

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

CASE NO.:50-2014-CP-003698-XXXX-NB

FOURTH DISTRICT CASE NO.:4D16-3314

ELIOT BERNSTEIN FAMILY TRUST DTD 05/20/08 AND ITS CURRENT AN  
Appellant (s) ,

VS .

ALEXANDRA BERNSTEIN  
ERIC BERNSTEIN  
MICHAEL BERNSTEIN  
LISA SUE FRIEDSTEIN  
MAX FRIEDSTEIN  
PAMELA SIMON, INDIVIDUALLY  
MOLLY NORAH SIMON  
THEODORE STUART BERSTEIN AS TRUSTEE OF THE SHIRLEY TRUST  
Appellee (s)

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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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Tuesday, November 01, 2016**

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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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**Record on Appeal Index  
Tuesday, November 01, 2016**

**Case #: 502014CP003698XXXXNB  
Case Description: SHIRLEY BERNSTEIN**

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PETITIONER	# 2 TRUST AGREEMENT DTD 05/20/08	02	2524-2553
DEFENSE	#2 CORRESPONDENCE FROM DONALD TESCHER TO TED & ELIOT BERNSTEIN,	02	2554-2556
DEFENSE	#3 PETITION FOR DISCHARGE CASE # 2011CP000653 DTD 4/09/12	03	2557-2560
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PETITIONER	#17 CORRESPONDENCE FROM ROBERT SPALLINA TO SIMON BERNSTEIN DTD 7	17	2673-2674
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1	8/6/2014		PENDING
2	8/6/2014		CPFF/TR
3	8/6/2014		COMPLAINT
4	8/7/2014		ADDITIONAL COMMENTS
5	8/7/2014		RECEIPT FOR PAYMENT
6	8/8/2014		SUMMONS ISSUED
7	8/12/2014		RECEIPT FOR PAYMENT
8	8/20/2014		AGREED ORDER
9	8/22/2014		SUBPOENA RETURNED / SERVED
10	8/22/2014		SUBPOENA RETURNED / SERVED
11	8/22/2014		SUBPOENA RETURNED / SERVED
12	8/25/2014		SUMMONS ISSUED
13	8/26/2014		MOTION
14	8/26/2014		RECEIPT FOR PAYMENT
15	8/26/2014		NOTICE OF HEARING
16	8/29/2014		MOTION TO WITHDRAW
17	9/3/2014		MOTION
18	9/3/2014		SUMMONS ISSUED
19	9/3/2014		SUMMONS ISSUED
20	9/3/2014		SERVICE RETURNED (NUMBERED)
21	9/5/2014		CROSS/COUNTER/3RD - CP,GA,MH
22	9/5/2014		APPL AND AFF OF INDIGENCY
23	9/5/2014		ANSWER
24	9/5/2014		COUNTERCLAIM
25	9/5/2014		DECLARATION
26	9/8/2014		RECEIPT FOR PAYMENT
27	9/8/2014		NOTICE OF HEARING
28	9/8/2014		APPL AND AFF OF INDIGENCY
29	9/12/2014		PETITION
30	9/16/2014		PROOF OF SERVICE
31	9/16/2014		PROOF OF SERVICE
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33	9/24/2014		ORDER
34	10/3/2014		COMPLAINT
35	10/7/2014		ORDER
36	10/10/2014		NOTICE OF APPEARANCE
37	10/10/2014		NOTICE
38	11/4/2014		NOTICE OF FILING
39	11/20/2014		ANSWER
40	11/24/2014		MOTION FOR DEFAULT
41	11/24/2014		NOTICE
42	11/24/2014		NOTICE OF HEARING
43	11/25/2014		REQUEST TO PRODUCE
44	11/25/2014		REQUEST TO PRODUCE

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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
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46	11/25/2014		NOTICE OF SERVICE
47	11/26/2014		AFFIDAVIT
48	12/3/2014		ORDER OF DEFAULT
49	12/5/2014		PETITION
50	12/30/2014		MOTION TO DISMISS
51	1/8/2015		NOTICE OF HEARING
52	1/12/2015		MOTION
53	1/15/2015		NOTICE OF HEARING
54	1/29/2015		ORDER
55	1/30/2015		MOTION TO COMPEL
56	2/5/2015		ORDER
57	2/6/2015		NOTICE OF HEARING
58	2/17/2015		ANSWER & AFFIRMATIVE DEFENSES
59	2/24/2015		MOTION
60	2/27/2015		MOTION TO STRIKE
61	3/13/2015		NOTICE OF HEARING
62	3/21/2015		NOTICE
63	3/23/2015		MOTION
64	3/23/2015		NOTICE OF HEARING
65	3/25/2015		NOTICE OF HEARING
66	3/31/2015		ORDER GRANTING
67	4/2/2015		MOTION
68	4/2/2015		NOTICE OF HEARING
69	4/8/2015		ORDER
70	4/15/2015		MOTION
71	4/16/2015		MOTION
72	4/17/2015		NOTICE OF HEARING
73	4/28/2015		NOTICE OF HEARING
74	5/5/2015		ORDER
75	5/5/2015		ORDER
76	5/5/2015		ORDER DENYING MOTION
77	5/6/2015		ORDER
78	5/8/2015		ANSWER & AFFIRMATIVE DEFENSES
79	5/14/2015		PETITION
80	5/18/2015		ORDER DENYING
81	5/19/2015		ORDER OF RECUSAL
82	5/19/2015		NOTICE OF REASSIGNMENT
83	5/20/2015		ANSWER & AFFIRMATIVE DEFENSES
84	5/26/2015		ORDER DENYING
85	6/10/2015		TRUE COPY
86	6/10/2015		TRUE COPY
87	6/10/2015		TRUE COPY
88	6/15/2015		ORDER

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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
89	6/18/2015		NOTICE OF REASSIGNMENT
90	6/18/2015		NOTICE OF UNAVAILABILITY
91	9/24/2015		ORDER SETTING HEARING
92	10/16/2015		TRUE COPY
93	11/13/2015		NOTICE
94	11/13/2015		NOTICE
95	11/20/2015		NOTICE OF MEDIATION
96	11/20/2015		WITNESS LIST
97	11/20/2015		EXHIBIT LIST
98	11/30/2015		CERTIFICATE
99	11/30/2015		NOTICE OF MEDIATION
100	11/30/2015		EVIDENCE/EXHIBIT LIST FILED
101	12/1/2015		PETITION
102	12/4/2015		PETITION
103	12/4/2015		PETITION
104	12/4/2015		NOTICE
105	12/4/2015		NOTICE
106	12/8/2015		ORDER DENYING
107	12/9/2015		MOTION
108	12/10/2015		EXHIBIT LIST
109	12/12/2015		REQUEST
110	12/12/2015		REQUEST
111	12/15/2015		MOTION
112	12/15/2015		MOTION
113	12/16/2015		FINAL JUDGMENT
114	12/17/2015		ORDER
115	12/23/2015		NOTICE OF UNAVAILABILITY
116	12/23/2015		NOTICE OF UNAVAILABILITY
117	12/23/2015		NOTICE OF UNAVAILABILITY
118	12/28/2015		EMERGENCY MOTION
119	12/28/2015		EMERGENCY MOTION
120	12/31/2015		MOTION
121	12/31/2015		MOTION
122	1/4/2016		ORDER DENYING
123	1/4/2016		PETITION FOR APPOINTMENT
124	1/4/2016		NOTICE OF HEARING
125	1/5/2016		NOTICE OF HEARING
126	1/5/2016		NOTICE OF APPEAL
127	1/5/2016		APPL AND AFF OF INDIGENCY
128	1/5/2016		MOTION
129	1/6/2016		MEMORANDUM
130	1/6/2016		OBJECTION
131	1/6/2016		OBJECTION
132	1/7/2016		EXHIBIT LIST

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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
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134	1/7/2016		CERTIFICATE OF SERVICE
135	1/7/2016		ORDER
136	1/8/2016		TRUE COPY
137	1/8/2016		TRUE COPY
138	1/8/2016		AUTOMATIC RECEIPT APPELLATE FILING
139	1/8/2016		ACKNOWLEDGMENT OF NEW CASE
140	1/8/2016		AUTOMATIC RECEIPT APPELLATE FILING
141	1/13/2016		RESPONSE TO:
142	1/13/2016		RESPONSE TO:
143	1/14/2016		NOTICE OF HEARING
144	1/15/2016		INACTIVE DIVISION
145	1/15/2016		INACTIVE DIVISION
146	1/15/2016		INACTIVE ATTORNEY
147	1/19/2016		OBJECTION
148	1/19/2016		NOTICE OF APPEAL CIVIL
149	1/19/2016		APPL AND AFF OF INDIGENCY
150	1/21/2016		AUTOMATIC RECEIPT APPELLATE FILING
151	1/21/2016		AUTOMATIC RECEIPT APPELLATE FILING
152	1/28/2016		NOTICE OF HEARING
153	1/28/2016		MOTION
154	2/3/2016		ORDER
155	2/9/2016		OBJECTION
156	2/9/2016		OBJECTION
157	2/10/2016		MOTION
158	2/10/2016		NOTICE OF HEARING
159	2/16/2016		MEMORANDUM
160	2/17/2016		ORDER DENYING
161	3/2/2016		ORDER
162	3/2/2016		RE-NOTICE OF HEARING
163	3/3/2016		MOTION
164	3/3/2016		RE-NOTICE OF HEARING
165	3/9/2016		NOTICE OF TAKING DEPOSITION
166	3/11/2016		EXHIBIT LIST
167	3/15/2016		MOTION FOR PROTECTIVE ORDER
168	3/15/2016		NOTICE
169	3/16/2016		OBJECTION
170	3/18/2016		MOTION FOR PROTECTIVE ORDER
171	3/22/2016		NOTICE OF HEARING
172	3/29/2016		NOTICE OF APPEAL CIVIL
173	3/29/2016		APPL AND AFF OF INDIGENCY
174	3/30/2016		NOTICE OF CANCELLATION
175	4/4/2016		ORDER
176	4/4/2016		SUBPOENA RETURNED / SERVED

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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
177	4/5/2016		PETITIONER EVIDENCE
178	4/5/2016		DEFENSE EVIDENCE
179	4/5/2016		PETITIONER EVIDENCE
180	4/5/2016		PETITIONER EVIDENCE
181	4/5/2016		PETITIONER EVIDENCE
182	4/5/2016		PETITIONER EVIDENCE
183	4/5/2016		PETITIONER EVIDENCE
184	4/5/2016		PETITIONER EVIDENCE
185	4/5/2016		PETITIONER EVIDENCE
186	4/5/2016		PETITIONER EVIDENCE
187	4/5/2016		PETITIONER EVIDENCE
188	4/5/2016		PETITIONER EVIDENCE
189	4/5/2016		PETITIONER EVIDENCE
190	4/5/2016		PETITIONER EVIDENCE
191	4/5/2016		PETITIONER EVIDENCE
192	4/5/2016		PETITIONER EVIDENCE
193	4/5/2016		PETITIONER EVIDENCE
194	4/5/2016		PETITIONER EVIDENCE
195	4/5/2016		DEFENSE EVIDENCE
196	4/5/2016		DEFENSE EVIDENCE
197	4/6/2016		INDEX TO RECORD ON APPEAL
198	4/6/2016		AUTOMATIC RECEIPT APPELLATE FILING
199	4/7/2016		NOTICE OF FILING
200	4/8/2016		SUBPOENA RETURNED / SERVED
201	4/8/2016		ORDER
202	4/11/2016		CERTIFICATE OF SERVICE
203	4/13/2016		APPL AND AFF OF INDIGENCY
204	4/19/2016		ORDER DENYING
205	4/25/2016		NOTICE OF COMPLIANCE
206	5/2/2016		NOTICE OF APPEAL CIVIL
207	5/2/2016		APPL AND AFF OF INDIGENCY
208	5/3/2016		AUTOMATIC RECEIPT APPELLATE FILING
209	5/4/2016		MEMORANDUM
210	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
211	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
212	5/5/2016		TRUE COPY
213	5/5/2016		ACKNOWLEDGMENT OF NEW CASE
214	5/12/2016		EXHIBIT LIST
215	5/23/2016		PETITIONER EVIDENCE
216	5/23/2016		RESPONDENT EVIDENCE
217	5/23/2016		PETITIONER EVIDENCE
218	5/23/2016		PETITIONER EVIDENCE
219	5/23/2016		PETITIONER EVIDENCE
220	6/9/2016		TRUE COPY

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**Case Description: SHIRLEY BERNSTEIN**

<b>#</b>	<b>Effective Date</b>	<b>Count</b>	<b>Description</b>
221	6/22/2016		NOTICE OF MEDIATION
222	7/1/2016		INDEX TO RECORD ON APPEAL
223	7/1/2016		AUTOMATIC RECEIPT APPELLATE FILING
224	8/10/2016		MOTION
225	8/23/2016		NOTICE OF HEARING
226	9/1/2016		ORDER
227	9/21/2016		MEDIATION REPORT
228	9/22/2016		TRUE COPY
229	9/27/2016		NOTICE OF APPEAL CIVIL
230	9/27/2016		NOTICE OF FILING
231	9/29/2016		AUTOMATIC RECEIPT APPELLATE FILING
232	9/30/2016		ACKNOWLEDGMENT OF NEW CASE
233	9/30/2016		TRUE COPY
234	10/10/2016		DIRECTIONS TO CLERK



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.:

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), files this Complaint against and provides notice to those interested in the Trust, Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., and states that at all times relevant:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust (“Trustee.”)

2. Shirley Bernstein died on December 10, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.

3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley’s Trust”).

4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley’s Trust.

5. An authentic copy of Shirley’s Trust is attached as Exhibit “A”.

6. Shirley’s Trust, Exhibit A, is clear and unambiguous.

7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.

8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one of more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

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 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 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.

27. In essence, through his Special Power, 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 each such grandchild under Simon's Trust.

28. The persons identified by Simon, “his then living grandchildren,” all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley’s “lineal descendants and their spouses”.

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: “my lineal descendants then living, *per stirpes*.”

30. The class of permissible appointees for Simon’s power (Shirley’s “lineal descendants and their spouses”) is different than the class of alternate/default beneficiaries (Shirley’s “lineal descendants *then living*, per stirpes”).

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley’s] grandchildren, none of Shirley’s and Simon’s children is a beneficiary under the

Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "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 [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.



53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

**Defendants and Potential Beneficiaries**

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

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<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

**COUNT I –DECLARATORY AND OTHER RELIEF**

66. Trustee restates the allegations contained in Paragraphs 1-65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

Dated this 6th day of August, 2014.

**ATTORNEYS FOR PLAINTIFF**

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– and –

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John J. Pankauski, Esquire  
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**SHIRLEY BERNSTEIN**  
**TRUST AGREEMENT**

*Prepared by:*

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**TESCHER & SPALLINA, P.A.**

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SHIRLEY BERNSTEIN

TRUST AGREEMENT

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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

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

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.

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

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

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

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

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

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

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

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

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

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

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

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

**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.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.

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

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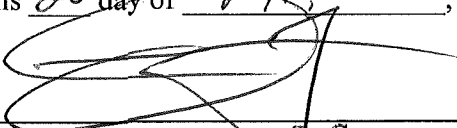
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

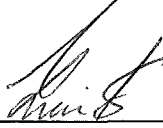
**SETTLOR and TRUSTEE:**



\_\_\_\_\_  
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

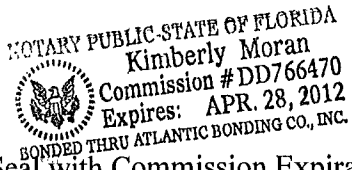
  
\_\_\_\_\_  
Print Name: TRACI KRATISH  
Address: 16068 CIENCRESS AVENUE  
DELRAY BEACH, FL 33446

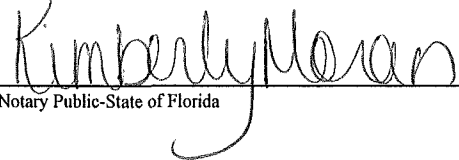
STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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

  
[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 \_\_\_\_\_

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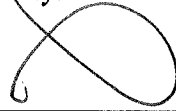
SHIRLEY BERNSTEIN  
TRUST AGREEMENT

**ATTACHMENT**

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

One Dollar (\$1.00) Cash

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



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SHIRLEY BERNSTEIN, Settlor and Trustee

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**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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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.

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*[remainder of page intentionally left blank]*

FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT




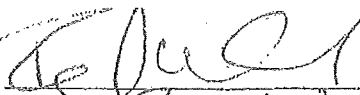
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

  
SHIRLEY BERNSTEIN

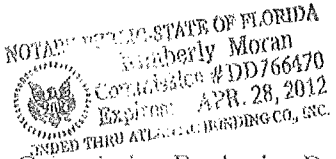
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

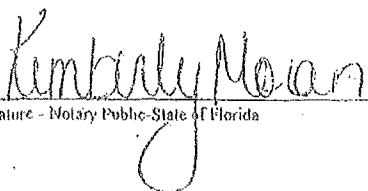
  
Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

  
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.



  
Signature - Notary Public - State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known  or Produced Identification   
Type of Identification Produced \_\_\_\_\_

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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](http://www.tescherspallina.com)



LAW OFFICES  
TESCHER & SPALLINA, P.A.

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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.

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

#### ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint 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

**CIVIL ACTION SUMMONS [Individual]**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

SHARON R. BOCK  
Clerk & Comptroller  
P.O. Box 4667  
West Palm Beach, Florida  
33402-4667

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

**THE STATE OF FLORIDA**

To Each Sheriff of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the complaint in this action on Defendant

ELIOT BERNSTEIN, individually, as Trustee  
f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.

2753 NW 34th Street  
Boca Raton, FL 33434

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney, whose address is:

**Alan B. Rose, Esq.**  
**MRACHEK, FITZGERALD, ROSE,**  
**KONOPKA, THOMAS & WEISS, P.A.**  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 / FAX (561) 655-5637

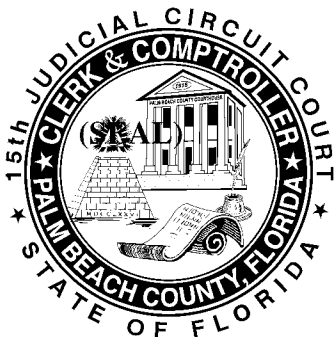
**E-mail designations:**

**Primary:** [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**Secondary:** [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
[blewter@mrachek-law.com](mailto:blewter@mrachek-law.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED :           AUG 12 2014          , 2014.



**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

BY:           Edna Smith            
Deputy Clerk  
Edna Smith

### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su resquesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante O Abogado del Demandante).

### IMPORTANTE

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous estes oblige de déposer votre response ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le ralai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de déposer vous-meme une response ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre response ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

2014 AUG 20 PM 2:51  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

**AGREED ORDER ON ELIOT BERNSTEIN'S  
MOTION FOR EMERGENCY INTERIM DISTRIBUTIONS**

THIS CAUSE having come before the Court on August 19, 2014, upon Eliot Bernstein's  
Motion for Emergency Interim Distributions ("the Motion"), to pay the private school tuition costs  
for his children. The Court, having reviewed the Motion and heard argument of counsel and/or the  
parties, having been advised of the terms of the parties' Confidential Agreement for Receipt of Partial  
Distribution (the "Agreement"), having taken testimony from Ted Bernstein and from Eliot and

Candice Bernstein, and otherwise being fully advised in the premises, hereby ORDERS AND ADJUDGES that

1. The Emergency Motion is **CONDITIONALLY GRANTED** in part, on the terms set forth below.

2. The Trustee is authorized, directed and compelled to make payments to the St. Andrew's School on behalf of each of Eliot's three children in the amounts specified in the Agreement, to cover the 2013-2014 arrearages, and the full cost of tuition for 2014-2015 school year. If for any reason any of the children withdraw from or no longer attend the St. Andrews School, said school may not disburse any monies in the children's accounts (excess payments, refunds if applicable, or otherwise) to anyone absent an order from this Court.

3. The Trustee is authorized and directed to make such payment upon receipt from Eliot and Candice Bernstein of a signed copy of the Agreement.

4. In addition, based upon this order directing the Trustee to make such payment, the Court rules that the Trustee shall be held harmless and cannot be sued for the act of making these required, court-ordered distributions. Neither Eliot or Candice Bernstein, individually; Eliot Bernstein and Candice Bernstein, as guardians and natural parents of Daniel, Jacob and Joshua; nor any other beneficiary of The Shirley Bernstein Trust shall commence, prosecute or participate in any litigation against the Trustee concerning these payments.

5. Eliot Bernstein and Candice Bernstein, individually; Eliot Bernstein and Candice Bernstein, as guardians and natural parents of Daniel, Jacob and Joshua; and any other beneficiary of The Shirley Bernstein Trust are enjoined and precluded from filing or pursuing any action against

the Trustee in connection with the Trustee's distributions provided under the Agreement for the payment to St. Andrews School and this Order.

6. The Court finds that no beneficiary objected to the requested distribution, and finds that it is in the best interests of Eliot Bernstein and his children that these distributions be made directly to the St. Andrew's School. Because the Agreement relates to minor children, the Court orders that the Agreement be treated as confidential, to be provided solely to the parties (parties may share on a confidential basis a copy of the Agreement with counsel advising them in this matter). In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children.

7. The Court retains jurisdiction to enforce the terms of this order, including enforcement of the injunction relief provided for herein.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 20 day of August, 2014.



\_\_\_\_\_  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

**SERVICE LIST**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
[john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: [eservice@palmettobaylaw.com](mailto:eservice@palmettobaylaw.com);  
[bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com);  
[tmealy@gcprobatelaw.com](mailto:tmealy@gcprobatelaw.com)  
Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Alan Rose, Esq.  
Mrachek Fitzgerald Rose Konopka Thomas &  
Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

John J. Pankauski, Esq.  
Pankauski Law Firm P.L.L.C.  
120 South Olive Avenue, Suite 701  
West Palm Beach, FL 33401  
email: [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com)

**EDWARD D. CAMERON**  
CERTIFIED PROCESS SERVER  
7308 73rd Way  
West Palm Beach, Florida 33407

**CASE NO. 502014CP003698XXXXSB**  
**COURT** Circuit-Palm Beach

**DATE:** August 13, 2014  
TED BERNSTEIN, as Trustee of the  
Shirley Bernstein Trust Agreement dated  
May 20, 2008  
VS.  
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, et al

**TYPE OF SERVICE**  
SUMMONS, COMPLAINT

**RETURN OF SERVICE**

To ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja B. and Jo B. under the Simon L. Bernstein Dtd 9/13/12, and on  
Behalf of his minor children D.B. Ja. B. and Jo. B.  
2753 NW 34<sup>th</sup> Street Boca Raton, Florida 33434

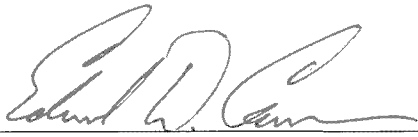
Received these papers on AUGUST 13, 2014 at 9:00 A.M. and on AUGUST 13, 2014 at 10:10 A.M. I served it on within named  
ELIOT BERNSTEIN in PALM BEACH County, Florida.

- INDIVIDUAL SERVICE:** By serving upon the named (Defendant/Witness) a true copy of this with the date and hour of service endorsed by me and a copy of the Plaintiff's complaint, petition or initial pleading.
- SUBSTITUTE SERVICE:** By leaving a true copy of this SUMMONS with the date and hour of service endorsed thereon by me and a copy of Plaintiff's Initial pleading as furnished by the Plaintiff's, at the within named (Defendant/Witness) usual place of abode with any person residing therein the age of 15 years or older to wit: CANDACE BERNSTEIN as WIFE and CO-RESIDENT of Defendant, or to manager of Defendant's business and informing such person of their content pursuant to: F.S. 48.031, F.S. 48.031(2)(a), F.S. 48.031(2)(b).
- CORPORATE SERVICE:** By serving a true copy of this to as an employee of Defendant corporation in compliance with F.S. 48.081(3) or serving , Service of Process Manager as a Registered Agent in compliance with F.S. 48.091.
- POSTED**  **COMMERCIAL**  **RESIDENTIAL** 1<sup>st</sup> Attempt 2<sup>nd</sup> Attempt
- NO SERVICE:** For the reason that after diligent search and inquiry failed to find said in County, Florida.

**COMMENT:**

**Description of Person Served:** AGE: 45, SEX: F, RACE/SKIN COLOR: W, HEIGHT: 5'7", WEIGHT: 150, HAIR: Blonde, EYES: Blue, GLASSES: No  
WITNESS FEE:

MRACHEK, FITZGERALD & ROSE, et al  
Alan B. Rose, Esq.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

By   
I am a certified process server in good standing  
in the 15th Judicial Circuit. #401

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

**EDWARD D. CAMERON**  
CERTIFIED PROCESS SERVER  
7308 73rd Way  
West Palm Beach, Florida 33407

**CASE NO. 502014CP003698XXXXSB**  
**COURT Circuit-Palm Beach**

**DATE:** August 13, 2014  
TED BERNSTEIN, as Trustee of the  
Shirley Bernstein Trust Agreement dated  
May 20, 2008

VS.  
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, et al

**TYPE OF SERVICE**  
SUMMONS, COMPLAINT

**RETURN OF SERVICE**

To ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja B. and Jo B. under the Simon L. Bernstein Dtd 9/13/12, and on  
Behalf of his minor children D.B. Ja. B. and Jo. B.

2753 NW 34<sup>th</sup> Street Boca Raton, Florida 33434

Received these papers on AUGUST 13, 2014 at 9:00 A.M. and on AUGUST 13, 2014 at 10:10 A.M. I served it on within named  
ELIOT BERNSTEIN in PALM BEACH County, Florida.

**INDIVIDUAL SERVICE:** By serving upon the named (Defendant/Witness) a true copy of this with the date and hour of  
service endorsed by me and a copy of the Plaintiff's complaint, petition or initial pleading.

**SUBSTITUTE SERVICE:** By leaving a true copy of this SUMMONS with the date and hour of service endorsed thereon by  
me and a copy of Plaintiff's Initial pleading as furnished by the Plaintiff's, at the within named (Defendant/Witness) usual place of  
abode with any person residing therein the age of 15 years or older to wit: CANDACE BERNSTEIN as WIFE and CO-RESIDENT  
of Defendant, or to manager of Defendant's business and informing such person of their content pursuant to: F.S. 48.031, F.S.  
48.031(2)(a), F.S. 48.031(2)(b).

**CORPORATE SERVICE:** By serving a true copy of this to as an employee of Defendant corporation in compliance with  
F.S. 48.081(3) or serving , Service of Process Manager as a Registered Agent in compliance with F.S. 48.091.

**POSTED**  **COMMERCIAL**  **RESIDENTIAL** 1<sup>st</sup> Attempt 2<sup>nd</sup> Attempt

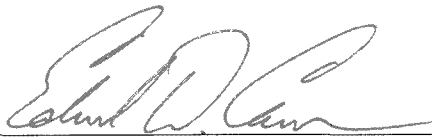
**NO SERVICE:** For the reason that after diligent search and inquiry failed to find said in County, Florida.

**COMMENT:**

**Description of Person Served:** AGE: 45, SEX: F, RACE/SKIN COLOR: W, HEIGHT: 5'7", WEIGHT: 150, HAIR: Blonde, EYES:  
Blue, GLASSES: No

WITNESS FEE:

MRACHEK, FITZGERALD & ROSE, et al  
Alan B. Rose, Esq.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

By 

I am a certified process server in good standing  
in the 15th Judicial Circuit. #401

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

**EDWARD D. CAMERON**  
CERTIFIED PROCESS SERVER  
7308 73rd Way  
West Palm Beach, Florida 33407

**CASE NO. 502014CP003698XXXXSB**  
**COURT Circuit-Palm Beach**

**DATE:** August 13, 2014  
TED BERNSTEIN, as Trustee of the  
Shirley Bernstein Trust Agreement dated  
May 20, 2008  
VS.  
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, et al

**TYPE OF SERVICE**  
SUMMONS, COMPLAINT

**RETURN OF SERVICE**

To ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja B. and Jo B. under the Simon L. Bernstein Dtd 9/13/12, and on Behalf of his minor children D.B. Ja. B. and Jo. B.

2753 NW 34<sup>th</sup> Street Boca Raton, Florida 33434


Received these papers on AUGUST 13, 2014 at 9:00 A.M. and on AUGUST 13, 2014 at 10:10 A.M. I served it on within named ELIOT BERNSTEIN in PALM BEACH County, Florida.

- INDIVIDUAL SERVICE:** By serving upon the named (Defendant/Witness) a true copy of this with the date and hour of service endorsed by me and a copy of the Plaintiff's complaint, petition or initial pleading.
- SUBSTITUTE SERVICE:** By leaving a true copy of this SUMMONS with the date and hour of service endorsed thereon by me and a copy of Plaintiff's Initial pleading as furnished by the Plaintiffs, at the within named (Defendant/Witness) usual place of abode with any person residing therein the age of 15 years or older to wit: CANDACE BERNSTEIN as WIFE and CO-RESIDENT of Defendant, or to manager of Defendant's business and informing such person of their content pursuant to: F.S. 48.031, F.S. 48.031(2)(a), F.S. 48.031(2)(b).
- CORPORATE SERVICE:** By serving a true copy of this to as an employee of Defendant corporation in compliance with F.S. 48.081(3) or serving , Service of Process Manager as a Registered Agent in compliance with F.S. 48.091.
- POSTED**  **COMMERCIAL**  **RESIDENTIAL** 1<sup>st</sup> Attempt 2<sup>nd</sup> Attempt
- NO SERVICE:** For the reason that after diligent search and inquiry failed to find said in County, Florida.

**COMMENT:**

**Description of Person Served:** AGE: 45, SEX: F, RACE/SKIN COLOR: W, HEIGHT: 5'7", WEIGHT: 150, HAIR: Blonde, EYES: Blue, GLASSES: No  
WITNESS FEE:

MRACHEK, FITZGERALD & ROSE, et al  
Alan B. Rose, Esq.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, Florida 33401

By   
I am a certified process server in good standing  
in the 15th Judicial Circuit. #401

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

**CIVIL ACTION SUMMONS [Individual]**

=====

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*



**THE STATE OF FLORIDA**

To Each Sheriff of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the complaint in this action on Defendant

PAMELA B.SIMON, Individually  
and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12  
950 N. Michigan Avenue, Apartment 2603  
Chicago, IL 60611

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney, whose address is:

**Alan B. Rose, Esq.**  
**MRACHEK, FITZGERALD, ROSE,**  
**KONOPKA, THOMAS & WEISS, P.A.**  
**505 S. Flagler Drive, Suite 600**  
**West Palm Beach, FL 33401**  
**(561) 655-2250 / FAX (561) 655-5637**

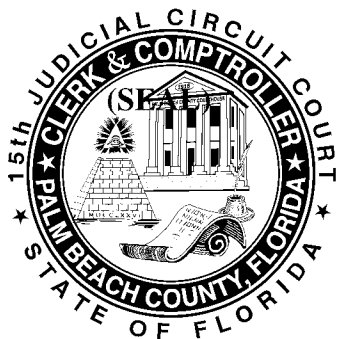
**E-mail designations:**

**Primary:** [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**Secondary:** [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
[blewter@mrachek-law.com](mailto:blewter@mrachek-law.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED :           AUG 26 2014          , 2014.



**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

BY: *Susan Lobello*  
Deputy Clerk  
Susan Lobello

SHARON R. BOCK  
Clerk & Comptroller  
P.O. Box 3406  
West Palm Beach, FL 33402

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### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su resquesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante O Abogado del Demandante).

### IMPORTANTE

Des poursuites judiciaires ont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous estes oblige de déposer votre response ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le ralai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de déposer vous-meme une response ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre response ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO.  
PROBATE DIVISION

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended

Honorable Martin Colin

Petitioner,

v.

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

\_\_\_\_\_ /

**MOTION FOR EXTENSION OF TIME TO FILE AN ANSWER AND COUNTER  
COMPLAINT**

COMES NOW, Eliot Ivan Bernstein ("Eliot"), PRO SE, Eliot as Beneficiary and  
Interested Party both for himself personally and with Candice as Guardians for their three minor  
children ("Petitioners") of the ALLEGED "Shirley Bernstein Trust dated May 20, 2008, as  
amended" ("Shirley Trust") and hereby files this "Motion for Extension of Time" and in support  
thereof states, as follows:

1. That Eliot requests an extension of time for several reasons.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

2. First, due to several other legal cases that are currently before the Court in the Estates and Trusts of Simon and Shirley Bernstein that make a timely reply unnecessary to this pleading and this pleading frivolous and vexatious at this time.
3. Certain issues, including the character and fitness of the alleged Trustee are currently before the Court in those cases and scheduled to be heard next by Your Honor that if Theodore is found unfit AGAIN to be a fiduciary by Your Honor in those matters this matter is moot.
4. That the dispositive documents that this action are based on are already challenged before the Court for proven and admitted Fraud, Forgery and Altered Trust Documents already discovered and more due to crimes committed by the former counsel for the alleged Trustee, Theodore, namely, Robert Spallina, Esq., Donald Tescher, Esq. and Mark Manceri. Where Spallina and Tescher were already removed as Fiduciaries and Counsel in these matters and Manceri withdrew voluntarily as they all should have but instead everyone wasted time and energy and money as they tried to continue the Fraud on the Court but finally after months WITHDREW from these matters due to admitted FRAUD.
5. This Court has already removed the prior Counsel to the alleged Trustee Theodore in Shirley's Estates and Trusts from the proceedings and removed Counsel and Fiduciaries in Simon's Trust and Estate for egregious acts of bad faith with unclean hands that directly benefited both Theodore Bernstein and his counsel Alan Rose, who both participated and benefited from the prior frauds.
6. The Court has already denied Theodore as unfit by Order to become the Successor Curator to his friends, associates and colleagues, Tescher and Spallina, who were removed for the Fraud, Forgeries and Admitted Altered Trust documents and the Court DENIED his bid as he is not now fit to be Trustee. This denial was after hearing arguments in the hearing to elect a new Curator, due to a plethora of legally sound reasons that Theodore is not qualified to act as a fiduciary and if this Court finds him not qualified in one capacity it would almost be a reversal of an Order to find him fit in any capacity forward. All reasons for Theodore's removal have been motioned and petitioned to the



Court already and the Court has a Motion to Remove Theodore on its own initiative as allowed by law when conditions such as those presented against the alleged Trustee exist.

7. That if Theodore does not succeed in his bid to remain PR and Trustee in either the Estates and Trusts of Simon and Shirley by Order of this Court, than Eliot should not have to respond to any prior pleadings submitted by them. If the successor trustee wants to advance this frivolous and toxic lawsuit and other pleadings filed by Theodore and his minion of Attorneys at Law when they are removed, then Eliot will deal with them at that time. After thorough investigation of the dispositive documents (certain ones still suppressed and denied by Theodore and review of the accountings, which Theodore has failed to file at all for two years in violation of Probate Rules and Statutes) and determined by this Court to be legally valid.
8. If the Court on its own initiative somehow finds Theodore fit as a fiduciary at this time, despite having once DENIED him as unfit to become a successor, despite the irrefutable evidence that he is not qualified at this time for other fiduciary positions for solid legal reasons posited with the Court, despite having urged him to withdraw his last bid for PR in Simon or face sanctions if he lost his frivolous filing than Eliot will file a reply to this and other pleadings and honor the Court's decision but would still need a bit of additional time to reply due to other reasons.
9. That the Court should recall after everyone involved wasting time and energies coming to the Court in droves of costly lawyers to witness at the podium Alan, Theodore and John Pankauski argue to have Theodore become the successor in Simon, they VOLUNTARILY WITHDREW their bid at Your Honor's strong urging to withdraw thrice prior to hearing. This as they know they could not win in the face of all the reasons pled to this Court already by the Creditor and Eliot and yet they fail to voluntarily withdraw for those same reasons and force everyone to continue to waste more time and monies to rid the proceedings of them forcefully and aggressively.
10. That the reasons for Theodore's removal are abundantly clear from Eliot's recent pleading alone, which includes almost 88 pages of solid legal reasons, titled "AMENDED EMERGENCY MOTION

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TO COMPEL ALLEGED TRUSTEE OF THE SHIRLEY TRUST TO MAKE EMERGENCY WELFARE PAYMENTS AS PROVIDED FOR UNDER THE TRUST; **MOTION FOR REMOVAL OF TRUSTEE ON THE COURT'S OWN INITIATIVE – FLORIDA TITLE XLII 736.0706,**” hereby incorporated by reference herein, along with the motions and petitions of the Creditor and Eliot to remove Theodore filed in both Simon and Shirley’s Estates and Trusts.

11. This Court must determine before even hearing this lawsuit if Theodore will survive Your Honor, the Creditor and Eliot’s legally sound reasons for Theodore’s removal and if not this pleading will serve merely as further evidence of the abuse of process that has delayed and interfered with inheritances by Theodore et al. for now two years of fraud, lies, deceit, forgery of deceased parties and much more committed already by Officers of this Court and Fiduciaries.
12. Eliot has further notified Alan several times that he is undergoing long planned medical treatments at this time and during such time Alan has done everything to make Eliot respond to FRIVOLOUS and ABUSIVE pleadings on behalf of his client and try and trick the Court that Eliot is being uncooperative. This despite Alan knowing all too well that Theodore is not qualified now to legally serve as a fiduciary in these matters and that he should voluntarily resign and none of this would be necessary but he continues to forcefully and aggressively abuse process and Eliot and his family in a desperate attempt to hold on.
13. Alan is fully aware his client is not qualified as his VOLUNTARY WITHDRAWAL to have him appointed as a fiduciary at the last waste of time hearing proved. What new evidence will he offer to change Your Honor or anybody’s mind to make Theodore fit as a fiduciary since that time? This in the wake of literally a mountain of reasons he is unfit at this time, including very serious NEW allegations of theft of personal properties and violation of a Court Order to inventory them by the creditor and Eliot, that further the reasons that legally disqualify him.
14. That Your Honor is also aware of the reasons that caused the Court once to Deny Theodore as fit and then urge them to go away and withdraw his frivolous and toxic filing or face sanctions if they lost.



Yet, despite all this, Theodore refuses voluntarily to resign as required by Probate Rule and Statute, his Attorney Alan continues to advise his client to withdraw despite repeated requests and instead they continue instead to waste more time and monies of everyone in pursuing toxic pleadings such as this and others. Until this Court aggressively and forcefully removes them in all capacities in the Estates and Trusts of Simon and Shirley and all Bernstein family related matters we will all suffer further damages and waste of time, including three minor children.

15. That further Eliot needs more time due to extended medical treatments that are a result of a change in the design of the teeth implanted (all of Eliot's teeth both upper and lower), which now will take more time. Eliot told Alan already this information and informed him that treatments could go on for several more weeks, estimated now at two to three more weeks and Eliot has already posited this evidence to Alan and this Court, including the number of my Doctor to call and confirm.
16. Yet, Alan and Theodore have ignored these reasons to slow down for a minute, especially where next up for hearing is the removal of Theodore, which may make this all moot. Alan is aware of my requests to recover fully and be off medications entirely to move forward, other than the hearing to remove Theodore, which Eliot will attend in any condition and instead Alan piles high Toxic, Vexatious, Frivolous and Costly pleadings such as this and others before the Court at this time knowing Eliot is not well.
17. Eliot has had no solace from Alan since advising him of his medical condition and request for some time and yet continues to harass and harangue him for depositions, productions, answers and more during this time when Alan knows Eliot is under medical treatment and taking medications. Alan wants answers to this new lawsuits he is filing to attempt to change irrevocable trusts to fit the frauds his client has already committed and knowing that Theodore is being sued for Breaches of Fiduciary Duties and much more.
18. For Eliot to file an answer to this baseless lawsuit that is premature is further abuse, as the very document and everything in Estates and Trusts must now be further analyzed for further fraud and

forgery and more before trying to change anything in a rush job to buy a "Get of Jail Free" card while Eliot is not well, tired and may make a mistake without counsel and his senses fully about him due to medications.

**WHEREFORE**, Eliot prays this Court grant an extension of no less than 90 days (keep in mind Eliot already has filed a Counter Complaint in another highly complex related case before this Court and Your Honor that is taking a massive amount of time at this time he does not feel well) or Order a Stay on this Lawsuit until further consideration and determination by this Court.

Filed on Tuesday, August 26, 2014,

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three children.

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, August 26, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his minor three children


X



## SERVICE LIST

<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:tbernstein@lifinsurancesconcepts.com">tbernstein@lifinsurancesconcepts.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> <a href="mailto:cklein@mrachek-law.com">cklein@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a> <a href="mailto:rfitzgerald@mrachek-law.com">rfitzgerald@mrachek-law.com</a> <a href="mailto:skonopka@mrachek-law.com">skonopka@mrachek-law.com</a> <a href="mailto:dthomas@mrachek-law.com">dthomas@mrachek-law.com</a> <a href="mailto:gweiss@mrachek-law.com">gweiss@mrachek-law.com</a> <a href="mailto:jbaker@mrachek-law.com">jbaker@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> <a href="mailto:lchristian@mrachek-law.com">lchristian@mrachek-law.com</a> <a href="mailto:tclarke@mrachek-law.com">tclarke@mrachek-law.com</a> <a href="mailto:gdavies@mrachek-law.com">gdavies@mrachek-law.com</a> <a href="mailto:pgillman@mrachek-law.com">pgillman@mrachek-law.com</a> <a href="mailto:dkelly@mrachek-law.com">dkelly@mrachek-law.com</a> <a href="mailto:cklein@mrachek-law.com">cklein@mrachek-law.com</a> <a href="mailto:williamson@mrachek-law.com">williamson@mrachek-law.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>
<p>RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD</p> <p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>COUNSEL FOR LIMITED APPEARANCE representing Mr. Tescher in connection with his Petition for Designation and Discharge as Co-Personal Representative of the Estate of Simon L. Bernstein, deceased.</p> <p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@ijblegal.com">ijb@ijblegal.com</a> <a href="mailto:martin@kolawyers.com">martin@kolawyers.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and FORMER WITHDRAWN COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES, NO NOTICES OF APPEARANCES</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 <a href="mailto:mrm1aw@comcast.net">mrm1aw@comcast.net</a> <a href="mailto:mrm1aw1@gmail.com">mrm1aw1@gmail.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>

			<a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a>
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD  Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	COUNSEL TO CREDITOR WILLIAM STANSBURY  Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a> <a href="mailto:service@feamanlaw.com">service@feamanlaw.com</a> <a href="mailto:mkoskey@feamanlaw.com">mkoskey@feamanlaw.com</a>	COURT APPROVED CURATOR TO REPLACE THE REMOVED FORMER PERSONAL REPRESENTATIVES/CO-TRUSTEES/COUNSEL TO THEMSELVES AS FIDUCIARIES TESCHER AND SPALLINA  Benjamin Brown, Esq., Thornton B Henry, Esq., and Peter Matwiczuk Matwiczuk & Brown, LLP 625 No. Flagler Drive Suite 401 West Palm Beach, FL 33401 <a href="mailto:bbrown@matbrolaw.com">bbrown@matbrolaw.com</a> <a href="mailto:attorcys@matbrolaw.com">attorcys@matbrolaw.com</a> <a href="mailto:bhenry@matbrolaw.com">bhenry@matbrolaw.com</a> <a href="mailto:pmatwiczuk@matbrolaw.com">pmatwiczuk@matbrolaw.com</a>	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN  William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 <a href="mailto:wpearsonlaw@bellsouth.net">wpearsonlaw@bellsouth.net</a>
RESPONDENT INDIVIDUALLY AND AS GUARDIAN AND TRUSTEE OF HER MINOR CHILD  Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a> <a href="mailto:lisa@friedsteins.com">lisa@friedsteins.com</a>	COUNSEL FOR JILL IANTONI and LISA FRIEDSTEIN  William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 <a href="mailto:bill@palmettobaylaw.com">bill@palmettobaylaw.com</a> <a href="mailto:eservice@palmettobaylaw.com">eservice@palmettobaylaw.com</a> <a href="mailto:mtimealy@gcprobateflaw.com">mtimealy@gcprobateflaw.com</a>	RESPONDENT – ADULT CHILD  Alexandra Bernstein 3000 Washington Blvd, Apt 424 Arlington, VA, 22201 <a href="mailto:alb07c@gmail.com">alb07c@gmail.com</a>	RESPONDENT/ARRESTED AND CONVICTED OF FRAUD AND ADMITTED TO FORGERY OF SIX SIGNATURES, INCLUDING POST MORTEM FOR SIMON/HAS HAD NOTARY PUBLIC LICENSE REVOKED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION. *See notes  Kimberly Moran <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a>

<p>RESPONDENT – ADULT CHILD</p> <p>Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:ehernstein@lifeinsuranceconcepts.com">ehernstein@lifeinsuranceconcepts.com</a> <a href="http://m.edb07@fsu.edu">m.edb07@fsu.edu</a> <a href="mailto:edb07fsu@gmail.com">edb07fsu@gmail.com</a></p>	<p>RESPONDENT – INITIALLY MINOR CHILD AND NOW ADULT CHILD</p> <p>Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:mchl_bernstein@yahoo.com">mchl_bernstein@yahoo.com</a></p>		<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p>
<p>RESPONDENT – ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:matl89@aol.com">matl89@aol.com</a></p>	<p>RESPONDENTS – MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>RESPONDENT – MINOR CHILD</p> <p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>RESPONDENT – MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:molly.simon1203@gmail.com">molly.simon1203@gmail.com</a></p> 	

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Wednesday, September 3, 2014

**TIME:** 8:45 AM

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray Beach, FL 33444

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

**MATTER TO BE HEARD:            ELIOT BERNSTEIN'S MOTION FOR  
EXTENSION OF TIME TO FILE AN ANSWER  
AND COUNTER COMPLAINT**

**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 26th day of August, 2014.

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Attorneys for Ted S. Bernstein

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

– and –

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as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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

CASE #502014CP003698XXXXSB  
Probate

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

Plaintiff,

-vs-

ALEXANDRA BERNSTEIN, etc., et al.,

Defendants.

\_\_\_\_\_ /

**PANKAUSKI LAW FIRM PLLC's MOTION TO WITHDRAW AS  
COUNSEL FOR TED BERNSTEIN**

**COMES NOW** the Pankauski Law Firm PLLC ("Firm") and moves this  
Honorable Court for the entry of an Order permitting its withdrawal as counsel for  
Ted Bernstein ("Ted") in this cause, and as grounds therefore states:

1. Irreconcilable differences have arisen between Firm and Ted which necessitate Firm's withdrawal as Ted's counsel.
2. There are matters pending before the Court, however, Ted continues to be represented in these proceedings by Alan Rose, Esquire.

**WHEREFORE**, the Pankauski Law Firm, PLLC prays that it may withdraw  
without further responsibility, obligation, or liability in connection with this matter,

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that the Motion be granted, and that such further relief be granted as may be just.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via e-service to all parties on the attached Service List this 29<sup>th</sup> day of August, 2014.

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By: John J. Pankauski  
John J. Pankauski  
Florida Bar No. 0982032



## SERVICE LIST

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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**MOTION TO SEVER AND STAY COUNTERCLAIM PENDING  
RESOLUTION OF TRUST CONSTRUCTION COUNTS**

Plaintiff, Ted S. Bernstein (the "Trustee"), moves to sever and stay the counterclaim filed  
by Respondent, Eliot Bernstein, and states:

1. The Trustee filed a simple, one count Complaint for declaratory judgment seeking  
to have this Court determine the proper construction to be given to the Shirley Bernstein Trust and  
to determine the validity of the exercise of a power of appointment given by the Trust to Simon L.  
Bernstein. The resolution of the one count trust construction Complaint is critical to the

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administration of this Trust and the final distribution of assets to the rightful ultimate beneficiaries. Without determining the proper and rightful beneficiaries of this Trust, it is impossible for the Trustee to properly administer the Trust and make a final distribution of assets.

2. There are a number of potential beneficiaries, including the ten living grandchildren of Simon Bernstein (each grandchild's respective parent is designated by Simon as trustee of a newly-formed trust); and three of the five children of Simon L. Bernstein. These potential beneficiaries have been named in the Complaint, and each has been either served or has agreed to waive service of process and respond. It is anticipated that all of the respondents will either answer the Complaint or default within the next 20. Thereafter, the one count trust construction action will be ripe for adjudication.

3. In addition to answering the Complaint, Eliot Bernstein has filed a 79-page Counterclaim naming numerous parties, including counsel for many of the parties, as additional counter-defendants. The Counterclaim is not in compliance with Florida Rules of Civil Procedure because it does not contain a short and plain statement of the facts supporting the claim. Instead, the Complaint is a verbose, shotgun-style pleading which raises myriad irrelevant and immaterial issues. The Trustee submits that the resolution of the Trust Construction action will resolve all or virtually all of the allegations raised in this Counterclaim.

4. In the interest of justice, for the convenience of the parties, and to preserve the value of the Trust assets by reducing the cost and expense of litigation, the Trustee respectfully requests that this Court sever the Counterclaim from the Complaint, and stay the Counterclaim until and pending the resolution of the issues raised in the Complaint. Thereafter, once the Court has entered

its judgment on the trust construction, the Court can decide on a more efficient basis if any of these claims are needed or should be permitted to proceed.

5. The Trustee believes that, given the limited resources available to the Trust, and given the narrow scope of the relief sought in the Complaint, severance is not only appropriate but warranted in this case. Severance is permitted under Florida Rule of Civil Procedure 1.270(b), and the trial court has broad discretion to grant a motion for separate trial when a joint trial would be inconvenient.<sup>1</sup> Here, it will be far more convenient to all of the parties to sever any counterclaim by Eliot, which relates to Eliot's false impressions as to his parent's financial resources (\$40 to \$100 million; Counter Complaint ¶¶63) and their estate plan, rather than delay for an extended period of time the resolution of this simple and necessary trust construction action. Otherwise, all of the beneficiaries other than Eliot will be inconvenienced and burdened by the extra cost of a combined or joint trial, which in this case will be more far expensive and time consuming to the beneficiaries than separate trials.<sup>2</sup>

6. Also, it would be more efficient, under the circumstances of the case, to resolve the trust construction action and determine the proper beneficiaries, before considering numerous other irrelevant and immaterial matters including Eliot's counterclaim.<sup>3</sup> Indeed, the resolution of the trust construction may or likely will moot Eliot's counterclaims. A court may try a threshold issue in

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<sup>1</sup>Fla. Civ. P. 1.270(b).

<sup>2</sup>5 Fla. Prac., Civil Practice § 15:8 (2014).

<sup>3</sup>*Microclimate Sales Co., Inc. V. Doherty*, 731 So. 2d 856, 858 (Fla. 5th DCA 1999).

advance of all other issues in the case if completion of the threshold issue would make other issues moot and subject to dismissal.<sup>4</sup>

WHEREFORE, the Trustee respectfully requests that this Court enter an Order immediately severing and staying Eliot's Counterclaim pending the resolution of the claims set forth in the Complaint.

**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 3rd day of September, 2014.

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

---

<sup>4</sup>*O'Keefe v. Okeeffe*, 522 So. 2d 460, 461 (Fla. 3d DCA 1988).

## SERVICE LIST

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and Eliot and Candice Bernstein,  
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Eric Bernstein, Michael Bernstein

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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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CIVIL ACTION SUMMONS

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;  
Eliot Bernstein in his capacity as  
Natural Guardian of his  
minor children, Joshua, Jacob and Daniel;  
and as beneficiary of the alleged Shirley  
Bernstein Trust dated May 20, 2008, as  
amended and Eliot Bernstein as Trustee of the  
Eliot Bernstein Family Trust dated May 20,  
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. - Personally;  
Alan B. Rose, Esq. - Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. - Personally;  
John J. Pankauski, Esq. - Professionally;  
Kimberly Francis Moran - Personally;  
Kimberly Francis Moran - Professionally;  
Lindsay Baxley aka Lindsay Giles - Personally;  
Lindsay Baxley aka Lindsay Giles - Professionally;  
"Simon L. Bernstein Amended and Restated Trust Agreement" Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;

2014 SEP -3 PM 2:40  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH FILED

Original Summons  
PU: Trav / [unclear] Com.

CIVIL ACTION SUMMONS

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SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe's (1-5000),

Counter Defendants,

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Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

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**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you.

Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.



CIVIL ACTION SUMMONS

THE STATE OF FLORIDA

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this action on Defendant

Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;  
Alan B. Rose, Esq., as a Partner at the Law Firm of  
Page, Mrachek, Fitzgerald & Rose, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
(561) 355-6991

Each Defendant is required to serve written defenses to the Complaint on Plaintiffs Attorney, whose address is:

Eliot Ivan Bernstein, Pro Se  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

E-mail designations:

Primary: iviewit@iviewit.tv  
Secondary: tourcandy@gmail.com  
iviewit@gmail.com

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED: September 3, 2014.

SHARON R. BOCK  
CLERK & COMPTROLLER



BY: 

## CIVIL ACTION SUMMONS

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### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante o Abogado del Demandante).

### **IMPORTANTE**

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous pourriez requérir les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

CIVIL ACTION SUMMONS

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;  
Eliot Bernstein in his capacity as  
Natural Guardian of his  
minor children, Joshua, Jacob and Daniel;  
and as beneficiary of the alleged Shirley  
Bernstein Trust dated May 20, 2008, as  
amended and Eliot Bernstein as Trustee of the  
Eliot Bernstein Family Trust dated May 20,  
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. - Personally;  
Alan B. Rose, Esq. - Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. - Personally;  
John J. Pankauski, Esq. - Professionally;  
Kimberly Francis Moran - Personally;  
Kimberly Francis Moran - Professionally;  
Lindsay Baxley aka Lindsay Giles - Personally;  
Lindsay Baxley aka Lindsay Giles - Professionally;  
"Simon L. Bernstein Amended and Restated Trust Agreement" Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

2014 SEP - 3 PM 2:39

Original Summons to: Pitt/Atty  
RU. Tray / P.S. / ins. Com.

CIVIL ACTION SUMMONS

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SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe's (1-5000),

Counter Defendants,

---

Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

---

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you.

Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

CIVIL ACTION SUMMONS

THE STATE OF FLORIDA

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this action on Defendant

THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE;  
THEODORE STUART BERNSTEIN, AS OFFICER, DIRECTOR AND SHAREHOLDER.

Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[thernstein@lifecinsuranceconcepts.com](mailto:thernstein@lifecinsuranceconcepts.com)

Each Defendant is required to serve written defenses to the Complaint on Plaintiffs Attorney, whose address is:

Eliot Ivan Bernstein, Pro Se  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

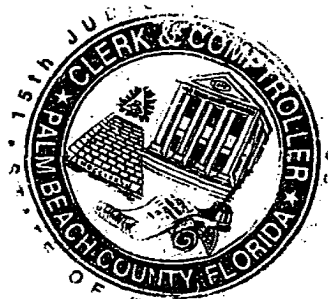
E-mail designations:

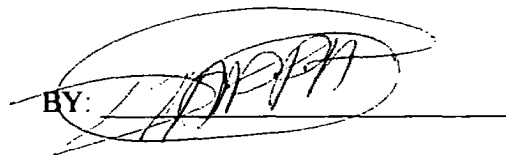
Primary: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
Secondary: [tourcandy@gmail.com](mailto:tourcandy@gmail.com)  
[iviewit@gmail.com](mailto:iviewit@gmail.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED: September 3, 2014.

SHARON R. BOCK  
CLERK & COMPTROLLER



BY: 

CIVIL ACTION SUMMONS

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**IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su resquesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede Hamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada obajo como "Plaintiff/Plaintiffs Attorney" (Demandante o Abogado del Demandante).

**IMPORTANTE**

Des poursuites judiciairesont etc entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignationjointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous estes obligé de déposer votre response ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le ralai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il ya d'autres obligations juridiques et vous requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de déposer vous-meme une response ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre response ecrite au "Plaintiff/Plaintiffs Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

Affidavit of Process Server

Filed 09/03/2014 04:01:53 PM

Ted Bernstein
Plaintiff/Petitioner

vs Alexandra Bernstein et al.
Defendant/Respondent

502014CP003698
Case#

Being duly sworn, on my oath, I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action.

Christopher Moss

Pamela B. Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated 9/13/12

Service: I served NAME OF PERSON/ENTITY BEING SERVED

with the (documents) Subpoena with \$ witness fee and mileage

Summons, Complaint and Exhibits A-C

by serving (NAME)

Pamela Simon

at Home

Business

303 E. Wacker Drive, Suite 2725, Chicago IL

on (DATE)

Aug. 27, 2014 at (TIME) 4:30 PM

Thereafter copies of the documents were mailed by prepaid, first class mail on (DATE)

From (CITY)

(STATE)

Manner of Service:

By Personal Service

By delivering, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof, namely,

By leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the general nature of the papers

By posting copies in a conspicuous manner to the address of the person/entity being served.

Non-Service:

After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

Unknown at Address

Evading

Other:

Address does not exist

Service cancelled by litigant

Moved, Left no forwarding

Unable to serve in a timely fashion

Service Attempts:

Service was attempted on:

( ) ( ) ( ) ( ) ( ) ( ) ( ) ( )

DATE TIME DATE TIME DATE TIME DATE TIME

( ) ( ) ( ) ( ) ( ) ( ) ( ) ( )

DATE TIME DATE TIME DATE TIME DATE TIME

Description:

- Male White Skin Black Hair White Hair 14-20 Yrs. Under 5' Under 100 Lbs.
Female Black Skin Brown Hair Balding 21-35 Yrs. 5'-5'3" 100-130 Lbs.
Brown Skin Blond Hair 36-50 Yrs. 5'4"-5'8" 131-160 Lbs.
Glasses Yellow Skin Gray Hair Mustache 51-65 Yrs. 5'9"-6' 161-200 Lbs.
Red Skin Red Hair Beard Over 65 Yrs. Over 6' Over 200 Lbs.

OTHER IDENTIFYING FEATURES:

State of Illinois County of Cook

Subscribed and sworn to before me

A notary public, this 28 day of August 2014

Notary Public

Signature of Andrew Raphael

SERVED BY

LASALLE PROCESS SERVERS

ILLINOIS PRIVATE DETECTIVE LICENSE# 117-001432



CHARTER MEMBER NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

CIVIL ACTION SUMMONS [Individual]

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*



**THE STATE OF FLORIDA**

To Each Sheriff of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the complaint in this action on Defendant

PAMELA B.SIMON, Individually  
and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12  
950 N. Michigan Avenue, Apartment 2603  
Chicago, IL 60611

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney, whose address is:

Alan B. Rose, Esq.  
MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 / FAX (561) 655-5637

E-mail designations:

Primary: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Secondary: [mhandler@mrachek-law.com](mailto:mhandler@mrachek-law.com)

[blewter@mrachek-law.com](mailto:blewter@mrachek-law.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

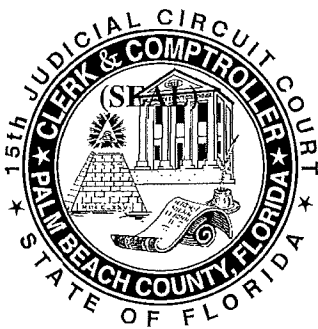
DATED :           AUG 26 2014          , 2014.

**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

BY: *Susan Lobello*

Deputy Clerk

Susan Lobello



SHARON R. BOCK  
Clerk & Comptroller  
P.O. Box 3406

West Palm Beach, FL 33402

000113

### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 Dias, contados a partir del recibo de esta notificacion, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su resquesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada obajo como "Plaintiff/Plaintiff's Attorney" (Demandante O Abogado del Demandante).

### IMPORTANTE

Des poursuites judiciairesont ete entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignation jointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous estes oblige de deposer votre response ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le ralai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent etre saisis par la suite, sans aucun preavis ulterieur du tribunal. Il y a d'autres obligations juridiques et vous requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de deposer vous-meme une response ecrite, il vous faudra egalement, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre response ecrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou a son avocat) nomme ci-dessous.

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR Palm Beach COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or In the Interest Of  
vs.  
Teschler & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698XX

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

**Notice to Applicant:** If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. Income tax return.)  
Are you Married?  Yes No Does your Spouse Work?... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknawn</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>na</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one: I  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. **I attest that the information I have provided on this application is true and accurate to the best of my knowledge.**

Signed this 4th day of September, 20 14.  
09/30/1963 c6956008  
Date of Birth Driver's License or ID Number

Eliot Bernstein  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-245-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

Kelly Gold Frank



Kelly Gold Frank  
COMMISSION # FF000732  
EXPIRES: MAR. 25, 2017  
WWW.AARONNOTARY.com

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_  
Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.  
THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO. 502014CP003698XXXXSB  
PROBATE DIVISION

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended

Honorable Martin Colin

Petitioner,

v.

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

ANSWER

COMES NOW, PRO SE, Eliot Ivan Bernstein ("Eliot") as Beneficiary and Interested  
Party both for himself personally and as Guardians for his three minor children of the alleged  
"Shirley Bernstein Trust dated May 20, 2008, as amended" ("Shirley Trust") and as Trustee of  
the "Eliot Bernstein Family Trust dated 5/20/2008" and hereby files this "ANSWER" and in  
support thereof states, on information and belief, as follows:

ANSWER

ANSWER

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\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee").

**ANSWER – Deny.** Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust and the admitted fraudulently altered amendment have been challenged due to evidence of fraud, forgery and more. The crimes of admitted forgery, proven fraudulent notarizations, proven Fraud on the Court, admitted improper and illegal distributions, and admitted fraudulently altered trust documents have already been proven and admitted in the Probate actions of the Estates and Trusts of Shirley and Simon Bernstein. In part, these crimes were committed by the alleged Trustee of the Shirley Trust, Theodore Bernstein and his former counsel, Robert Spallina, Esq. and Donald Tescher, Esq. primarily.

Spallina and Tescher not only acted as Theodore's counsel in Shirley's Estate and Trust but also acted as Co-Personal Representatives, Co-Trustees and Counsel for themselves in Simon's Estate and Trusts.

Theodore Bernstein, due to his direct involvement in the crimes and being the primary party benefiting from the crimes and other reasons before this Court in the Probate actions is not now or ever qualified to act in any fiduciary capacities in the Estates and Trusts of both Shirley and Simon Bernstein.

Theodore has advanced fraudulent schemes that benefited him directly and primarily. These schemes were aided and abetted by his Attorneys at Law who are also his close personal friends and business associates, Tescher and Spallina, who together have all caused intentional interference with expectancy of inheritances, committed thefts and a multitude of other criminal acts.

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That there is language in the Shirley Trust and the Simon Trust that specifically precludes Theodore from acting as Trustee, as he is considered dead for ALL purposes of the Shirley Trust and Simon Trust and distributions made thereunder.

ARTICLE III. GENERAL

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, [emphasis added] 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. Shirley Bernstein died on December 10, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.

**ANSWER** – Deny, Shirley Bernstein died on December 08, 2010. That it is insulting that Shirley's son Theodore and his counsel have repeatedly misstated the day she died, despite repeated corrections.

3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust")

  
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**ANSWER** – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is not enough information at this time to determine if the Shirley Trust is a valid document created on that day or if it is another fraudulent document in a series of documents in both the Estates and Trusts of Simon and Shirley that have been fraudulently notarized, forged and more. That fraudulent documents were distributed by the Fiduciaries and Attorneys at Law to the beneficiaries and others and further posited with Court. The crimes were done by Officers of this Court, Attorneys at Law and Fiduciaries who used this Court in order to illegally seize Dominion and Control of the Estates and Trusts of Simon and Shirley by putting in place imposter Personal Representatives/Executors and Trustees and then once in control committing hosts of further alleged crimes. That the original Shirley Trust document is missing, along with other dispositive documents and has been suppressed and denied by the fiduciaries despite repeated requests to inspect and review it for evidence of further fraudulent activity. The former acting Attorney at Law, Co-Personal Representative, Co-Trustee of Simon’s Estate and Trusts, Manager of certain Bernstein family entities, Robert Spallina, Esq., has already admitted to Palm Beach County Sheriff Investigators<sup>1</sup> to having fraudulently altered a Shirley Trust document that attempted to change beneficiaries to benefit his client Theodore’s family which had no interests in the Shirley Trust and Simon Trust at the expense of beneficiaries that he is alleged fiduciary for. Spallina stated to Investigators, “That against his better judgment he altered the first page of the first amendment to the Shirley Bernstein trust agreement, before he turned it over to Yates [Eliot and his minor children’s counsel].”

The Court will remember that in addition to this fraudulent alteration of a trust document, Shirley’s Estate was also closed by a DEAD Personal Representative, Simon, who while DEAD was used by Spallina to submit false instruments to the Court that included illegally notarized and forged

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<sup>1</sup> Palm Beach County Sheriff Report at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

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documents and acted alive while dead for months. This fraud on the Court illegally enabled Shirley's Estate to be closed fraudulently and changes made to her Estate by Simon acting as the PR/Executor POST MORTEM. These crimes are why Your Honor reopened the Shirley Estate and in part what led to Tescher and Spallina's removal from these matters in all fiducial and legal capacities in both the Estates and Trusts of both Simon and Shirley.

4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.

**ANSWER** – Admit in Part. Shirley was a resident of Palm, Beach County, Florida. Deny in part. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot cannot be sure that Shirley created the alleged Shirley Trust or if this is a further fraudulent document and evidence exists that it may be fraudulent and this evidence has been presented to the Court in the Probate cases before the Court currently for both Simon and Shirley were evidence of criminal misconduct has occurred in both.

5. An authentic copy of Shirley's Trust is attached as Exhibit "A".

**ANSWER** – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee is aware of the fraudulent activity and to date has failed to take any actions to inspect or allow others to inspect the alleged documents, further suppressing and denying them so that it cannot be stated that this is an authentic copy of the original Shirley Trust. The Shirley Trust is also not complete as there are Schedules and Addendums referenced in the alleged Shirley Trust that are wholly missing and not attached to the Shirley Trust. These suppressed and denied Schedules and Addendums would allow the beneficiaries to see the corpus or Trust Res of the Shirley Trust. Without these items, the attached Shirley Trust is not an authentic copy of the Shirley Trust and all of its parts and what property was made a part of it.

6. Shirley's Trust, Exhibit A, is clear and unambiguous.

**ANSWER** – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust, along with all other dispositive documents in both Simon and Shirley’s Estates and Trusts, are not known to be authentic at all despite the alleged clarity and unambiguity of any language in them. Due to the fraud already committed, proven and admitted and other recently discovered evidence that shows the alleged Shirley Trust is a fraud, the whole document is challenged before the Court as being a part of a larger fraud to alter illegally the beneficiaries of the alleged Shirley Trust, Post Mortem. Changes attempted to be made years after the beneficiary class was irrevocably established. There are reasons to believe the Shirley Trust document also has been altered to add Theodore Bernstein as a Successor Trustee fraudulently, as part of the larger fraud to seize illegally Dominion and Control of the Shirley Trust and Estate. In fact, the language that states that Theodore is the alleged Successor Trustee, which is oxymoronic and contradicts other very specific language that states that for ALL purposes of the Shirley Trust and distributions made thereunder Theodore is considered DEAD. Why then would Shirley then make him a Successor Trustee, leaving the document both unclear and ambiguous?

7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.

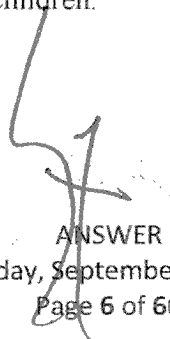
**ANSWER** – Admit.

8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

**ANSWER** – Admit.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

**ANSWER** – Admit.



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10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B.

Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

**ANSWER** – Admit in part and deny in part. Admit to the names of the five children of Shirley.

Deny the remainder. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the alleged Shirley Trust became irrevocable after her death and has specific language that has removed both Theodore and Pamela and their lineal descendants from her definition of lineal descendant in the alleged Shirley Trust document. That Theodore and Pamela, and their lineal descendants, are considered PREDECEASED for all purposes of the purported Shirley Trust and for distributions made thereunder, making Theodore and Pamela currently for the purposes of the Shirley Trust no longer defined as living lineal descendants. The alleged language states clearly and unambiguously as follows;

ARTICLE III. GENERAL

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, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal**

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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.

That the alleged Trustee and his counsel are aware of this language in the alleged Shirley Trust and yet file an improper pleading with misinformation to this Court, despite language that clearly and unambiguously predeceases Theodore for all purposes of the alleged Shirley Trust and dispositions made thereunder, disqualifying him to be the alleged Trustee and make any distributions. That for this reason alone the alleged Trustee should instantly be removed and this complaint stricken other than allowing Eliot's Counter Complaint. Despite repeated requests for the alleged Trustee to resign, in light of this language and a long list of other reasons currently before the Court that make him unfit, the alleged Trustee Theodore continues to act despite knowing that he is not qualified at this time to be a fiduciary or make distributions thereunder. More astonishingly is that his Attorneys at Law have allowed their client to continue to act despite knowing that he is considered dead for all purposes of the Shirley Trust. The Court should also take note that similar language exists that predeceases Theodore in Simon's Trust. Again, Theodore, who is not named in the alleged Simon Trust as a Successor has now been illegally appointed Successor by his former counsel Tescher and Spallina who passed the baton to their close personal friend and business associate Theodore. This illegal and prohibited transfer to an unqualified party who was part of advancing their fraudulent schemes and benefitted their client Theodore set up a Successorship of Criminals. This illegal appointment that defies the language in the alleged Simon Trust has further illegally stymied and delayed inheritances and the administration of the Estate and Trusts of Simon, similar to what is occurring in the administration of Shirley's Estates and Trusts. This criminal Successorship committed by Tescher and Spallina who drafted the alleged Simon Trust and knew that Theodore was considered predeceased for ALL purposes of the Simon Trust and dispositions made thereunder and thus could not become a Successor Trustee.

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11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

**ANSWER** – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, due to the fraudulent documents and forgeries already proven and admitted in these matters can now be forensically analyzed and the originals produced for inspection, this alleged Shirley Trust is alleged to be part of a series of fraudulent documents and amendments that may be legally void.

12. Simon L. Bernstein died on September 13, 2012.

**ANSWER** – Admit.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot disagrees that Theodore could in fact be a Successor Trustee, as Shirley removed Theodore and considered him PREDECEASED for all purposes of the alleged Shirley Trust and distributions made thereunder. That for Shirley to have used that language explicitly to then construct the document to make Theodore an alleged Trustee to make distributions thereunder contradicts her explicit language and definitions that remove Theodore for ALL purposes, including making distributions and this reeks of further alteration of documents. In light of the many fraudulent and forged documents already uncovered, this oxymoronic contradiction of the alleged Shirley Trust terms, indicates that Theodore may have been inserted fraudulently into a copy of the original document in efforts to illegally seize Dominion and Control of the Shirley Trust. This document tampering aided and abetted by his former Attorneys at Law, Tescher and Spallina, who have already been removed for admittedly altering Shirley Trust documents to benefit their client Theodore and whose offices were

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involved in Notarization Fraud, Forgery, Fraud on the Court and Fraud on the beneficiaries and more already. Simon and Shirley had mirror estate plans. Eliot believes the Successor Trustee to Shirley's trust was Bill Stansbury, mirroring the original Simon Trust (recently uncovered and suppressed and denied until May 06, 2014 when it was turned over to the Curator Ben Brown) that named Bill Stansbury as Successor Trustee. Evidence suggests that Theodore was fraudulently inserted into the Shirley Trust in direct contradiction to the terms of the Shirley Trust that state that he is deceased for ALL purposes of the Shirley Trust and distributions made thereunder.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged First Amendment document has also been repeatedly requested and denied to the beneficiaries. That Eliot states that this document has a MASSIVE BEARING on this case as it is a central component of the admitted fraudulent alteration of a Shirley Trust document committed and admitted to being altered by the alleged Trustee Theodore's former counsel, Spallina. Robert Spallina, Esq. admitted to the Palm Beach County Sheriff Department that he fraudulently altered this alleged First Amendment. This statement is further misinformation provided in this action to this Court to try to deny the importance of the fraud that has taken place by the Fiduciary Theodore and his minion of Attorneys at Law and attempt to cover up and gloss over the truth.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document,

which the Trustee first learned of in mid-January 2014, is not a valid amendment to the Shirley's Trust, and has no bearing on this issue in this case.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged second First Amendment document has also been repeatedly requested and denied. Eliot states that this document has **MASSIVE BEARING** on this case, as it is central to the admitted fraud committed by the alleged Trustee's former counsel Robert L. Spallina, Esq. and was altered to include language that benefited Theodore's family directly by circumventing the Shirley Trust language that predeceased Theodore's lineal descendants. Spallina's admits to altering the alleged first Amendment to Palm Beach County Sheriff Investigators and states to them,

That against his better judgment he [Spallina] altered the first page of the first amendment to the Shirley Bernstein Trust agreement, before he turned it over to Yates [Yates is Christine Yates, Esq. of the law firm Tripp Scott who was acting on behalf of Eliot's minor children]... Spallina said that they noticed that the first page of the document skipped from one to three, so he took it upon himself to add in number two, before sending it to Yates. The change that number two made to the trust, amended paragraph E of Article III, making it read that only Ted and Pam were considered predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton.

This fraudulent alteration of a Shirley Trust document done Post Mortem was used in addition to other fraudulently notarized and forged documents proven and admitted already in the Shirley Estate that his law firm, Tescher and Spallina, P.A. also illegally created for six parties, including one for Simon Post Mortem to advance the fraud with Yates and others. These crimes all worked to benefit the alleged Trustee Theodore and his respective lineal descendants by reinserting his lineal descendant back into the Shirley Trust illegally in order to then make illegal distributions of Shirley Trust properties that benefited Theodore and Pamela. The admitted alteration was done at the expense of the named and proper beneficiaries as defined in the irrevocable beneficiary class of the

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alleged Shirley Trust and set in stone with her death three years earlier, which wholly excluded Theodore, Pamela and their lineal descendants from the Shirley Trust. This fraudulent alteration of a Shirley Trust document and claim by the Trustee that is not relevant to this actions is yet another example of Theodore and his counsel further misinforming this Court of the truth.

Ted was aware of this document prior to Jan of 2014 or else he could have never seen language that included his children in the Shirley Trust as he claimed to PBSO investigators in January 2014, as that language does not exist other than in the fraudulent amendment. Ted telling PBSO Investigators,

Ted stated that he did not read all of Shirley's Trust documents and that Spallina and Tescher had both told him several times how Shirley's Trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets from the trust.

Ted retained Spallina and paid for his services as counsel to Ted in his alleged role as Trustee of the Shirley Trust and Spallina was providing legal advice to Ted. If Ted's counsel had knowledge of the fraudulently altered document and fraudulent language that permitted distributions to 10 grandchildren, then Ted had knowledge. Therefore, both Ted and Spallina were acting under this altered document language far before Spallina claims to have altered it in January 2013 and began selling assets and making distributions to improper parties as if the altered document existed. Again, NOWHERE in the alleged Shirley Trust is there any reference to 10 grandchildren getting distributions of the Shirley Trust as four of them were considered predeceased with their parents for ALL purposes of the Shirley Trust and distributions made thereunder.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibits "A" and "B" are only copies and no original documents have been provided in four years to the

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beneficiaries and have been denied, suppressed and withheld despite repeated requests to produce them for inspection and to forensically analyze their authenticity.

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. No copies of this alleged Family Trust have been provided to beneficiaries despite repeated requests for it, in violation of Probate and Trust Rules and Statutes.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot does not know what a "special" power of appointment is as it does not appear mentioned in the alleged Shirley Trust. What is special is that lineal descendants according to the alleged Shirley Trust definition provided already herein, are only Eliot, Lisa and Jill and their spouses, as again, Theodore, Pamela, their lineal descendants and spouses are considered predeceased for **all** purposes of the alleged Shirley Trust and distributions made thereunder, including any trusts created thereunder. The term "beneficiary" is clearly defined to be Family Trusts created for Eliot, Lisa and Jill and include the "Eliot Bernstein Family Trust Created on May 20, 2008" which was created, along with similar

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Family Trusts for Jill and Lisa. NO Family trusts were created for Theodore and Pamela, as they and their lineal descendants are considered dead for ALL purposes of the Shirley Trust and distributions made thereunder.

#### ARTICLE II E.1

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** [emphasis added];

#### ARTICLE II E.2

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 Trnsts for my lineal descendants then living** [emphasis added], 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 Trnsts[emphasis added],** 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** [emphasis added].

Clearly, the alleged language states that lineal descendants are only those defined, which include only Eliot, Jill and Lisa and their lineal descendants and exclude Theodore and Pamela and their lineal descendants as already defined herein. The power granted Simon was a "Limited Power" and not a "special" power. The alleged Shirley Trust by this language above referenced by the alleged

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Trustee, incorporates by reference the Family Trusts set up for Eliot, Jill and Lisa into the Shirley Trust. These Family Trust are not attached to the alleged Shirley Trust presented in this case, along with the other missing referenced Schedules and Addendums, making the claim that this is an authentic copy of the Shirley Trust a further misleading statement to this Court.

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that information and accountings have been suppressed, withheld and denied and not provided in both the Estate and Shirley Trust for **four years** to the beneficiaries, **IN GROSS VIOLATION and BREACH OF PROBATE and TRUST RULES and STATUTES** and thus it is unknown what was funded in the Shirley Trust. Again, Schedules and Addendums referenced in the alleged Shirley Trust are also suppressed and denied making it impossible to know what assets are part of the trust corpus or Trust Res. That Theodore in two years acting as the alleged Trustee has also failed to provide statutorily required accountings that are also required under the terms of the alleged Shirley Trust when demanded and again these requests to produce accountings have been denied.

That documentation regarding the information on the inventories provided in Simon and Shirley's Estates have also been challenged and alleged as part of the larger theft of assets of Simon and Shirley that are under ongoing investigations and civil and federal actions. The alleged Trustee, Theodore is the central suspect in **ALL** of these investigations, along with his sister Pamela and their minion of Attorneys at Law who have all participated in the already proven frauds and others alleged. Four of Theodore's Attorneys at Law are removed and resigned from these matters already, including the recent withdrawal of John Pankauski, Esq. and the Pankauski Law Firm PLC for irreconcilable differences with their client Theodore.



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21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one or more of my [Shirley's] lineal descendants and their spouses."

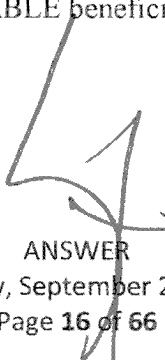
**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley's lineal descendants and their spouses are clearly defined in the alleged Shirley Trust and specifically exclude for ALL purposes of the alleged Shirley Trust and distributions made thereunder, Theodore and Pamela, their lineal descendants and their spouses, all considered as PREDECEASED.

### ARTICLE III. GENERAL

E. Definitions. In this Agreement,

**I. ... 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, [emphasis added]...**

Again, what is important to note is the definition of lineal descendants, which is clear and unambiguous that Theodore, Pamela, and their lineal descendants are NOT lineal descendants of Shirley as defined as they are specifically excluded by name as living lineal descendant. That if Simon could have or allegedly attempted to make changes to the disposition of the Shirley Trust he could only make changes to the IRREVOCABLE beneficiary class established at her death.



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That further, the alleged Simon Trust that was later allegedly amended to amend language that was specifically deemed unamendable regarding Simon's limitations on Shirley's property added to his Simon Trust at her death, stated,

**ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN TRUST**

**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 [emphasis added].**

Then, the alleged Simon Trust was fraudulently amended to leave out this language that prohibits Simon from attempting to amend or revoke anything to do with the Shirley Trust properties transferred to Simon in order to perpetrate a fraud and try to change through amendment that which could not be amended, as stated,

**ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST**

**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.

This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added by Shirley by Will or otherwise after her death, by any means, including revocation or amendment or otherwise, this prohibited amendment to Shirley Trust allegedly by Simon is exactly what was being attempted by allegedly amending Simon's Trust and attempting to then use those changes to attempt to change the Shirley Trust beneficiary class.

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Even more telling of criminal intent in the Estates and Trusts with regard to this “special” power of Simon’s, is that in the alleged 2012 Amended and Restated Trust of Simon, drafted by Tescher and Spallina, there is language that STRICTLY LIMITS Simon’s power in regard to Shirley Trust properties. The language “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.” was intentionally deleted from the alleged Amended and Restated Simon Trust, which language specifically prohibits revocation or amendment regarding Simon’s powers in regard to Shirley’s property.

Then, copies of the alleged original Simon Trust with that language in it was intentionally suppressed and denied from beneficiaries despite repeated requests, in order to hide the fact that Simon could do nothing to amend the Shirley Trust or make changes to her properties transferred or change her irrevocable class of beneficiaries once she died. The original alleged Simon Trust was not turned over to beneficiaries until this Court Ordered Tescher and Spallina to turn over all documents and properties to the newly appointed Curator Benjamin Brown, Esq. upon their resignations and removal. Where Brown then turned the alleged original Simon Trust over and this fraudulent alteration was then discovered when the language of the two documents could be analyzed side by side.

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets “shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, per stirpes.”

**ANSWER** - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley’s lineal descendants then living and their spouses specifically excludes for ALL purposes of the alleged Shirley Trust, Theodore and Pamela, their lineal descendants and their spouses and

considers them PREDECEASED and thus not living as clearly defined in number 19 above in the alleged language of II E. 2 and throughout the Shirley Trust.

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Everything Simon did allegedly to make changes in he and Shirley's Estates and Trusts in 2012 is already challenged in this Court. Challenged for being Fraudulently created, alleged Forged, proven Improperly Notarized<sup>2</sup> and part of a larger fraud to seize illegally Dominion and Control of the Estates and Trusts and then loot the Estates and Trusts of Simon and Shirley through this series of fraudulent documents done POST MORTEM. Already several documents are proven POST MORTEM FORGED AND FRAUDULENTLY NOTARIZED. That again, there is no defined "Special Power" in the alleged Shirley Trust and Eliot has never heard of a "special" power appointment. What the Trustee is hesitant to make clear to this Court is that it was a VERY LIMITED POWER OF APPOINTMENT and the only permissible appointees under the limited power of appointment are Eliot, Jill and Lisa and their respective lineal descendants as already exhibited in the Section E.1 Limited Power of Appointment language cited already herein. It is unknown if Simon exercised this alleged Limited Power of Appointment or if it too was also done for him Post Mortem. From the PBSO report, it becomes clear that Simon was prohibited from making any changes to Shirley's Trust and Spallina alleges that he drafted documents that were fraudulent and that made changes Simon COULD NOT LEGALLY DO, as stated to Palm Beach County Sheriff Investigators by Spallina when he claimed,

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<sup>2</sup> The alleged 2012 Will and alleged 2012 Amended and Restated Trust of Simon have already been found by Governor Rick Scott's Notary Public division to be improperly notarized so as it make it unknown if Simon appeared before the Notary, a one Lindsay Baxley, the alleged Trustees personal assistant. There are other severe problems with the construction of all of these documents Simon was alleged to have signed already pled to the Court in the Estate matters.

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Spallina said that he explained to him [Simon] again, that only his trust, not Shirley's can go to both grandchildren, unless he takes all of the assets out of the Shirley Trust and puts them into his name...

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, **even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

25. An authentic copy of Simon's Will is attached as Exhibit "C".

**ANSWER** - Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibit C is a copy, no original has been provided in two years to the beneficiaries by the fiduciaries, both former removed fiduciaries and the alleged current fiduciary and it has been further been denied and suppressed despite repeated requests to produce it. In fact, it has been claimed by the Curator Benjamin Brown, Esq. to Eliot that no original document may exist and that an original Will was not provided in the production from the former fiduciaries upon their resignation and removal in Simon's Estate.

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

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 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 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.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states

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that then living grandchildren Simon allegedly claims in the alleged 2012 Will can only refer to the grandchildren of the Shirley Trust that are lineal descendants as defined in her language, as Eliot, Lisa and Jill's children only. Simon was precluded under language of the original Simon L. Bernstein Trust dated May 20, 2008 from making any changes or amendments to his Trust in regard to Shirley's Trust property as stated in the opening of the document,

**SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008**

**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.**

Further and not as if that is necessary but in formality to Answer this Toxic, Vexatious, Frivolous, Costly and Fraudulent pleading, as already stated, for all purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren are considered predeceased for all distributions made thereunder. Do note the use of a lower case g in grandchildren in the language cited by the Trustee, the term grandchildren is not defined by Simon to be the 10 grandchildren in his alleged 2012 Will as it is not capitalized. Nor did Simon name or number the grandchildren in any way to equal the 10 grandchildren in the language cited and even if he did it was impermissible for him to take make changes to Shirley's Trust property. Therefore any power he granted himself under a newly drafted amendment was Limited in the original trust, as the Limited Power was intended ONLY for the living grandchildren defined specifically to exclude Theodore, Pamela and their lineal descendants under the Shirley Trust, thus it could only refer to Eliot, Lisa and Jill's six children, of which Eliot has three. Therefore, the above language referenced was knowingly and with scienter unlawfully created and inserted into the document by Robert

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Spallina and Donald Tescher to wrongfully benefit their client and close bedfellow Theodore Bernstein and business associate Pamela Simon in their creation of these premeditated frauds. Spallina in fact stated to PBSO Investigators,

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, **he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

Here in black and white Spallina admits that Simon COULD NOT LEGALLY INCLUDE TED AND PAM'S CHILDREN for distributions of the Shirley Trust property because of the "PREDECEASED LIMITATIONS." Yet, here in this newly filed complaint we have the alleged Trustee Theodore, now aided and abetted by Alan Rose, trying to claim that there were no predeceased limitations and that distributions could be legally made to include Theodore and Pamela's kids. This statement despite Spallina's statement to PBSO claiming it could not legally be done and where Spallina drafted the document for Tescher, who better to tell Alan Rose that this cannot be legally done and what he is attempting through this felonious legal pleading is merely further legal process abuse.

This time the attempt to commit the fraud is to make the clearly illegal distributions now appear legal through a cleverly crafted word fraud constructed in this TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and FRAUDULENT pleading attempting to claim the fraudulent distributions made already are legal by cutting and pasting partial statements, wholly out of context. The fraud Spallina claims was illegally committed by Simon, was done despite he and his partner Tescher knowing this language was prohibited and fraudulent, claiming apparently that his legal work aided and abetted and allowed Simon to commit a fraud. Simon loved his wife Shirley profusely as noted for 50+ years and would never under any circumstances attempted to dishonor her last wishes and desires steeped in fraud. Eliot states this whole document, allegedly done days before Simon died, was in fact

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another fraudulent and forged document that came Post Mortem. Where all witnesses to the documents alleged execution have already either been arrested and convicted of fraudulently notarizing documents or admitted to fraudulently altering trust documents and thus have NO CREDIBILITY FORWARD in attesting to the documents.

Further, the Notarization failed to state if Simon was present at the signing and this done by Theodore's assistant Lindsay Baxley. The language in the alleged original Simon Trust, specifically stated that Simon was also unable to amend or revoke anything in regard to the properties of the Shirley Trust transferred to him upon her death. This language prohibiting any changes through amendment, revocation or otherwise was intentionally omitted when the Simon Trust was allegedly amended. Then to cover up their fraud Spallina, Tescher and Theodore suppressed and denied the original Simon Trust to advance the fraud hiding the illegal amendment to the original trust, as already exhibited herein.

27. In essence, through his Special Power, 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 each such grandchild under Simon's Trust.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that "in essence" despite any "special" power the only living grandchildren in reference to Shirley Trust property can only include grandchildren that are her defined living lineal descendants, Eliot, Lisa and Jill. Again, as already stated, for ALL purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren have been considered PREDECEASED and thus Simon could not legally make any changes to alter the irrevocable beneficiary class or make distributions to any other parties. That Eliot further claims that Simon could not alter the Beneficiary Class of Shirley's Trust once it became irrevocable. That the

Shirley Trust does not provide provision for Simon to illegally convert and distribute assets of the IRREVOCABLE Shirley Trust from her designated class of beneficiaries to newly created trusts executed POST MORTEM of Simon through Simon's alleged Will and Trusts. Spallina stated to PBSO,

He [Spallina] told Simon ( Si as he called him) that he could not make those changes to Shirley's Trust because she had wrote Ted and Pam and their children as predeceased in her Trust. Spallina reiterated that Simon can do whatever he wants with his estate, but all he can do with Shirley's Trust is give it to Lisa, Jill, and Eliot's children.

The alleged 2012 Simon Trust is further not a valid legal document as it is already proven improperly notarized and suffers from other construct defects already pled to this Court and currently before the Court in the Simon and Shirley Estate matters.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. This statement hinges on the word "appear" when in fact the living grandchildren in regard to the Shirley Trust property legally appear to be ONLY the living grandchildren of Shirley as defined in her irrevocable beneficiary class of Eliot, Lisa and Jill. Again, Theodore, Pamela, their lineal descendant and their spouses, Deborah Bernstein and David B. Simon, are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and Simon was precluded specifically from amending or altering the Shirley Trust property as illustrated already herein.

The word grandchildren is not capitalized nor defined in the Simon Trust language so obviously if he exercised this power, he was referring only to the grandchildren of Eliot, Lisa and Jill as those were

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the only legally permissible grandchildren, as Theodore and Pamela's children were considered predeceased for ALL purposes of the Shirley Trust and distributions made thereunder. Per the terms of the Shirley Trust therefore the only legal permissible appointees under the Shirley Trust are the living grandchildren of Eliot. Jill and Lisa whose shares could be adjusted only by Simon through his Limited Power and NO NEW PARTIES could be added once Shirley's Trust beneficiary class became irrevocable.

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, per stirpes."

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Simon cannot effectively appoint assets outside of the permissible appointees of the irrevocable class of beneficiaries defined under the alleged Shirley Trust.

The beneficiaries of the alleged Shirley Trust are family trusts created on May 20, 2008 for ONLY Eliot, Lisa and Jill as defined in the IRREVOCABLE alleged Shirley Trust. This Class of Beneficiaries is therefore closed and unchangeable, despite what Simon is alleged to have attempted to do. Again, Theodore, Pamela, their lineal descendant, their spouses (Deborah Bernstein and David B. Simon, Esq.) are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and are not permissible appointees or distributees. Simon was specifically precluded from amending or revoking anything in the Shirley Trust or distributions made thereunder in Article 1, Section A of his alleged original Simon Trust he executed with Shirley while they both were alive, as it stated prior to amendment, which was prohibited,

**SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008**

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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.**

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants then living, per stirpes").

**ANSWER** - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That if Simon's alleged LIMITED POWER OF APPOINTMENT class of permissible appointees is different that Shirley's Trust, which it is not it still would it would not matter, as Shirley's IRREVOCABLE Class of beneficiaries is defined and irrevocable upon her death. Nothing Simon allegedly did after her death to change that could alter the IRREVOCABLE Class of Shirley's beneficiaries, as he was limited and under Section I, Article A of the alleged Simon Trust, he could not amend or change anything in regards to Shirley's Trust property, including who it was to be distributed to under the Shirley Trust. That the appointees allowable were unchangeable after her death by any party, even one alleging new or "SPECIAL" or magical powers subsequently created. That this would be a construction flaw in Simon's alleged 2012 Amended and Restated Trust done allegedly 48 days before his passing while he was medically unfit to even make changes being of unfit mind and body at that time as pled to this Court in the Simon and Shirley Estate cases already before this Court.

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus,

  
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it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no "special" power of appointment granted to Simon in the alleged Shirley Trust, only a **LIMITED** power of appointment for a permissible class of appointees defined in Shirley's definition of lineal descendants to exclude Theodore and Pamela and their lineal descendants. Any language to the contrary in any amended document of Simon is procured in fraud and drafted by Robert Spallina and Donald Tescher to unlawfully benefit their client and business associate Theodore Bernstein and business associate Pamela Simon and their respective lineal descendants who were disinherited in the Shirley Trust. Eliot states that Simon and Shirley's definition of grandchildren in the alleged dispositive documents referenced is different and so the alleged Trustee and his counsel, through careful wordsmithing games try now to mislead the Court that their grandchildren are similar for distributions made under the alleged Shirley Trust. From this false statement of the alleged Trustee he then leaps to an invalid conclusion based on the faulty premise claiming Eliot, Lisa and Jill are not to receive any portion of the assets in Shirley's Trust, knowing that in no way could Simon change the class of beneficiaries from Eliot, Jill and Lisa to **ANY OTHER PERSON OR PERSONS**. That Simon's ability to replace Eliot, Lisa and Jill with their children **ONLY** as beneficiaries after Shirley's death is already challenged as well and will have to be determined by this Court if such attempted change is legal. This determination of course can only be done once the dispositive documents are **FINALLY TURNED OVER** and are analyzed for further evidence of forgery and fraud to see if they have also been tampered with and determinations are made as to what documents will ultimately prevail. That Eliot, Jill and Lisa and their lineal descendants are the only beneficiaries under the Shirley Trust once

  
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it became irrevocable at her death, the beneficiary class forever closed and any attempt by Simon to change this would have been through knowingly fraudulent acts.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Theodore references the alleged Shirley Trust where documents are admitted altered and tampered with already and Eliot has no belief in the validity of any parts of the Shirley Trust at this time. That Theodore is alleged to have become Successor through further alleged fraudulent alteration and fabrication of the Shirley Trust documents in order to illegally gain Dominion and Control of the trust with his sister Pamela and their minion of Attorneys at Law who aided and abetted in the frauds. **THEODORE IS CONSIDERED PREDECEASED FOR ALL PURPOSES OF THE ALLEGED SHIRLEY TRUST AND DISTRIBUTIONS MADE THEREUNDER AND THUS CANNOT BE A TRUSTEE AS HE IS DEAD.** Therefore, despite what any ALLEGED documents may say, Theodore is not now or ever was qualified to act as Trustee by the very terms of the alleged Shirley Trust document he acts under and in addition to the language that precludes him there are now a host of legally valid other reasons already presented to this Court that make him unfit to serve in any fiducial capacities in either Simon and Shirley's Estates and Trusts. The other reasons, include but are not limited to, conflicts of interests and adverse interests (to Eliot especially who has uncovered all these frauds and other crimes and is pursuing Theodore with criminal authorities and civil authorities) that prohibit his continued acts in any fiducial capacity in the Estates and Trusts of Simon and Shirley. Further, Theodore and his predecessors failure to account in violation of Probate and Trust Rules and Statutes and his direct involvement in the prior fraudulent activities with his Counsel that benefited him directly. Theodore further claimed to the Palm Beach County Sheriff

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Investigators that he did not read the trust document he was operating under and only acted to make distributions on the advice of his counsel Spallina, which is directly contradicted by Spallina's statements to Palm Beach County Sheriff Investigators where he claims that he advised Theodore NOT to make distributions. Theodore stated to investigators as cited in the Palm Beach County Sheriff Report,

He [Theodore] said that Tescher and Spallina told him after his father's death that he was the Trustee for his mother's estate. He said over many in person meetings and phone calls he was given guidance by the attorneys on how to perform his duties as Trustee, because this was all new to him. He had never been in this role before. He stated he was not provided a checklist or book on how to perform these duties. . . **Ted stated he did not read all of Shirley's trust documents** [emphasis added] and that Spallina and Tescher had both told him several times how Shirley's trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets of the Trust.

Spallina then stated to investigators,

Spallina stated that against his advice, a distribution was made from one of the trusts after Simon's death. He stated that he advised against this and when Simon passed a former partner filed a claim against the Estate for \$2,500,000. . . He [Spallina] said that in September of 2013, \$80,000 was distributed to each of the seven trusts, which is a total of \$560,000. Spallina reiterated that Ted was told not to make distribution.

That the Court should note that either Ted cannot read or had read the fraudulently altered first amendment, prior to when Spallina claims anyone knew about the document in January 2014 when he confessed to altering the document to add language to include illegally Theodore and Pamela's children back in. NOWHERE in the alleged Shirley Trust does it state that distributions are to be made to the 10 grandchildren as Ted claims and then acted to make such unlawful and prohibited distributions to his and Pamela's family.

Eliot also states that before this frivolous, vexatious and premature action was taken by the Trustee in filing this ridiculous construct action, Eliot filed a Counter Complaint in yet another frivolous and

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vexatious action filed and now before the Court, in the Oppenheimer v. Eliot and Candice Bernstein lawsuit. The Oppenheimer lawsuit directly relates to the nexus of past and present frauds committed in the Estates and Trusts of Simon and Shirley and involves their Estate and Trust documents but was filed in a separate action and sought no relation to the Estate actions. Eliot countersued the Shirley Trust in his Counter Complaint and thus this action for construction should have been filed in that case where the Shirley Trust is already a Defendant, along with Theodore, Alan Rose and others. Eliot asks the Court to relate ALL of these related cases to avoid further WASTE, FRAUD AND ABUSE OF PROCESS. The Oppenheimer lawsuit has counts against Theodore and his minion of Attorneys at Law for Breach of Fiduciary Duties, Interference with an Expectancy, Legal Malpractice, Theft and more, all making Theodore further unqualified to act as fiduciary any longer, as pled in numerous pleadings filed by Eliot and the Creditor Stansbury in the Simon Estate currently before the Court.

The next item up to be heard in the Estate of Simon are the motions to remove Theodore as a fiduciary, including a motion for Your Honor to make the decision on your own initiative under FL Statute 736, due to recent information showing assets under Theodore's control as fiduciary are now missing, mismanaged, unaccounted for and probably stolen. Evidence learned in a hearing before this Court revealed that Theodore and his counsel Alan Rose did not know where assets of the Simon Estate were after the sale of Shirley's condominium. This lack of accountability for assets under Theodore's control led to an Order from this Court over two months ago in the Estate of Simon for re-inventorying the assets and that Order has not been complied with and is being evaded.

After the Court Order to re-inventory the missing assets at Simon's other home in Saint Andrews Country Club, where Alan Rose and Theodore claimed the furniture and other effects had been taken after the illegal sale of Shirley's condominium, in a deposition of Donald Tescher he claimed the personal property of Simon's was sold with the condominium, directly contradicting Theodore's

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prior statements to the Court and directly contradicting the final accounting Tescher and Spallina filed with the Court in Simon's Estate where the assets are listed as still owned by the Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the condominium was an asset of the alleged Shirley Trust that was ONLY to be distributed to her legally qualified beneficiaries at the time, which the alleged Shirley Trust clearly defines as Eliot, Lisa and Jill and their lineal descendants. That at the time the condominium was sold, Theodore signed forms, including tax forms while acting as the alleged PR of the Estate of Shirley. That at that time he sold the condominium Theodore was not the successor PR and not appointed by the Court. This was in large part due to the fact that NO successor PR was chosen when Simon died to replace Simon as they needed Simon to appear alive while executing POST MORTEM changes to his and Shirley's dispositive documents. Then almost defying belief, Simon, while dead, was further used by Attorneys at Law Tescher and Spallina to close the Estate of Shirley while he was DEAD, yes, DEAD and the Court was not notified of his death and no Successor was legally appointed or accepted such position. These FRAUDS ON THE COURT were done as part of the larger fraud to illegally seize Dominion and Control of the Estates and Trusts through a series of POST MORTEM FORGED AND FRAUDULENT DOCUMENTS POSITED BY A DEAD PR. The series of fraudulent documents include documents that were forged and notarized by Simon Post Mortem and that were posited for him with the Court while he was dead for four months and whereby nobody notified the Court that he was DEAD and nobody elected a new PR to legally close the Estate. That

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this Fraud on the Court of using a DEAD PR to close the Estate of Shirley led this Court to reopen the Estate of Shirley and further delay and stymie expected inheritances of Eliot. In the September 13, 2013 hearing where Your Honor first learned of these frauds on this Court, Your Honor issued the statement that you had enough evidence there and then to read Miranda Warnings to Theodore, Spallina and Tescher. That all distributions made from this sale were made after Theodore and the others who took them knew at the time that their own names had been forged and documents of theirs and their father were fraudulently notarized and forged. Yet, none of them contacted the authorities once they had this knowledge that the documents were fraudulent making them all further unqualified to act in any fiduciary matters they claim in this lawsuit and cause for all of them to be reported by this Court to the proper authorities and have Guardians appointed for their children's protection, as many of the alleged crimes have Theodore and Pamela attempting to take monies they claim are due to their children, instead to themselves without their children's knowledge as the Federal Illinois insurance action in Simon's estate will further prove.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee made distributions to Simon's grandchildren, which the Trustee knew were not the same as Shirley's grandchildren by definition in the alleged Shirley Trust document he operates under, which is a defined and closed Beneficiary Class of Eliot, Jill and Lisa and their lineal descendants only, as already defined herein. This conversion and comingling of funds benefited Theodore the most and this is a classic conflict of interest where the Trustee is acting to benefit himself rather than the true and proper legally qualified beneficiaries. How can Theodore be Trustee if he is fighting to have

language that his attorney Spallina fraudulently fabricated or else does not exist now inserted into an irrevocable trust or attempt to reconstruct the trust to include himself and his children at the expense of other defined beneficiaries, to the tune of converting approximately 33% percent of the sale price of the condominium alone to his family, again a classic conflict that cannot be parsed or allowed and violates Probate and Trust Rules and Statutes and further reason for his removal instantly by this Court in any alleged Fiducial capacity in Simon and Shirley's Estates and Trusts. Monies therefore were knowingly and illegally converted and comingled to Theodore and his sister Pamela's lineal descendant in violation of the terms of the alleged Shirley Trust. That monies from the alleged Shirley Trust were taken out and distributed to Post Mortem Trusts allegedly created by Simon, created allegedly on the day he died but Eliot as of this date has never received a trust instrument for him to review but has been urged to take distributions blindly to it and waive all rights in so doing. Shirleys trust is clear that she and her spouse provided for Theodore and Pamela and their lineal descendants during her lifetime and were to receive NOTHING.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions. **ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot did not refuse to accept the “partial interim distributions” for any reason other than the way they were structured was through FRAUD and based on fraudulent, forged and fabricated documents. Eliot, as he stated to Judge Colin in the September 13, 2013 hearing, would not participate in the same FRAUD that his siblings did and convert and comingle funds illegally to knowingly improper beneficiaries or waive any rights in receiving those distributions or release the trustee for making

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those distributions illegally. Eliot, after seeking the Court's approval to take knowingly fraudulent distributions for the condominium transaction was not given such blessing by Hon. Martin Colin after careful review of the situation would not give his judicial blessing on the transaction to make it legally approved for Eliot to take such fraudulent distribution without giving any implied consent or waiving his rights to sue others for their fraud.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

**ANSWER – Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Robert Spallina even admits that the powers cited were not permissible and Simon's Trust was thus restated unlawfully based on fabricated documents he prepared for his client.

The alleged Trustee and his minion of Attorneys at Law that he personally brought into the Bernstein family affairs has participated in creating the disagreement with intent and scienter so as to benefit his family personally and to gain 33% of a beneficial interest in something that he and his children are prohibited from having by the express language in the alleged Shirley Trust. Simon's alleged power of appointment has not been verified at this time to be a legally qualified power, as the very document it comes from, the 2012 alleged Amended and Restated Trust is improperly notarized and constructed This may be evidence of a premeditated attempt to either force Simon to sign documents while he was suffering mental and physical symptoms that were unexplainable by his doctors, starting approximately 60 days before his death and lasting until his final breath or to his alleged murder (where MURDER was alleged to PBSO by Theodore the day Simon died, see PBSO Report at [www.iviewit.tv/SheriffReports.pdf](http://www.iviewit.tv/SheriffReports.pdf) and Theodore pointed the finger and accused Simon's girlfriend of poisoning him). The documents allegedly signed 48 days before his death cannot even

be shown to have been signed by Simon at all that day, as the notary failed to state such appearance and to further complicate matters, all the potential witnesses to the documents allegedly signed by Simon are involved directly in the proven Fraudulent Notarizations done POST MORTEM, the admitted Alteration of trusts documents done POST MORTEM and the admitted Forgeries done POST MORTEM. All these 2012 documents are under ongoing investigations and have been challenged before the Court. The Trustee and others who took ILLEGAL INTERIM DISTRIBUTIONS knowingly, knew what they were doing and that everything was challenged and that their names had been forged and fraudulent notarizations affixed upon documents in the Estate of Shirley, in fact, Eliot specifically notified them all not to make any distributions to the grandchildren at all until the Court and investigators could determine what the effects of the fraudulent documents were and if they could change in any way the Shirley Class of Beneficiaries. Instead, they rushed to take the monies and were advised by Theodore, Spallina, Tescher, Manceri and Rose that the distributions were legal, despite their knowledge that they had committed fraud to achieve the illegal distributions.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

**ANSWER – Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no disagreement or dispute involving the Shirley Trust or its construction, other than the document appears as fraudulent and more, as it was Irrevocable and its beneficiary class sealed and so Tescher, Spallina, Theodore, Pamela and others decided to create disputes to enable them to convert and comingle funds that benefited them all to the detriment of the true and proper beneficiaries.

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38. Article III.E.1 of Shirley's Trust states that, "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 [Shirley]".

**ANSWER -- Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again, the actual language states in full,

### **ARTICLE III. GENERAL**

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.

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

**ANSWER - Admit.**



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40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the authenticity of the dispositive document referenced is challenged in toto at this time as being a Fraud and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust appear to be clear regarding permissible appointees as Eliot, Jill and Lisa and their lineal descendants only.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the documents authenticity in toto is challenged as being a Fraudulent and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust are clear that Simon has a limited power of appointment over permissible appointees defined as Eliot, Jill and Lisa and their lineal descendants only. Simon's alleged "Special" power is alleged to have been done almost two years after Shirley's death and may have been done POST MORTEM as alleged and despite the alleged magical nature of this document that makes it "Special" it was only referencing the LIMITED POWER granted under the alleged Shirley Trust and thus could not favor any party other than her irrevocable class of beneficiaries, Eliot, Jill and Lisa and their lineal descendants. Simon

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could not alter or change this irrevocable class of beneficiaries to any other parties and Spallina and Tescher who drafted this alleged language would have been perpetrating a fraud if they tried to make Simon have "Special" magical powers to break the law. Again, it appears this "Special" power where it is known that there are only "limited" and "general" powers of appointment, appears to be an attempt by Spallina and Tescher to make a new power not defined in law that has "Special" powers of committing FRAUD. Now after being busted and admitting to authorities that these changes to the Shirley Trust could not be done, THEODORE and his COUNSEL, both involved directly in advancing the proven and admitted frauds to benefit THEMSELVES, attempt to CON this Court into attempting to rewrite the Shirley Trust and commit further FRAUD ON THE COURT and FRAUD on the BENEFICIARIES through this legal process abuse in efforts to make the PRIOR PROVEN AND ADMITTED FRAUD LEGAL through this TOXIC, VEXATIOUS, FRIVOLOUS, ABUSIVE, COSTLY and FRAUDULENT pleading. What can one expect when their lives hang in the balance as without this Court making "Special" powers legal that are not, they are going to jail for their acts, which makes them further conflicted, adverse and retaliatory to the beneficiaries, adverse to the wishes and desires of the decedents and further reason for Theodore's removal as a Fiduciary in all capacities in the Estates and Trusts of Simon and Shirley and for Alan Rose's removal as the Attorney at Law for the alleged Trustee Theodore. That this Court needs to now report Theodore and his counsel to the proper authorities for this attempted Fraud on the Court to pass further fraudulent documents to the Court and attempt to have the Court approve the criminal FRAUDULENT DISTRIBUTIONS already made and miraculously provide an illegal "Get Out of Jail Free Card" by further violating law and this Court by attempting to make a crime now legal.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

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**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Donald Tescher was also on the line and participated in the phone call.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Simon did say on a phone call with his children that he was considering changing he and Shirley's plans and asked for agreement in principle before making any changes. If the proposed changes could be legally done, where it is now confessed by Spallina that he knew this legally could not be done, it would have divided the Estates and Trusts of Shirley equally among all ten grandchildren. This meeting was really about Simon asking Eliot, Jill and Lisa ONLY, if they would be willing to give up their 1/3<sup>rd</sup> interests in the Estates and Trusts of Simon and Shirley as they were the only beneficiaries at the time, in order to have the abuse by Theodore and Pamela as defined herein stop. These changes briefly contemplated by Simon were to be in exchange for Theodore and Pamela agreeing to stop their abuse of Simon and stop pressuring him to make changes to put them back into the Wills and Trusts or they would continue withholding their children from seeing him and using them as pawns to force the changes. Threatening that if Simon did not comply with their demands for changes he would never see four of his ten grandchildren again.

There was a concurrent extortion of Simon for several months leading up to the meeting in addition to the one being waged by Theodore and Pamela to make the changes, which was engaged in by four of five of Simon's children, Theodore, Pamela, Jill and Lisa. This extortion again used their children's as pawns so that if Simon did not comply with their demands to either stop seeing his

girlfriend, Maritza Puccio Rivera they and their children would not see Simon. Simon would not stop seeing his girlfriend, Simon refused to make changes to his and Shirley's Estates and Trusts and Theodore, Pamela, Lisa and Jill and their children did not see Simon for almost a year and half over this. All of this starting almost immediately after the loss of his wife and carrying on for over a year and half and the withholding of his grandchildren started almost immediately after Shirley's death when Theodore and Pamela were unscrupulously informed by Tescher and Spallina that they were entirely disinherited with their lineal descendants. This rage despite the reason stated being that they had already been fully compensated for millions upon millions of dollars by acquisition of family businesses and more while Simon and Shirley were living. The other three children and their children had not.

The rage caused by this release of this private, highly sensitive and confidential information about their being disinherited in the Estates and Trusts of both Simon and Shirley was done without Simon's consent by Spallina and left Simon a sitting or possibly a dead duck, see Pamela's Attorney Letter to Simon [www.iviewit.tv/2011/11/28/PamelaLettertoSimonHeriaud&Genin.pdf](http://www.iviewit.tv/2011/11/28/PamelaLettertoSimonHeriaud&Genin.pdf) after learning of her and Theodore and their lineal descendants disinheritance, fully incorporated by reference herein. That this Court should note that Simon may have been being drugged or poisoned at the time of the meeting as Theodore alleged to Palm Beach County Sheriff Investigators on the day Simon died that he was being poisoned<sup>3</sup>, as defined herein and this drugging and poisoning may have been started months before his death.

That this Court should note that Simon was under so much duress from this elder abuse that he sought mental health treatment from Patricia Fitzmaurice LCSW, due to mental duress, stress and fear caused by four of his children and from the pain from the extortion with his children withholding his grandchildren was causing him. This was like the death of 11 of 14 of his living direct lineal

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<sup>3</sup> September 13, 2012 Palm Beach County Sheriff Report @ [www.iviewit.tv/Sheriff\\_Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) pages 24-27, fully incorporated by reference herein.

descendants. Eliot and his family while have been requested to join the abuse of their father and withhold his children in protest too, flatly refused to participate in the cruelty as he loved and respected his father and mother until the day they died, along with Eliot's lovely wife Candice and their three children.

That Spallina in the meeting inferred at the time that all the changes could legally be done, despite later claiming he advised Simon that he could not make the changes, however this admission only came after the Sheriff came knockin. The fact that the Shirley Trust was irrevocable and that Eliot, Lisa and Jill were the only beneficiaries of the Shirley Trust and Simon could not change this and thus to change this would require fraud was never disclosed to any parties at the meeting.

Until the meeting, on May 10, 2012, Eliot had never been informed that he was a one third beneficiary of both Simon and Shirley's Estates and Trusts, nor that Theodore and Pamela had been WHOLLY disinherited but once learned it explained why they were abusing Simon for months since Shirley passed and why they were trying to extort him to commit fraud and make changes or else. In fact, Spallina's claimed to Palm Beach County Sheriff Investigators that these changes to the beneficiary class of Shirley could not be made legally, which they cannot. Therefore, his own statement invalidates any alleged agreement made by any parties who were misled, coerced or otherwise engaged to participate in fraudulent transactions promulgated by Tescher and Spallina and furthered now by Theodore and Alan Rose in this fraudulent pleading.

That Eliot, Jill and Lisa agreed in principle to the suggested estate plan changes that they first heard about in the May 10, 2012 meeting and had no idea they were being asked to give up their inheritances in both Estates. Eliot requested from Spallina and Tescher all documentation showing his newly learned of interests as a one third beneficiary in the Estates and Trusts, the dispositive documents that existed and those that were going to be change or amend the existing documents before he would fully agree and sign anything. Eliot did sign one document but with language

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attached that stated the signature was not valid until receiving the documents requested to review and to ascertain what interests he was being asked to forgo or waive. Eliot also requested to be provided with an accounting as required in the Estate and Trusts of Shirley that he was a beneficiary of and that was also never sent by Tescher and Spallina. That Simon on May 09, 2012 was unaware that Spallina and Tescher had not sent out the legally required dispositive documents and accountings to Eliot after Shirley's death and advised Eliot to ask for them before doing anything from Spallina and Tescher.

Eliot after the meeting stated orally and in writing repeatedly to Spallina and Tescher that before making any final decisions and waiving any interests, Eliot would have to see these statutorily required items he was owed as a beneficiary and the other requested documents. These documents were promised to be sent to him before any changes would be made, Spallina stating he would have them within a few days.

That a singular Waiver was the only document ever sent to Eliot and that was later discarded by the Court as being FORGED and FRAUDULENTLY NOTARIZED for Eliot and thus legally void.

This was sent to the Court with two Waivers for Simon, one already admitted FORGED for Simon Post Mortem and the other one challenged as forged too and these FORGED AND FRAUDULENT waivers were then submitted to this Court by Tescher & Spallina, P.A. on behalf of Simon, acting as the PR/Executor when they were posited with the Court while dead.

That the agreement in the May 10, 2012 meeting was based on the fact that the issues between Theodore and Pamela with Simon to make these changes or else would cease if Simon made the changes. However, the hostilities against Simon from the meeting to the day of his death months later never ceased between Theodore and Pamela, as the changes were never executed upon and for a number of reasons including the fact that Simon learned that they were illegal changes being forced upon him that he could not and would do. This only enraged Theodore and Pamela further and

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Spallina and Theodore are alleged to have had a huge fight with Simon only days before he passed in efforts to force him to make changes or else.

Simon had determined that he could not legally make the changes and being an expert estate planner for most of his life knew these changes to either he or Shirley's estate could legally not be done and did not therefore make the changes that were suggested, which would have made him participate in a fraud. Theodore and his counsel were attempting to extort him to commit this fraud or else with Spallina and Tescher together drafting the alleged documents knowing what they were doing was illegal.

That even if Simon, Theodore, Pamela, Spallina and Tescher all wanted or intended to make these changes, the only way they could be done would be through committing fraud. An agreement construed in fraud is not legally valid so the 2012 Will and Amended and Restated Trust would not survive is so constructed to commit a fraud. Since nothing could be done to legally change the irrevocable beneficiary class of Shirley once Shirley died as stated in their dispositive documents, without committing fraud on the beneficiaries Eliot, Lisa and Jill an agreement to try and do so would be a fraudulent agreement and thus void.

For these reasons it is believed that Simon never legally executed any changes in he or Shirley's 2008 estate plans and all attempts to do so appear to have been done POST MORTEM and done with knowingly fraudulent intent by Spallina, Tescher and Theodore, all claiming to be expert estate planners who knew this was legally impossible. This leads one to believe that the meeting and these documents were part of a premeditated plan to have Simon under duress and pressure commit fraud to make changes or else. After Simon died suddenly and unexpectedly those who wanted these changes so badly, Theodore and Pamela, along with Tescher and Spallina, then created Post Mortem forged and fraudulent documents to achieve these fraudulent ends and make the illegal changes they knew could not be legally done. It is apparent Simon never executed any of the alleged 2012

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dispositive documents that would have made him commit fraud knowingly and that his Attorneys at Law were claiming at the time could be legally done to Eliot and others, while knowing they were advancing a fraudulent scheme.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that no matter what Eliot or anyone else stated or agreed to at the May 10, 2012 meeting, Eliot DID NOT AGREE, nor did anyone else Eliot recollects, agree to participate in fraudulent transactions that were legally impermissible.

In fact, in either of the alleged Simon Trust documents the following language is specific and unchallengeable,

**ALLEGED 2008 SIMON L. BERNSTEIN TRUST**

**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 [emphasis added].**

**ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST**

**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.

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This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added to Simon's Trust by Shirley after her death, by any means, including revocation or amendment or otherwise and yet this is exactly what was being attempted by allegedly amending Simon's Trust. This same change to her trust property is being attempted through this pleading that attempts to mislead the Court by failing to include this language that specifically prohibits such attempted amendment. In fact, in so illegally crafting the alleged Amended and Restated Simon Trust, Spallina attempted to just erase that language prohibiting the changes to Shirley's property in the new trust altogether. Then Spallina and Tescher hid the alleged 2008 Simon Trust from the beneficiaries in violation of Probate and Trust codes and statutes, until they were forced to turn it over by Court order upon their removal in all capacities from the Estates and Trusts of Simon and Shirley.

That when turning over in January of 2013 (four months after Simon's death) the 2012 Amended and Restated Simon Trust to Eliot's counsel, Christine Yates of Tripp Scott law firm, who was hired to get the documents Spallina and Tescher refused to give Eliot, Spallina failed to enclose the 2008 Simon Trust as required. This done in order to hide this fraudulent and illegal change that was being made in his alleged amended document that anyone who would have saw the document being amended would have instantly found the attempted amendment to change Shirley's property as prohibited.

That it gets worse, as to further the fraud, Spallina admitted to Palm Beach County Sheriff Investigators that he further altered a Shirley Trust Amendment to compliment the fraudulent amendment in Simon's Trust and sent them together via US Mail to Eliot's counsel Christine C. Yates, in efforts to try and fraud her that the beneficiaries of Shirley's trust could be changed to all the 10 grandchildren by Simon using the two combined fraudulent documents.

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The admitted fraudulent alteration of Shirley's Trust Amendment by Spallina inserted the following admitted fraudulent language into an older amendment that did not have this language, effectively trying to alter Shirley's Trust through fraud,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

That the slight change in language in this fraudulent amendment from what Shirley's Trust actually states, is the omission of Ted and Pam's lineal descendants as also being excluded and considered predeceased from the Shirley Trust. Spallina admitted to the Palm Beach County Sheriff Investigators that he made this change to further his fraud in January 2013 POST MORTEM OF BOTH SIMON AND SHIRLEY, as with other documents used in this fraud in both estates and trusts of both Simon and Shirley.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. A little late for the alleged Trustee to start asking this Court how to distribute assets after distributions were made to knowingly improper parties and now that they are caught committing fraud trying to change the documents to fit the crimes. That Eliot states that the words "stated intentions" has no documents legally executed to support the stated intentions, whereby 10 grandchildren received distributions.

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Even if it were Simon's stated intention and was executed, it was not done legally under Article I, Section A of Simon's Trust and under the alleged Shirley Trust language that defined her class of beneficiaries, which were set in stone at her death. Therefore, who cares what Simon intended to do if it was impermissible, illegal and consummated through intentional fraud, which would void any attempted change entirely.

It appears that when Simon refused to make changes and found changing anything in Shirley was legally impossible, the changes were made for him POST MORTEM and may have been part of premeditated plan once Simon was allegedly murdered or even died naturally. Therefore, no matter what may have or may not have been agreed to in regard to changing the beneficiary class after Shirley's death on her property that became irrevocable under her Shirley Trust or what was alleged done to so do, NO CHANGES to the defined beneficiary class could legally be made without committing fraud.

NO CHANGES OR AMENDMENTS IN SIMON'S ALLEGED 2012 Will and Trust that attempted to alter SIMON OR SHIRLEY'S class of beneficiaries are legally valid. Even if they were executed these changes are still legally invalid and those who participated in attempting to alter that class of beneficiaries set in stone once Shirley died are guilty of knowingly participating in fraud. Therefore, the BENEFICIARIES Shirley's Trusts ARE STILL THE ONLY LEGALLY ALLOWABLE BENEFICIARIES OF ELIOT, JILL AND LISA and their lineal descendants. Simon, nor anyone else's intent or acts could change the beneficiary class of the Shirley Trust legally once one of them had died and therefore any documents so attempting to commit fraud are therefore legally void and any distributions made to any other parties based on the fraudulent documents or illegal agreements are fraudulent conversions as well. ALSO MISSING FROM THE SHIRLEY AND SIMON TRUSTS AND ESTATES ARE THE REMOVED SCHEDULES OF ASSETS REFERRED TO IN THE DISPOSITIVE DOCUMENTS, yet another series of frauds unfolds concerning the alleged

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Shirley Trust that is missing KEY COMPONENTS that have been suppressed and denied in violation of Probate and Trust Rules and Statutes and law.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has been refused all requests for inspection of books and records and it remains unknown if there are proper books and records or where they are in violation of Probate and Trust Rules and Statutes.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee Theodore is not a qualified Trustee now or ever, even if he was named a Successor as he is excluded by the very terms of the alleged Shirley Trust document and is further not an interested person as THEODORE IS CONSIDERED DEAD by the terms of the Shirley Trust for all purposes including any distributions made thereunder. Thus it would be prohibited oxymoronic contradictory language if Theodore's name was put there by Shirley instead of fraudulently inserted as is alleged. Thus, Theodore cannot be Trustee by the very terms of the document and has no interests that are not created through a series of fraudulent documents and other frauds. Thus, this baseless lawsuit stands merely as further EVIDENCE OF FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES AND INTERESTED PARTIES and yet another attempt to commit fraud hoping Your Honor will aid and abet this time around.

  
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48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

49. Pursuant to Article III, Shirley's Trust is governed by the laws of the State of Florida.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, the documents validity and ANY language thereunder is challenged as fraudulent and thus NOTHING can be relied upon in the document until it is first determined if the document is legally valid and to date, Eliot, despite repeated requests, has not been able to inspect and analyze the original to know if it even exists at this time. Certainly the Shirley Trust would have to include all Schedules, etc. that were attached, which still remain suppressed and denied.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.



53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the alleged Trustee Theodore cannot be the Trustee by the very language of the Shirley Trust as he is dead and therefore cannot retain legal counsel as alleged Trustee as he is dead for ALL purposes of Shirley's Trust and distributions made thereunder.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

**ANSWER - Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that if Theodore has retained counsel acting as an alleged Trustee and agreed to pay attorney fees and reimburse costs from Shirley's Trust and his counsel agreed to this too, they are both knowingly furthering a fraud. Both Theodore and his counsel are aware of the language prohibiting Theodore from being a Trustee or making any distributions under Shirley's Trust, as Ted is considered dead for ALL purposes of the Shirley Trust and distributions made thereunder, including distributions to any Attorney at Law, including the five or six of them that he has already made distributions to.

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>[Footnote 1]</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

**ANSWER – Affirm and Deny -** Eliot affirms the names and stated age of over 18 regarding Theodore's children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Theodore and his lineal descendants have absolutely no beneficial interest in the

Shirley Trust and are not permissible beneficiaries, appointees, defendants or even interested parties and that this newest attempt to convert and comingle the funds to them through a wordsmithing game to commit fraud through this pleading is further Fraud on this Court.

The fact that the alleged Trustee admits herein that there are disputes created by his former counsel that create a question if HIS family is to receive ANY distributions from Shirley's Trust again sets up a classic Conflict of Interest and another reason he should voluntarily resign as Trustee. Yet, Theodore, as an alleged Trustee and Fiduciary, again Breaches his Duties regarding resigning when there are not waivable conflicts and refusing to resign due to this conflict that his own counsel created to benefit him and pits him against the interests of the beneficiaries. Theodore however continues to act in these matters that he is knowingly conflicted with directly and further now has adverse interests and hostilities to other beneficiaries and the creditor Stansbury who are alleging he is unfit to be a fiduciary and alleging that he is committing criminal acts and civil torts against them. That Theodore and his counsel Rose who were both involved in advancing the fraudulent distribution scheme, including through this Toxic pleading are also arguing and pleading for their lives, as if these documents are fraudulent, as others have been and found to be part of a Fraud, he and his counsel are the central accused parties.

#### **FOOTNOTE 1**

Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any

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devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

**FOOTNOTE 1 ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

That Eliot believes that no Receipts were initially signed or agreement to return the ILLEGAL and IMPROPER distributions made to parties knowing they were committing fraud. All parties ignored repeated warnings to NOT MAKE OR TAKE THE ILLEGAL DISTRIBUTIONS prior to taking them (Spallina even claiming to PBSO Investigators that he told Theodore not to make distributions.)

That Eliot states the statement that Theodore takes “no position in this lawsuit” is a flat out lie.

Theodore is the Plaintiff in this lawsuit acting as the alleged Successor Trustee to defend the interests of the Trust and simultaneously Theodore has another position as the acting Trustee for his children/defendants interests. This conflict makes Theodore stand to gain or lose the most if this attempted FRAUD ON THE COURT and FRAUD ON THE BENEFICIARIES, INTERESTED PARTIES and CREDITOR succeeds or fails. If it fails his children get nothing, if it succeeds, his children may get something, setting up another irrefutable classic conflict of interest with the other beneficiaries that he is required to resign as Trustee over but again holds on, urged on by his Attorney at Law Rose.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

**ANSWER** – Affirm and Deny - Eliot affirms the name Molly Simon and her stated age of over 18. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendant Molly have absolutely no beneficial interest in the Shirley Trust.

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57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendants have absolutely no beneficial interest in the alleged Shirley Trust and are not permissible distributees or have any beneficial interests under any circumstances by express language in the Shirley Trust and the original 2008 Simon Trust that prohibit any distribution to them.

Pamela is also arguing here that she has a beneficial interest personally somehow for she refuses to believe or accept the language that has her and lineal descendant predeceased for all purposes of the distributions made under Shirley's Trust. This is a large problem underlying all of these crimes.

Pamela also has other problems in these matters, including her involvement in the fraudulent attempt to convert Simon's life insurance policy from the Estate to benefit her pockets directly while moving the assets from the Estate, where her child was alleged to be a beneficiary. In essence, stealing money from her child who she claims is a beneficiary of the Shirley Trust. Pamela is also fending for her life in this pleading. If these documents are further proven fraudulent, as so many others have already been and found to be part of a larger fraud, than Pamela is one of the central accused parties that promoted and participated in the advancement of the fraudulent beneficiary scheme working with Theodore, Tescher, Spallina and others. She is also one of two who benefited the most through the illegal distributions and fraudulent beneficiary scheme.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

  
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**ANSWER** – Admit in Part. The names and relation to Eliot of his children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot also does not claim that his minor children have a beneficial interest in the Shirley Trust directly and only as Eliot’s lineal descendants would they inure interests.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

**ANSWER** –Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that he is not Trustee of D.B., Ja. B. and Jo. B. trusts created allegedly **POST MORTEM** under the challenged Simon L. Bernstein Trust Dtd 9/13/12 and that he has never seen a copy of any such trusts allegedly created under an alleged legally void document.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

**ANSWER** – Admit in Part. The names and relation of Jill and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Jill may have a beneficial interest in the alleged Shirley Trust with Eliot and Lisa.

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust.

**ANSWER** – Admit in Part. The names and relation of Lisa and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Lisa, not her child directly has a beneficial interest in the alleged Shirley Trust.

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by

the beneficiaries and this Court and the Court determines if the document can legally stand or to simply dismiss this lawsuit based on parties that have no legal interest in the Shirley Trust filing it to make prior conversions and comingling done fraudulently be somehow rewritten to make the documents fit the crime and thus is further FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit still retain Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

COUNT I – DECLARATORY AND OTHER RELIEF

66. Trustee restates the allegations contained in Paragraphs 1-65.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

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69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has admitted to this Court already that a direct conflict of interest was created with his children through the frauds, which has delayed his inheritances. Once realizing the conflicts intentionally created between he and his children through the fraud, Eliot immediately sought separate and distinct counsel for he and his children to negate this conflict as is required by him, especially when acting as Trustee to his children. The question is why did his siblings and all of them, not take similar steps to have separate counsel for their children. This conflict was immediately recognized by Eliot’s counsel Tripp Scott and Christine Yates, Esq. who was forced to stop representing Eliot to represent his children instead and this information was passed to Eliot’s siblings who simply ignored the information while acting as Trustees for their children despite the conflict.

By this statement, the Trustee is admitting that all the children of Shirley are conflicted with their children similar to Eliot and yet Eliot is the only one who sought separate and distinct counsel for he and his children to avoid this Breach of Fiduciary Duty as a Trustee of his children as required by Probate Rules and Statutes.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states massive irreparable harm has already come to the true and proper beneficiaries from the Frauds that have already interfered and delayed inheritances by now four years in Shirley and two years in Simon committed mainly by Officers and Fiduciaries who are under the tutelage of this Court. Theodore and Alan are alleged central parties in advancing the frauds and more.

Any irreparable harm to the trust and the beneficiaries are the trustees fault caused by his own breaches of duties and breaches of trust and he and his counsel should be held personally and professionally responsible, liable sanctioned, held accountable and forced to repay any damages his actions and inactions have caused by this Court.

72. There is no other adequate remedy at law.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

  
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**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

76. The Trustee’s rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that the only seeds ripening at this time are the seeds of fraud that are under multiple ongoing state and federal investigations and civil actions, all involving a mass of fraudulent acts to convert, comingle and outright steal assets in what is alleged to be anywhere from 40-100 million dollars as Alan has stated in prior pleadings to this Court in the probate cases of Simon and Shirley.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.



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**ANSWER** – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states the distributions were not just improper but ILLEGAL and felonious conversions and comingling done knowingly and with scienter by those who took them, all against the advice of Eliot and his counsel and others. Note that Eliot is the only party that did not have to sign anything about receiving improper illegal fraudulent distributions that he converted and comingling to improper parties with knowledge that it was illegal. That for these reasons, again, Eliot suggests Guardians for the children of each child of Simon and Shirley’s who knowingly did these fraudulent distributions, knowing of fraudulent and forged documents in their own names and their father’s name and failed to take any legally required steps to report the crimes, in fact suppressing their knowledge, while acting as Fiduciaries for their children are unfit to be Trustees to their children any longer.

79. “Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the “Trust”), files this Complaint against and provides notice to those interested in the Trust, Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., and states that at all times relevant.”

**ANSWER** – Deny. Theodore is alleged to be Trustee through a fraudulent document and that document needs to be further analyzed by beneficiaries and authorities to determine its alleged

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authenticity. That Theodore's Trusteeship would be doomed as it directly conflicts with other language in the document. Even if he were named in the document as Successor he is firmly stated to be PREDECEASED for ALL purposes of the alleged Shirley Trust and distributions made thereunder and thus would not now or ever be qualified to make distributions as Trustee thereunder, as Ted again is dead for all purposes of the Shirley Trust and distributions made thereunder. That the alleged Defendants listed above are not at all named as beneficiaries in the Shirley Trust and are strictly prohibited from being included as having a beneficial interest. The Shirley Trust is irrevocable with a specific beneficiary class and trusts created thereunder that already exist and could not be altered Post Mortem by any party, including this Court despite this desperate and Toxic, Vexatious and Ridiculous pleading. These alleged Defendant trusts are created years after Shirley's death and after Simon's death as well and are alleged to be part of a further attempt to make fraudulent conversions and illegal distribution of benefits to improper parties. That Eliot has never seen or been given any such trusts in he or his children's names as listed by the alleged Trustee as Defendants and knows not who has executed these or how or how these trusts have become defendants in this nonsensical pleading.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by the beneficiaries and this Court and the Court determines if the ALLEGED dispositive documents can legally stand. Or simply dismiss this lawsuit based on the fact that the parties that have no legal interest and standing in the Shirley Trust and this lawsuit is a further Fraud on the Court by Officers of this Court and Fiduciaries to attempt to make prior conversions and comingling done fraudulently somehow now post criminal acts legal. This attempt by using this TOXIC, VEXATIOUS, FRIVOLOUS, HARASSING and COSTLY pleading make the documents now fit the crimes. Thus is yet another FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO

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INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit however retain all Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

Filed on Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X \_\_\_\_\_

**SERVICE LIST**

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IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;  
Eliot Bernstein in his capacity as  
Natural Guardian of his  
minor children, Joshua, Jacob and Daniel;  
and as beneficiary of the alleged Shirley  
Bernstein Trust dated May 20, 2008, as  
amended and Eliot Bernstein as Trustee of the  
Eliot Bernstein Family Trust dated May 20,  
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Teschler & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;

COUNTER COMPLAINT  
Tuesday, September 2, 2014  
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\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK \*\*\*

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants,

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Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

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**COUNTER COMPLAINT**



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COMES NOW, PRO SE<sup>1</sup>, Eliot Ivan Bernstein ("Eliot") as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged "Shirley Bernstein Trust dated May 20, 2008, as amended" ("Shirley Trust") and as Trustee of the "Eliot Bernstein Family Trust dated 5/20/2008" and hereby files this "ANSWER AND COUNTER COMPLAINT" and in support thereof states, on information and belief, as follows:

**Parties, Jurisdiction and Venue**

1. This is an action for money damages in excess of \$15,000.00 and for equitable, compensatory, punitive and other reliefs that may be as high as billions of dollars explained further herein.
2. Counter Plaintiff, Eliot Ivan Bernstein ("Eliot") or ("Counter Plaintiff") is the parent and natural guardians of minors, Joshua Ennio Zander Bernstein ("Joshua") or ("Josh"), Jacob Noah Archie Bernstein ("Jacob") or ("Jake") and Daniel Elijsha Abe Ottomo Bernstein ("Daniel") or ("Danny"), and resides with them in Palm Beach County, Florida.
3. Counter Plaintiff Eliot Ivan Bernstein is the alleged Trustee of the Eliot Bernstein Family Trust.
4. Counter Defendant, Tescher & Spallina, P.A. and all Partners Associates and of Counsel ("TSPA"), is domiciled in Florida and was counsel to Simon and Shirley Bernstein for Estate planning and more.
5. Counter Defendant, Robert L. Spallina, Esq. ("Spallina"), personally is a resident of Florida.
6. Counter Defendant, Robert Spallina, Esq., professionally, is a resident of Florida and a central defendant in all allegations contained herein.

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<sup>1</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, PRO SE, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Set 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)." In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

7. Counter Defendant, Robert L. Spallina, Esq., as the former, Co-Personal Representative, Counsel and Fiduciary of the ESTATE and WILL OF SIMON BERNSTEIN (2012); Co-Trustee, Counsel and Fiduciary of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged WILL OF SIMON BERNSTEIN (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); Trustee and Fiduciary of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); Personal Representative, Fiduciary and Counsel to the ESTATE and WILL OF SIMON BERNSTEIN (2008); Trustee, Fiduciary and Counsel to the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST; Counsel to the Personal Representative and Fiduciary Simon Bernstein and Successor Personal Representative Theodore Bernstein for the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); Counsel to the Trustee and Fiduciary Simon Bernstein and Successor Trustee Theodore Bernstein for the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); Counsel to the alleged Successor Trustee and Fiduciary Theodore Bernstein of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Fiduciary and Counsel to the ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to

the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738; Counsel to the Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel to the Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel and Registered Agent to the Defendant, BERNSTEIN FAMILY REALTY, LLC; Counsel, Registered Agent and Manager of Bernstein Holdings LLC; Counsel and Registered Agents for Bernstein Family Investments LLLP; Counsel and Trustee to Defendants, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012.

8. Counter Defendant, Donald R. Tescher, Esq. ("Tescher"), personally is a resident of Florida.
9. Counter Defendant, Donald R. Tescher, Esq., professionally, is a resident of Florida and a central defendant in all allegations contained herein.
10. Counter Defendant, Donald Tescher, Esq. as the former; Co-Personal Representative, Counsel and Fiduciary of the ESTATE and WILL OF SIMON BERNSTEIN (2012); Co-Trustee, Counsel and Fiduciary of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged WILL OF SIMON BERNSTEIN (2012); Counsel to the Co-Personal Representatives and Co-Trustees of the alleged SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); Trustee and Fiduciary of the MARITAL TRUST

and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; Trustee, Counsel and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); Personal Representative, Fiduciary and Counsel to the ESTATE and WILL OF SIMON BERNSTEIN (2008); Trustee, Counsel and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST; Counsel to the Personal Representative and Fiduciary Simon Bernstein and Successor Personal Representative Theodore Bernstein for the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); Counsel to the Trustee and Fiduciary Simon Bernstein and Successor Trustee Theodore Bernstein for the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); Counsel to the alleged Successor Trustee and Fiduciary Theodore Bernstein of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); Trustee, Fiduciary and Counsel to the ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008; Trustee, Fiduciary and Counsel to the SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06; Trustee, Fiduciary and Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Trustee, Fiduciary and Counsel to the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006; Counsel to the DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738; Counsel to the Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel to the Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381; Counsel and Registered Agent to the Defendant, BERNSTEIN FAMILY

REALTY, LLC; Counsel, Registered Agent and Manager of Bernstein Holdings LLC; Counsel and Registered Agent for Bernstein Family Investments LLLP; Counsel and Trustee to Defendants, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012; Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012.

11. Counter Defendant, Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A. and all Partners Associates and of Counsel fka Tescher Gutter Chaves Josepher Rubin Ruffin & Forman , P.A. (“GC”) is domiciled in Florida and was Counsel to Simon and Shirley Bernstein for Estate planning work and more prior to Donald Tescher’s removal from that firm and forming Tescher & Spallina, P.A. and where Simon’s account was then transferred by Tescher, the account manager, to his new firm TSPA.
12. Counter Defendant, Theodore Stuart Bernstein (“Theodore”) or (“Ted”), individually, is a resident of Florida and a central defendant in all allegations contained herein.
13. Counter Defendant Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;
14. Counter Defendant Theodore Bernstein as, Personal Representative of the Shirley Estate; Personal Representative and Fiduciary of the ESTATE AND WILL OF SHIRLEY BERNSTEIN (2008); alleged Successor Trustee and Fiduciary of the SHIRLEY BERNSTEIN TRUST AGREEMENT (2008); alleged Successor Trustee and Fiduciary of the SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT (2012); as the alleged Trustee and Fiduciary of the SIMON L. BERNSTEIN TRUST AGREEMENT (2008); as alleged Successor Trustee and Fiduciary of the MARITAL TRUST and FAMILY TRUST created by SHIRLEY BERNSTEIN TRUST (2008); as the alleged Trustee and Fiduciary of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995; as an alleged Trustee and Fiduciary of the SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008); as alleged Manager of Bernstein Family Realty

LLC; as alleged Trustee and Fiduciary to the WILMINGTON TRUST 088949-000 SIMON L BERNSTEIN IRREVOCABLE TRUST.

15. Counter Defendant, Lisa Sue Friedstein (“Lisa”), Individually, is an Illinois resident with interests in the Florida probate and trusts of Simon and Shirley.
16. Counter Defendant, Jill Marla Iantoni (“Jill”), Individually, is an Illinois resident with interests in the Florida probate and trusts of Simon and Shirley.
17. Counter Defendant, Pamela Beth Simon (“Pamela”) or (“Pam”), individually, is a resident of Illinois and acting on behalf her daughter and herself in the Florida Probate matters of Simon and Shirley.
18. Counter Defendant, Mark Manceri, Esq. (“Manceri”), personally, is a resident of Florida.
19. Counter Defendant, Mark Manceri, Esq., professionally is a resident of Florida and was Counsel to, BERNSTEIN FAMILY REALTY, LLC; Counsel to Defendants Tescher and Spallina; Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of Shirley Bernstein Trust Agreement 2008; Counsel to Theodore Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the Estate and Will of Simon Bernstein 2012.
20. Counter Defendant, Mark R. Manceri, P.A. and all Partners, Associates and of Counsel, is domiciled in Florida and acted as counsel in these matters to various parties.
21. Counter Defendant, Page, Mrachek, Fitzgerald & Rose, P.A. and all Partners Associates and of Counsel (“PMFR”), is domiciled in Florida and acted as counsel in these matters to various parties.
22. Counter Defendant, Alan B. Rose, Esq. (“Alan”) or (“Rose”), personally, is a resident of Florida who acted as counsel to various parties in these matters.
23. Counter Defendant, Alan B. Rose, Esq., professionally, is a resident of Florida and acted as Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of the alleged Shirley Bernstein Trust Agreement 2008; Counsel to Theodore

Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the alleged Successor Trustee Theodore Bernstein of the alleged Simon Bernstein Amended and Restated Trust (2012); Counsel to Theodore Bernstein in the Stansbury Creditor Lawsuit in various capacities of various entities named thereunder.

24. Counter Defendant, Pankauski Law Firm PLLC and all Partners, Associates and of Counsel (PLW”), is domiciled in Florida and represented various parties in these matters.
25. Counter Defendant, John J. Pankauski, Esq. (“Pankauski”), personally, is a resident of Florida that acted as counsel to various parties in these matters;
26. Counter Defendant, John J. Pankauski, Esq., professionally, is a resident of Florida and as Counsel to Defendant Theodore Bernstein as an Individual; Counsel to Theodore Bernstein as alleged Successor Trustee of the alleged Shirley Bernstein Trust Agreement 2008; Counsel to Theodore Bernstein as Personal Representative of the Estate and Will of Shirley Bernstein; Counsel to the alleged Successor Trustee Theodore Bernstein of the alleged Simon Bernstein Amended and Restated Trust (2012).
27. Counter Defendant, Kimberly Francis Moran (“Moran”), personally, is a resident of Florida who was arrested in the matters for fraudulently notarizing documents and admitted to forging documents in these matters.
28. Counter Defendant, Kimberly Francis Moran, professionally, is a resident of Florida and was Notary Public/Legal Assistant for Spallina & Tescher P.A. and was convicted of Felony Fraudulent Notarization in the Estate of Shirley Bernstein and admitted Forgeries, including Post Mortem Forgery of Simon’s name while working and under direction of Defendants Tescher, Spallina and Tescher & Spallina, P.A. Moran has also had her Notary Public license revoked by Governor of Florida Rick Scott’s Notary Public Division.

29. Counter Defendant, Lindsay Baxley aka Lindsay Giles (“Baxley”) or (“Giles”), personally, is a resident of Florida who improperly notarized documents and was charged with such by the Florida Governor Rick Scott’s Notary Public Division while working for Theodore Bernstein.
30. Counter Defendant, Lindsay Baxley aka Lindsay Giles, professionally, is a resident of Florida who improperly notarized documents and was charged with such by the Florida Governor Rick Scott’s Notary Public Division while working for Theodore Bernstein.
31. Counter Defendant, Simon L. Bernstein Trust Agreement dated May 20, 2008 and as alleged Amended and Restated Trust Simon L, Bernstein Trust Agreement dated July 25, 2012 (“Simon Trust”) is a trust established in Florida.
32. Counter Defendant, Shirley Bernstein Trust Agreement dated May 20<sup>th</sup> 2008 (“Shirley Trust”), is a trust established in Florida.
33. Counter Defendant, Estate of Simon Bernstein, is an estate in the State of Florida.
34. Counter Defendant, Estate of Shirley Bernstein, is an estate in the State of Florida.
35. Counter Defendant, SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008), is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
36. Counter Defendant, SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06, is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
37. Counter Defendant, SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06, is a Trust established in Florida by Shirley. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.



38. Counter Defendant, SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008), is a Trust established in Florida by Shirley and where the Beneficiaries are presumed to include but are not limited to, Eliot and/or his children or both. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
39. Counter Defendant, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995, is a suppressed and denied trust that is alleged missing and lost and yet a Plaintiff in a US Federal Court case and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both and the Estate of Simon.
40. Counter Defendant, SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000), is a Trust established in Florida by Simon and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
41. Counter Defendant, SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000), is a Trust established in Florida by Shirley and where the Beneficiaries, include but are not limited to, Eliot and/or his children or both.
42. Counter Defendant, Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
43. Counter Defendant, Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.
44. Counter Defendant, Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012, is a trust set up in Florida by an unknown. Information is currently unavailable regarding the Trustees, etc. as it is alleged missing or destroyed.

45. Counter Defendant, ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008, is a Trust established in Florida by Shirley and Simon.
46. Counter Defendant, DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
47. Counter Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
48. Counter Defendant, JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, is a Trust established in Florida by Shirley and Simon.
49. Counter Defendant, DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738, is a Trust established in Florida by Shirley and Simon.
50. Counter Defendant, JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381, is a Trust established in Florida by Shirley and Simon.
51. Counter Defendant, JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381, is a Trust established in Florida by Shirley and Simon.
52. Counter Defendants, JOHN AND JANE DOE 1-5000, are John and Jane Doe.
53. Material and Fact Witness – Judge Martin Colin, personally and professionally, where certain Felony crimes occurred in and upon the Court of Judge Colin and were committed by Officers and Fiduciaries of his Court.
54. Material and Fact Witness – Judge David French, personally and professionally, where certain Felony crimes occurred in and upon the Court of Judge French and were committed by Officers and Fiduciaries of his Court.
55. Jurisdiction and venue are proper in Palm Beach County, Florida because the beneficiaries of the trusts reside here or have interests in the trusts in Florida, the trusts were allegedly created in Florida, the corporate entities are domiciled here and/or do business in the State of Florida.

**BACKGROUND SPECIFIC TO THIS CASE**

56. That Eliot states that the Trustees complaint uses language from documents that are already challenged in the Court and need to be forensically analyzed for further evidence of fraud. All language cited from any alleged trusts is now speculative. Where it is alleged that Simon did not amend and restate his 2008 Will and Simon Trust in 2012 and that these documents were done Post Mortem and are all fraudulent, forged, improperly notarized and improperly constructed to commit fraud.
57. That all documents executed allegedly by Simon in 2012 to change anything with Shirley's 2008 Will and Shirley Trust are further fraudulent and forged documents and legally invalid.
58. That until this Court can determine the dispositive documents to use forward due to the fraud and forgeries and more, any language cited from any of the wills or trusts of both Simon and Shirley cannot be relied on without disclaimer that identifies the fact that these documents all must be analyzed and reviewed forensically for further evidence of fraud, before any language can be accepted as legally valid.
59. That as of this date, Eliot has been refused to see or inspect the original dispositive documents in the estates and trusts of Simon and Shirley, in violation of Probate and Trust Rules and Statutes.
60. That Eliot hereby incorporates all statements made in his Answer to this complaint, all pleading made in the Oppenheimer v. Candice and Eliot Bernstein lawsuit before Hon. Judge Colin and all prior pleadings in the Probate cases of Simon and Shirley before Hon. Judge Colin and Hon. Judge David French pending hearings, all are hereby incorporated by reference herein.
61. That this Court is in part the SCENE OF THE CRIME, as the fraudulent and forged documents were posited with this Court, by Officers of this Court, Tescher and Spallina by their law firm TSPA, which enabled the illegal seizure of Dominion and Control of the Estates and Trusts of both Simon and Shirley.

62. That a highly sophisticated legal process abuse scheme was committed by the fiduciaries and counsel to the fiduciaries (including certain of the fiduciaries acting as their own counsel) committing felony acts while acting as Fiduciaries and Officers of this Court to illegally seize Dominion and Control of the Estates and Trust of Simon and Shirley.
63. That Simon and Shirley Bernstein had a net worth between 40-100 million dollars.
64. That these crimes, include but are far from limited to, proven Frauds on the Court, alleged Fraud on a Federal Court, proven Frauds on the Beneficiaries, proven Fraudulent Notarizations, Admitted Forgery of six persons including Simon POST MORTEM, admitted fraudulent alteration of a Shirley Trust document POST MORTEM, Creditor Fraud, Bank Fraud, Insurance Fraud, Theft of Assets, Identity Theft of a dead person and more.
65. That all the crimes listed above were committed primarily by Fiduciaries and Attorneys as Law, all acting as Officers of this Court, all who proceeded to then use the fraudulent and forged documents to commit Fraud on the Court and Fraud on the beneficiaries. These crimes included using Simon as an acting PR/Executor while he was dead for several months to close his wife Shirley's Estate illegally.
66. That Simon was used while DEAD to submit false instruments to this Court filed by TSPA, as they needed to make it look like Simon closed his deceased wife Shirley's Estate and made changes to he and Shirley's Estates and Trusts while alive.
67. That Simon died on September 13, 2012 and at that time was the PR/Executor of Shirley's Estate and Trustee of the Shirley Trust.
68. That Simon submitted documents to the Court as if alive from the date he died until January 2013 when Shirley's Estate was illegally closed by a dead PR/Executor.

69. That after Simon died no Successor PR/Executor was appointed for Shirley's Estate as it appeared Simon had closed the Shirley Estate while alive and died after so doing, which is untrue, Simon died before closing Shirley's Estate.
70. That after Simon died no Successor Trustee was appointed for the Shirley Trust, as it appeared Simon had closed the Shirley Estate while alive and died after so doing, which is untrue, Simon died before closing Shirley's Estate.
71. That documents were fraudulently notarized for Simon POST MORTEM.
72. That documents were fraudulently notarized for five of Simon's children.
73. That documents were forged for Simon Post Mortem.
74. That documents were forged for five of Simon's children.
75. That documents were admitted fraudulently altered in the Shirley Bernstein Trust.
76. That when Shirley Bernstein passed her Shirley Trust became irrevocable.
77. That when Shirley Bernstein passed the beneficiaries of the Shirley Trust were Eliot, Jill and Lisa and their lineal descendants through Family Trusts created for them thereunder.
78. That Theodore and Pamela and their lineal descendant are disinherited entirely and considered predeceased for all purposes of Simon and Shirley's Trusts and distributions made thereunder.
79. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the 2008 Simon Trust and distributions made thereunder.
80. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the alleged 2012 Amended and Restated Simon Trust and distributions made thereunder.
81. That Theodore and Pamela and their lineal descendants are disinherited entirely and considered predeceased for all purposes of the alleged 2008 Shirley Trust and distributions made thereunder.

82. The Simon L. Bernstein Amended and Restated Trust is alleged to have been amended from the Simon L. Bernstein Trust dated May 20, 2012 and was amended improperly and improperly notarized approximately 48 days prior to Simon's unexpected and sudden death.

83. That the alleged Shirley Trust states,

### ARTICLE III. GENERAL

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,** [emphasis added] 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.

84. That the alleged Simon Trust states,

### **ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN 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.  
**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. [emphasis added].**

85. That the alleged 2012 Amended and Restated Simon L. Bernstein Trust Agreement states,

**ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN 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.

[NOTE LANGUAGE FROM 2008 SIMON TRUST REMOVED]

86. That Simon could not by the 2008 Simon Trust to revoke this 2008 Simon Trust Agreement in whole or in part and otherwise modify or amend the Simon Trust Agreement after Shirley's death with respect to property added by Shirley upon Shirley's death by Shirley's Will or otherwise and could not amend or change the Shirley Trust.

87. That through the 2012 Amended and Restated Simon Trust Agreement, attempts are made to modify and amend the 2008 Simon Trust with respect to property added by Shirley upon Shirley's death.

88. That Eliot through trusts already established in his family's name is a beneficiary of 1/3<sup>rd</sup> of the 2008 Shirley Trust.

89. That Eliot is a 1/3<sup>rd</sup> beneficiary through a Family Trust in his name of the 2008 Simon Trust.

90. That if the alleged 2012 documents do not survive and the 2008 Simon Trust prevails, which there is already evidence of fraud, improper construction, proven improper notarizations and more and there is new evidence now indicating they were procured to knowingly commit fraud by the fiduciaries and officers of this Court and this would legally invalidate them.

91. That if the 2012 alleged Simon Trust and Will fail are legally invalidated, Eliot is a 1/3<sup>rd</sup> beneficiary of the Simon Trust and the Shirley Trust both dated May 20, 2008.
92. That in a May 2012 meeting Eliot was asked by Simon if he would be willing to give up his 1/3<sup>rd</sup> interests in Simon and Shirley's Estate and Trusts and transfer Eliot's interests to Simon's 10 grandchildren.
93. That there were disputes and issues that Theodore and Pamela had with Simon and Shirley having disinherited them and their lineal descendants that were discussed in the May 2012 meeting and if Simon, Eliot, Jill and Lisa choose to later execute upon the contemplated changes these disputes were agreed to come to an end.
94. That after the May 20, 2012 meeting Eliot requested documents from Tescher and Spallina and stated he would in no way do anything with transferring his interests until seeing what interests he was giving up and what the terms, tax and other consequences would be for he and his family and if the arrangement agreed to in principle was legally possible.
95. That Eliot to date, despite repeated requests of the former and current alleged fiduciaries for accountings of his interests, has never received the accounting of his interests asked for in the May 2012 meeting and in multiple written requests since that time in violation of Probate and Trust Rules and Statutes.
96. That Eliot to date, despite repeated requests to the former and current alleged fiduciaries has not received complete dispositive documents in the Estates and Trusts of Shirley and Simon with all Schedules, Addendums and any other attachments affixed and has been further refused inspection of the original documents.
97. That Simon did not have the right to change the beneficiary class of the Shirley Trust as the Trust became irrevocable with Eliot, Jill and Lisa beneficiaries only through Family Trusts created exclusively and only for them and their lineal descendants.



98. Shirley and Simon's wishes and intents were drafted together and stated in their 2008 Wills and Trust documents for them with clear desires to wholly disinherit Theodore, Pamela and their lineal descendants and considered them predeceased for all purposes of their trusts and distributions made thereunder for compensation they already received while Simon and Shirley were alive.
99. That in the 2008 Shirley Trust and 2008 Simon Trust, Theodore, Pamela and their lineal descendants are referred to as having been adequately provided for during their lifetimes.
100. ~~46~~ That Theodore and Pamela in the May 2012 meeting with Simon agreed that if Simon were to change his estate plans legally they would cease their disputes, harassment and extortion of Simon to force him to make changes and allow him to see his grandchildren again.
101. That this relief from abuse was all Theodore and Pamela were asked to give up in the May 20, 2012 meeting, as they had nothing to give up in either the Simon Trust or Shirley Trust as they were wholly disinherited and had no beneficial or other interest in the 2008 Simon and Shirley Trusts.
102. That the disputes between Theodore and Pamela with Simon did not cease until the day Simon died. In fact, the disputes and hostilities grew worse after the May 20, 2012 meeting, as Simon never expressed any desire to make any changes again or did anything to make changes to he and Shirley's estate plans.
103. That Simon never asked Eliot again to consider giving up his interests in he and Shirley's Estates and Trusts to benefit Theodore and Pamela's family in order to cease the elder abuse against him.
104. The elder abuse of having his grandchildren held hostage to either make changes and concede to demands by four of his five children continued until the day he died. These disputes and issues grew over the refusal of Simon to make estate plan changes to reinsert Theodore and Pamela's lineal descendants only back into the estate plans, as discussed in the May 20, 2012 meeting.
105. That Simon also refused to stop seeing his girlfriend to the day he died, Maritza Puccio Rivera, and, Theodore, Pamela, Jill and Lisa continued to use their children as pawns withholding them from him

to persuade Simon to give in to their demands to stop seeing her or never see four of his five children and seven of his ten grandchildren again.

106. That the May 2012 meeting was called for by Simon to end disputes with his four other children, other than Eliot whom he had no disputes with and who was not extorting him to do anything and never withheld his children from him for any reason whatsoever.
107. That Spallina and Tescher drafted the alleged 2012 Will and Amended and Restated Trust of Simon, Spallina witnessed the document and Spallina and Tescher named themselves as Co-Personal Representatives and Co-Trustees.
108. That Spallina represented as counsel he and Tescher as Co-Personal Representatives and Co-Trustees of the alleged 2012 Will and Amended and Restated Trust of Simon.
109. That Spallina represented Theodore as counsel in his role as alleged Successor PR and alleged Successor Trustee of the Shirley Bernstein Estate and Shirley Trust.
110. The alleged 2012 dispositive documents of Simon gave Spallina and Tescher fiducial and legal powers in the Estate and Trusts of Simon and therefore direct interests and financial gains via their alleged roles as Co-PR/Executors, Co-Trustees and Counsel to themselves as fiduciaries.
111. That Tescher and Spallina through their law firm TSPA billed the Estate and Trusts for time worked to forge, fraudulently notarize and fraudulently alter trust documents in the Estates and Trusts of Simon and Shirley.
112. That the alleged 2012 dispositive documents of Simon were witnessed by Kimberly Moran and Robert Spallina who have both now admitted to fraudulently altering documents in these matters.
113. That Kimberly Moran worked as a Legal Assistant and Notary Public while employed by Tescher & Spallina, P.A.
114. That fraudulently notarized documents and forged documents crafted by Moran were posited by Tescher & Spallina, P.A. with the Probate Court in Shirley's Estate on behalf of Simon who was

acting as the PR/Executor (Spallina his counsel as PR/Executor) at the time while Simon was dead at the time the documents were posited with the Court.

115. That Theodore, Spallina and Manceri were told by Judge Martin Colin in a September 13, 2013 hearing, one year after Simon died, that when he discovered that Simon was dead at the time he was alleged to be serving closing documents with Court that he had enough to read them their Miranda Rights. Judge Colin reiterated this later in the hearing to Theodore and Spallina.
116. The alleged 2012 alleged Simon Will and alleged Amend and Restated Simon Trust documents were improperly notarized by Lindsay Baxley who works as Theodore's assistant, as determined by Governor Rick Scott's Notary Public Division for failing to state if Simon was present when the documents were notarized in his name.
117. That Moran was arrested and convicted for fraudulently notarizing a document and admitted to fraudulently notarizing six documents for six separate parties, including one for Simon Post Mortem and these false instruments were posited with this Court by Tescher & Spallina, P.A. on behalf of their client Simon as PR/Executor after Simon had died.
118. That for three to four months after died Simon was used by Spallina and Tescher as if he were alive to submit closing documents for Shirley's Estate and then closed the Estate of Shirley with a dead PR/Executor in violation of law.
119. That Moran admitted to Palm Beach County Sheriff Investigators that she forged six documents for six separate parties, including a Post Mortem forgery for Simon and these false instruments were posited with this Court by Tescher & Spallina, P.A.
120. That Alan Rose is a Respondent in the probate Estate cases of both Simon and Shirley.
121. That Alan Rose is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
122. That Theodore Bernstein is a Respondent in the probate Estate cases of both Simon and Shirley.

123. That Theodore Bernstein is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
124. That Robert Spallina, Esq. is a Respondent in the probate Estate cases of both Simon and Shirley.
125. That Robert Spallina, Esq. is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
126. That Donald Tescher, Esq. is a Respondent in the probate Estate cases of both Simon and Shirley.
127. That Donald Tescher, Esq. is a Counter Defendant in the Oppenheimer v. Candice and Eliot lawsuit before this Court.
128. That on or about January 2013, Lisa and Jill were notified that there were forged and fraudulent documents in the Estate of Shirley in their name and their deceased father's name.
129. That on or about May 2013, Theodore, Pamela, Spallina, Tescher, Lisa and Jill were all notified that there were forged and fraudulent documents in the Estate of Shirley in Theodore, Pamela, Lisa, Jill, Eliot and their deceased father's name through a pleading filed by Eliot in the Probate cases of both Simon and Shirley.
130. That these fraudulent acts attempt to change beneficiaries in the Shirley Trust and the Simon Trust illegally through committing multiple, separate and distinct Frauds on this Court and the beneficiaries, achieved by advancing fraudulent and forged instruments to various parties to commit various frauds and these acts were perpetrated primarily by Counter Defendants, Tescher, Spallina, Tescher & Spallina, P.A., Moran, Baxley, Rose, Pankauski, Manceri, Theodore, Pamela and others acting either separately or in various combinations in conspiracy to commit fraud and more.
131. That Robert Spallina has admitted to Palm Beach County Sheriff Investigators that he fraudulently altered a trust document of the Shirley Trust after consulting with Donald Tescher about what to do to attempt to make changes to the IRREVOCABLE Shirley Trust beneficiary class. This alteration was necessary as the Shirley Trust was irrevocable and Simon was also prohibited from making

changes to the Shirley Trust beneficiary class and so Spallina alleges to PBSO investigators that he took it upon himself to alter a trust document to achieve what he and Tescher knew was legally impossible and fraudulent.

132. That distributions were made in the Shirley Trust to improper parties as the only beneficiaries of Shirley's Trust are Eliot, Lisa and Jill through Family Trusts created under the Shirley Trust for the benefit of them and their lineal descendants only, despite any efforts Simon may or may not have made to change the beneficiary class, he was prohibited from any such changes and thus would have been committing a fraud by changing them after Shirley's death.
133. That Spallina and Tescher have resigned and withdrawn due to their fraudulent activities that have now caused intentional delays with Eliot's inheritance and interfered and delayed distributions for now almost two years by their attempt to feloniously change beneficiaries to benefit Theodore and Pamela who without the fraudulent acts would receive nothing in the Simon Trust and Shirley Trust.
134. That Theodore introduced Tescher and Spallina to Simon and the Bernstein family as Theodore was doing business with them and was a close personal friend with Tescher primarily and Spallina.
135. That Tescher was the main partner on the Bernstein family matters and worked closely with his partner Spallina on virtually all documents and issues relating to the Bernstein family matters.
136. That Theodore Bernstein was asked by Eliot Bernstein to contact the FBI in relation to his having been the last party to take possession of Eliot's car and having it towed to where it was blown up and blew up three cars next to it in what is alleged to have been an attempted murder of Eliot and his family, see [www.iviewit.tv](http://www.iviewit.tv) for graphic images.
137. That Theodore is adverse to Eliot as Eliot has alleged that Theodore worked with defendants in a RICO and ANTITRUST lawsuit Eliot filed, against interests in companies and intellectual properties owned by Simon and Eliot.

138. That Theodore works closely with several of the defendants in the RICO that Eliot alleges have stolen intellectual properties owned by Eliot and Simon, including the law firms of Greenberg Traurig, Proskauer Rose LLP, Albert Gortz, Esq. and Gerald Lewin, CPA., four of the primary suspects in orchestrating the original IP thefts.
139. This case is related to ALL of the following ongoing actions<sup>2</sup> worldwide involving Eliot Bernstein where there are claims of civil and criminal conspiracy, including RICO, where the main predicate acts are committed by Attorneys at Law in each separate action.
140. That Eliot's RICO and ANTITRUST lawsuit is legally related to a New York Supreme Court Disciplinary Department Attorney at Law Whistleblower Lawsuit of Christine C. Anderson, Esq.
141. That shockingly there are many links in each of the lawsuits to the same Attorneys at Law as in the initial RICO, acting in various combinations in each case, including the instant action, in efforts to harm Eliot and his family, including a massive amount of legal process abuse and crimes committed in and upon the Courts involved in these cases. That the lawsuits, include but are not limited to:
- i. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK, ELIOT I. BERNSTEIN, et al., Plaintiffs, - against - APPELLATE DIVISION FIRST DEPARTMENT DISCIPLINARY COMMITTEE, et al., Defendants. Case No. 07 Civ. 11196 (SAS), Honorable Judge SHIRA A. SCHEINDLIN, U.S.D.J. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.) (TO BE PETITIONED TO REOPEN BASED UPON FRAUD ON THE COURT AND OBSTRUCTION RECENTLY DISCOVERED).
  - ii. SIMON BERNSTEIN ESTATE PROBATE CASE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL ESTATE OF SIMON LEON BERNSTEIN CASE NO. 502012CP004391 IZ XXXX SB (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.).
  - iii. SHIRLEY BERNSTEIN ESTATE PROBATE CASE IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL ESTATE OF SHIRLEY BERNSTEIN CASE NO. 502011CP00653XXXXSB (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.).
  - iv. IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION, Case No. 13cv3643, before the Hon. Judge Amy St.

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<sup>2</sup> The estate and trust cases all should be related legally related by the Court but appear not yet related and Eliot is asking this Court to do so in the administration of justice and to save costs.

- Eve (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)<sup>3</sup>
- v. OPPENHEIMER V CANDICE AND ELIOT BERNSTEIN CASE NO. 502014CP002815XXXXSB
  - vi. IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. CA 01-04671 AB, PROSKAUER ROSE LLP, A NEW YORK LIMITED LIABILITY PARTNERSHIP, PLAINTIFF, VS. IVIEWIT.COM, INC., A DELAWARE CORPORATION, IVIEWIT HOLDINGS, INC., A DELAWARE CORPORATION, AND IVIEWIT TECHNOLOGIES, INC., A DELAWARE CORPORATION, DEFENDANT. (To be petitioned to reopen based upon fraud on the court and obstruction recently discovered.)
  - vii. OBSIDIAN FINANCE GROUP, LLC ET AL. V. COX CASE NO. 3:11-CV-00057-HZ. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.). (Note Bernstein is not a Defendant but was tried to be added as a Defendant after the case was heard).
  - viii. RANDAZZA ET AL V. COX, BERNSTEIN ET AL., CASE NO. 2:12-CV-02040-GMN-PAL. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)
  - ix. COX VS. RANDAZZA, ET AL. – NEVADA RICO CASE NO. 2:13-CV-00297-JCM-VCF CHANGED TO 2:13-CV-00297 JCM (NJK) CHANGED TO 2:13-CV-00297 MMD-VCF. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)
  - x. MARC J. RANDAZZA ET AL. V GODADDY, LLC ET AL. ISSUED BY THE MIAMI-DADE COUNTY, FLORIDA 11TH JUDICIAL CIRCUIT COURT, CIVIL ACTION NO. 2014-5636-CA. (HEREBY FULLY INCORPORATED BY REFERENCE IN ENTIRETY HEREIN, ALL PLEADINGS, ORDERS, ETC.)

142. That Tescher, Spallina, Moran, Theodore, Manceri, Pamela, Baxley and others are all under INVESTIGATION with Palm Beach County Sheriff Office (“PBSO”) detectives.

143. That Moran and Baxley were investigated and found guilty of various Notary violations in these matters by Florida’s Governor Rick Scott’s Notary Public Division. Allegations investigated were for Fraud, Fraudulent Notarizations, Forgery and other crimes, instigated by Eliot and Candice in relation to criminal acts<sup>4</sup> taking place in the Estates and Trusts of Simon and Shirley with both state and federal civil and criminal authorities.

<sup>3</sup> Where the Estate of Simon was recently allowed to intervene in the II. case as it directly relates to the Estate of Simon. The Estate was not previously represented in the case by the former PR’s of the Estate Tescher and Spallina, who actually represented Theodore in direct opposition to the Estate beneficiaries and aided and abetted him in committing Insurance Fraud and Fraud on a US Federal Court.

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144. That Spallina filed an insurance death benefit claim form with Heritage Union Life acting as the Trustee of a what he and others claim is a lost “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995” that no executed copies have been produced for and that he claimed never to have seen or possessed.
145. That Spallina’s fraudulent death benefit claim was denied for good and just cause by the insurance carrier for failure to produce a qualified legal beneficiary and more.
146. That Theodore Bernstein filed a Breach of Contract lawsuit in an Illinois Circuit Court that was moved to an Illinois Federal Court for Heritage’s Union’s failure to pay the fraudulent death claim filed by Spallina, acting as the Plaintiff in that lawsuit with direct conflicting interests with the Estate of Simon and Simon Trust beneficiaries, including his own children, as Theodore is trying to extract the proceeds of policy to himself directly versus the Estate of Simon beneficiaries.
147. The Theodore is the alleged “Trustee” for the missing “SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995” a document he claims not to possess or to have ever seen

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1. Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder of Simon Bernstein filed by Theodore Bernstein
  2. Palm Beach County Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations
  3. Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates
  4. Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more.
    - a. PBSO REPORTS @ [http://www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)
  5. State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations
  6. Jacksonville, IL. Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.
  7. Case No. 13-cv-03643 United States District Court – Northern District II.
  8. Florida Probate Simon – Case No. 502012CP004391XXXXSB
  9. Florida Probate Shirley – Case No. 502011CP000653XXXXSB
  10. Heritage Union Fraud Investigation – Case No. TBD
  11. Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein
  12. Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran
    - a. [http://www.iviewit.tv/Simon and Shirley Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.p  
df](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131014%20Office%20of%20the%20Governor%20Moran%20Suspension%20of%20Notary.pdf)
  13. Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley
    - a. [http://www.iviewit.tv/Simon and Shirley Estate/20140421 Office Of Governor Lindsay Baxley  
Complaint Misconduct.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140421%20Office%20Of%20Governor%20Lindsay%20Baxley%20Complaint%20Misconduct.pdf)



an executed copy, along with his counsel Tescher and Spallina who also claim never to have possessed or seen the nonexistent trust.

148. That Spallina had in his possession an alleged 2000 insurance trust, titled "SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) allegedly done by Simon with Proskauer Rose LLP that would have made legally void any 1995 prior insurance trust claimed to be the beneficiary by Spallina as the 2000 insurance trust specified the Heritage Union Life missing policy.
149. That the alleged SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) was secreted from the insurance company, this Court, the Federal Court involved in the Breach of Contract litigation and the beneficiaries by Spallina, Tescher, Theodore and Pamela.
150. That the SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000) until it was discovered in the production documents Spallina and Tescher were forced to turn over by this Court's Order to the Curator Benjamin Brown, Esq. upon their removal and withdrawal.
151. That the discovery in 2014, almost two years after Spallina filed his fraudulent claim on behalf of the 1995 lost trust and Theodore filed his lawsuit on behalf of the 1995 lost trust, also came with evidence that conspiratorial efforts were made in writing by Tescher, Spallina, Theodore and Pamela to hide the document, while advancing a claim that would get Pamela money, as the 2000 insurance trust had her already disinherited therein.
152. That Theodore Bernstein filed the Breach of Contract lawsuit claiming he was the alleged "Trustee" of the lost 1995 trust after Spallina's filed a claim only months earlier stating that he was the "Trustee" of the 1995 insurance trust.
153. That Theodore was advised by his Counsel Spallina allegedly that he had no basis to file the Breach of Contract Lawsuit as the alleged "Trustee" of a nonexistent trust and yet Theodore ignored the advice of counsel and went ahead with filing the baseless Breach of Contract lawsuit.

154. That Theodore's brother-in-law David Simon and his brother Adam Simon through their law firm housed in Pamela's company then replaced Spallina as Theodore's counsel in the Illinois Breach of Contract Lawsuit.
155. That Tescher and Spallina were sent multiple correspondences from Heritage Union Life addressed to them as the Trustee of the LaSalle National Trust, N.A. in regard to the Heritage Union Life policy.
156. That NO executed copies of this alleged "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995" and Theodore like Spallina claims to have never seen or possessed this lost trust.
157. That after the insurance death benefit claim was denied, Theodore upon filing his Breach of Contract lawsuit and replaced his former counsel Spallina as the alleged Trustee of this lost and missing "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995" that neither he nor his Attorneys at Law, Spallina and Tescher claim to have ever seen or have any proof that it factually exists or any idea of what the executed document states.
158. That while representing Theodore initially in the Breach of Contract matters, Spallina and Tescher, were also simultaneously representing the Estate and Trust of Simon at the time as Co-PR's, Co-Trustees and Counsel to the Co-PR's and Co-Trustees and had fiducial duties to the Estate.
159. That if no beneficiary can be found at the time of death, Florida statutes state the death benefit will go to the Estate.
160. That once the Breach of Contract lawsuit was filed by Theodore, acting as Trustee of the lost "SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995", Spallina and Tescher, while knowing of the lawsuit, failed to intervene on behalf of the Estate of Simon's interests in the policy.

161. That instead of representing the Estate in the Breach of Contract lawsuit, Spallina and Tescher aided and abetted Theodore and three of his four siblings (Pamela, Lisa and Jill) in their attempt to fraudulently move the insurance policy out of the Estate that was allegedly OWNED by Simon and thereby have the proceeds paid to themselves directly in equal shares, to the detriment of the Estate and Estate beneficiaries, who they claim are their own children.
162. That acting as Trustees and Guardians for their children in the Estate of Simon matters, when filing their Breach of Contract Lawsuit to get the benefits transferred to themselves, Theodore, Pamela, Jill and Lisa failed to get counsel for their children, necessary to protect their alleged interests in the policy and this set up a classic conflict interest. Even after knowing that if the lost trust does not legally exist and could not secure the insurance proceeds, the Estate and hence their children would allegedly get the proceeds or Eliot, Lisa and Jill would get them if the 2012 alleged Amended and Restated Simon Trust documents are found legally invalid.
163. That if the Breach of Contract Lawsuit is successful Theodore and Pamela would receive 2/5<sup>th</sup> of the insurance policy proceeds and the amount of the death benefit currently is an unknown, as the policy is also missing and lost as claimed by Spallina, Tescher, Theodore, Pamela and even claimed lost by the insurance carrier.
164. That if the Breach of Contract Lawsuit is unsuccessful, and the policy proceeds instead are paid to the Estate, which owns the policy allegedly, Theodore and Pamela would receive NOTHING as they have been disinherited and their children may receive nothing or 4/10<sup>th</sup> of it.
165. That Theodore sold a condominium and signed tax forms as the Personal Representative in the process, prior to this Court having issued him Letters.
166. That Theodore failed to properly notify beneficiaries that he was allegedly the Successor Trustee of the Shirley Trust timely and also failed to follow Trust Rules and Statutes by failing to send complete

Shirley Trust documents with all Schedules and Addendums and other attachments requested with his acceptance.

167. That upon his alleged acceptance Theodore failed to file accountings and NO final accounting was ever submitted by Simon to the Court prior to Theodore claiming to be Successor Trustee to Simon and Theodore failed to file any Accounting in the two years since he has alleged himself to be the Successor Trustee in violation of Trust Rules and Statutes.
168. That Simon never transferred the role of PR to Theodore as the Estate was closed by Simon while dead.
169. That had Tescher and Spallina notified the Court that Simon was dead prior to Simon closing Shirley's Estate while he was dead, a Successor would have been appointed to have closed the Estate legally.
170. That the Estate of Shirley was closed illegally, which led to it being reopened and remains reopened as of the date of this Counter Complaint filing with the Court.
171. That Robert Spallina and Donald Tescher informed Eliot and others the day Simon died that Theodore was going to be the Successor Trustee and PR/Executor of the Estate and Trusts of Shirley because he was the oldest living child and that was the law in Florida.
172. That later on the day Simon died after learning of this, Eliot challenged the anointment of Theodore as Successor Trustee and PR/Executor of Shirley's Estate and Trusts.
173. That Spallina and Tescher then stated they just discovered documents, the 2008 Will and Shirley Trust that actually named Theodore as the Successor Trustee and Successor PR/Executor, contradicting their prior claims that Theodore was only a Successor because he was the oldest living child.

174. That Eliot asked for copies of all dispositive documents to inspect for both Simon and Shirley and was told by Spallina they were not giving dispositive out at the time and that he did not have to give them to Eliot, as he claimed Eliot had no interests.
175. That Eliot was not given full and complete copies of these documents to inspect and still has not been given them and was forced to retain Tripp Scott law firm to attempt to recover them for Eliot and his three minor children.
176. Eliot is a beneficiary through his Family Trust set up under the Shirley Trust, which he is Trustee for. Eliot also acts as a Trustee and Guardian for his children who may or may not be decided by this Court to be beneficiaries and either way he was owed the documents under Florida Probate and Trust Rules and Statutes as a beneficiary or Guardian of beneficiaries.
177. That defying logic and raising the brow, in a case already fraught with felonious document tampering in both Simon and Shirley's Estates and Trusts by several parties, is that Shirley allegedly had Tescher and Spallina draft the Shirley Trust that completely disinherited and considered Theodore deceased for all purposes and for distributions made thereunder and then contradict that language and name Theodore as alleged Successor Trustee able to then make distribution thereunder. In essence, Shirley would have created a direct conflict of interest knowing that any disinherited child would be bitter and that she had made him legally dead so that he could not make distributions. Eliot has challenged this document as fraudulent in part for these reasons.
178. That Theodore has been accused by the Creditor Stansbury of having architected a scheme to defraud him of over two million dollars in the Creditors action against the Estates of Simon and Shirley.
179. That Theodore is involved in insurance litigation centering around his having been involved in insuring parties for much higher insurance amounts than they had insurable interest for through possible felonious underwriting. That parties are alleged to have died and insurance companies learned of the unjustified amounts of death benefits and recalled other policies whereby the same

uninsurable interests were found, causing a payback to be sought for commissions made by those who advanced the scheme.

180. That Theodore with his counsel Rose have negotiated an alleged settlement with Stansbury for himself personally and simultaneously settled with the Estate of Shirley acting as the PR/Executor.
181. That this settlement presents a classic conflict of interest where Theodore negotiated for his personal interests while negotiating simultaneously as a PR/Executor for Shirley's Estate where he has no interests and waiving others interests that he has fiduciary responsibilities to, to benefit himself at their expense. Theodore should have resigned himself with Rose from one side of the negotiations and not negotiated both sides while conflicted.
182. That beneficiaries were not made aware of the settlement discussions and were not given any documents to review the transactions, which occurred in a black box for the Estate beneficiaries, where the terms are still unknown and no documents or what amounts of what was settled have been provided.
183. That the beneficiary designations of IRA accounts for Simon and Shirley are now claimed missing by Spallina, Tescher and JP Morgan.
184. That Theodore Bernstein was transferred the position of Manager of a company, Bernstein Family Realty LLC that is part of the estate plan of Simon and Shirley, owned by Eliot's minor children.
185. That Theodore was allegedly transferred the Manager position by Janet Craig, who simultaneously upon Theodore's acceptance sent over personal and confidential information she maintained regarding this company to Theodore and other private and confidential trust information regarding Eliot and his three minor children.
186. That Theodore later claimed he knew nothing about this transfer of the Manager role by Craig while simultaneously paying bills of Bernstein Family Realty LLC over a several month period using Shirley Trust funds to make the payments.

187. That Theodore received letters written to him by Craig that stated she was transferring information to him as Manager of BFR.
188. That after Simon died by several months, Spallina ILLEGALLY transferred the role of the Manager position of Bernstein Family Realty LLC to Craig at Oppenheimer and in so doing violated the operating agreement of BFR.
189. That the operating agreement of BFR that Spallina created and kept record for, called for a vote to elect a Successor Manager after Simon died by the Members, who are Eliot and Candice Bernstein as Guardians of their children who own the company equally.
190. That Spallina made the decision without consulting with Eliot and Candice on who to elect and told Eliot and Candice that the new Manager was Craig.
191. That Craig accepted the transfer from Spallina in violation of the operating agreements of BFR, which would have had to have her voted in by the Members.
192. That Craig transferred the documents and role of Manager of BFR to Theodore in violation of the operating agreements of BFR as no vote was again taken by the Members of BFR, Eliot and Candice on behalf of their children.
193. That Legacy Bank accounts that Simon was the only signatory party on the accounts that pertained to BFR were used for several months after Simon was deceased by several parties who were unauthorized.
194. That Simon's American Express was used for several months after he was deceased by other parties.
195. That Simon Post Mortem received a red light ticket and his license was suspended for failure to respond.
196. That Legacy Bank froze accounts of Simon's that were being used after his death by several months.

197. That Pamela, Jill and Lisa after Shirley's death came to the home of Simon in Florida and shipped personal properties of Simon's that were left to him by Shirley back to their homes in Chicago, including but not limited to, Jewelry, Art, Clothing and more.
198. That these items taken from Simon's residence are estimated to be worth several million dollars and they were taken by his daughters who claimed they were protecting them from being stolen by Rachel Walker, Simon's assistant and then from his girlfriend, Maritza Puccio. These items have not been accounted for in Shirley's Estate or on her inventory or Simon's Estate inventory and accounting, as if they vanished. Eliot has repeatedly requested their return and has been completely denied even a response regarding these missing assets of the Simon Estate.
199. That Robert Spallina alleges to have transferred monies frozen at Legacy Bank of Simon's for BFR to new Oppenheimer BFR accounts months after Simon's death.
200. That furniture and other personal properties of Shirley and Simon's, estimated to be worth millions of dollars was not properly inventoried on Shirley or Simon's inventory when they passed.
201. That furniture and other personal properties of Simon's estimated to be worth millions of dollars that was transferred to Simon as his personal property when Shirley died and was inventoried (but challenged already by Eliot and Creditor Stansbury as to the value) now appears to be missing.
202. That this Court was told by Alan Rose and Theodore Bernstein that furniture of Simon's that was his personal property was moved when the Condominium was fraudulently sold and was taken to Simon's other residence in Saint Andrews Country Club. To confirm this removal of the properties and transfer to the other residence, this Court ordered a re-inventorying of the furniture and other properties of the Condominium on a motion filed by the Curator Benjamin Brown, Esq.
203. That Donald Tescher and Alan Rose, in a deposition of Tescher's conducted by his friend and colleague who Tescher and Theodore retained in these matters, Alan Rose, then claimed that the furniture had been sold with Condominium and that they would "true it up" later with the



beneficiaries. That this statement directly contradicts the statements to this Court about where the furniture went.

204. That the parties Theodore committed fraud with in the sale of the Condominium, include but are not limited to, Nestler Polleto Realty / Sotheby's International Realty, Attorney at Law Gregory S. Gefen, PA of Florida, All Regency Title dba US Title of Florida, Old Republic National Title Insurance Company and George Wesley Thomas Voorheis a Canadian resident.
205. That Theodore Bernstein gave Eliot a gold ten commandment necklace Simon had told Eliot he was bequeathing him (specific bequeathed items are missing from the Estates and Trust documents despite reference to them in the ALLEGED dispositive documents). Theodore told Eliot he was taking the personal property jewels of Simon he removed from his residence and accounting for this Jewelry with Tescher and Spallina. Theodore stated the necklace would be deducted from any distributions later made to Eliot. That nowhere on the inventory of Simon or Shirley is this jewelry listed or accounted for.
206. That an appraisal of Shirley's Jewelry done for an insurance policy done are materially different in character and substance of the quality and type of the alleged same pieces Theodore then had appraised. It appears that there are either similar looking pieces inventoried and appraised and there then should be two separate pieces of jewelry that look the same and appear to be named similarly but that have wholly different characteristics and MASSIVE discrepancy in worth over several hundred thousand dollars on one jewel alone. Alternatively, the Jewels were changed from the time the insurance company appraised them to when Theodore took possession of them and had them appraised.
207. Theodore took possession for months of Jewelry that was an asset of Simon's Estate, despite the fact that Spallina and Tescher upon Simon's death were the alleged PR's responsible for these jewels. This has been reported to Sheriff Investigators.

208. That Theodore, Pamela, Lisa and Jill, acting as alleged trustees for their children, all knew documents were forged and fraudulently notarized in their names that could change the beneficiaries of the Estates and Trusts of Simon and Shirley and took no actions for months to notify authorities or this Court and instead during that time rushed to liquidate assets and convert and comingle monies to knowingly questionable parties.

209. That Theodore, Pamela, Lisa and Jill, instead of reporting the forged and fraudulent documents in their names now proven and admitted by them as such, then tried to waive the forgery and fraud through perjured new waivers filed with this Court in attempts to replace the illegally done ones. That further they attempted to forgive the felony crimes done in their names, their father Post Mortem and Eliot's names without reporting such crimes. That this behavior imparts aiding and abetting in the crimes. misprision of a felony and breach of fiduciary duties.

210. That Theodore Bernstein opened a criminal investigation on the day Simon died into what he alleged was a possible murder of Simon with Palm Beach Sheriff Investigators claiming that Simon's girlfriend Maritza Puccio had poisoned Simon.

211. That Theodore Bernstein ordered on the day Simon died an autopsy of Simon for what he alleged was a possible murder of Simon with the Palm Beach Medical Examiner's office claiming that Simon's girlfriend Maritza Puccio had poisoned Simon.

212. That Simon Bernstein owned 30% of initial shares of stock in several companies<sup>5</sup> he formed together with Eliot and some that were formed fraudulently without their knowledge by Proskauer Rose and

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lviewit Holdings, Inc. – DL  
lviewit Holdings, Inc. – DL (yes, two identically named)  
lviewit Holdings, Inc. – FL (yes, three identically named)  
lviewit Technologies, Inc. – DL  
Uviewit Holdings, Inc. - DL  
Uview.com, Inc. – DL  
lviewit.com, Inc. – FL  
lviewit.com, Inc. – DL

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Gerald R. Lewin that used identically named to their companies, as listed in footnote one, herein together all these companies are referred to as “Iviewit Stock.”

213. That Proskauer Rose and Foley & Lardner filed patents on behalf of Eliot Bernstein for technologies Eliot invented that Simon had a 30% ownership interest in them.
214. That Proskauer Rose LLP and Gerald Lewin formed these companies and have held the Iviewit Stock that was supposed to be in Simon’s Estate and Trusts and that Theodore and Spallina made contact with Proskauer and Lewin to find where they were.
215. That Tescher and Spallina after contacting Proskauer and Lewin were unable to find the missing Iviewit Stock and Proskauer and Lewin who maintained the Iviewit Stock and patent interests did not turn them over.
216. That the Iviewit Stock may be worth hundreds of BILLIONS of dollars as certain of the Iviewit Stock companies held rights to Intellectual Properties of Eliot’s where the technologies have been estimated to have values including “billions” and “priceless” by others who reviewed the Intellectual Properties, invested in them and licensed them, including but not limited to, Wayne Huizenga and Wayne Huizenga Jr., Crossbow Ventures, Wachovia Bank and others who evaluated them such as Real 3D, Inc. (owned by Intel 20%, Lockheed Martin 70% and Silicon Graphics Inc. 10%) and now owned wholly by Intel, Warner Bros., Sony, AOL, Time Warner, Proskauer Rose, Foley & Lardner, Goldman Sachs and others.
217. This instant lawsuit is yet another Fraud on the Court, beneficiaries and others, in efforts to make prior illegal and fraudulent distribution committed now legal through attempting to modify an

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I.C., Inc. – FL  
iviewit.com LLC – DL  
Iviewit LLC – DL  
Iviewit Corporation – FL  
Iviewit, Inc. – FL  
Iviewit, Inc. – DL  
Iviewit Corporation

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irrevocable trust beneficiary class. This attempt to reconstruct the language of the irrevocable Shirley Trust and change the Class of Beneficiaries defined at her death on December 08, 2010 through documents that are challenged and alleged to be fraudulent and evidence of fraud already proven and admitted in regard to documents in the Estate and Trusts of Simon and Shirley.

218. That after attempting to alter the Class of Beneficiaries of the Shirley Trust fraudulently, Theodore, Pamela, Jill and Lisa took distributions allegedly for their children based upon knowingly fraudulent documents and knowing the distributions were improper.

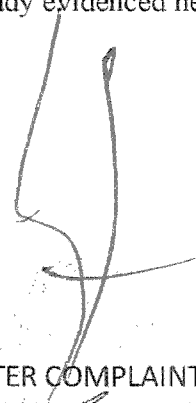
### **COUNT 1 - CIVIL CONSPIRACY**

219. This is an action for Civil Conspiracy under Florida Statutes.

220. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 219, inclusive.

221. That as with any conspiracy, all of the facts regarding the actions of each of the defendants is largely unknown at this time and with ongoing investigations and new production documents that reveal even more alleged criminal acts and civil torts, more is being learned every day but one thing is for certain in this illegal legal conspiracy, the primary participants known at this time are licensed Attorneys at Law who have acted together to deprive Eliot and his family of legal rights through further abuse of process and complex illegal legal frauds constructed to obstruct justice and deny Eliot of due process and procedure and his and his children's inheritances.

222. That Theodore, on the day Simon died on September 13, 2012 alleged that Simon was murdered and filed a Palm Beach County Sheriff report already evidenced herein, claiming that Simon's girlfriend poisoned Simon.

A handwritten signature in black ink, appearing to be 'J. J. J.', is written over the bottom portion of the page. The signature is stylized and somewhat illegible.

223. That Theodore, on the day Simon died on September 13, 2012 alleged that Simon was murdered and ordered an Autopsy<sup>6</sup> be done, alleging that Simon's girlfriend poisoned Simon.
224. That Simon may have been murdered but now a growing body of evidence uncovered involves proven and further alleged FELONY criminal misconduct by the Counter Defendants in combination.
225. That Simon may have been murdered not by his girlfriend but by those involved in the criminal conspiracy that has taken place to illegally seize Dominion and Control of the Estates and Trusts of Shirley and Simon and loot their assets to the tune of between \$20-100 Million dollars (not including the Iviewit Stock and interests in Eliot's Intellectual Properties which would raise the values into the BILLIONS) and deprive Eliot and his family of their inheritances.
226. That Simon may have been murdered not by his girlfriend but by those involved in the criminal conspiracy to steal intellectual properties worth billions upon billions of dollars, a conspiracy that has already been filed in a RICO and ANTITRUST lawsuit, already embodied herein, whereby there are allegations that ATTORNEYS AT LAW and others put a bomb in the Minivan of Eliot to murder he and his family, have made repeated and reported death threats to Eliot, OBSTRUCTED JUSTICE (allegedly in this Court as well in a prior lawsuit already mentioned herein), ABUSED PROCESS, ILLEGALLY WIRETAPPED AND MISUSED JOINT TERRORISM TASK FUNDS AND RESOURCES TO VIOLATE ELIOT and others PRIVACY RIGHTS and more.
227. That Eliot is the midst of attempting to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as Attorneys at Law, Judges, Politicians and more.
228. That in Eliot's Federal RICO and ANTITRUST Lawsuit, recent news shows a massive fraud on the courts occurred and Obstructions of Justice directly committed by heads of the New York Attorney at

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<sup>6</sup> [www.iviewit.tv/SIMONBERNSTEINAUTOPSYREPORTHEAVYMETAL.pdf](http://www.iviewit.tv/SIMONBERNSTEINAUTOPSYREPORTHEAVYMETAL.pdf)

Law Disciplinary Committees and more, see all of the following articles. These articles relate to Eliot Bernstein's Federal RICO and ANTITRUST lawsuit that was legally related by Hon. Judge Shira Scheindlin to the Whistleblower Lawsuit of Attorney at Law and Disciplinary Expert former New York Supreme Court Attorney, Christine C. Anderson, Esq. Eliot's RICO is one of the cases mentioned in the articles related to her case that due process and procedure was obstructed with intentionally. All of these matters will be cause for the lawsuits, including Eliot's that are legally related to Anderson to be reopened due to fraud on the court and obstruction newly learned of, as evidenced in the following articles. That the articles in reference to Senator John Sampson being threatened and taking bribes to stifle corruption he was aware of are also related to Eliot's testimony before the New York Senate Judiciary Committee on Public Corruption in the New York Supreme Court Disciplinary Departments of New York (akin to the Florida Bar) that Sampson chaired while head of the Democratic Party of New York.

SELECTED ARTICLES RELATING TO THE ELIOT BERNSTEIN RICO AND NEW INFORMATION ABOUT OBSTRUCTION OF JUSTICE AND MORE:

SEARCHED

**INDICTMENTS COMING! US SENATOR JOHN SAMPSON FORMER HEAD OF THE NEW YORK DEMOCRATIC PARTY AND CHAIRMAN OF THE NEW YORK SENATE JUDICIARY COMMITTEE WAS THREATENED & BRIBED TO COVER UP NY & FEDERAL CORRUPTION!!**

UPDATE - INDICTMENTS COMING : Iviewit Breaking News: NY Supreme Court Ethics Oversight Bosses Alleged MISUSE of Joint Terrorism Task Force Resources & Funds & Violations of Patriot Acts Against Civilian Targets for Personal Gain... US Senator John Sampson Threatened & Bribeed to Cover Up NY & Federal Corruption!!

<http://www.free-press-release.com/news-iviewit-breaking-indictments-coming-us-senator-john-sampson-threatened-bribed-to-cover-up-ny-federal-corruption-1369140092.html>

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Wednesday, May 15, 2013  
Expose Corrupt Courts

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**INSIDER SAYS NY STATE OFFICIALS BRIEFED ON JUDICIAL CORRUPTION  
INDICTMENTS**

BREAKING NEWS: A New York State Court administrative insider says that top state officials have been briefed by the feds on pending federal corruption indictments that will include New York state court employees....

And late this morning, a Washington, D.C. source confirmed the information, adding that the target of one federal corruption indictment will include at least one sitting New York State judge and other individuals- all with ties to major banks.....

<http://exposecorruptcourts.blogspot.com/2013/05/insider-says-ny-state-officials-briefed.html>

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**UPDATE: SENATOR JOHN SAMPSON, FORMER NEW YORK SENATE JUDICIARY  
CHAIR THREATENED AND BRIBED TO COVER UP OFFICIAL CORRUPTION**

FRIDAY, MAY 17, 2013

Washington, D.C. Insider Says Senator John Sampson Covered-Up Court Corruption

BREAKING NEWS: Washington, D.C. insider says NYS Senator John Sampson covered-up evidence of widespread corruption in New York Surrogate's Courts.

Source says Sampson was first threatened, but then successfully bribed, to bury evidence involving countless state and federal crimes involving billions of dollars.

Syracuse, Rochester, Albany, White Plains, Brooklyn and Manhattan Surrogate's Courts are said to top the list of areas involved.

It was revealed on Wednesday that a New York State Court administrative insider said that top state officials had been briefed by the feds on pending federal corruption indictments that would include employees of New York's Office of Court Administration (a/ka/ "OCA"). Most court employees, including judges, are employed by OCA.

It was further confirmed by the Washington, D.C. source that judges, with ties to banks, would be among those charged.

<http://ethicsgate.blogspot.com/2013/05/washington-dc-insider-says-senator-john.html>

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**VIEWIT BREAKING NEWS: NY SUPREME COURT ETHICS OVERSIGHT BOSSES  
ALLEGED MISUSE OF JOINT TERRORISM TASK FORCE RESOURCES & FUNDS &  
VIOLATIONS OF PATRIOT ACTS AGAINST CIVILIAN TARGETS FOR PERSONAL  
GAIN..**

May 14, 2013

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See Full Story at:

<http://www.free-press-release.com/news-iviewit-breaking-news-ny-supreme-court-ethics-oversight-bosses-alleged-misuse-of-joint-terrorism-task-force-resources-funds-violations-of-patriot-1368533731.html>

and

<http://ethicsgate.blogspot.com/2013/04/formal-complaint-filed-against-nys.html>

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**FORMAL COMPLAINT FILED AGAINST NYS EMPLOYEES FOR ILLEGAL WIRETAPPING... THE WIDESPREAD ILLEGAL WIRETAPPING INCLUDED TARGETED NEW YORK STATE JUDGES AND ATTORNEYS....**

<http://ethicsgate.blogspot.com/2013/04/formal-complaint-filed-against-nys.html>

SELECT QUOTES FROM THAT NEWS STORY

April 3, 2013

Robert Moosy, Jr., Section Chief  
Criminal Section, Civil Rights Division  
US Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530

RE: FORMAL COMPLAINT AGAINST NEW YORK STATE EMPLOYEES INVOLVING CONSTITUTIONAL VIOLATIONS, INCLUDING WIDESPREAD ILLEGAL WIRETAPPING

Dear Mr. Moosy,

At some point in time shortly after 9/11, and by methods not addressed here, these individuals improperly utilized access to, and devices of, the lawful operations of the Joint Terrorism Task Force (the JTTF). These individuals completely violated the provisions of FISA, ECPA and the Patriot Act for their own personal and political agendas. Specifically, these NY state employees essentially commenced black bag operations, including illegal wiretapping, against whomever they chose- and without legitimate or lawful purpose.

This complaint concerns the illegal use and abuse of such lawful operations for personal and political gain, and all such activity while acting under the color of law. This un-checked access to highly-skilled operatives found undeserving protection for some connected wrong-doers, and the complete destruction of others- on a whim, including the pre-prosecution priming of falsehoods (set-ups). The aftermath of such abuse for such an extended period of time is staggering.

It is believed that most of the 1.5 million-plus items in evidence now under seal in Federal District Court for the Eastern District of New York, case #09cr405 (EDNY) supports the fact, over a ten-year-plus period of time, of the illegal wiretapping of New York State judges, attorneys, and related targets, as directed by state employees.

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One sworn affidavit, by an attorney, confirms the various illegal activity of Manhattan's attorney ethics committee, the Departmental Disciplinary Committee (the DDC), which includes allowing cover law firm operations to engage in the practice of law without a law license. Specifically, evidence (attorney affidavits, etc.) supports the claim that Naomi Goldstein, and other DDC employees supervised the protection of the unlicensed practice of law. The evidence also shows that Ms. Goldstein knowingly permitted the unlicensed practice of law, over a five-year-plus period of time, for the purpose of gaining access to, and information from, hundreds of litigants.

Evidence also supports the widespread illegal use of black bag operations by the NYS employees for a wide-range of objectives: to target or protect a certain judge or attorney, to set-up anyone who had been deemed to be a target, or to simply achieve a certain goal. The illegal activity is believed to not only have involved attorneys and judges throughout all of the New York State, including all 4 court-designated ethics departments, but also in matters beyond the borders of New York.

The set-up of numerous individuals for an alleged plot to bomb a Riverdale, NY Synagogue. These individuals are currently incarcerated. The trial judge, U.S. District Court Judge Colleen McMahon, who publicly expressed concerns over the case, saying, I have never heard anything like the facts of this case. I don't think any other judge has ever heard anything like the facts of this case. (2nd Circuit 11cr2763).

**The concerted effort to fix numerous cases where confirmed associates of organized crime had made physical threats upon litigants and/or witnesses, and/or had financial interests in the outcome of certain court cases.**

The judicial and attorney protection/operations, to gain control, of the \$250 million-plus Thomas Carvel estate matters, and the pre-prosecution priming of the \$150 million-plus Brooke Astor estate.

The wire-tapping and ISP capture, etc., of DDC attorney, Christine C. Anderson, who had filed a lawsuit after being assaulted by a supervisor, Sherry Cohen, and after complaining that certain evidence in ethics case files had been improperly destroyed. (See SDNY case #07cv9599 - Hon. Shira A. Scheindlin, U.S.D.J.)

The eToys litigation and bankruptcy, and associates of Marc Dreier, involving over \$500 million and the protection by the DDC of certain attorneys, one who was found to have lied to a federal judge over 15 times.

The set-up and chilling of effective legal counsel of a disabled woman by a powerful CEO and his law firms, resulting in her having no contact with her children for over 6 years.

The wrongful detention for 4 years, prompted by influential NY law firms, of an early whistleblower of the massive Wall Street financial irregularities involving Bear Sterns and where protected attorney-client conversations were recorded and distributed.

The blocking of attorney accountability in the \$1.25 billion Swiss Bank Holocaust Survivor settlement where one involved NY admitted attorney was ultimately disbarred- in New Jersey. Only then, and after 10 years, did the DDC follow with disbarment. Gizella Weisshaus v. Fagan.

**NY SUPREME COURT BOSSES ILLEGALLY WIRETAPPING JUDGES CHAMBERS & HOMES. CHRISTINE ANDERSON WHISTLEBLOWER ILLEGALLY TARGETED FOR 24/7/365 SURVEILLANCE IN RELATED CASE TO IVIEWIT ELIOT BERNSTEIN RICO...**

FOR IMMEDIATE RELEASE

(Free-Press-Release.com) May 14, 2013 -- According to news reports, yes, the heads of the NY Supreme Court Ethics Department have been accused of derailing Justice by targeting victims and misusing Government Resources against private citizens with no other motive then Obstruction of Justice in court and regulatory actions against them or their cronies.

World Renowned Inventor Eliot Bernstein files NEW RICO RELATED CRIMINAL ALLEGATIONS against Law Firms Proskauer Rose, Foley & Lardner, Greenberg Traurig and more. Allegations that Bernstein was a target of these criminals cloaked as ATTORNEY AT LAW ETHICS BOSSES at the NY Supreme Court were presented to Federal Judge Shira A. Scheindlin. That evidence was presented that Bernstein's father may have been a target and murdered for his efforts to notify the authorities and more!!!

READ ALL ABOUT IT @

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

PREVIOUS PRESS RELEASES RELATING TO JUDGES ILLEGALLY WIRETAPPED

That on Tuesday, February 19, 2013, ECC released the story,

**ETHICSGATE UPDATE FAXED TO EVERY U.S. SENATOR THE ULTIMATE VIOLATION OF TRUST IS THE CORRUPTION OF ETHICS OVERSIGHT EXCLUSIVE UPDATE:**

<http://exposccorruptcourts.blogspot.com/2013/02/ethicsgate-update-faxed-to-every-us.html>

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**IVIEWIT LETTER TO US DOJ OFFICE OF INSPECTOR GENERAL MICHAEL E. HOROWITZ**

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130513%20FINAL%20Michael%20Horowitz%20Inspector%20General%20Department%20of%20Justice%20SIGNED%20PRINTED%20EMAIL.pdf>

**IVIEWIT RICO MOTION FOR CLARIFICATION:**

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130513%20FINAL%20Motion%20for%20Clarification%20of%20Order174604%20WITH%20NO%20EXHIBITS.pdf>

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Investigative Blogger Crystal Cox Sues Forbes and the New York Times for Defamation. March 6, 2013

<http://www.free-press-release.com/news-investigative-blogger-crystal-cox-sues-forbes-and-the-new-york-times-for-defamation-1362547010.html>

### **COURT CASES OF INTEREST**

COX VS. RANDAZZA, ET AL. " NEVADA RICO CASE NO. 2:13-CV-00297-JCM-VCF CHANGED TO 2:13-CV-00297 JCM (NJ) CHANGED TO 2:13-CV-00297 MMD-VCF

OBSIDIAN FINANCE GROUP, LLC ET AL. V. COX CASE NO. 3:11-CV-00057-HZ (Famed First Amendment Rights Attorney at Law and Professor, Eugene Volokh, Esq., Professor at UCLA School of Law is representing Cox on Appeal)

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THE JUDICIAL & ATTORNEY DISCIPLINARY PROCESS IN THE STATE OF NEW YORK

September 24, 2009 - Second Hearing

Public Hearing: Standing Committee On The Judiciary New York Senate Judiciary Committee  
John L. Sampson Chairman

SENATE STANDING COMMITTEE ON THE JUDICIARY NOTICE OF PUBLIC HEARING

SUBJECT: The Appellate Division First Department Departmental Disciplinary Committee, the grievance committees of the various Judicial Districts and the New York State Commission on Judicial Conduct

PURPOSE: This hearing will review the mission, procedures and level of public satisfaction with the Appellate Division First Department Departmental Disciplinary Committee, the grievance committees of the various Judicial Districts as well as the New York State Commission on Judicial Conduct

ORAL TESTIMONY BY:

Witness List for Judiciary Hearing 9/24/09 The Judicial & Attorney Disciplinary Process in the State of New York

1. Richard Kuse of New City, NY
2. Victor Kovner of the Fund for Modern Courts
3. Douglas Higbee of Mamaroneck, NY
4. Judith Herskowitz of Miami Beach, FL
5. Peter Gonzalez of Troy, NY
6. Andrea Wilkinson of Rensselaer, NY
7. Maria Gkanios of Mahopac, NY
8. Dominic Lieto of Mahopac, NY
9. Regina Felton Esq of Brooklyn, NY
10. Kathryn Malarkey of Purchase, NY

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11. Nora Renzuli, Esq. of Staten Island, NY
12. Stephanie Klein of Long Beach, NY
13. Ike Aruti of Rosedale, NY
14. Terrence Finnan of Keene, NY
15. Gizella Weisshaus, NY
16. **Eliot L. Bernstein of Boca Raton, FL**
17. Suzanne McCormick & Patrick Handley of NY

The Appellate Division of the Supreme Court is the entity that is legally responsible for enforcing the Rules of Professional Conduct governing the conduct of attorneys in New York State. The Appellate Division Departments have created grievance committees that are charged with the investigation of complaints against attorneys. Within the First Judicial Department the Departmental Disciplinary Committee of the Appellate Division investigates complaints against attorneys. The New York State Commission on Judicial Conduct was created by the State Constitution and is charged with investigating complaints against Judges and Justices of the Unified Court System.

According to the 2009 Report of the Commission on Judicial Conduct, there were 1,923 complaints filed in 2008. Yet of these complaints only 262 were investigated and of those, 173 were dismissed. This hearing will examine the processes and procedures that are followed by the various agencies charged with the responsibility of enforcing the rules and regulations that must be followed by the Judiciary and the Bar in the State of New York. It will also evaluate public satisfaction with the disciplinary process.

229. That Eliot has been targeted through a complete violation of his personal property rights, privacy rights and more as he is a related case to Anderson Whistleblower lawsuit that was obstructed and in effort to silence his efforts to take a large bite out of crime in New York and Florida.
230. That this lawsuit and all the other related Probate cases and other legal cases Eliot is in are a coordinated and conspiratorial efforts to harm Eliot and his family through legal process abuse and RICO type activities that use the legal system to deprive victims of their due process rights against those that hold seats of power and honor who were fixing the cases against them and their friends and misusing government resources to do so.
231. That this legal conspiracy may relate to other legal actions Eliot is currently involved in as described in Eliot's first Petition in the Estate cases<sup>7</sup>, which are again involving conspiracy charges against primarily Attorneys at Law.

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<sup>7</sup> That on May 6, 2013 Petitioner filed an "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 SIMON/SHIRLEY BERNSTEIN AND MORE." Filed in both estates.

232. That many defendants in the RICO and ANTITRUST who stand as the primary accused are similar to parties alleged to be involved in the criminal misconduct in the probate and trust cases before this Court, including but not limited to, Gerald Lewin, CPA and Proskauer Rose LLP (Albert Gortz, Esq.).
233. That Eliot will be seeking the US District Court's approval to have the RICO reopened based on Fraud on that Court, new evidence of RICO related crimes in the Probate and Trust actions defined herein with common threads to the RICO defendants and new evidence of intentional Obstruction of Justice in the RICO and related cases currently unfolding.
234. That Simon may have been murdered but not by his girlfriend as alleged, as he may have been talking with State and/or Federal Authorities regarding his knowledge in Proskauer Rose's alleged involvement in the Sir Robert Allen Stanford Ponzi scheme<sup>8</sup> and more and to gain control or destroy Simon's interests in Eliot's Intellectual Properties and the Iviewit Stock companies.
235. That Eliot is pursuing Proskauer Rose LLP, Gerald Lewin, CPA and Albert Gortz, Esq. as the main initial parties involved in the theft of Simon and Eliot's Intellectual Properties and companies that were set up to hold those assets, worth estimated billions of dollars.

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15th Judicial Florida Probate Court

[www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf)

and

Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

[www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Southern District of New York

<sup>8</sup> "U.S. justices say Allen Stanford victims can sue lawyers, brokers" REUTERS, By Lawrence Hurley, WASHINGTON Wed Feb 26, 2014 4:09pm EST <http://www.reuters.com/article/2014/02/26/us-usa-court-stanford-idUSBREA1P17220140226>

and

"Proskauer, Chadbourne Could Face Billions In Damages" Law 360, By Stephanie Russell-Kraft, New York (February 26, 2014, 10:16 PM ET)

<http://www.law360.com/articles/513782/proskauer-chadbourne-could-face-billions-in-damages>

and

"How Allen Stanford kept the SEC at bay" Reuters, By Murray Waas, January 27, 2012 11:06 AM ET

<http://business.financialpost.com/2012/01/27/how-allen-stanford-kept-the-sec-at-bay>

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236. That the RICO CONSPIRACY has reached into the estates and trusts, again through corruption involving complex legal frauds committed through misuse of the legal system now by new Attorneys at Law acting as Officers of this Court, acting in concert with those accused in Eliot's RICO and criminal complaints, now committed in efforts to deprive Eliot and his family of their inheritances to interfere and hinder their efforts to bring about justice in several of the other now legal battles Eliot and they are involved in.
237. That the Simon and Shirley probate and trust matters before this Court now have several elements of RICO in Florida, including but not limited to, proven fraudulent notarizations, admitted forgery, alleged Extortion, alleged Murder (by Theodore and Pamela primarily and Theodore's past employee Rachel Walker), Conversion, Multiple Counts of Interstate Mail and Wire Fraud, Insurance Fraud, Institutional Trust Company Fraud, Theft, Fraud on this Court, Fraud on a Federal Court and more.
238. That two or more parties have conspired in each of the frauds described herein and others, some acting as fiduciaries in the Estates and Trusts of Simon and Shirley while simultaneously serving as Officers of this Court and under this Court's Jurisdiction.
239. That to effectuate the looting of the Estate, the document fraud on this Court and the beneficiaries allowed the fraudsters to illegally seize Dominion and Control of the Estates and Trusts and by misusing their fiducial trust and powers and violating most of the Probate and Trust Rules and Statutes they were enabled to loot the assets of Simon and Shirley through various state and federal criminal acts.
240. That new evidence reveals that Eliot and his family have been targeted by high ranking members of the legal community (disciplinary department members, judges and attorneys at law) who illegally misused Joint Terrorism Task Force funds and resources to specifically Obstruct Justice in Eliot's prior lawsuits cited herein by targeting them and surveilling them directly to interfere with their rights to due process and procedure.

241. That Simon and Shirley left vast wealth to their beneficiaries under their years of elaborate estate plans, costing thousands upon thousands of dollars to set up these trusts, business entities and other vehicles. Simon and Shirley went to Proskauer for Estate planning in 2000 primarily to protect their interests in Eliot's technologies but Simon fired them upon learning of their involvement in the criminal acts involved in the stolen Intellectual Properties against his son.
242. That Simon and Shirley's interests in the technologies and companies that held them is missing from the Estates and Trusts of Simon and Shirley at this time, as are ALL Schedules, Addendums and other attachments that were required to be attached to them and given to beneficiaries.
243. That Spallina contacted Lewin and Proskauer to find out where the Iviewit Stocks were that they held for the companies they formed to hold the Intellectual Properties and did not receive any information back regarding where the Iviewit Stock companies stocks were.
244. That Oppenheimer and JP Morgan were both initially involved in Eliot's technologies and signed various agreements with the companies that held the Intellectual Properties, see <http://iviewit.tv/CompanyDocs/Appendix%20A/>.
245. That all of these complex estate plans, including multiple layers of trusts, business entities and other estate planning vehicles have been seized illegally and interfered with by various of the Counter Defendants, acting alone and/or in concert with other Counter Defendants.
246. That assets have been converted to improper parties through a combination of frauds and thefts to defeat Eliot of his inheritance, including but not limited to, the shares of the Iviewit Stock companies that held the Intellectual Properties.
247. That many of these crimes have occurred in and on this Court as the scene of the crimes, which were committed by Officers of this Court and the fiduciaries.
248. That in order to achieve this looting of the Estate, Trusts and Corporate Entities, financial and accounting information due the Beneficiaries has been suppressed and denied and now it is learned in

some instances even destroyed, in violation of probate statutes, trust statutes, state law, federal law, attorney conduct codes and through breach upon breach of fiduciary duties.

249. That all parties sued hereunder have acted alone and in combination with others to violate the trusts, business entities and other vehicles to fraudulently remove assets from the corpuses of the trusts and estates and business entities, in various artifices to defraud the true and proper beneficiaries.
250. That if this Court would like a more definite type conspiracy statement at this time, detailing all known participants and each act they have committed in the conspiracy, including those already pled in the Estate cases before the Court, Petitioner will be happy to provide a statement similar to a RICO Statement to tie the conspirators together in any Amended Complaint that further elaboration is requested.
251. That more on the conspiracy aspect of this lawsuit and how it interrelates to the Probate cases now before the Court can be found in Eliot's first Petition in the Estate cases of both Simon and Shirley, under the section titled "The Elephant in the Room."<sup>9</sup> While this was done over a year ago, many of the main allegations of criminal misconduct and civil torts that were alleged at that time have now been either proven or admitted and many more recently uncovered new crimes have been found.
252. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Civil Conspiracy, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

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<sup>9</sup> That on May 6, 2013 Petitioner filed an "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 SIMON/SHIRLEY BERNSTEIN AND MORE." Filed in both estates.

[www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Southern District of New York, Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.



**COUNT 2 - CIVIL EXTORTION**

253. This is an action for Civil Extortion under Florida Statutes.

254. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 253, inclusive.

255. That many of the claims of Extortion have already been pled before this Court in filings<sup>10</sup> yet unheard at this time but that are fully incorporated here by reference.

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<sup>10</sup> That on September 04, 2013, ELIOT filed Docket #TBD, in the estate of Simon, a "NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: **MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE.**"

<http://www.iviewit.tv/20130904MotionFreezeEstatesShirleyDueToAdmittedNotaryFraud.pdf>

and

That on October 10, 2013 Petitioner filed in Shirley's estate case Motions titled,

(I) MOTION TO ORDER ALL DOCUMENTS BOTH CERTIFIED AND VERIFIED REGARDING ESTATES OF SHIRLEY AND SIMON (SIMON'S DOCUMENT ARE REQUESTED AS IT RELATES TO SHIRLEY'S ALLEGED CHANGES IN BENEFICIARIES) BE SENT TO ELIOT AND HIS CHILDREN IMMEDIATELY IN PREPARATION FOR THE EVIDENTIARY HEARING ORDERED BY THIS COURT

(II) MOTION TO FOLLOW UP ON SEPTEMBER 13, 2013 HEARING AND CLARIFY AND SET STRAIGHT THE RECORD

**(III) MOTION TO COMPEL FOR IMMEDIATE, EMERGENCY RELIEF!!!, INTERIM DISTRIBUTIONS AND FAMILY ALLOWANCE FOR ELIOT, CANDICE & THEIR THREE MINOR CHILDREN DUE TO ADMITTED AND ACKNOWLEDGED FRAUD BY FIDUCIARIES OF THE ESTATE OF SHIRLEY AND ALLEGED CONTINUED EXTORTION**

(IV) MOTION TO CORRECT AND DETERMINE THE BENEFICIARIES OF THE ESTATE BASED ON PRIOR CLOSING OF THE ESTATE THROUGH FRAUD ON THE COURT BY USING FRAUDULENT DOCUMENTS SIGNED BY SIMON WHILE HE WAS DEAD AND POSITED BY SIMON IN THIS COURT WHEN HE WAS DEAD AS PART OF A LARGER FRAUD ON THE ESTATE BENEFICIARIES

(V) MOTION TO ASSIGN NEW PERSONAL REPRESENTATIVES AND ESTATE COUNSEL TO THE ESTATE OF SHIRLEY FOR BREACHES OF FIDUCIARY DUTIES AND TRUST, VIOLATIONS OF PROFESSIONAL ETHICS, VIOLATIONS OF LAW, INCLUDING BUT NOT LIMITED TO ADMITTED AND ACKNOWLEDGED FRAUD, ADMITTED AND ACKNOWLEDGED FRAUD ON THE COURT, ALLEGED FORGERY, INSURANCE FRAUD, REAL PROPERTY FRAUD AND MORE

(VI) MOTION FOR GUARDIAN AD LITUM FOR THE CHILDREN OF TED, P. SIMON, IANTONI AND FRIEDSTEIN AND ASSIGN A TRUSTEE AD LITUM FOR TED FOR CONFLICTS OF INTEREST, CONVERSION AND MORE

(VII) MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "ORDER ON NOTICE OF EMERGENCY MOTION TO FREEZE ASSETS" ON SEPTEMBER 24TH FOR ERRORS AND MORE AND

(VIII) MOTION TO RECONSIDER AND RESCIND ORDER ISSUED BY THIS COURT "AGREED ORDER TO REOPEN THE ESTATE AND APPOINT SUCCESSOR PERSONAL REPRESENTATIVES" ON SEPTEMBER 24TH FOR ERRORS AND MORE

[www.iviewit.tv/20131010MotionCompelFreezeYouHaveTheRighttoRemainSilent.pdf](http://www.iviewit.tv/20131010MotionCompelFreezeYouHaveTheRighttoRemainSilent.pdf)

256. That the Counter Defendants worked together and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of BFR and the children's trust funds, which were the primary sources of funding for Eliot's family, along with intentional interference with Eliot and his children's inheritances.
257. That Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately, a Pattern and Practice of frauds to destroy BFR and the children's trusts, in efforts to deplete Eliot of resources and then extort Eliot to either accept improper distributions as others had done to his children by participating in their fraud or else deprive Eliot of his and his children's inheritances.
258. That the Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of the Estates and Trusts and delay and interfere with expectancies and inheritances of Eliot and his children.
259. That the Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to illegally seize Dominion and Control of Telenet Systems and delay and interfere with Eliot and Candice's income and interests in that company.
260. That once Counter Defendants had seized Dominion and Control of the Estates, Trusts and Corporate Entities and diminished available funds to Eliot's family, they began an extortive attempt to have Eliot either participate in the fraudulent activity they were caught in or to face intentional financial calamity they now controlled.
261. That when Eliot refused and instead continued to pursue investigations with civil and criminal authorities, Counter Defendants worked together in concert and with others to interfere and deprive in combinations and separately to interfere and deprive Eliot and his family of inheritances due them and deplete trust funds in his three minor children's trusts and leave them with no income.

262. That income for Eliot and his family had been set up to continue for years to come by Simon and Shirley in their estate plans and through their inheritances and these funds were shut off illegally and virtually overnight cutting them off of essential monies owed them and thrusting Eliot and his family to financial ruin with intent and scienter.
263. That Eliot and his children had been set up financially through entities created by both Simon and Shirley while living. These finances were intended to continue after their deaths through their ELABORATE estate plans especially in regard to Eliot and some of these entities were created exclusively for Eliot and his family's PROTECTION and so designed to provide monthly income, fully prefunded school funds and a fully paid for home owned by his children for many years into the future. That these plans were intentionally interfered with and Eliot's needs were held on accepting a carrot fraught with fraud and the hope that Eliot would sign releases, waivers and through participation in a knowing fraud a consent of sorts.
264. That ELIOT is a one third beneficiary of the Estates and Trusts of both Simon and Shirley Bernstein until Counter Defendants through a series of forged and fraudulent documents created by the former PR's and Trustees of Simon and Shirley's Estates and Trusts then attempted to claim that Simon had changed Shirley's beneficiaries and his own from their three children, Eliot, Jill and Lisa, to their ten grandchildren.
265. That Fraud on the Court was committed by Officers of this Court, including using a dead PR, Simon, to close the Estate of Shirley his deceased wife, morbid indeed and Fraud on the Court, as the PR's failed to notify the Court that Simon was dead and failed then to elect a successor PR or Trustee once they were through using the dead Simon to achieve their Fraud on the true and proper beneficiaries.
266. That Eliot's siblings Theodore and his sister Pamela had been wholly disinherited and considered predeceased for Shirley and Simon's Estate and Trusts in 2008. When Shirley died in 2010 her

Trusts that held millions of dollars in assets then became irrevocable with Eliot, Lisa and Jill and their lineal descendants as the only ultimate beneficiaries.

267. That both Simon and Shirley completed mirrored Wills and Trusts in 2008, according to deposition statements made by Donald Tescher on July 09, 2014, and these plans wholly left their Estates and Trusts and all properties to Eliot, Lisa and Jill and their lineal descendants only.
268. That documents recently provided by Court Order in the Estate of Simon have revealed that the 2008 Wills and Trusts of Shirley and Simon's appear materially different and not mirrored bringing into question their legal validity.
269. That Shirley died with her 2008 Will and Trusts as her dispositive documents, with Simon as a Trustee while alive and only Eliot, Lisa and Jill and their lineal descendants as the beneficiary class when it became irrevocable through Family Trust created for them and their lineal descendants only.
270. That Simon could neither add nor subtract beneficiaries to the Shirley Trust once she died as the Shirley Trusts became irrevocable.
271. Despite efforts by the former PR/Executors/Trustees, Tescher, Spallina, Theodore, Rose, Manceri, Pankauski, Moran, Baxley and others to illegally achieve changes to the beneficiaries through a series of fraudulent and admitted forged and fraudulently altered documents, Simon did not factually do the changes.
272. That no documents exist that are not fraudulently altered or improperly prepared, witnessed, notarized and executed showing that Simon ever made any changes to he and Shirley's alleged 2008 Wills and Trusts.
273. That subsequent to the Fraud on the Court and positing of fraudulent documents that led to seizure of Dominion and Control, illegal distributions were made and converted and comingled, as if these fraudulent beneficiary changes were legal. This fraud was to the advantage of Theodore and Pamela primarily and to the disadvantage of other beneficiaries including primarily Eliot and his family.

274. That Simon in no way could execute a Power of Appointment to make any changes to the class of beneficiaries in Shirley's Will and Trusts (Eliot, Lisa and Jill and their lineal descendants) once she passed away due to language in the Simon Trust that prohibited him from amending or revoking anything with Shirley's Trust property once it transferred to him. Despite knowing these facts about the frauds, the PR's and Fiduciaries rushed to sell assets and then take knowingly improper distributions made to knowingly improper.
275. That in 2012 Shirley's Estate was reopened by Hon. Judge Martin Colin due to Fraud committed by Tescher, Spallina, TSPA, Theodore, Manceri and Moran et al. and remains open today, pending ongoing litigation.
276. That in 2012 it is ALLEGED that Simon annulled his 2008 Will (instead of amending it) and allegedly replaced it with an alleged 2012 Will and further allegedly Amended his 2008 Simon Trust and allegedly replaced it with a 2012 Amended and Restated Simon Trust, only 48 days before he passed suddenly and unexpectedly and by alleged MURDER according to Theodore and Pamela primarily.
277. That in 2013 it is proven in this Court in the Estate and Trust cases that POST MORTEM, Simon closed the Estate of Shirley, while dead for four months acting as Personal Representative, yes dead and done with Fraudulently Notarized, Fraudulent and Forged documents that has already led to one an arrest for felony acts and admissions of fraudulently altering trust documents and more.
278. That in 2013 it was learned from the Governor Rick Scott's Office Notary Public Division that the notarizations on the ALLEGED 2012 Will and Amended and Restated Trust were improperly notarized.
279. That Simon cannot now said to have been present on the date the documents were allegedly signed, due to such improper notarization and therefore are legally void for this and other defects.

280. The documents have been challenged before this Court for the alleged 2012 Will and Trusts of Simon.
281. That Eliot has assisted the Palm Beach County Sheriff Office Financial Crimes Division in making the arrests and forcing the admissions of fraud, while also pursuing other alleged criminal acts to loot the Estates and Trusts of Simon and Shirley that are under ongoing investigations and civil actions.
282. Many of the crimes committed were done by the Officers and Fiduciaries of this Court and due to this fact Counter Defendants in this lawsuit and Counter Defendants in the Oppenheimer Lawsuit have further conspired to deny Eliot and his family, including three minor children, of their inheritances and made further extortive efforts to have Eliot participate in knowingly fraudulent distributions.
283. That knowing that they were intentionally harming Eliot and his family financially, they proceeded to repeatedly attempt to force Eliot to either partake in illegal activities to get his inheritance monies by participating in the fraud they had done, sign waivers to release them and give them implied consent or starve and watch his family suffer from his failure to partake in fraud and give them waivers and releases of liabilities to partially set them free and make their illegal acts not prosecutable by Eliot.
284. Eliot is also now threatened with foreclosure through more fraudulent acts, already pled in the Estates and Trust cases before the Court and threatened to be evicted from the home his children own that is now claimed via an alleged Mortgage and Promissory Note allegedly held by Simon's Estate, that was added to an amended inventory of Simon's after the fiduciaries were contacted by criminal authorities.
285. These tactics represent classic extortion, with a either play or pay, even using the kids in certain of the alleged attempted extortions to force Eliot to take illegal distributions or watch his THREE MINOR CHILDREN suffer from their abuses, including, taking a KIA Soul that Simon had given Eliot's 15 year old son for his birthday days before he died and using it as a bargaining chip to try

and gain waivers, claiming it as an asset of the Estate. The extortive attempt was based on if Eliot would cooperate and take the car the way they wanted, they would release it as a gift. If Eliot did not comply they would take it and claim it as personal property of Simon's, which they did. This battle went on for over a year until they finally when brought to this Court abandoned their effort to extort Eliot using his son's car and dropped their legal action and gave it back as exempt property before facing Your Honor. However, before so returning the exempt property they filed pleadings with this Court claiming it as Personal Property of Simon's, yet this does not appear on the final accounting of Simon or his inventories.

286. That the fiduciaries cut off all inheritance funds for Eliot and his family and claimed Eliot could have the monies to pay his bills, keep his children in school, etc. but only on the condition that he took illegal distributions to improper parties as others did, which of course he would not break the law, as fully illustrated in the September 13, 2013 hearing before this Court.

287. Where since that September 13, 2013 hearing, Eliot and his family have suffered economic doom that has intentionally been levied upon him by the PR's and Fiduciaries of the Estates and Trusts (excluding Benjamin Brown, Esq. Curator to replace removed PR to Simon's Estate and Brian O'Connell, Esq. Successor PR in Simon's Estate) that continues to this day. Repeated efforts have been made while Eliot was forced to beg the very criminals caught in their crimes for funds or watch each time his family suffer, which he did.

288. That the soon to be DOOMED efforts to force foreclose on the home Eliot's children home they own and further starve out Eliot and his family completely, wholly defeats the wishes of both Simon and Shirley Bernstein.

289. That the elaborate estate planning mechanisms Simon and Shirley put in place to protect Eliot and his family's assets, in some instances these plans were solely for Eliot and his family, knowing that Eliot and his family's lives are in danger, where set up to provide steady monthly income to Eliot to work

on protecting his and Simon's patent interests and to work on protecting himself from another  
**TERRORIST STYLED CAR BOMBING ASSASSINATION ATTEMPT.**

290. That if Eliot had his inheritance in the Shirley Trust as provided for under the terms of the irrevocable trust at this time, Eliot would suffer no financial duress for either he or his children, just on the few assets they are now aware are part of the Shirley Trust corpus or trust res. Again, if the Schedules, Addendums and other referenced attachments were disclosed Eliot would know the true extent of his inheritance and what exactly property was in both the Shirley Trust and Simon Trust.

291. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Civil Extortion, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 3 - THEFT**

292. This is an action for Civil Theft under the Florida Statutes.

293. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 292 inclusive.

294. That theft of property has occurred with illegal Post Mortem use of bank accounts, including POST MORTEM use in accounts held in the Estates and Trusts.

295. That IRA beneficiaries are missing and IRA monies are alleged missing and no accountings exist for these items that were part of Shirley and Simon's Estates and Trusts.

296. That a series of property frauds have left assets missing and unaccounted for at this time, including but not limited to, Jewelry, Artwork and Furnishings, worth tens of millions of dollars, which has been reported to authorities and remains under ongoing investigation.

297. That insurance fraud has occurred and is under ongoing civil actions and criminal investigations.



298. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Theft, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 4 – FRAUDULENT CONVERSION**

299. This is an action for Fraudulent Conversion under Florida Statutes.

300. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 299, inclusive.

301. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children's inheritances by falsifying documents and other criminal acts and civil torts to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances and fraudulently convert and commingle monies to improper parties illegally.

302. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Conversion, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 5 – INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY**

303. This is an action for Torturous Interference with an Inheritance under Florida Statutes.

304. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 302, inclusive.

305. That Eliot and/or his children had expectancy from the Trusts, Estates and Corporate Entities of Simon and Shirley left to them by Simon and Shirley in their Estates and Trusts and there has been intentional interference with the expectancy through tortuous felonious misconduct by the fiduciaries and their counsel that caused and continues to cause damages.
306. That Spallina, Tescher, Theodore, Craig, Worth, Manceri, Rose, Pankauski and others have interfered with Eliot and his children's inheritances through a number of schemes and artifices to defraud and by falsifying dispositive documents to convert assets to improper parties and seize Dominion and Control of various trusts and estates assets with intent and destroy, suppress and deny Eliot and his family of their inheritances.
307. That Eliot and his family have been denied access to Estate and Trust documents and accountings for now four years in Shirley's Estates and Trusts and two years in Simon's Estates and Trusts in efforts to deny them their inheritances and convert properties to improper parties.
308. That despite the fact that Simon and Shirley's Estate and Trusts were to be distributed to Eliot and his children immediately upon their deaths to provide income for their health, maintenance, schooling and more, through intentional egregious acts of bad faith and criminal activity Eliot and his family have not received any inheritance in almost two years since Simon and four years since Shirley passed, which was intentionally delayed to cause harm to he and his minor children.
309. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Intentional Interference with an Inheritance/Expectancy, jointly and severally, personally and professionally and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 6 – CIVIL FRAUD**

310. This is an action for Civil Fraud under Florida Statutes.

311. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 310, inclusive.
312. That a complex set of frauds have taken place in the Estates and Trusts of Simon and Shirley and some are already proven such as improper notarizations of Wills and Trusts of Simon, proven fraudulently notarized Waivers in Shirley's Estate, proven Fraud on this Court through use of a deceased person, Simon, to act as Personal Representative to close an Estate through documents filed by the law offices of Tescher and Spallina on behalf of a dead PR and with no notice to the Court for months that the PR that was filing the documents had passed and this was done with scienter with this Court POST MORTEM through various fraudulent acts.
313. That when Simon died the Estate of Shirley had not been closed and in order to attempt to change her beneficiaries of her Estate and Irrevocable Trusts, the scheme needed Simon to be alive and close the Estate and transfer her Shirley Trust property to him while alive so that it could be stated that he then changed her Shirley Trust irrevocable class of beneficiaries while living. If the estate was not closed nothing could transfer officially and so since Simon did not close her Estate while living and acting as the PR and Trustee to her Shirley Trust, it was done for him Post Mortem to make it appear it happened while he was living.
314. That knowing that Simon's ALLEGED Power of Appointment was Limited and he could not make changes to the Shirley Trust class of beneficiaries after her death legally Simon never exercised his power of appointment while living and therefore Simon was used POST MORTEM for several months while he was dead to close Shirley's Estate. Then allegedly Simon attempted to amend his Simon Trust to try and make changes to Shirley's beneficiary class and his own. It is alleged that this was all done for Simon POST MORTEM, through already proven fraudulent documents and admitted forgeries, admitted altered trust documents and more that is alleged and currently under investigation.

315. That virtually every act of the Fiduciaries and their Counsel has been fraudulent since the altering and changing of dispositive documents to illegally seize Dominion and Control of the Estates, Trusts and Corporate Entities in efforts to loot the Estates, Trusts and Corporate Entities of Simon and Shirley through various subsequently enacted fraudulent acts that remain ongoing and under investigation both civilly and criminally at this time.

316. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Frauds, jointly and severally, personally and professionally, for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 7 - BREACH OF FIDUCIARY DUTIES**

317. This is an action for Breach of Fiduciary Duties under Florida Statutes.

318. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 317, inclusive.

319. That the fiduciaries of the Estates, Trusts and Corporate Entities sued hereunder are alleged to have gained their fiduciary positions through a series of fraudulent documents and other egregious acts of bad faith done with unclean hands through felony misconduct and more. Almost EVERY action the fiduciaries of the Estates and Trusts have taken since using fraudulent and forged documents and fraudulently altering others is a breach of fiduciary duties through combinations of self-dealing transactions, excessive compensations, excessive and unjustified legal fees (including billing for time to respond to investigators and more), improper and illegal investment decisions and a mass of pilfering and stealing of assets.

320. That despite being aware of their involvement in criminal acts, the fact that they are under ongoing investigations, the fact that the dispositive documents have been challenged and found fraught with

fraud and more, the fiduciaries, primarily now Theodore, since the counsel he brought to the Bernstein family, Tescher, Spallina, Manceri and now Pankauski are all removed and withdrawn from these matters citing irreconcilable differences with Theodore.

321. Tescher and Spallina withdrew and cited such irreconcilable differences with Theodore and the Bernstein family entirely after admitting to fraudulently altering trust documents and more.
322. That despite Prima Facie evidence in the dispositive documents Theodore acts under, that states that Theodore specifically cannot be a fiduciary, he continues to act in defiance as a fiduciary for purposes of making distributions he is explicitly prohibited from doing in the documents. The fact that Theodore and his Counsel Rose know that the alleged 2012 Simon Trust and the alleged 2008 Shirley Trust both have language that considers Theodore deceased and further language that considers him predeceased for distributions made under the Shirley Trust and Simon Trust, Theodore continues to act as a non-qualified fiduciary in violation of Probate and Trust Rules and Regulations.
323. That Theodore has multiple and irrefutable conflicts of interest that preclude him from acting as a fiduciary, including conflicts with his own children, conflicts now with other beneficiaries caused by the fraud of his former counsel Tescher and Spallina where his family may lose all interests, conflicts with the Stansbury matter as he is the primary accused party of the bad acts against Stansbury and a defendant in that lawsuit. The Simon Estate, Simon Trust and Shirley Trust are tied up in that litigation as defendants and may have damages awarded against them and so the Estate and Trusts if damaged may end up suing Theodore if they are forced to settle or lose in the litigation. Therefore, Theodore cannot negotiate on the one hand for himself personally and as an officer of companies he owns and then negotiate as Trustee for the interests of the Estate and Trusts as a fiduciary, especially where he has no interests in the Estate and Trusts and would benefit for shifting the liabilities from settlement or suit to the Estate and Trusts instead of himself personally and professionally where he

has everything to lose. These conflicts act as separate and distinct breaches of his fiduciary duties and require his withdrawal under Florida Probate and Trust Rules and Statutes.

324. That Theodore has adverse interests against beneficiaries, in fact he has stated he wants to use “forceful and aggressive” tactics against Eliot in sworn statements in a hearing before this Court that further preclude his involvement forward as fiduciary in the Estates and Trusts of Simon and Shirley and require his withdrawal under Florida Probate and Trust Rules and Statutes.
325. That despite Theodore knowing and being informed repeatedly of the reasons he cannot now serve in any fiduciary capacities in the Estates and Trusts of Simon and Shirley he continues with his counsel to act willfully, wantonly and grossly negligent in disregard of his fiduciary duties.
326. That Theodore is alleged by his counsel to have took distributions against the advice of counsel as claimed by Spallina to Palm Beach County Sheriff Investigators, in transactions that Spallina claimed were legally impossible to them, all in efforts to loot further the Estates and Trusts before he is fully removed in every capacity in the Estates and Trusts of Simon and Shirley by this Court.
327. That all fiduciaries to the Estates, Trusts and Corporate Entities sued hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their fiduciary duties and in violation of state and federal laws causing a mass of civil torts against Counter Plaintiffs through multiple, separate and distinct breaches of fiduciary duties.
328. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against all Counter Defendants in any fiduciary role for any of the trusts sued hereunder for Breach of Fiduciary Duties under 736.1001 Remedies for breach of trust and other applicable statutes both jointly and severally, personally and professionally, and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 8 - ABUSE OF PROCESS**

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000246

329. This is an action for Abuse of Process under Florida Statutes.
330. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 329, inclusive.
331. That improper use of the Court's process through Toxic, Vexatious, Fraudulent and Costly litigations, fraudulent and forged documents submitted to the Court, fraudulently altered trust documents and Toxic, Vexatious, Fraudulent and Costly pleadings and other illegal legal debauchery already defined herein that has taken place repeatedly, including the filing of this instant action with ulterior and improper motives of the Counter Defendants to now make their crimes already committed legal by attempting yet another fraud on this Court and passing further false instruments to this Court.
332. That all of the document frauds have been implemented using Court processes to achieve Dominion and Control of the Estates and Trusts through a series of fraudulent dispositive documents crafted to commit fraud both on the Court and the Beneficiaries, Interested Parties and Creditors.
333. That several instances of Fraud on this Court by Officers and Fiduciaries of this Court are already proven in these matters and this represents irrefutable PRIMA FACIE evidence of Abuse of Process, similar to the abuse of process in this action, whereby the Courts are being used to attempt to diffuse and cover up the crimes that have taken place already.
334. That there are multiple abuses of process that are expensive and abusive to the beneficiaries, including legal harassment in efforts to further harm beneficiaries by causing expensive delays and disputes in estate and trust administration and billing up outrageous attorney fees and costs through frivolous and fraudulent pleadings and litigations such as this.
335. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants, jointly and severally, personally and professionally, for Abuse of Process and for remedies as may be awarded

Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 9 - LEGAL MALPRACTICE**

336. This is an action for Legal Malpractice under Florida Statutes.

337. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 336, inclusive.

338. That Attorneys at Law, Spallina, Tescher, Manceri, Rose, Pankauski, Gortz and others have worked together in concert and with others to interfere and deprive in combinations and separately to commit frauds, frauds on the courts through intentional legal malpractice and more in direct efforts to commit a series of criminal wrongdoings and civil torts against parties to the Estates and Trusts of Simon and Shirley, which have enriched them greatly through legal fees and more.

339. That all Attorneys at Law named as Counter Defendants hereunder have committed legal malpractice by subverting their clients' interests and participating in a variety of criminal acts resulting in a mass of civil torts to the true and proper Beneficiaries of the Estates and Trusts of Simon and Shirley and others.

340. That through a web of conflicting interests and adverse interests the Attorneys at Law involved in this action and those involved in the probate of the Estates of Simon and Shirley have worked together in concert and with others, to interfere and deprive in combinations and separately, violating virtually the entire Attorney Conduct Codes, Probate and Trust Rules and Statutes and State and Federal Laws to injure Counter Plaintiff and others through legal malpractice and more.

341. That the Attorneys at Law have enriched themselves through these fraudulent activities they participated in and advanced to the disadvantage of Eliot and his family and others involved through



intentional acts where they directly violated their attorney ethics and law and so abused process to enact fraud after fraud.

342. That the Attorneys at Law named hereunder as Counter Defendant, in some instances even admittedly, altered Estate and Trusts documents to enrich themselves and others, including their friend and client Theodore, while intentionally causing problems with the Beneficiaries to gin up disputes that resulted in excessive legal fees for themselves and the fiduciaries, in some cases the Attorneys also acting as the Fiduciaries and then counsel to themselves as the fiduciaries, as the case is with Tescher and Spallina.
343. That Tescher and Spallina conspired together to change and alter Trust documents in Shirley's Estate in efforts to benefit their CLIENT, FRIEND and BUSINESS ASSOCIATE, Theodore.
344. That all Attorneys at Law to the Estates, Trusts and Corporate Entities sued hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their Attorney Conduct Codes and Law causing a mass of civil torts against Counter Plaintiffs.
345. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment against Counter Defendants for Legal Malpractice, jointly and severally, professionally and personally and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 10 – EQUITABLE LIEN**

346. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 345, inclusive.
347. This is an action to impose an Equitable Lien on the Estates and Trusts Assets in both the Simon and Shirley Estates that were seized illegally from December 08, 2010 when Shirley deceased and then

further from September 13, 2012 when Simon deceased through a series of fraudulent activities that transferred Dominion and Control of the assets to improper parties and have since led to numerous other fraudulent activities under ongoing State and Federal investigations both civil and criminal.

348. That this is an action for an Equitable Lien on the children's Trusts, all Trusts sued hereunder and all Estates, Trusts and Corporate Entities sued hereunder that Simon and Shirley had interests in, due to the fraudulent activity taking place in a wide array of Estate and Trust documents and to preserve and protect the assets from further ongoing loss and theft.

349. That the Counter Defendants have become enriched unjustly due to the criminal acts and civil torts defined herein.

350. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiffs prays for judgment for an Equitable Lien and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 11 - ACCOUNTING**

351. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 350, inclusive.

352. This is an action against Theodore, Spallina and Tescher who have failed to provide statutorily required accountings for the Estates and Trusts they allege to be Trustees for to the Beneficiaries and Interested Parties and further for full formal accountings of all Trusts, Estates and Entities involved in the estate plans of Simon and Shirley and sued hereunder.

353. That Theodore has failed to provide accounting in any of his alleged roles as a fiduciary in the Estates and Trusts of Shirley and Simon as required by law since he allegedly began acting as a fiduciary.

354. That Theodore states he was appointed by Tescher and Spallina as Successor Trustee in the Simon Trust and has failed to file a transitional accounting since January 2014 in violation of Probate and Trust Rules and Statutes.
355. That Spallina and Tescher and all other current and former trustees (excluding Benjamin Brown, Esq. the Curator of Simon's Estate and the new Successor PR of the Estate of Simon, Brian O'Connell, Esq.) failed to provide accountings or tender documents to Beneficiaries and Interested Parties according to well established probate rules and statutes in their roles as fiduciaries and counsel to the Estates and Trusts of Simon and Shirley as required by law.
356. That Theodore after allegedly becoming Successor Trustee to the Trusts of Simon has failed to provide an accounting or any other evidence that he was elected legally as the Successor Trustee.
357. That Theodore after acting for almost a year in Shirley's Estates and Trusts with no legal authority or notice or accountings to beneficiaries, was then appointed PR of the Estate of Shirley by Judge Colin and since October 2013 when he supposedly received Letters he has failed to provide an accounting, failed to provide his Letters and copies of the Shirley Will and all Schedules and Addendum to the beneficiaries, in violation of Probate Rules and Statutes.
358. All Trustees in ALL of the Trusts created by Simon and Shirley Bernstein and so sued hereunder have failed to perform accounting under;

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the

fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

359. That all Fiduciaries and Attorneys at Law to the Estates, Trusts and Corporate Entities sued

hereunder have committed multiple Egregious Acts of Bad Faith with Unclean Hands in violation of their fiduciary duties by failing to provide legally timely accountings and have intentionally and with scienter have failed to provide accountings causing a mass of civil torts against Counter Plaintiff.

360. That all fiduciaries sued hereunder have failed to provide complete copies and present for inspection upon requests by beneficiaries the complete trusts and wills of Simon and Shirley, in violation of Florida Probate Rules and Statutes.

361. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff demands judgment for accountings for ALL Estate and Trusts of both Shirley and Simon sued hereunder that have been denied in violation of statutes and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 12 – REMOVE COUNTER DEFENDANTS IMMEDIATELY FROM ALL FIDUCIARY AND LEGAL POSITIONS IN THE ESTATES, TRUSTS AND OTHER CORPORATE ENTITIES SUED HEREUNDER**

362. This is an action to remove the current ALLEGED Trustee of the Estate and Shirley Trust and the Trustee of the Simon Trust, Theodore.

363. Counter Plaintiff hereby reiterate and incorporate herein by reference, as if fully restated herein, preceding paragraphs 1 through 362, inclusive.

736.0706 Removal of trustee

364. That on July 11<sup>th</sup> 2014 Theodore's Motion to be Appointed Personal Representative of the Estate of Simon to replace the Curator, Benjamin Brown, Esq. who was appointed after Tescher and Spallina were removed in all capacities from the Estates and Trusts of Simon and Shirley Bernstein amidst the criminal acts and civil torts proven, admitted and alleged in the Estates and Trusts thus far that they were a part of was withdrawn by Theodore and his counsel at the strong urging of this Court to withdraw the pleading.
365. That Theodore made a bid to become the Successor PR of Simon's Estate, against a tidal wave of opposition and legally sound reasons that do not make him qualified now or ever to act in any fiduciary capacities in either the Estates and Trusts of Simon and Shirley. Theodore withdrew his request after wasting this Court and everyone's time, including a mass of legal fees encumbered by all parties in responding and coming to Court and allowed an independent Third Party Personal Representative to be elected, Brian O'Connell, Esq.
366. That Theodore is not now qualified to be Personal Representative or Trustee or Manager of any of Simon and Shirley's Wills and Trusts and other entities created by them for the beneficiaries, as he has a plethora of Conflicts of Interests, he has absolute Adverse Interests in both Simon and Shirley's Estates and Trusts, he is under ongoing criminal investigations and civil actions that further make him conflicted and unable to legally serve and he must instantly be removed by this Court to preserve and protect the assets of Simon and Shirley from further Fraud and more that Theodore is the central alleged perpetrator of.
367. That Theodore has directly benefited the most from the criminal acts already proven, admitted and alleged.

368. That Theodore has been considered in all Wills and Trusts of Simon and Shirley as PREDECEASED and for purposes of distributions made thereunder and thus cannot be Successor Trustee as he is dead and prohibited by explicit language in the Simon Trust and Shirley Trust.
369. That Theodore has no real beneficial interest in these matters due to his disinheritance and in light of the allegations against him it is strange that he wants to continue to act as a Fiduciary. In fact, he is being sued for Breaches of Duties and due to the fact that all of the ongoing frauds were allowed under his tutelage and were aided and abetted by his Attorneys at Laws that represented him and that are his friends and business associates, all who came in to the Simon and Shirley Estate and Trust matters through their relation to Theodore.
370. Theodore must be removed as he and his sister Pamela are the direct benefactors of all these problems and criminal acts committed thus far, to the disadvantage of other beneficiaries, interested parties and creditors and thus are adverse to other beneficiaries where their families may be wholly disinherited and their children receive nothing if they do not act in their own best interests and not the beneficiaries.
371. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Counter Plaintiff prays for judgment to REMOVE COUNTER DEFENDANTS IMMEDIATELY FROM ALL FIDUCIARY AND LEGAL POSITIONS IN THE ESTATES AND TRUSTS AND OTHER ENTITIES OF SIMON AND SHIRLEY BERNSTEIN, to SEIZE ALL RECORDS and Estate and Trust Assets from all Counter Defendants regarding the Estates, Trusts and Corporate Entities Sued hereunder and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

**COUNT 13 - PRELIMINARY INJUNCTION**

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372. This is an action under Florida Statute 526.312 and any other applicable statutes to prohibit instantly the current ALLEGED Trustee of the Shirley Trust and Simon Trusts, Theodore from taking any further actions in any fiducial capacities without Court approval until these matters of fraud and more can be fully resolved both criminally and civilly before this Court and state and federal civil authorities.

373. Counter Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 372, inclusive.

374. That this injunction should freeze all assets held in ALL Trusts, Estates and Entities named hereunder to preserve them from further fraud being committed by fiduciaries and counsel to the fiduciaries, who are all alleged to be directly involved in the prior criminal acts, ongoing alleged criminal acts and admitted criminal acts and that no further acts regarding the assets should be made without direct Court approval, including ALL Attorney at Law fees, costs or any other transactions other than those already arranged by the Court with Brian O'Connell and Benjamin Brown. That this is to include all properties held in all Trusts, Estates and Corporate Entities sued hereunder that Simon and Shirley owned or had interests in.

375. All conditions precedent to this action have been performed or occurred and continue.

376. All conditions precedent to this action have been performed or occurred and continue.

WHEREFORE, Eliot prays for judgment a Preliminary Injunction and for remedies as may be awarded Counter Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate.

WHEREFORE, Eliot further prays further for judgment for the following,

- j. to have 120 days to Amend this Counter Complaint and notices this Court that this complaint was done while Eliot is undergoing dental work that has had him medicated on narcotic analgesics and the muscle relaxer flexeril and therefore request an extension.

- ii. A verified statement by Judge Martin Colin and David French stating that they have no conflicts of interest with these matters where the crimes have occurred in and upon their Courts and further stating that their involvement directly in the case and fact that they will both be material and fact witnesses to the crimes that occurred in their Courts by Officers of the Court that they approved and had Jurisdiction over who committed felonious acts in and upon their Courts. This request is to help overcome any appearance of impropriety that is created by their handling a lawsuit where they and the Officers of their Courts are centrally involved in the criminal misconduct and civil torts. In other words so the general public would not think that any judge could be covering up crimes committed in and upon their court for themselves and officers of their court involved directly and indirectly in the crime. This statement should affirm to the beneficiaries, interested parties and creditors that any involvement in the cases forward would violate no known, attorney conduct codes, judicial canons, state and federal law and in no way can be viewed to prejudice the rights of any parties subject to the lawsuit.
- iii. That Eliot prays this Court demand the alleged Fiduciaries to release funds to Eliot to hire counsel for his family, his children, and for the Trust separate from the Alleged Trustee counsel to protect the innocent beneficiaries from further damage in these matters that they have deemed essential to the administration of the Estate and Trusts of Simon and Shirley and since these legal actions are the direct result of fraud caused by the fiduciaries and their counsel in part and have forced Eliot and his children to need separate and distinct counsel to defend their interests. The PR's and Trustees have refused repeated requests for legal fees even for the minor children and so this Court must Order them to pay.
- iv. That as this case is similar and related to the probate estate and trust cases before this Court already and the Counter Defendants are similar to the Respondents in those matters that



Service of this Counter Complaint be waived by the Court, other than through email service and ECF service to save Eliot monies as he is indigent due to intentional delays in his inheritance caused by Officers of this Court and others to directly harm Eliot and prevent him from having legal representation. Any fees to file this Counter Complaint should also be paid for by the Estates and Trusts until it can be recovered from the responsible parties who caused these costs to be necessary as a result of their frauds and more. That already in the Oppenheimer Counter Complaint many parties that are in the related cases including many attorneys at law are refusing to waive service and force Eliot to send a Marshal instead and waste more monies. Attorneys hiding from service of process, unheard of in matters they created from their criminal acts in many of the instances of service dodging in the Oppenheimer matter by Respondents in the Estate and Trust cases.

Filed on Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust

X

CERTIFICATE OF SERVICE

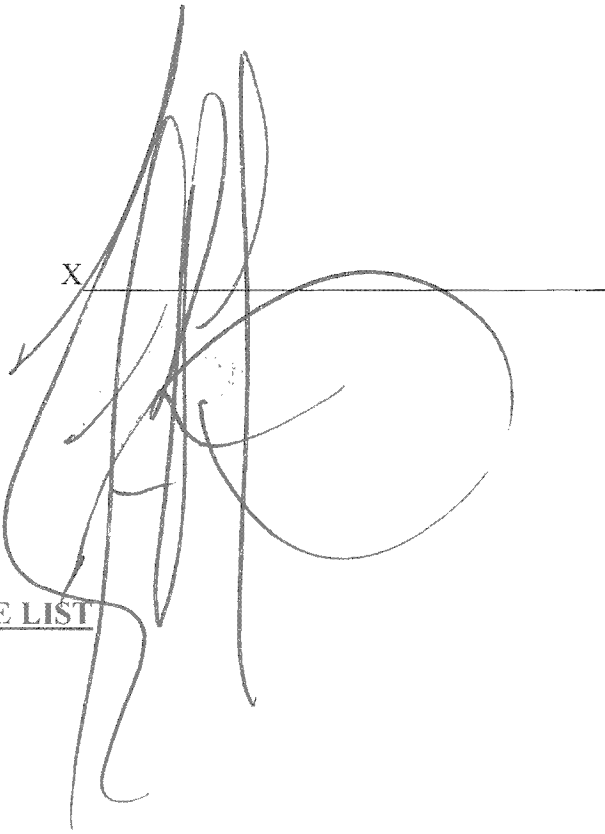
I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, September 2, 2014,

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and Trustee of the Eliot Bernstein Family Trust.

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X




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IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;  
Eliot Bernstein in his capacity as  
Natural Guardian of his  
minor children, Joshua, Jacob and Daniel;  
and as beneficiary of the alleged Shirley  
Bernstein Trust dated May 20, 2008, as  
amended and Eliot Bernstein as Trustee of the  
Eliot Bernstein Family Trust dated May 20,  
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;

DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

Tuesday, September 2, 2014

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\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants,

---

Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

The Undersigned, Eliot Ivan Bernstein, alleges:



DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

Tuesday, September 2, 2014

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1. There is now pending in the above Estates and Trusts of Simon and Shirley Bernstein proceedings in addition to this proceeding Case No. 502014CP002815XXXXSB that are adversarial, including the Counter Complaint and the following,
  - i. 502012CP004391XXXXSB Simon Bernstein Estate;
  - ii. 502011CP000653XXXXSB Shirley Bernstein Estate;
  - iii. Simon Bernstein Amended and Restated Trust;
  - iv. Shirley Bernstein Trust Agreement;
  - v. 502014CP002815XXXXSB Trusts created for the benefit of Joshua, Jacob and Daniel Bernstein.
2. Pursuant to Florida Probate Rule, 5.025(b), the undersigned hereby declares the proceedings to be adversary.
3. Hereafter all proceedings relating thereto, as nearly as practicable, shall be constructed similar to suits of a civil nature, and the Florida Rules of Civil Procedure shall govern.

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 Tuesday, September 2, 2014,



---

Declarant

Eliot Bernstein, Pro Se, Individually and as  
legal guardian on behalf of his three minor  
children and as Trustee of the Eliot Bernstein  
Family Trust.  
2753 NW 34<sup>th</sup> Street  
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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

Tuesday, September 2, 2014

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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

Tuesday, September 2, 2014

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DECLARATION THAT THIS PROCEEDING AND OTHERS RELATED ARE ADVERSARY

Tuesday, September 2, 2014

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Monday, September 15, 2014

**TIME:** 10:30 a.m. (or immediately following the contempt hearing)

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray Beach, FL 33444

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

**MATTER TO BE HEARD:            TED S. BERNSTEIN'S MOTION TO SEVER  
AND STAY COUNTERCLAIM PENDING  
RESOLUTION OF TRUST CONSTRUCTION  
COUNTS**

**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 8th day of September, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: [eservice@palmettobaylaw.com](mailto:eservice@palmettobaylaw.com);  
[bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com);  
[tnealy@gcprobateclaw.com](mailto:tnealy@gcprobateclaw.com)

Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Alan Rose, Esq.  
Mrachek Fitzgerald Rose Konopka Thomas &  
Weiss, P.A.  
505 S Flagler Drive, Suite 600  
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(561) 655-5537 - Facsimile  
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IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR Palm Beach COUNTY, FLORIDA

Eliot Ivan Bernstein

CASE NO. 502014CP003698XX

Plaintiff/Petitioner or In the Interest Of

vs.

Teschler & Spallina, P.A. et al.

Defendant/Respondent

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

**Notice to Applicant:** If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Parental Rights actions.

14 SEP - 8 PM '14  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY  
SOUTH BRANCH OFFICE  
FILED

1. I have 0 dependents. (Include only those persons you list on your U.S. Income tax return.)

Are you Married? / Yes No Does your Spouse Work? / Yes  No Annual Spouse Income? \$

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly other  
I am working to pay

(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknown</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>na</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one: I  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties owed

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I assert that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 2014  
09/30/1963 c6956008

Date of Birth Driver's License or ID Number

Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 581-245-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

*Kelly Gold Frank*



Kelly Gold Frank  
COMMISSION # FF000732  
EXP: RES: MAR. 25, 2017  
WWW.AARONNOTARY.com

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

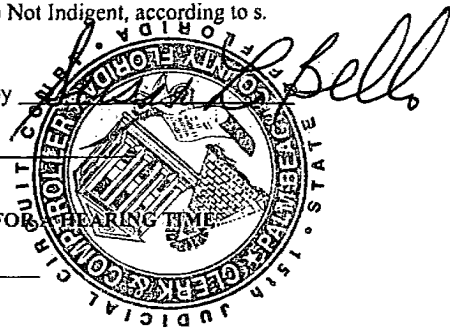


**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 8 day of Sept, 20 14.

Clerk of the Circuit Court by \_\_\_\_\_



This form was completed with the assistance of: \_\_\_\_\_  
Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR HEARING TIME.**

**THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

Case No. 502014CP003698XXXXSB

Eliot Ivan Bernstein, Individually;  
Eliot Bernstein in his capacity as  
Natural Guardian of his  
minor children, Joshua, Jacob and Daniel;  
and as beneficiary of the alleged Shirley  
Bernstein Trust dated May 20, 2008, as  
amended and Eliot Bernstein as Trustee of the  
Eliot Bernstein Family Trust dated May 20,  
2008,

Honorable Martin Colin

Jury Trial Requested

Counter Plaintiff,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel,  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;

**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**

Friday, September 12, 2014

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\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants,

---

Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

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**PETITION TO REMOVE TED BERNSTEIN AS  
ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN  
IRREVOCABLE TRUST**

**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**

Friday, September 12, 2014

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COMES NOW, PRO SE<sup>1</sup>, Eliot Ivan Bernstein ("Eliot") as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged "Shirley Bernstein Trust dated May 20, 2008, as amended" ("Shirley Trust") (see Exhibit A3) and as Trustee of the "Eliot Bernstein Family Trust dated 5/20/2008" (see Exhibit A4) and hereby files this "PETITION TO REMOVE TED BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE OF THE ALLEGED SHIRLEY BERNSTEIN IRREVOCABLE TRUST" and in support thereof states, on information and belief, as follows:

**I. Eliot has standing to seek removal.**

The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a **beneficiary** may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has **a present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

**II. This Court has the Authority Under Florida Law to Remove TED as Trustee of the Revocable Trust.**

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<sup>1</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, PRO SE, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See *Haines v. Kerner* 92 Set 594, also See *Power* 914 F2d 1459 (11th Cir1990), also See *Hulsey v. Ownes* 63 F3d 354 (5th Cir 1995). also See In Re: *HALL v. BELLMON* 935 F.2d 1106 (10th Cir. 1991)." In *Puckett v. Cox*, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in *Conley v. Gibson*, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

Under Florida law, this Court has broad authority to affect trust administration<sup>2</sup>. Under §736.0201, Fla. Stat. (2014), the Court has the following power:

**736.0201. Role of court in trust proceedings**

\* \* \* \*

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:
- (a) Determine the validity of all or part of a trust;
  - (b) **Appoint or remove a trustee;**
  - (c) Review trustees' fees;
  - (d) Review and settle interim or final accounts;
  - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
  - (f) Obtain a declaration of rights;
  - (g) Determine any other matters involving trustees and beneficiaries.
- (emphasis added)

**III. Legal Standard for Removal of Trustee.**

When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

**736.0706. Removal of trustee**

\* \* \* \* \*

- (2) **The court may remove a trustee if:**
- (a) **The trustee has committed a serious breach of trust;**
  - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (c) **Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;** or
  - (d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

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<sup>2</sup> Eliot has filed a pleading with the Court to Remove Theodore on the Court's own motion based on a host of reasons that disqualify Theodore at this time, including Prima Facie evidence in the Court's possession already. The filing was docketed August 28, 2014 and titled "AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN" and being all Pro Se, is hereby included by reference in entirety with all exhibits herein.

TED's removal is warranted by Subsections (2) (a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

**736.0802. Duty of loyalty**

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust **solely** in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided ins. 736.1016 a ... transaction ... which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction ... (emphasis added)

*See Aiello v. Hyland*, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust). Therefore, the only remedy is removal and a non-conflicted independent trustee appointed.

**IV. Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Irrevocable Trust of Shirley Bernstein (see Exhibit A3 – 2008 Alleged Shirley Trust) by the Terms of the Trust and also due to Conflict of Interests, Adverse Interests, Breaches of Fiduciary Duties and more.**

**A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Irrevocable Trust, which means he is "unfit" under §736.0706(2)(c).**

**1. Ted Bernstein is "PREDECEASED" for all purposes of dispositions of the Shirley Trust.**

The language of the Shirley Trust states clearly and unambiguously,

**ARTICLE III - GENERAL**

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

**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**

Friday, September 12, 2014

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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.  
**(emphasis added)**

The definition of Disposition from NOLO Legal Dictionary, "2) The act of transferring care, possession, or ownership to another, such as by deed or will." Thus, for purposes of the dispositions made under the 2008 Shirley Trust, Ted is definitely dead and thus cannot serve as Successor Trustee, despite the ALLEGED Shirley Trust ALLEGEDLY naming him.

Further, there has been admission from Robert Spallina, Esq. ("SPALLINA") to Palm Beach County Sheriff Investigators<sup>3</sup> that he fraudulently altered a Shirley Trust document already to attempt to include Ted's lineal descendants back into the Shirley Trust illegally. Spallina was also acting as Ted's attorney at the time in his alleged role of Successor Trustee in the alleged Shirley Trust.

That Tescher & Spallina, PA have also been found to have closed Shirley's Estate with a dead Personal Representative. Simon, as part of a larger fraud on the Court in efforts to change beneficiaries of the Shirley Estate and Shirley Trusts.

That Tescher & Spallina, PA have also been found to have posited in the Court Record fraudulently notarized and forged documents for six parties, including a document for Simon forged and notarized Post Mortem.

Originals of the Shirley Trust have been suppressed and denied from the beneficiaries for over two years despite repeated requests to inspect and further it appears that Schedules,

---

<sup>3</sup> Palm Beach County Sheriff Reports at [www.lviewit.tv/Sheriff\\_Reports.pdf](http://www.lviewit.tv/Sheriff_Reports.pdf)

Memorandums, Addendums and Codicils are all missing, making it impossible to determine the Trust Res, in violation of Probate Rules and Statutes.

That it is alleged that TESCHER and SPALLINA have further fraudulently altered the Shirley Trust document to name TED as a Successor Trustee in the Shirley Trust after Simon, despite the absolute conflict with the language in the Shirley Trust that considers TED predeceased and thereby unqualified to act as a Successor Trustee as he is dead legally for the purposes of the document. It should be noted by the Court, that in a deposition taken of TESCHER, he states that Simon and Shirley did mirrored trust documents in 2008. The 2008 Simon Trust (see Exhibit A) however was suppressed and denied and not given to the beneficiaries with his alleged 2012 Amended and Restated Trust after his death and was not turned over by TESCHER and SPALLINA until they were removed from the proceedings for their involvement in fraud and more and whereby this Court issued an Order for them to turn over all their records and properties to the newly elected Curator, Benjamin Brown, Esq. in 2014.

When noting the successorship in Simon's 2008 Trust that is alleged to mirror Shirley's, Simon had chosen William Stansbury, currently the largest Creditor<sup>4</sup> in the Simon Estate as the successor trustee after Shirley, NOT TED. It would seem logical that both Simon and Shirley had chosen Stansbury for his outstanding character and integrity in place of their eldest son TED, as they had both considered TED predeceased and an unfit businessman having just recovered from bankruptcy and not possessing a college degree as part of their decision. There is also evidence that

---

<sup>4</sup> Stansbury is a creditor due to a lawsuit that primarily has TED as the perpetrator of multiple torts against Stansbury amounting to over \$2,000,000.00. It also has been alleged in the Simon Estate case before the Court that Simon was unaware until several weeks before his death (at around the same time he is alleged to have amended his 2008 Trust, which was about 48 days or so before his death) that TED may have misappropriated millions of dollars from Stansbury and that he too was being sued. Ted hired counsel Greenberg Traurig to represent him in the matter, Simon did not have counsel and died before he could be represented properly in the matter. Greenberg Traurig later resigned as Counsel to Ted and Alan B. Rose, Esq. replaced them.

**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**

**Friday, September 12, 2014**

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Simon was going to make Stansbury the CEO of LIC Holdings, Inc., a company he and TED owned, as he did not find TED fit to run that company either in the event he passed.

Initially, the Bernstein family members were told by SPALLINA and TESCHER that TED was the Successor PR and Trustee of Shirley's Estate and Trusts because Florida law stated the oldest child was the Successor. Then after Eliot confirmed with others that this was untrue, they later claimed that they had found in the trust that TED was named, which appears to be yet another fraudulent document submitted to the beneficiaries and interested parties and this Court in these matters. That Eliot awaits inspection of the original trust and will be turning that over to investigators as well.

Despite if the document named TED to be successor, it contradicts the terms of the trust that specifically consider him predeceased. Where there are several ongoing frauds and frauds on the Court, all under investigation and all benefiting TED and his minion of Attorneys at Law (four out of five have resigned as TED's counsel already for irreconcilable differences and two already removed for their involvement in FRAUD). There are numerous other reasons that TED is not qualified, nor was he ever, to be a Successor Trustee or be a fiduciary in ANY capacity in the Estates and Trusts of both Simon and Shirley, as further defined herein.

That it is alleged that TED, with the aid of TESCHER and SPALLINA, have used a series of fraudulent documents to seize illegally Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then once control was obtained, used the documents and their control to begin looting the estates and trusts through a variety of felony criminal misconduct.

That the alleged 2012 Simon Will and Simon's Amended & Restated Trust have been found by Governor Rick Scott's Notary Public Division to have been improperly notarized so as not to be able to determine if Simon was present at the signing. The only two witnesses to the document are Robert Spallina, Esq. and Kimberly Moran who have both admitted to fraudulently altering

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documents in the Simon and Shirley Estates and Trusts. Further, the documents are constructed improperly as SPALLINA, who becomes PR and TRUSTEE for Simon in the documents that he created, also witnesses the documents, which directly benefit him and his partner TESCHER as they control the Estate and Trust through their roles as, Co-Personal Representatives, Co-Trustees and SPALLINA additionally as counsel to the Co-Personal Representatives and Co-Trustees. Once SPALLINA gains control with these documents, he begins an unaccounted billing of the Estates and Trusts and where once Eliot had the Sheriff's investigating their frauds, a legal frenzy of billings arose from their attempts to defend against Eliot's actions and tell lies upon lies in the hearings before this Court, only later to confess of involvement in advancing the frauds, a confession which appears heavily perjured and full of other admitted criminal acts and comes only after Sheriff's came knocking on their door and arrests were made of their Legal Assistant and Notary Public, Kimberly Moran who admitted to forging and fraudulently notarizing documents in these matters and more. These documents suffer other construct issues that have been pled to the Court in unheard motions and petitions currently before the Court in the Estate and Trust lawsuits involving Simon and Shirley.

That TED was directly involved in taking improper and illegal distributions from the Shirley Trust that benefited his family, against allegedly the advice of his Counsel Spallina (as reported by Spallina to Palm Beach County Sheriff Investigators) and based on the fraudulent documents Spallina created to include his family back into the Shirley Trust. TED has advanced this fraudulent scheme, converted funds improperly, breached his alleged fiducial responsibilities repeatedly to deny beneficiaries access to information regarding the Shirley Trust, including but not limited to, failing to produce any accountings in violation of Probate Rules and Statutes, failing to give notice and documentation of his successorship to beneficiaries and in fact suppressing and denying required disclosure in violation of Probate and Trust Rules and Statutes and more. That TED's involvement

in advancing the frauds and failure to act as fiduciary according to Probate and Trust Rules and Statutes are all cause for his immediate removal in ALL fiducial capacities.

The remainder of the Petition is borrowed from the Petition to Remove TED as Successor Trustee in the Simon Estate recently filed and set for hearing on September 24, 2014 for good and just causes. These same issues are applicable in evaluating his lack of character and fitness to serve as a fiduciary in the Shirley Trust that make his removal necessary and mandatory by this Court, as well as for removal from any other fiducial claims TED asserts in the Estates and Trusts of Simon and Shirley Bernstein. There is also a motion for Your Honor to remove Theodore on your own motion under Fla Stat. 736.

**V. IN RE THE SIMON BERNSTEIN TRUST - Theodore Stuart Bernstein Should Be Removed as Trustee of the alleged Revocable Trust by the Terms of the Trust and his Conflict of Interest.**

**A. Theodore Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the alleged Revocable Trust, which means he is "unfit" under §736.0706(2)(c).**

**2. Ted Bernstein is a "related party" and therefore not eligible to serve.**

The previous co-trustees of the alleged Revocable Trust were Donald Tescher, Esq. ("TESCHER") and Robert Spallina, Esq. ("SPALLINA") by virtue of the Successor Trustee provision set forth in Article IV, Section C of the alleged Revocable Trust. A copy of the alleged Trust<sup>5</sup> is attached hereto as Exhibit "A." By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, TESCHER and SPALLINA, resigned as co-trustees of Simon's Revocable Trust, co-personal representatives/executors to the Estate of Simon, SPALLINA resigned as counsel to TED as alleged Trustee (for irreconcilable differences) in the Shirley Trust and as

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<sup>5</sup> This alleged Revocable Trust of Simon's has been found to have improper notarization affixed by the Governor Rick Scott's Notary Public Division. The two witnesses to the document have already confessed to fraudulent alteration of other documents in the Shirley Bernstein and Simon Bernstein Estates and Trusts, including admitted forgery and fraudulent notarizations.

counsel to TED as Personal Representative of the Shirley Estate and both resigned in all other fiducial and legal capacities they were acting in for any Bernstein family related matters. Upon resignation TESCHER stating, "If the majority of the Bemstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity." TESCHER made the appointment of TED after claiming he learned that his law firm and SPALLINA had fraudulently altered a Shirley trust document to change beneficiaries illegally and then make illegal distributions under a fraudulent scheme. The alleged successorship was done without sending notice to beneficiaries that they had done this transfer and the document transferring notarized by the already convicted Felon for fraudulent notarizations, Kimberly Moran. TED accepted the alleged successorship without sending notice to beneficiaries and neither TESCHER, SPALLINA or TED provided an accounting of the trust upon the transfer, all in violation of Probate and Trust Rules and Statutes. A copy of the resignation letter is attached hereto as Exhibit "B."

If TED has become successor trustee of the Revocable Trust, he should be removed. He is ineligible under the very terms of the Revocable Trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Revocable Trust states:

C. Appointment of Successor Trustee

3. ... A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

Under Article III, Subsection E(7), A "Related or Subordinate Party" is defined in the Trust as follows:

**ARTICLE III. GENERAL**

**E. Definitions.** In this Agreement,

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 ).

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to alleged beneficiaries, TED's sons, SIMON's grandsons. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore again unfit to serve as a successor trustee under §736.0706(2)(c).

**3. Ted Bernstein was specifically disqualified to be a Successor Trustee by the terms of the Trust.**

Another provision of the Trust also disqualifies TED.

Article III E (I) states:

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 ... " (**emphasis added**)

The prior Simon revocable trust done in 2008 that was alleged to be amended by Simon 48 days prior to his sudden and unexpected death reads from Article III E (I),

E. **Definitions**. In this Agreement,

I. **Children, Lineal Descendants**. The terms "child," "children" and "lineal descendants 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. **(emphasis added)**

Therefore, by the very language of the Trust and the prior pre alleged 2008 Simon Trust done with Shirley in 2008<sup>6</sup> (see Exhibit A2), Ted Bernstein, in either scenario is wholly disinherited, predeceased and disqualified by these provisions to serve as a Successor Trustee as TED is considered DEAD for all purposes of the disposition and distributions of the trust. This is Prima Facie evidence for this Court to act on its own motion and instantly remove TED to protect the interests of the beneficiaries and others from an unqualified and possibly fraudulent successorship.

SPALLINA and TESCHER allegedly appointed TED as they parted in disgrace despite this language that disqualifies him, the language **that they wrote**. This transfer fraudulent transfer of fiduciary power and trusteeship was to retain the illegal Dominion and Control of the Estates and Trusts that TED, TESCHER and SPALLINA gained through the fraudulent documents, a criminal succession of trusteeship. TED, should have been removed with TESCHER and SPALLINA with his counsel Alan B. Rose, as they are centrally involved in the fraudulent schemes and illegal distributions made and TED and his minion of attorneys at law have benefited the most from the crimes committed by his former counsel TESCHER and SPALLINA. TESCHER and SPALLINA are also TED's close personal friends and business associates and TED brought them in to the Bernstein family. This illegal transfer assured TESCHER and SPALLINA a successor that

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<sup>6</sup> The original Simon Trust done in 2008 with Shirley was not turned over to beneficiaries until TESCHER and SPALLINA were ordered by the Court to turn over their records upon their removal in 2014 to the Curator Benjamin Brown, Esq.

would continue to aid and abet their crimes and attempt to cover them up in the Court and prevent the beneficiaries access to the estate and trust information. This continuation of breaches is alleged to be exactly what is taking place since TED has claimed these fiduciary roles, in what appears yet another Fraud on this Court by now the unfit and unqualified alleged successor TED and his last remaining lawyer Rose, after four have already abandoned him. In Shirley's Estate this Court appointed TED as PR after reopening the Estate due to TESCHER, SPALLINA and others frauds. TED, since the time of appointment in October 2013, has failed to provide, a full copy of the Shirley Will and Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings. These intentional violations of Probate and Trust Rules and Statutes by TED since your honor found him fit in October 2013, and again this is a serious enough breach of fiduciary duties for this Court to instantly remove Theodore on its own motion as unfit, unqualified and for egregious breaches of fiduciary duties in failure to accountant.

**B. Ted Bernstein, as Trustee of the Revocable Trust, has a Conflict of Interest with the Estate of Simon Bernstein.**

At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust")<sup>7</sup> as beneficiary.

Shortly after SIMON's death in 2012, Robert Spallina, one of the, resigning Co-Personal Representatives of the Estate of Simon Bemstein, resigning Co-Trustees of Simon's Revocable Trust, resigning counsel to the Co-Personal Representatives and Co-Trustees TESCHER and SPALLINA, resigning counsel to TED as Personal Representative of the Shirley Estate and resigning

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<sup>7</sup> The Court should note that in TESCHER and SPALLINA's production documents Ordered by this Court to be turned over to the appointed Curator, Benjamin Brown, Esq., turned up a 2000 insurance trust done by Proskauer Rose, LLP. This Proskauer insurance trust specifically mentioned the insurance policy as part of the trust corpus. This trust was discovered with correspondences indicating that it was intentionally secreted from this Court, a US Federal Court and the true and proper beneficiaries with intent and scienter and replaced with a scheme to use a "lost" and "missing" 1995 Insurance Trust that no executed copies exist for or have been produced. See Exhibit F.

counsel to TED as alleged Trustee in the Shirley Irrevocable Trusts, submitted a claim form to Heritage Union Life on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 that he signed as "Trustee", for the benefit of the grown children of Simon Bernstein. SPALLINA did not tender the 2000 Proskauer Trust in his possession, instead intentionally secreting that. SPALLINA submitted this death benefit claim despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (See Exhibit "C" attached.) Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON's death, the insurance proceeds would be payable to the personal representative of the Estate. They would then after satisfying possibly any Creditors flow into a pour over trust for either Eliot, Lisa and Jill or the ten grandchildren of Simon, which will be determined by this Court in the future due to the frauds committed in the dispositive documents. In no scenario would TED or PAMELA receive any proceeds if they flowed into the Estate and thus have conflicting interests with their children that they allege to be beneficiaries of Simon's Estate and Trusts and other beneficiaries.

Because no executed insurance trust instrument was produced, Heritage refused to pay the life insurance proceeds to anyone without a court order and so DENIED the claim<sup>8</sup>. To this date, almost two years later, no executed trust instrument has been tendered in the Federal Illinois Insurance Litigation. That Ted Bernstein acting as "Trustee" on behalf of the legally nonexistent Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the

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<sup>8</sup> The Court should note that SPALLINA filed the claim acting as the trustee of the lost trust that he claims never to have seen or possessed and attempted to have the monies converted and comingled with his law firm Tescher & Spallina P.A. account. The Court should further note that when the Illinois Life Insurance Litigation was filed shortly after SPALLINA's claim was denied, TED filed the lawsuit as trustee to the lost trust that he too claims never to have seen or possessed an executed copy of, replacing SPALLINA.

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"Life Insurance Litigation") for Breach of Contract for Heritage's failure to pay the claim to the legally nonexistent trust. The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago under the tutelage of the Honorable Amy St. Eve.

The Estate of Simon Bernstein filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate's interest in the life insurance proceeds. The Plaintiffs, including TED acting as "Trustee", after SPALLINA initially filed the death benefit claim as the "Trustee" of the legally nonexistent trust, filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum") (*See*, Exhibit "D," attached).

The opening paragraph of the Opposition Memorandum states as follows:

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee**, (collectively referred to as "BERNSTEIN TRUST"), **TED BERNSTEIN, individually**, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein's Motion to Intervene as follows: **(emphasis added)**

TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (**other than Eliot**) have taken the position that they are the beneficiaries of the legally nonexistent lost or missing Insurance Trust. Despite the opposition of TED BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene. TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.

TED, individually and as the alleged trustee of the alleged Insurance Trust, has placed his personal interests above the interests of the Revocable Trust beneficiaries, who are allegedly the grandchildren of SIMON or may be Eliot, Jill and Lisa, through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation. This creates an inherent conflict of interest for TED. TED, as successor trustee of the Revocable Trust, owes a duty of loyalty

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under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries, to administer the trust solely in their interest. The Estate and trust beneficiaries are alleged to be the grandchildren of Simon Bernstein, although Eliot has challenged these documents done days before Simon's death validity, especially in light of already proven, admitted and alleged crimes committed in Shirley and Simon's Estate and Trusts. The crimes, include but are not limited to,

- i. six admitted instances of forgery (including Post Mortem for Simon),
- ii. a proven felony conviction rendered for an admitted six fraudulent notarizations (including Post Mortem for Simon),
- iii. an admitted fraudulent alteration of a Shirley's Trust document by SPALLINA,
- iv. Fraud on the Court through fraudulent and false instruments posited in the Court by Officers of the Court and Tescher & Spallina, PA law firm, acting on behalf of a DEAD Personal Representative to close the Estate of Shirley, and,
- v. the Governor Rick Scott's Notary Public Division's findings of improper notarizations on Simon's alleged 2012 Will and Amended and Restated Simon Bernstein Trust done 48 days before his death. The legally invalid notarizations leave it unknown if Simon was present on the day of signing the documents and the only witnesses to alleged signing of the document have already admitted to fraud, SPALLINA and MORAN.

This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional alleged \$1.7 million in life insurance benefits<sup>9</sup>. If so recovered, this would dramatically increase the Estate assets that Eliot and/or his children will receive (when the Court determines the beneficiaries due to the residue effects of the crimes that attempted to change beneficiaries in the Estates and Trusts of Shirley and Simon that have caused intentional

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<sup>9</sup> The Court should also note that NO parties in the Insurance Litigation, including the life insurance carriers involved to date have produced a bona fide copy of the executed insurance policy for the Breach of Contract lawsuit that is based upon it and thus no terms, including the beneficiaries and the face are known at this time, making this yet another "Rabbit Hole" of apparent malfeasances.

interferences and delays with expectancies. By opposing intervention by the Estate TED's actions exposed the estate/trust assets to liability. The need to have this Court Order intervention was due to the fact that TED'S counsel and the prior Co-Personal Representatives/Executors and Co-Trustees Robert Spallina, Esq. and Donald Tescher, Esq. to the Estate, failed to file any intervener action on behalf of the Estate and in fact aided and abetted TED'S efforts to convert the asset of the Estate to TED by SPALLINA'S filing the alleged Fraudulent Insurance Claim to benefit his client TED. SPALLINA actually acted as the "Trustee" of the lost insurance trust that he claims never to have seen or possessed and also fraudulently acted as the "Trustee" of the primary beneficiary "LaSalle National Trust NA" at his business address, as evidenced in Exhibit C. When the carrier DENIED SPALLINA's claim, TED filed the Insurance Litigation as the Trustee of the lost trust and not SPALLINA. However, both TED and SPALLINA have made statements that they have never seen or possessed this missing trust and yet both claim to be "Trustee" for various of their fraudulent attempts to collect the proceeds outside the Estate.

Thanks to, this Court, William Stansbury (who has financed the counsel for the beneficiaries and his interests as a Creditor), Peter Feaman, Esq., Benjamin Brown, Esq. and others, the Estate is now represented by counsel. Once the disgraced TESCHER and SPALLINA were removed from these matters, the Estate was able by Order of the Court to retain counsel to intervene in the Federal action on behalf of the Estate of Simon in efforts to protect the beneficiaries. The Federal court has now allowed that intervention on behalf of the Estate of Simon and the Estate is represented for the first time in almost two years. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the alleged \$1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).

As a consequence of the foregoing, TED is in breach of his fiduciary duty to the beneficiaries of the Revocable Trust by opposing efforts to make the Estate more solvent, which in tum exposes

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the Trust to increased liability, and warrants his removal under §736.0706(2)(a). Ted's continued interference is an attempt to redirect estate assets to himself personally and would further damage the estate beneficiaries. In addition, Ted's interference with his minion of Attorneys at Law has caused un-necessary and costly legal fees of an unknown amount since no accountings for legal fees have been submitted to this Court or the beneficiaries.

Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 119 So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties: trial court properly exercised its authority to remove trustee).

### **C. Misconduct in the Shirley Bernstein Estate and Trust**

There are serious proven and admitted felony crimes and further allegations of fraud, forgery and fraudulently altered trust documents in the Shirley Bernstein Estate and Shirley Bernstein trust, where Ted Bernstein is the Personal Representative of the Estate and the alleged Successor Trustee of Shirley's trust. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away. The signatures were admitted to be FORGED for six parties, including Simon Post Mortem and Eliot. TESCHER and SPALLINA's Legal Assistant and Notary Public, Kimberly Francis Moran, confessed to Palm Beach County Sheriff Investigators that she fraudulently notarized and forged documents and since has been arrested and convicted of Felony misconduct. That these documents and others were then posited with the Court by TESCHER and SPALLINA through their law firm Tescher & Spallina P.A. on behalf of Simon acting as the PR/Executor while DEAD. Yes, Simon was DEAD yet acting as PR/Executor and where TESCHER and SPALLINA failed to notify the Court of his death and elect a successor to properly and legally close Shirley's Estate, instead using Simon to close the Estate four months after he had passed. This

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was done as part of a larger fraud in efforts to change beneficiaries of Shirley's irrevocable trust's beneficiary class, committed through a series of Frauds on the Court that used Simon when he was dead, to appear living at the closing of Shirley's Estate. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court stated it had enough Prima Facie evidence of felony criminal misconduct and Fraud on the Court by the potential parties involved in advancing these frauds. TED and SPALLINA, that Your Honor stated they should be read their Miranda Rights, twice. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

Evidence and admissions of further felony misconduct have since been obtained regarding new acts recently uncovered and there are many new crimes being alleged after receiving new and damning evidence from the former disgraced fiduciaries and attorneys at law, TESCHER and SPALLINA, when they resigned and turned over their records and properties to the successor curator, Benjamin Brown, Esq. Brown then turned the information over finally to beneficiaries as part of their records and there appears to be a plethora of new crimes uncovered.

Further, the attorney, SPALLINA for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff Investigators<sup>10</sup>, which had the effect of benefitting TED BERNSTEIN's family primarily and directly in efforts to fraudulently and knowingly convert assets to TED's family. That TED advanced the fraudulent beneficiary scheme to change Shirley's beneficiaries of her irrevocable beneficiary class with TESCHER and SPALLINA. Statements made by SPALLINA to Palm Beach

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<sup>10</sup> Palm Beach County Sheriff Reports can be found at [www.ivivwiz.tv/Sheriff Reports.pdf](http://www.ivivwiz.tv/Sheriff%20Reports.pdf), fully incorporated by reference herein.

Sheriff Investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.

TED also claimed to Palm Beach Sheriff Investigators that he had not read all of Shirley's trust documents that he was acting as fiduciary under, see the attached PBSO report.

Ted Bernstein's involvement with his former counsel TESCHER and SPALLINA<sup>11</sup> in such activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.

That in addition to the instant pleading, the following already filed pleadings, in particular to the motions and petitions to remove TED, are hereby be incorporated in entirety with all Exhibits by reference herein, as additional facts and Prima Facie Evidence for the Court to consider in the removal of TED in all fiducial roles in the Estates and Trusts of Simon and Shirley Bernstein:

i. Docket #244 - Simon Estate (see Exhibit G)

MOT - MOTION  
**Filing Date:** 28-AUG-2014  
**Filing Party:** BERNSTEIN, ELIOT IVAN  
**Docket Text:** (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED

ii. Docket #215 - Simon Estate (see Exhibit H)

PET - PETITION  
**Filing Date:** 29-JUL-2014  
**Filing Party:** STANSBURY, WILLIAM E

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<sup>11</sup> The Court should note that TED's current counsel, Alan B. Rose, Esq. was also involved in knowingly advancing the fraudulent beneficiary scheme with TESCHER, SPALLINA and TED and continues to advance such fraudulent scheme through continued toxic pleadings with this Court in efforts to now have the Court change Shirley trust documents, four years Post Mortem, in efforts to have the Court, through Fraud on the Court, change the beneficiaries of Shirley's Irrevocable Beneficiary Class to fit the crimes already committed by TED and his siblings, other than Eliot, when they knowingly took distributions to knowingly improper parties to mainly benefit TED and his sister Pamela Simon who were both disinherited and considered predeceased by both Simon and Shirley, for good and just cause and perhaps this Court is starting to see in part why their parents did not want them involved in the Estates and Trusts in any way, shape or form, as stated, "for all purposes."

**Docket Text:** PETITION TO REMOVE TED BERNSTEIN AS SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST

iii. Docket #188 - Simon Estate (see Exhibit I)

188                      RESP - RESPONSE TO:

**Filing Date:**                      27-JUN-2014

**Filing Party:**                      STANSBURY, WILLIAM E

**Docket Text:**                      RESPONSE IN OPPOSITION TO THE APPOINTMENT OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B

iv. Docket #126 - Simon Estate (see Exhibit J)

126                      NOF - NOTICE OF FILING

**Filing Date:**                      22-MAY-2014

**Filing Party:**                      William Stansbury

**Docket Text:**                      JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O SIMON BERNSTEIN E-FILED

v. Docket # - Simon Estate (see Exhibit K)

97                      PET PETITION

**Filing Date:**                      07-APR-2014

**Filing Party:**                      Eliot Bernstein

**Docket Text:**                      PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN

WHEREFORE, Eliot Ivan Bernstein requests that THEODORE "TED" STUART BERNSTEIN, the alleged apparent successor trustee of the Shirley Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting, whereby TED and the former removed fiduciaries, TESCHER and SPALLINA, have failed to file or tender to beneficiaries any accounting in the Estate of Shirley and



the Shirley trusts for four years and the Simon trust for two years<sup>12</sup>.

Dated, Friday, September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as  
Legal Guardian on behalf of his minor three  
children.

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the  
foregoing has been furnished by email to all parties on the following Service List, Friday,  
September 12, 2014.

Eliot Bernstein, Pro Se, Individually and as  
Legal Guardian on behalf of his minor three  
children

X

**SERVICE LIST**

<sup>12</sup> The Court should note that NO COMPLETE TRUSTS OR WILLS HAVE EVER BEEN PROVIDED to beneficiaries with all of the Schedules and Addendums attached to show what the Corpus of each entity is and the only accounting tendered in these matters was for Simon's Estate. The accounting provided was upon the Court's Order for TESCHER and SPALLINA to file a Final Accounting upon their termination. That accounting has been challenged by ALL parties, including, the Curator Benjamin Brown, Esq., the new Personal Representative of the Simon Estate, Brian O'Connell, Esq. and Eliot, for gross violations of statutory accounting rules and regulations and more.

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<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:thebernstein@lifeinsuranceconcepts.com">thebernstein@lifeinsuranceconcepts.com</a> !!!</p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mehandler@mrachek-law.com">mehandler@mrachek-law.com</a> <a href="mailto:eklein@mrachek-law.com">eklein@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a> <a href="mailto:fitzgerald@mrachek-law.com">fitzgerald@mrachek-law.com</a> <a href="mailto:skonopka@mrachek-law.com">skonopka@mrachek-law.com</a> <a href="mailto:dthomas@mrachek-law.com">dthomas@mrachek-law.com</a> <a href="mailto:gwais@mrachek-law.com">gwais@mrachek-law.com</a> <a href="mailto:jbaker@mrachek-law.com">jbaker@mrachek-law.com</a> <a href="mailto:mehandler@mrachek-law.com">mehandler@mrachek-law.com</a> <a href="mailto:christian@mrachek-law.com">christian@mrachek-law.com</a> <a href="mailto:telarke@mrachek-law.com">telarke@mrachek-law.com</a> <a href="mailto:edavies@mrachek-law.com">edavies@mrachek-law.com</a> <a href="mailto:pallman@mrachek-law.com">pallman@mrachek-law.com</a> <a href="mailto:dkeely@mrachek-law.com">dkeely@mrachek-law.com</a> <a href="mailto:eklein@mrachek-law.com">eklein@mrachek-law.com</a> <a href="mailto:williamson@mrachek-law.com">williamson@mrachek-law.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> <a href="mailto:dchristian@tescherspallina.com">dchristian@tescherspallina.com</a></p>
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PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

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PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

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<p>RESPONDENT - ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:mattl89@aol.com">mattl89@aol.com</a></p>	<p>RESPONDENTS MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>RESPONDENT -- MINOR CHILD</p> <p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeninsuranceconcepts.com">lindsay@lifeninsuranceconcepts.com</a></p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>RESPONDENT MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:molly_simon1203@gmail.com">molly_simon1203@gmail.com</a></p>	

**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**

Friday, September 12, 2014

# EXHIBIT A

2012 ALLEGED AMENDED AND RESTATED TRUST OF SIMON L.  
BERNSTEIN

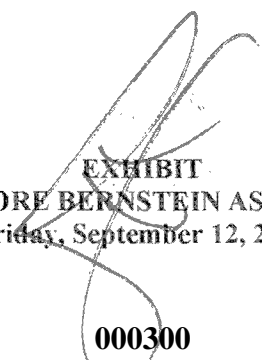


EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

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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](http://www.tescherspallina.com)

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

**EXHIBIT A**

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SIMON L. BERNSTEIN

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AMENDED AND RESTATED TRUST AGREEMENT

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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

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

## ARTICLE II. AFTER MY DEATH

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

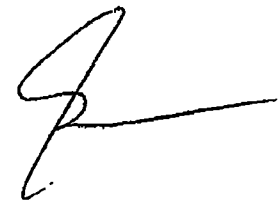
B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with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

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

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.



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

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

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

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

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

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

### ARTICLE III. GENERAL

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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

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

C. **Substance Abuse.**

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

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

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

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

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

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



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.

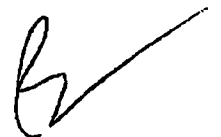
3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

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

#### ARTICLE IV. FIDUCIARIES

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

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



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;

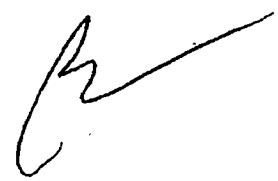
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or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

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LAW OFFICES

**TESCHER & SPALLINA, P.A.**

000321

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.

*[remainder of page intentionally left blank]*



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

SETTLOR and TRUSTEE:

*[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 21 day of July, 2012:

*[Handwritten signature of Robert L. Spallina]*  
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  
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 \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

# EXHIBIT A2

2008 ALLEGED TRUST OF SIMON BERNSTEIN

EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000326

**SIMON L. BERNSTEIN**  
**TRUST AGREEMENT**

*Prepared by:*

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

**TESCHER & SPALLINA, P.A.**

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SIMON L. BERNSTEIN

TRUST AGREEMENT

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This Trust Agreement is dated this 20<sup>th</sup> day of MAY, 2008, 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, 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). 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 her 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

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(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. 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*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust



or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

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.

**C. 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.

**D. 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 me 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.

**E. 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.

**F. 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.

**G. 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.



**H. 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.

**I. 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.

**J. 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 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 SHIRLEY BERNSTEIN ("*SHIRLEY*").

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.

SIMON L. BERNSTEIN  
TRUST AGREEMENT

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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, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. 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. SHIRLEY 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. SHIRLEY 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).

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

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

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two



witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

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

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

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

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

G. Liability and Indemnification of Trustee.

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

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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

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

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

**J. Interested Trustee.** The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

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

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

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

#### 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 tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" 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.

*[remainder of page intentionally left blank]*





IN WITNESS WHEREOF, the parties hereto have executed this 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 20 day of May, 2008:

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

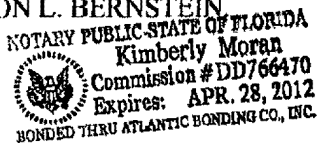
  
Print Name: TRACI KRATISH  
Address: 16068 GLENCREST AVE  
DEERHAY BEACH, FL 33446

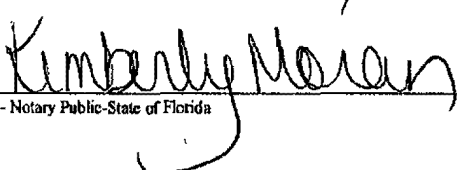
STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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



  
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known  or Produced Identification   
Type of Identification Produced \_\_\_\_\_

FAWPDATAdm\Demarcin, Shirley & Simon\2008 Estate Planning\Simon L. Bernstein Trust Agreement.wpd [05/15/24 19:08]

SIMON L. BERNSTEIN  
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

**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.

  
\_\_\_\_\_  
SIMON L. BERNSTEIN, Settlor and Trustee

**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](http://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 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 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.**

#### 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\drt\Bernstein, Shirley & Simon\2008 Estate Planning\Will of Simon L. Bernstein.wpd (08/15/41:29:519)

LAST WILL  
OF SIMON L. BERNSTEIN

TESCHER & SPALLINA, P.A.

**SIMON L. BERNSTEIN**  
**IRREVOCABLE TRUST AGREEMENT**

*Prepared by:*

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

**TESCHER & SPALLINA, P.A.**

**SIMON L. BERNSTEIN**

**IRREVOCABLE TRUST AGREEMENT**

THIS AGREEMENT, made this 20 day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

**SECTION 1: DISTRIBUTION.**

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

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D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

SECTION 2: MERGER WITH SIMILAR TRUSTS.

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

SECTION 4: SPENDTHRIFT PROVISION.

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

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**SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.**

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

**SECTION 6: TRUSTEE'S POWERS.**

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

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G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forborne under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

SECTION 7: INVESTMENT ADVISER.

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

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D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

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SECTION 10: PAYMENT OF INCOME.

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

SECTION 11: NON-ACCRUAL OF INCOME.

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

SECTION 13: TRUSTEE'S COMPENSATION.

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

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date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

**SECTION 15: SIMULTANEOUS DEATH.**

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

**SECTION 16: TRUST SITUS.**

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

**SECTION 17: DEFINITIONS.**

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

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D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.

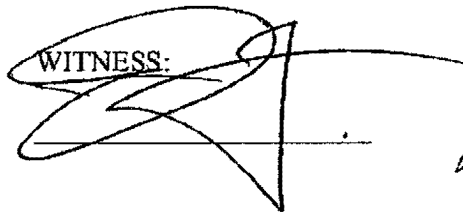
E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

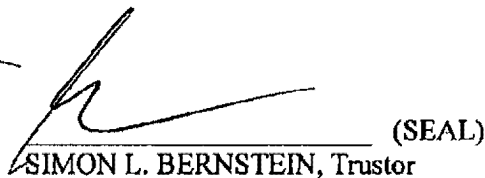
F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

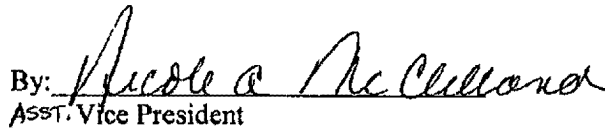
H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

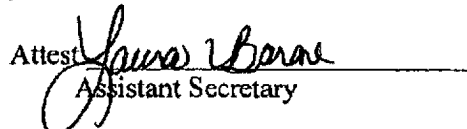
IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 25<sup>th</sup> day of May, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its <sup>Asst.</sup> Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the 22<sup>nd</sup> day of May, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument. (N.A.M.)

WITNESS: 

 (SEAL)  
SIMON L. BERNSTEIN, Trustor

WILMINGTON TRUST COMPANY, Trustee

By:   
ASST. Vice President

Attest:   
Assistant Secretary

TESCHER & SPALLINA, P.A.

STATE OF FLORIDA )  
 ) SS.  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA  
Kimberly Moran  
Commission #DD766470  
Expires: APR. 28, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

Kimberly Moran  
Notary Public

STATE OF DELAWARE )  
 ) SS.  
COUNTY OF NEW CASTLE )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of June, 2008, by Nicole A. McClelland <sup>Asst</sup> Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

Laura D. Barone  
Notary Public

LAURA D. BARONE  
Notary Public - State of Delaware  
My Comm. Expires April 3, 2012

“SCHEDULE A”

Consisting of One Page

of

SIMON L. BERNSTEIN

Irrevocable Trust Agreement

Dated May 20, 2008

Between

SIMON L. BERNSTEIN

and

WILMINGTON TRUST COMPANY

\* \* \*

CASH in the amount of One Dollar (\$1.00)

\* \* \*

TESCHER & <sup>11</sup>SPALLINA, P.A.

# EXHIBIT A3

2008 ALLEGED TRUST OF SHIRLEY BERNSTEIN



EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000376



**SHIRLEY BERNSTEIN**

**TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431  
(561) 998-7847  
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**TESCHER & SPALLINA, P.A.**

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SHIRLEY BERNSTEIN

TRUST AGREEMENT

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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

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(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.

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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

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

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.

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

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

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

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

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

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

~~8. Person Related from 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.

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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.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.

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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.

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ARTICLE V - ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

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

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

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

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

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

SB

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

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

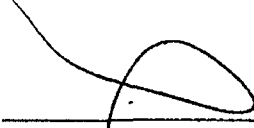
**G. Residence as Homestead.** Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal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

*[remainder of page intentionally left blank]*

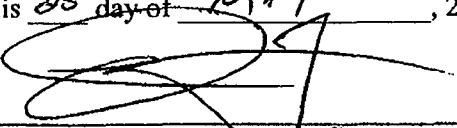
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IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

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**  
**DELRON BEACH, FL 33446**

STATE OF FLORIDA  
 \_\_\_\_\_  
 COUNTY OF PALM BEACH

SS.

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 \_\_\_\_\_

F:\WPDATA\rt\Bernstein, Shirley & Simon\2008 Estate Planning\Shirley Bernstein Trust Agreement wpd [05 15 11 19 08]

SHIRLEY BERNSTEIN  
 TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

**ATTACHMENT**

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

One Dollar (\$1.00) Cash

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

  
\_\_\_\_\_  
SHIRLEY BERNSTEIN, Settlor and Trustee

**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

Document ADMITTED FRAUDULENTLY  
ALTERED BY ROBERT SPALLINA, ESQ.  
TO PALM BEACH COUNTY SHERIFF!!!!

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

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

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

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

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

“Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN (“*TED*”) and PAMELA B. SIMON (“*PAM*”), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder.”

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

=====

*[remainder of page intentionally left blank]*

FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT

**TESCHER & SPALLINA, P.A.**

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This whole paragraph was fraudulently inserted by Attorney at Law and Counsel to Ted as Successor Trustee, Robert Spallina, Esq. who admitted to crime to Palm Beach County Sheriff Investigators. This was in efforts to reinsert Ted's children into the Trust as Ted and his lineal descendants are considered predeceased.

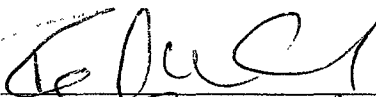
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

**SETTLOR and TRUSTEE:**

  
\_\_\_\_\_  
SHIRLEY BERNSTEIN

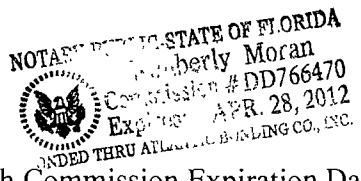
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

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

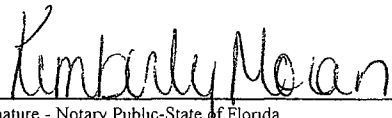
  
\_\_\_\_\_  
Print Name: Rachel Walker  
Address: 100 Plaza Real South  
Apt 308  
Boca Raton, FL 33432

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 \_\_\_\_\_

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

Alleged First Amendment to Shirley Trust that Spallina states he altered and created a Second First Amendment above to change the beneficiaries of the Shirley Trust to include his client Ted's children through illegally fraudulently altering the document. This documents authenticity is challenged.

F

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**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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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

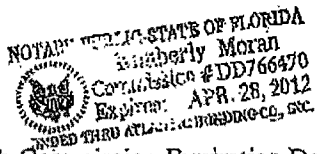
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

  
\_\_\_\_\_  
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 \_\_\_\_\_

NEWPDATANotaryBernstein, Shirley & Simon2008 Estate PlanningFirst Amendment to Shirley Bernstein Trust Agreement wpd (11/09/26 18:08)

# EXHIBIT A4

ELIOT BERNSTEIN FAMILY TRUST DATED 5/20/2008



EXHIBIT

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

000410

**ELIOT BERNSTEIN**

**FAMILY TRUST**

*Prepared by:*

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

**TESCHER & SPALLINA, P.A.**

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**ELIOT BERNSTEIN**

**FAMILY TRUST**

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THIS IRREVOCABLE TRUST AGREEMENT is made and entered into this 20 day of May, 2008, by and between SIMON L. BERNSTEIN, a resident of Palm Beach County, Florida, as grantor, hereinafter referred to in the first person, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN as co-trustees (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), and ROBERT L. SPALLINA as the independent trustee (referred to as the "*Independent Trustee*," which term more particularly refers to all individuals and entities serving as independent 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 independent trustee). I have delivered to the Trustee certain property as set forth in the Attachment annexed hereto, receipt of which is hereby acknowledged by the Trustee. Such property, and any additions to such property, shall be held in trust as provided in this Agreement.

**ARTICLE I. TRUST ADMINISTRATION**

**A. Additions, Substitutions and Trust Irrevocable.** I or any other person may cause additional property to be added hereunder at any time during life or at death by will, insurance or death benefit beneficiary designation or otherwise. I shall have no right or power, either alone or in conjunction with any other person, to alter, amend, revoke or terminate any of the terms of this Agreement in any manner whatever. Unless and until surrendered by me in a writing delivered to the Trustee, I retain the power, to be exercised in an individual and nonfiduciary capacity (*i.e.*, without any fiduciary duty to any beneficiary with respect to its exercise or nonexercise) and without requiring the consent or approval of any person, to from time to time reacquire trust principal by substituting other property of equivalent value for said principal. Notwithstanding the foregoing, said right of substitution shall not apply to any insurance policies on my life owned by this Trust that would cause me to have any incidents of ownership as that term is defined under Section 2042 of the Code and the Regulations thereunder. I shall have the right at any time or times by an instrument, in writing, delivered to the Trustee to relinquish the right of substitution provided for herein.

**B. Rights of Withdrawal.** In any calendar year during my life in which property is contributed to the Trust by gift, each Withdrawal Beneficiary with respect to such contribution, acting personally or through his or her legal or natural guardian or attorney-in-fact, is hereby granted the absolute right, with respect to each such contribution, by written instrument or instruments delivered to the Trustee prior to the termination of such right, to withdraw from the principal of the Trust, from time

ELIOT BERNSTEIN  
FAMILY TRUST

TESCHER & SPALLINA, P.A.



to time, an amount having an aggregate value (as of the date or dates of withdrawal) equal to such Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution. Any such right to withdraw shall terminate at the earliest time and then to the extent that any such termination will not result in a taxable gift made by the individual holding the right, provided, no part of any right to withdraw shall terminate less than 60 days after the contribution to the Trust to which such right relates.

1. For purposes of this Subparagraph I.B., a Withdrawal Beneficiary with respect to a contribution to the Trust shall mean each person designated by the contributor to the Trustee in writing contemporaneously with such contribution, provided, in the event the contributor fails to make any such designation with respect to a contribution, my then living lineal descendants and their spouses shall be the Withdrawal Beneficiary with respect to such contribution.

2. For purposes of this Subparagraph I.B., each Withdrawal Beneficiary's Withdrawal Amount with respect to a contribution shall be such amount designated by the contributor to the Trustee in writing contemporaneously with the contributor's designation of such person as a Withdrawal Beneficiary, provided, if the contributor of such contribution fails to designate a Withdrawal Amount with respect to any Withdrawal Beneficiary, then each Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution shall be an amount equal to a fraction (defined below) multiplied by the lesser of (i) the value of such contribution (at the time of such contribution), or (ii) the sum of the amounts of all federal gift tax exclusions then available to the contributor with respect to all Withdrawal Beneficiaries with respect to such contribution. The numerator of said fraction shall be the amount of any federal gift tax exclusion available to such contributor with respect to such Withdrawal Beneficiary (at the time of such contribution) and the denominator shall be the sum of the amounts of all federal gift tax exclusions then available to such contributor with respect to all such Withdrawal Beneficiaries. One-half of a contribution made by a married person shall be treated as a second separate contribution made by his or her spouse, provided, if such married person's spouse is then one of such Withdrawal Beneficiaries, only one-half of the excess of such contribution (at the time of such contribution) over the amount of the federal gift tax exclusion then available to such contributor with respect to his or her spouse shall be so treated.

3. Regardless of anything in this Subparagraph I.B. to the contrary, each contributor of a contribution to this Trust shall have the right with respect to such contribution by a written instrument delivered to the Trustee at the time of such contribution (i) to exclude any person who would otherwise have a right of withdrawal from exercising such power; (ii) to increase or decrease the amount subject to any right of withdrawal except that the amount subject to all withdrawal rights shall not exceed the amount of the contribution; and/or (iii) to change the period during which any right of withdrawal may be exercised.

4. The Trustee shall inform any Withdrawal Beneficiary of the existence of such right of withdrawal within ten days after it comes into existence but not later than the last day of the calendar year in which it comes into existence. Any such Withdrawal Beneficiary or his or her guardian may, after receiving such notice at least once, waive further notices by an instrument in writing delivered to the Trustee.

ELIOT BERNSTEIN  
FAMILY TRUST

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TESCHER & SPALLINA, P.A.

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C. **Trusts for ELIOT BERNSTEIN and my Lineal Descendants.** The Trust shall be administered as follows for its beneficiaries:

1. **Initial Beneficiary.** My son, ELIOT BERNSTEIN, shall be the first principal beneficiary of the Trust.

2. **Net Income and Principal Distributions.**

a. The Trustee shall pay to or apply for the benefit of a principal beneficiary and the lineal descendants of a principal beneficiary dependent on such principal beneficiary for support; so much of the net income and then principal of his or her separate Trust as the Independent Trustee determines in its sole, absolute and unreviewable discretion, provided, however, that while a principal beneficiary is serving as Trustee hereunder, he or she may make distributions to or for the benefit of himself or herself for such beneficiary's Needs without any authorization from the Independent Trustee. Having in mind the extent to which funds will be available for expenditure for the benefit of such beneficiaries, the Independent Trustee is authorized to expend such amounts as it, in its sole, absolute and unreviewable discretion, shall determine to maintain the then current lifestyle of such beneficiaries, including, but not limited to, complete authority to provide for their personal care and comfort in any manner whatsoever. Net income that is not distributed shall be added to principal on an annual basis.

b. The Independent Trustee is specifically authorized in its sole, absolute and unreviewable discretion to acquire, hold and maintain one or more residences (whether held as real property, condominium or cooperative apartment) for the use and benefit of the principal beneficiary and his or her cohabitating spouse and lineal descendants, and to sell or otherwise dispose of such residences when not desired for such use and benefit. The Independent Trustee is authorized to pay all carrying charges of such residences, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair, renovation, improvement and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of such beneficiaries.

c. In exercising the discretions conferred in this Subparagraph, the Independent Trustee should give due consideration to the advisability of using the principal beneficiary's own assets and resources in order to reduce the amount of the principal beneficiary's taxable estate, thereby minimizing the amount of the principal beneficiary's future taxes. Further, it is my intent that this Trust be used to enhance the principal beneficiaries' quality of life, including (without limitation) travel, purchase of a home, cultural appreciation and enjoyment (music, arts, etc.), and education. In addition, I would like this Trust to provide a source of funds in the event that a principal beneficiary, through accident or misfortune, does not have sufficient sources of income to provide for his or her own support. I expect my lineal descendants to support themselves independently and to be productive members of their communities and not to become dependent upon distributions from the Trusts to the extent that they lose their ambition and incentive. When a beneficiary is able to be gainfully employed

and is not actively engaged in raising his or her children, the Independent Trustee should give due consideration in exercising its discretion to not using Trust assets to replace the beneficiary's own efforts to work and accumulate financial security. However, it is not my intent to force a parent to work outside the home when he or she has determined that it is important to stay at home to raise a family. In addition, I do not intend that the Independent Trustee place undue emphasis on the amount a beneficiary earns if he or she is actively engaged in a worthwhile pursuit, including working as an unpaid volunteer for charitable purposes. In prioritizing distributions between the principal beneficiary and his or her lineal descendants, it is my intent that my first priority is the principal beneficiary. In addition to the foregoing guidance, I request, but do not require, that my lineal descendants take adequate precautions for the protection of our family's wealth and property from marital discord through the use of prenuptial agreements or other similar planning and devices. I also request, but do not require, that my lineal descendants pursue higher education, to the best of their abilities and individual circumstances. For some descendants this may mean the completion of a college education, the receipt of a masters or a doctorate, or a professional degree, and for others this may mean training in their chosen vocation. It is not my goal that the Independent Trustee reward professional students, nor punish those lineal descendants for whom life or individual circumstances indicate that the pursuit of higher education is not practical or advantageous, but only to encourage my lineal descendants to take full advantage of all educational opportunities open to them and not rush their entry into the workplace. I do not intend by these expressions of intent to bind the Independent Trustee or alter the absolute discretion it has been granted hereunder or create enforceable obligations to any beneficiary, but merely to provide general guidance to the Independent Trustee in the exercise of its discretions.

3. Death of a Principal Beneficiary. If a principal beneficiary dies with assets remaining in his or her separate Trust, upon his or her death he or she may appoint all or part of his or her Trust, in trust, to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such principal beneficiary and such principal beneficiary's creditors, estate, and creditors of such principal beneficiary's estate), provided that any such appointment to a surviving spouse of a principal beneficiary shall be limited to a life estate in all or a lesser portion of such principal beneficiary's separate Trust, and such spouse's separate trust shall be administered as provided in Subparagraph I.D. below. Any part of his or her Trust such principal beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons with such persons to become the principal beneficiary thereunder;

- a. for his or her lineal descendants then living, *per stirpes*; or
- b. 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, SHIRLEY BERNSTEIN.

Such separate Trusts shall be administered as provided for trusts under this Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.



**D. Administration of Separate Trust for Spouse.** The Independent Trustee shall pay to the spouse of a principal beneficiary, so much of the net income and principal of his or her separate trust as is proper for such spouse's Needs. Net income that is not distributed shall be added to principal on an annual basis. Upon the death of a spouse of a principal beneficiary, the remaining assets of his or her separate trust shall be divided among and held in separate Trusts for his or her lineal descendants then living, *per stirpes*, who are also lineal descendants of the predeceased principal beneficiary who established this Trust for his or her spouse pursuant to the power of appointment granted to said principal beneficiary under Subparagraph I.C. above. Each lineal descendant for whom a separate trust is established shall become the principal beneficiary of such separate Trusts and such separate trusts shall be administered as provided under Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.

**E. 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 principal beneficiary, the Independent Trustee in its discretion may terminate such Trust and pay it to said principal beneficiary.

**F. 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 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 Florida then in effect.

**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 II. GENERAL

**A. Disability.** 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 such a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt by such payee is a complete release to the Trustee.





**B. Substance Abuse.**

1. In General. If the Independent Trustee reasonably believes that a beneficiary of any trust (which for purposes of this Subparagraph II.B.1 includes the lineal descendants of a principal beneficiary who are eligible to receive distributions from that 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 Independent 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 distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights (if any), and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees and Independent Trustees will be suspended. In that event, the following provisions of this Subparagraph II.B will apply.

2. Testing. The Independent 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 Independent Trustee of the results of all such examinations. The Independent 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 Independent 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 Independent 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 Independent Trustee. If the beneficiary consents to the treatment, the Independent Trustee may, in its absolute and unfettered discretion, pay the costs of treatment including directly to the provider of those services.

4. Resumption of Distributions. The Independent 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 Independent 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. Exoneration. No Independent Trustee (nor any doctor retained by the



Independent Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Independent Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph II.B. The Independent Trustee (and any doctor retained by the Independent 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 II.B, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute amounts to a beneficiary.

6. Tax Savings Provision. Despite the provisions of this Subparagraph II.B, the Independent 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 Independent 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.

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

D. 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 birth by a 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, for all purposes of this Trust and the dispositions made hereunder, my children shall only include TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and my lineal descendants shall include only said named individuals and their respective lineal descendants.

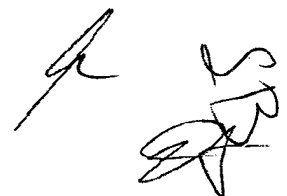
2. Code. "*Code*" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

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

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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. Needs 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. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs 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 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 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.

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

6. 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).

7. 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 and distribution recipients 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.

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

**E. 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.

**F. 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) to support such beneficiary; and no Trustee 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.

**G. 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.

**H. 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 the beneficiary in this Trust 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.

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

**J. 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.

Handwritten signature and initials in the bottom right corner of the page.

**K. Release of Medical Information.**

1. Disability of Beneficiary. Upon the written request of the Independent 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 including Independent 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 such 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, including myself and an Independent 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 paragraph II.D.3 hereof.

**ARTICLE III. FIDUCIARIES**

**A. Powers of the Trustee.** The Trustee has the powers now or hereafter provided by law and the following powers exercisable without court approval, provided, however, that the Trustee shall

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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 make purchases from my estate, any trust established by me during my lifetime, for full and adequate consideration and to make loans to my estate for adequate and reasonable interest and security, and the Trustee is expressly authorized to purchase stock and securities for adequate and full consideration owned by my estate, any trust established by me during my lifetime, whether such stock and securities are issued by closely held corporations or publicly traded corporations; 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



reduce any income distributions otherwise required hereunder for 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 Trustee 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 the 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 authorised 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, 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. The Trustee (or the Independent Trustee if I am serving as Trustee or if a Related or Subordinate Party is serving as Trustee) is authorized to purchase one or more life insurance policies on my life, the life of any beneficiary described herein, or any spouse or lineal ascendant or lineal descendant of myself or such beneficiaries. The following provisions shall apply with respect to any insurance policies constituting an asset of any trust herein created:

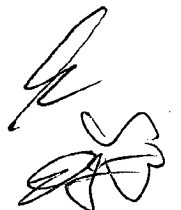
a. General Powers. The Trustee shall have the power to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as part of the principal of the trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no Trustee other than a sole Trustee may exercise any incidents of ownership with respect to policies of insurance insuring the Trustee's own life.

b. Payment of Premiums. The Trustee shall be under no obligation to pay the premiums which may become due and payable under the provisions of any policy of insurance subject to this trust, or to make certain that such premiums are paid by myself or any other person, or to notify any persons of the nonpayment of such premiums, and it shall be under no responsibility or liability of any kind in case such premiums are not paid, except that it shall apply any dividends received by it on such policy to the payment of premiums thereon. Upon notice at any time during the continuance of this trust that the premiums due upon such policies are in default, or that premiums to become due will not be paid, either by myself or by any other person, the Trustee, within its sole discretion, may apply any cash values attributable to such policy to the purchase of paid-up insurance or of extended term insurance, or may borrow upon such policy for the payment of premiums due thereon or may accept the cash values of such policy upon its forfeiture. If facts shall occur, under the terms of the policy which shall enable a waiver of the payment of future premiums, the Trustee, upon receipt of written notice of such facts, shall promptly notify the insurance company which has issued such policy, and shall take any and all steps necessary to make such waiver of premium provision effective.

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c. Collection of Proceeds. Upon the death of an insured the proceeds of the insurance policies insuring that life which are then subject to this trust shall be collected by the Trustee. The Trustee shall have full authority to take any action with regard to the collection that it deems best and to pay any expenses thereof out of the trust estate. However, it shall not be required to enter into or maintain any litigation to enforce payment of such policies until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it might, in its judgment, be subjected by any such action on its part. The Trustee shall have full authority to make any compromise or settlement with respect to any such policies and to give to all insurance companies the necessary and proper releases and acquittances in full discharge of all their liabilities under such policies. Only the net proceeds of insurance policies subject to this trust shall be collected by the Trustee.

d. Liability of Insurance Company. No insurance company, whose policies shall be subject to this trust and who shall make payment of the proceeds thereof to the Trustee, shall be required to inquire into or take notice of any of the terms or conditions of this trust or to see to the application or disposition of the proceeds of such policies. The receipt of the Trustee to any such insurance company shall be effectual to release and discharge it for any payment so made and shall be binding upon every beneficiary of the trusts herein created.

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. 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.

22. 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 successor Trustees, but may remove such successor Trustees 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.

23. Fiduciary Outside Domiciliary State. In the event no Trustee shall 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 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 given to the appointing Trustee with respect to the trust. 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 of any Trustee or agent acting under the provisions of this paragraph. No periodic court or statutory accounting shall be required of such appointed Trustee.

24. Additions. To receive and accept additions to the Trusts in cash or in kind from



donors, Personal Representatives, administrators, Trustees or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

25. 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 names or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

26. 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.

27. 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.

28. Tax Reimbursement. To pay, from time to time in the Independent Trustee's sole and absolute discretion, to me or the Personal Representatives of my estate, on a cumulative basis as may be necessary, such amounts as I or my Personal Representatives shall certify as is necessary to discharge my tax liability (whether federal, state or otherwise) in respect of income realized by the Trust and not distributed to me; provided, however, this authority shall only be exercised by the Independent Trustee hereunder, and I shall not make or participate in making any discretionary distribution pursuant to this Subparagraph. The Independent Trustee shall have no obligation to reimburse me for any income taxes imposed on me by law and paid by me on Trust income or gains.

If I am serving as Trustee hereunder or if a Related or Subordinate Party is serving as Trustee hereunder, any powers and discretions provided under this Subparagraph III.A. to the Trustee that would result in gross estate inclusion of assets of this Trust under Code §§ 2036, 2038, or 2042, or successor provisions thereto, shall not be exercisable by me or such related or subordinate Trustee, and shall be exercisable only by the other Trustees who are not related or subordinate to me, or if none, by the Independent Trustee.

**B. Resignation or Removal.** The Trustee may resign with or without cause, by giving written notice, specifying the effective date of such resignation to his or her successor Trustee and to the current income beneficiaries, at the time of giving notice. I (or my spouse if she is serving as sole Trustee) reserve the right to remove a Trustee or co-Trustee from office, with or without cause, by giving written notice, specifying the effective date of such resignation to the removed Trustee, to his or her successor Trustee, and to the current income beneficiaries. Upon the resignation or removal 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. For purposes of this Subparagraph, the Trustee shall include the Independent Trustee.



**C. Appointment of Successor Trustee.**

1. Appointment. Upon a Trustee's resignation (including the Independent Trustee), or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee (including the Independent Trustee), I (or my spouse if she is serving as sole Trustee) may appoint any person or persons as successor Trustee, co-Trustee or Independent Trustee, and in the case of the Independent Trustee it shall not be a Related or Subordinate Party, nor a person related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto. 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. There shall always be a Trustee and an Independent Trustee serving hereunder, provided that the same person or entity may serve in both capacities.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph III.C, subsequent to the death of the survivor of my spouse and me, I specifically appoint the following person or persons as Trustee of the following Trusts:

a. Trustee of Separate Trusts for My Lineal Descendants. With regard to a separate trust held for a lineal descendant of mine hereunder under which such lineal descendant is the principal beneficiary, each such lineal descendant of mine shall serve as co-Trustee with the then serving Trustee upon attaining age thirty (30) years, and each such lineal descendant shall serve as sole Trustee upon attaining age thirty-five (35) years, provided, however, that there shall always be an Independent Trustee serving of such separate trust. While serving as sole Trustee, a lineal descendant of mine may designate an co-Trustee to serve with such lineal descendant and each such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

b. Trustee of Separate Trust for a Spouse of a Lineal Descendant of Mine. A corporate fiduciary shall serve as Trustee and Independent Trustee of any separate trust held for the benefit of a spouse of a lineal descendant of mine. Such corporate fiduciary shall be an entity with trust powers under state law and no less than One Billion (\$1,000,000,000.00) Dollars under trust management (itself and its affiliates).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee (including the Independent 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 Independent Trustee, as the case may be) or the last person or entity designated to serve as Trustee of the applicable trust (or Independent Trustee, as the case may be) may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee or Independent Trustee (who may be one of the persons making the appointment if over the age of thirty years):

- a. The remaining Trustees, if any; otherwise,
- b. The principal beneficiary or the spouse of a principal beneficiary for whom a separate trust is held.

The appointment shall 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.

4. Power to Remove Trustee. Subsequent to the death of the survivor of my spouse and me, the age 35 or older principal beneficiary of a Trust, or the spouse of a principal beneficiary for whom a separate trust is held, shall have the power to unanimously remove a Trustee, co-Trustee or Independent Trustee of such Trust at any time with or without cause other than a successor Trustee or Independent Trustee appointed by me or my spouse at death under our last Wills, with the successor Trustee or Independent 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. 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.

**F. 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 the preceding paragraph, 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.

G. 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.

H. 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.

I. 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.

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

**K. 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.

**L. Multiple Trustees.** Except as specifically provided herein as to the allocation of powers or discretion of the Independent Trustee, 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 IV. INDEPENDENT TRUSTEE**

**A. In General.** The Independent Trustee shall have only those duties, obligations, and powers hereunder expressly provided to it, and the Trustee shall not participate in any affirmative duties





provided to the Independent Trustee. Otherwise, the provisions hereunder applicable to the Trustee shall be applicable also to the Independent Trustee except where the context differentiates between a Trustee and an Independent Trustee, including without limitation provisions relating to liability and indemnification of trustees. In the event of any conflict between the powers granted hereunder to both the Trustee and the Independent Trustee, the powers of the Independent Trustee shall have priority over the Trustee. Thus, for example, if the Independent Trustee determines to invest in a Closely Held Interest, such investment is permissible notwithstanding that it reduces the assets available for other investments by the Trustee.

**B. Who May Serve.** Notwithstanding any other provisions of this Trust Agreement to the contrary, including without limitation powers in myself or others to appoint additional or successor Trustees or Independent Trustees, at no time shall a person or entity serve as an Independent Trustee hereunder if such person or entity is a Related or Subordinate Party or is related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto, nor shall I be eligible to serve.

**C. Limited Power of Amendment.**

1. Amendment Power. In the case of each separate Trust at any time in existence hereunder, such Trust's then Independent Trustee, other than any (i) who has ever made a gift transfer to such trust, or (ii) who is prohibited by the provisions of Subparagraph IV.C.2 below from participating in the amendment involved, from time to time may, notwithstanding any other provision of this instrument, amend or restate this instrument, including its dispositive, administrative and other provisions of all kinds, in order to permit the Trustees hereunder (including the Independent Trustee):

a. To address tax and/or other circumstantial changes that may affect such Trust and/or its beneficiaries,

b. To take advantage of changed trust drafting approaches to address potential trust problems, and/or

c. To remove from the governing trust instrument any provisions which have become "deadwood" (i.e., no longer operative in the ongoing administration of such trust due to changed circumstances)

with respect to (i) such Trust, and (ii) all trusts that are subsequently to come into existence under this instrument to hold part or all of the assets of such Trust, in whatever way or ways, such Independent Trustee, in the exercise of its sole discretion, may deem appropriate in the best interests, as interpreted by such Independent Trustee alone, of the principal beneficiary of such Trust(s) and of each such principal beneficiary's family as a whole. Such Independent Trustee shall be guided by what, in the sole judgment of such Independent Trustee alone, would apparently be my original intent hereunder in the light of the changed circumstances. This power of amendment shall include, by way of example and not limitation, the power to:



d. Grant, reduce or eliminate general (as defined in Code Section 2041) and special powers of appointment with respect to part or all of any trust property (such powers may be made subject to any conditions or consents and limited to such objects as may be described in the grant or reduction of each power);

e. Add mandatory distribution or set aside provisions for one or more beneficiaries or permissible distributees;

f. Divide a Trust into separate trusts or merge separate trusts together;

g. Provide for the creation of one or more separate subaccounts (equivalent to a separate trust) in any Trust hereunder with respect to which such subaccounts are more restrictive or other administrative or dispositive provisions are made applicable in order to permit some or all of the properties or interests that may at any time be held in or allocable to that Trust to be segregated and transferred to that subaccount to achieve some tax or other benefit that would otherwise not be available to such property or interest or to the principal beneficiary or one or more of the other current beneficiaries of that Trust (such as, by way of example and not limitation, to permit (i) such property, interest or beneficiary to qualify for some governmental or tax benefit, generation-skipping transfer tax exemption or Code Section 2032A election, or (ii) a disclaimer to be made; and

h. Restrict in any way, revocably or irrevocably, the future exercise of any power held by any beneficiaries, myself, and/or a Trustee (including Independent Trustee) hereunder.

2. Limitations on Amendment Power. Notwithstanding the foregoing, however, under no circumstances shall any such amendment:

a. Extend the period of any such trust's existence beyond the already applicable rule against perpetuities limitation period specified in Subparagraph I.G.;

b. Diminish in any way (that is not controlled by the beneficiary) any enforceable right any beneficiary may already have (under the then terms of this instrument) to receive the income of any trust, currently or at any time in the future (but, to the extent an amendment benefits or grants a power to a current beneficiary of any trust, it may diminish the rights of one or more beneficiaries to receive in the future the income of that trust or of any trust subsequently to come into existence to hold part or all of the assets of that trust);

c. Reduce in any way the restrictions and limitations on or liabilities of (i) myself hereunder, including without limitation Subparagraph I.A. or as a fiduciary as set forth in Subparagraph III.F., or (ii) this Article IV. This shall not be interpreted to limit the ability of the Independent Trustee to increase such restrictions, limitations and liabilities;

d. Result in any direct or indirect financial benefit to anyone who is not presently or in the future a lineal descendant of mine or the spouse of lineal descendant of mine while

married to a lineal descendant of mine;

e. Make any change that would have the effect of disqualifying any such trust insofar as such trust, prior to such amendment, otherwise qualified for and was in fact already taking advantage of, while such advantage otherwise will continue, (i) any exemption from a surviving spouse's elective right or from any creditor's right to levy on any beneficiary's interest in any such trust, or (ii) any substantial deduction, credit, exclusion or other tax benefit (such as any charitable deduction, any annual gift tax exclusion, Code Section 2032A election, a generation-skipping tax exemption, the opportunity to be a stockholder in an S corporation without adversely affecting the S election of such corporation, a significant grandfathered status under some changed law, and so on).

3. Method of Amendment. Any such amendment shall be by written instrument, executed by such amending Independent Trustee with all the formalities of a deed, setting forth the trust or trusts hereunder to which the amendment applies and the effective date of such amendment.

#### ARTICLE V. ADDITIONAL TAX 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.

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. 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. 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 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 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. Subchapter S Stock.** Regardless of anything herein to the contrary, in the event that 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[s] 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.

**D. Taxes.** The Trustee shall pay to the Personal Representative of my estate from the principal of the Trust, but not from the portion of any asset or the proceeds thereof which would not otherwise be includible in my gross estate for estate tax purposes, such as the proceeds of insurance policies that are not includible in my estate, such amounts as the Personal Representative certifies, in writing, are required for the payment of estate, inheritance, succession and transfer taxes, including any interest or penalty thereon, which are payable by said Personal Representative by reason of my death and are attributable to assets held in this Trust (*i.e.*, to the extent that such taxes are increased by the taxability of such Trust assets). The Trustee may rely upon the correctness of such certifications and is exonerated from all liability for making payments in reliance thereon. Notwithstanding any distribution requirement herein, subsequent to my death the Trustee is authorized to retain in trust any amounts designated to be distributed until the earlier of the issuance of an estate tax closing letter from the Internal Revenue Service in regard to my estate or the closing of the federal estate tax statute of limitations for estate taxes arising by reason of my death.

**E. Taxpayer Identification Number.** By executing this Trust Agreement, the Trustee authorizes Tescher & Spallina, P.A. to apply for a taxpayer identification number from the Internal Revenue Service for the Trust.

ELIOT BERNSTEIN  
FAMILY TRUST

-26-

TESCHER & SPALLINA, P.A.

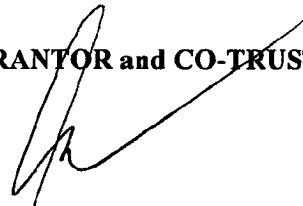


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TS001286

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

GRANTOR and CO-TRUSTEE:



SIMON L. BERNSTEIN

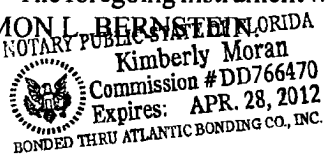
This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

DBale  
Print Name: Diana Banks  
Address: 23415 Boca Trace Dr  
Boen Raton Fl 33433

Traci K  
Print Name: TRACI KRATISH  
Address: 16068 GLENCREST AVE  
DEER BEACH, FL 33446

STATE OF FLORIDA  
SS.  
COUNTY OF PALM BEACH

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



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 \_\_\_\_\_

CO-TRUSTEE:

[Signature]  
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 1st day of May, 2008:

[Signature]  
Print Name: Diana Banks  
Address: 23415 Boca Trace Dr  
Boca Raton FL 33433

[Signature]  
Print Name: TRACI KRATISH  
Address: 16068 GLENCREST AVE  
DELRAY BEACH, FL 33446

STATE OF FLORIDA  
SS.  
COUNTY OF PALM BEACH

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


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

[Signature]  
Signature - Notary Public


Print, type or stamp name of Notary Public

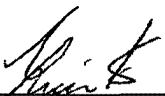
Personally Known ✓ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

INDEPENDENT TRUSTEE:

  
ROBERT L. SPALLINA

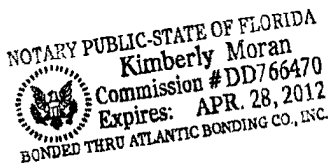
This instrument was signed by ROBERT L. SPALLINA in our presence, and at the request of and in the presence of ROBERT L. SPALLINA and each other, we subscribe our names as witnesses on this 12<sup>th</sup> day of May, 2008:

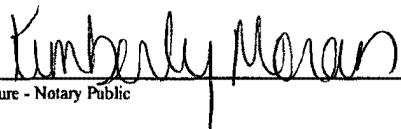
  
Print Name: Diana Banks  
Address: 23415 Boca Trace Dr  
Boca Raton, FL 33433

  
Print Name: TRAII KRATISH  
Address: 16068 GLENCREST AVE  
DEERBAY BEACH, FL 33446

STATE OF FLORIDA  
SS. •  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by ROBERT L. SPALLINA.



  
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 \_\_\_\_\_



TRUST

ATTACHMENT

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1	Cash	\$1.00

# EXHIBIT B

DONALD R. TESCHER, ESQ. LETTER DATED JANUARY 14, 2014



EXHIBIT

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, September 12, 2014

000442

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

January 14, 2014

**VIA U.S. MAIL AND EMAIL**

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> 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

**EXHIBIT** B

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.

# EXHIBIT C

ALLEGED FRAUDULENT INSURANCE CLAIM SUBMITTED BY  
ATTORNEY AT LAW ROBERT L. SPALLINA, ESQ. AND RELATED  
CORRESPONDENCES




EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000445

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

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

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

RLS/km

Enclosures

EXHIBIT C

000446

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
1855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

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

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

SUPPORT STAFF  
DIANE DUNN  
KIMBERLY MORAN  
SUANN TESCHER

November 1, 2012

**VIA FEDERAL EXPRESS**  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32251

Re: **Insured: Simon L. Bernstein**  
**Contract No.: 1009208**

Dear Sir or Madam:

Enclosed is the Claimant's Statement for the above referenced policy, together with an original death certificate for the insured, Simon Bernstein. We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which is the trust listed as beneficiary of the above referenced policy. We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post. We are unable to locate a copy of the original insurance policy.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures

km = Kimberly  
Moran

JCK001277

000447

**CLAIMANT STATEMENT**  
Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

**INSTRUCTIONS**

The following items are required for all claims:

- An original **certified death certificate** showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).**

If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special Instructions and additional requirements may apply.

- **If the beneficiary is the Estate of the Insured**, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- **If the beneficiary is a trust**, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- **If the beneficiary is a minor**, we will require evidence of court appointed guardianship of the Minor's Estate.
- **If the policy is collaterally assigned**, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- **If the primary beneficiary(ies) is (are) deceased**, we will require a death certificate for each deceased beneficiary.
- **If the policy has a split dollar agreement associated with it**, we will require a copy of said agreement.
- **If the policy is subject to a Viatical or a Life Settlement transaction**, and if the beneficiary is 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, please complete questions 19 and 30.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.



## CLAIMANT STATEMENT

### FRUD INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & 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 & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

## CLAIMANT STATEMENT

0008630.0002710

DECEDENT INFORMATION			
1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security No. <span style="background-color: black; color: black;">[REDACTED]</span>	
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) <b>1009208</b>		5. If policy is lost or not available, please explain: <b>unable to locate, policy is 30 years old</b>	
6. Deceased's Date of Death <b>09/13/12</b>		7. Cause of Death <b>natural causes</b>	
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. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
10. Street Address		11. City	12. State and Zip
14. Date of Birth		15. Social Security or Tax ID Number	16. Relationship to Deceased
		<span style="background-color: black; color: black;">[REDACTED]</span>	
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 2 <sup>nd</sup> 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
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 0012F Use Claimant Statement No 7 AX 12/23/2011 Page 3

JCK001271

## 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]* \_\_\_\_\_ Date *10/1/12*

Signature of Claimant and Title \_\_\_\_\_ Date \_\_\_\_\_

Signature of Second Claimant, if any, and Title \_\_\_\_\_ Date \_\_\_\_\_

CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

9038686, 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.

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

We the undersigned, on oath, depose and state 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.

Form with fields: Name of Trust (Simon Bernstein Irrevocable Insurance Trust), Date of Trust Agreement (06/01/1995), Trust Tax ID Number (65-0178916), Printed Name of Trustee(s) (Robert L. Spallino), Signature(s) (Robert L. Spallino).

Spallino signature

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

October 9, 2012

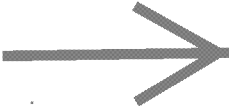
LASALLE NATIONAL TRUST N.A TRUSTEE  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09765315

Dear Trustee:

We are writing in response to your notification of the death of Simon Bernstein. Our sincere condolences go to the family for their loss.

In order to proceed with our review of the claim, we require the following items to be submitted:

- 
- The enclosed Claimants Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
  - A certified death certificate. This should indicate cause of death, manner of death, date of birth and Social Security Number.
  - Return the original policy -- If the original policy cannot be located, please note on the Claimant Statement (Page 3, Item 4).
  - Trust Documentation -- Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.
  - Letter of representation or written authorization signed by the beneficiary authorizing information to be released on the above referenced policy.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

JCK001262

We will promptly review and evaluate the claim upon receipt of the required documents. A valid claim will include interest due and payable from the date of death at a rate of 10% if we do not pay the claim within 31 days from the latest of 1) the date that we receive proof of death, 2) the date we receive sufficient information to determine our liability and the appropriate beneficiary(ies) entitled to the proceeds; or 3) the date that any legal impediments are resolved.

If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

Diane Henderson  
Claims Manager

Enclosure(s): Life Claimant Statement No RAA

JCK001263

AWD History for Work object key 2012-10-04-10.38.59.016241T01

JLIFE - DTHCLM - CLLEGAL - CLIENT - Updateable

- 1009208 - -

Social Security Num:

Policy Number: 1009208

Agent Number:

Insured's Last Name: BERNSTEIN

Printed on Tuesday, May 07,

Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-17  
Begin Time: 16:49:34  
User Id: SMCDOJL  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments: Received a call from attorney Spallina. He wants to talk to in-house counsel about not filing declaration because of expense. Sent Jackson legal message to call me or Spallina. JIM

Flags:  
DTM Job Name:  
DTM Return Code:  
DTM Task Name:  
DTM Next Task:  
End Date: 2013-01-17  
End Time: 16:49:34

Begin Date: 2013-01-17  
Begin Time: 16:47:32  
User Id: SMCDOJL  
Workstation Id:  
Business Area: JLIFE  
Type: DTHCLM  
Status: CLREVIEW  
Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Flags: 0000N0  
DTM Job Name:  
DTM Return Code:  
DTM Task Name:  
DTM Next Task:  
End Date: 2013-01-17  
End Time: 16:43:22

Begin Date: 2013-01-15  
Begin Time: 11:50:00  
User Id: JWALKK  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: WALKER, KELLIE  
DTM Description:  
Comments: faxed client letter to Robert Spallina and advised of court order required. faxed to 561-997-9308

Flags:  
DTM Job Name:  
DTM Return Code:  
DTM Task Name:  
DTM Next Task:  
End Date: 2013-01-15  
End Time: 11:50:00

JCK001225

000455

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

November 29, 2012

LASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
DOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09801925

Dear Trustee:

We are writing to remind you that we have not received the previously requested items necessary to proceed with our review of the pending claim on the above referenced policy. The required items are:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

V02091806

Sincerely,

D. Henderson  
Claims Services

Enclosure(s): IL Department of Insurance Notification  
Life Claimant Statement: No RAA

JCK001290



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

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

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

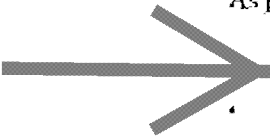
VIA FACSIMILE: 803-333-4936

Attn: Bree  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 62631

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/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures

From: (561) 997-7008  
Kimberly Moran  
TESCHER & SPALLINA  
4855 Technology Way  
Suite 720  
BOCA RATON, FL 33431

Origin ID: PHKA

FedEx  
Express



J12201208200003

Ship Date: 21DEC12  
ActWgt: 1.0 LB  
CAD: 1544078/NET3300

Delivery Address Post Code



SHIP TO: (000) 625-0503

BILL SENDER

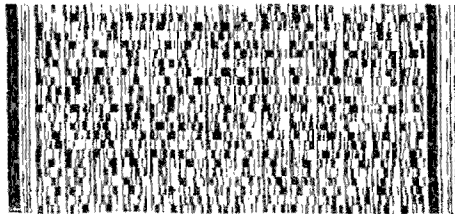
Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

JACKSONVILLE, IL 62651

Ref # Bernstein 11187.506  
Invoice #  
PC #  
Dept #

MON - 24 DEC AA  
STANDARD OVERNIGHT

TRK# 7943 7521 3807  
0281



SH SPIA

62651  
IL-US  
STL



515G1826VA844

JCK001306

## Eliot Bernstein

---

**Subject:**


FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

**From:** Robert Spallina [<mailto:rspallina@tescherspallina.com>]

**Sent:** Tuesday, October 23, 2012 2:34 PM

**To:** Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein

**Subject:** RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form. 

Thank you for your help.

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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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# EXHIBIT D

MEMORANDUM OF LAW IN OPPOSITION TO THE ESTATE'S  
MOTION TO INTERVENE (THE "OPPOSITION MEMORANDUM")



EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000460

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Tstee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )  
Third-Party Defendants. )

Case No. 13 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

PLAINTIFFS MEMORANDUM OF LAW  
IN OPPOSITION TO ESTATE OF SIMON  
BERNSTEIN'S MOTION TO  
INTERVENE

EXHIBIT D

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  
26 200 West Atlantic Avenue, Courtroom 8  
27 Delray Beach, Florida 33344

28 Friday, September 13, 2013  
29 1:30 p.m. - 2:15 p.m.

30 Stenographically Reported By:  
31 JESSICA THIBAUT

32

33 ♀

34 00002

35 1 APPEARANCES

36 2

37 3 On Behalf of the Petitioner:

38 4 ELIOT IVAN BERNSTEIN, PRO SE  
39 2753 NW 34th Street  
40 5 Boca Raton, Florida 33434

41 6

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

♀

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

♀

00027

1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

♀

00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of



ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually and  
as alleged Trustee of the Simon Bernstein  
Irrevocable Insurance Trust Dtd, 6/21/95

Cross-Defendant

and,

PAMELA B. SIMON, DAVID B. SIMON,  
both Professionally and Personally  
ADAM SIMON, both Professionally and  
Personally, THE SIMON LAW FIRM,  
TESCHER & SPALLINA, P.A.,  
DONALD TESCHER, both Professionally  
and Personally, ROBERT SPALLINA,  
both Professionally and Personally,  
LISA FRIEDSTEIN, JILL IANTONI  
S.B. LEXINGTON, INC. EMPLOYEE  
DEATH BENEFIT TRUST, S.T.P.  
ENTERPRISES, INC. S.B. LEXINGTON,  
INC., NATIONAL SERVICE  
ASSOCIATION (OF FLORIDA),  
NATIONAL SERVICE ASSOCIATION  
(OF ILLINOIS) AND JOHN AND JANE  
DOES

Third-Party Defendants.

---

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows:

### INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”<sup>1</sup>

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the “Estate” to further Stansbury’s own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury’s motion been granted in its entirety by the Florida court, Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14<sup>th</sup> Order to deny Stansbury’s second effort to intervene in this lawsuit.

---

<sup>1</sup> Order entered January 14, 2014 [Dkt. #110].

**FACTUAL BACKGROUND**

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.<sup>2</sup>

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing.<sup>3</sup>

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.<sup>4</sup>

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.<sup>5</sup>

---

<sup>2</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as **Exh. A**. See

<sup>3</sup> See Probate Court Order attached to the Estate's motion to intervene as **Exhibit B** (Dkt. # ).

<sup>4</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. **Exh. A**, pg. 13-14, 34-35, 39.

<sup>5</sup> See Transcript, **Exh. A** at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: “Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate.”

8. It has been over six months since the court entered its Order denying Stansbury’s motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate’s motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.<sup>6</sup> A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer’s Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate” or “the Estate” as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, “on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as ‘LaSalle National Trust, N.A. as Successor Trustee’, and the Contingent Beneficiary was designated as ‘Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.’ ” (Aff. of Don Sanders, **Exh. B** at ¶62).

---

<sup>6</sup> The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

### STANDARD OF REVIEW

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1<sup>st</sup>) 123025, 373 Ill. Dec. 620, 994 N.E.2<sup>nd</sup> 105 (1<sup>st</sup> Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

“Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value.” “Permissive intervention under Rule 24(b), permits “anyone to intervene who... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “*unduly delay or prejudice the adjudication of the original parties rights.*”<sup>7</sup> (emphasis added).

### ARGUMENT

**A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.**

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

---

<sup>7</sup> See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7<sup>th</sup> Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2<sup>nd</sup> Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

“The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the "Estate".

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate's motion or complaint to intervene necessitates revisiting the issue.

**B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff's claim that it is the named beneficiary of the Policy proceeds and negates the Estate's claims. (go through the Paragraphs and cite in the statement of unrefuted facts).**

As indicated in Plaintiffs' Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

**C. The Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.**

As stated above, the Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:



**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 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 in the manner provided in such designation which is incorporated herein by reference.<sup>8</sup>

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.<sup>9</sup>

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

---

<sup>8</sup> See (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

<sup>9</sup> See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

**D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.**

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.

**E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.**

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of \$1,000,000.00."<sup>10</sup>

This language again mirrors the language in Stansbury's prior motion to intervene.<sup>11</sup> And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

**F. Public policy concerns mitigate against the Estate's motion.**

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

---

<sup>10</sup> See Dkt. #110, Estate motion to intervene at ¶9.

<sup>11</sup> See Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

**CONCLUSION**

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

**By: /s/Adam M. Simon**  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
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Attorneys for Plaintiffs and Third-Party  
Defendants  
*Simon L. Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95; Ted  
Bernstein as Trustee, and individually,  
Pamela Simon, Lisa Friedstein and Jill  
Iantoni*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434  
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Stamos & Trucco LLP  
One East Wacker Drive  
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*Attorney for Benjamin Brown, as Curator and Administrator*  
*Ad Litem for the Estate of Simon Bernstein*

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*Attorney for Benjamin Brown, as Curator and Administrator*  
*Ad Litem for the Estate of Simon Bernstein*

on the 28th day of June, 2014.

/s/ Adam M. Simon  
Adam M. Simon (#6205304)  
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Attorney for Plaintiffs

# EXHIBIT E

SEPTEMBER 13, 2013 TRANSCRIPT OF PROCEEDINGS, PAGES 15 AND  
16 RE MIRANDA WARNING TO THEODORE AND ROBERT L.  
SPALLINA, ESQ.



EXHIBIT

PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000478

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 PROBATE/GUARDIANSHIP DIVISION 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 \_\_\_\_\_/  
13 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
14 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
15 (BOTH PERSONALLY & PROFESSIONALLY); DONALD  
16 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
17 THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
18 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
19 PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
20 DOE'S (1-5000),  
21 Respondents.

22 \_\_\_\_\_/  
23 TRANSCRIPT OF PROCEEDINGS  
24 BEFORE  
25 THE HONORABLE MARTIN H. COLIN

26 South County Courthouse  
27 200 West Atlantic Avenue, Courtroom 8  
28 Delray Beach, Florida 33344

29 Friday, September 13, 2013  
30 1:30 p.m. - 2:15 p.m.

31 Stenographically Reported By:  
32 JESSICA THIBAUT

33 25

34 ♀

35 00002

36 1 APPEARANCES

37 2

38 3 On Behalf of the Petitioner:

39 4 ELIOT IVAN BERNSTEIN, PRO SE  
40 2753 NW 34th Street  
41 5 Boca Raton, Florida 33434  
42 6

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

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1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

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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

# EXHIBIT F

2000 INSURANCE TRUST OF SIMON BERNSTEIN DONE BY  
PROSKAUER ROSE, LLP AND CORRESPONDENCES REGARDING  
THE SECRETING THE TRUST IN FAVOR OF A PRIOR LOST OR  
MISSING TRUST THAT NO EXECUTED COPIES EXIST FOR.



EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000482

SIMON BERNSTEIN

2000 INSURANCE TRUST

DATED: *August 15, 2000*

**PROSKAUER ROSE LLP**

Attorneys at Law  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431-7360

TRUST AGREEMENT dated this 15 day of August, 2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

Settlor's descendants, living from time to time, such sums out of the principal of the trust (even to the extent of the whole thereof), in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine; provided, however, that the Trustees shall notify the Settlor's wife and each of the Settlor's descendants of their intention to make any distribution pursuant to this subdivision, whereupon the Settlor's wife and each of said descendants shall have the right (prior to such distribution) to withdraw principal pursuant to subdivision (c) of this Article 2 within thirty days after receipt of such notice.

(c) In each calendar year (including the year in which the trust is first funded), with respect to any addition to principal,

(1) The Settlor's spouse is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to the fair market value of the property added to principal (valued as of the date the addition is made),

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to the Settlor's spouse (determined on the date the addition is made, after taking into

account all prior gifts to the Settlor's spouse by such individual and assuming that in the case of any such individual other than the Settlor, his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code,

and

(B) the amount from prior years (if any) that remains subject to his or her power of withdrawal.

(2) If the aggregate additions to the trust made in said year exceed the amount that the Settlor's spouse may withdraw pursuant to paragraph (1) of this subdivision (c), each of the Settlor's descendants, living from time to time, is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to,

(I) a) the fair market value of the property added to principal (valued as of the date the addition is made),

reduced by,

b) the amount subject to the power of withdrawal of the Settlor's spouse pursuant to paragraph (1) of this subdivision (c),

divided by,

(II) the number of the Settlor's descendants having a power of withdrawal under this paragraph (2) immediately after the addition is made,

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to such descendant (determined on the date the addition is made, after taking into account all prior gifts to said descendant by the individual making that addition and assuming that his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code),

and

(B) the amount from prior years (if any) that remains subject to said descendant's power of withdrawal.

(3) Said rights of withdrawal may be exercised only by written notice to the Trustees and any such withdrawals shall be made out of additions to principal made during the current year, and, to the extent that those additions are insufficient, out of the balance of the principal. The Trustees shall notify the Settlor's spouse and each of the Settlor's descendants, living from time to time, in writing of his or her power of withdrawal with respect to each addition within fifteen days after the date the addition is made.

(4) (A) Each beneficiary's power of withdrawal in any calendar year shall lapse at the end of that year to the extent of,

(i) the amount described in Section 2514(e) of the Code (which, if expressed as a percentage of the fair market value of trust principal, shall be that percentage determined as of the end of the year in question), combining, for this purpose, the fair market

values of the principal of the trust under this Agreement and of all other trusts as to which the beneficiary may have a power of withdrawal,

reduced (but not below zero) by,

- (ii) the amounts by which the beneficiary's powers of withdrawal with respect to each such trust shall have lapsed at the end of that year (assuming that, with respect to each beneficiary, his or her powers of withdrawal as to each such trust, including this trust, shall lapse in the order in which the trust granting such power was created).

(B) Each beneficiary's power of withdrawal shall lapse in its entirety, (i) upon the beneficiary's death, or (ii) upon the Settlor's death if any part of the principal of the trust is includable in the Settlor's gross estate for Federal estate tax purposes.

(5) Notwithstanding the foregoing, any individual making an addition to the principal shall have the right, by written instrument delivered to the Trustees when the addition is made, with respect to any power of withdrawal that otherwise would be created as a result of said addition, (A) to exclude any beneficiary from exercising his or her power of withdrawal that would otherwise be created, (B) to increase (but not exceeding the amount of his or her addition) or decrease the amount subject to any beneficiary's power of withdrawal, or (C) to change the period during which any beneficiary's powers of withdrawal may be exercised.



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3. Upon the death of the Settlor, the then principal of the trust shall be held by the Trustees in further separate trust to pay the income therefrom in quarterly or more frequent installments to the Settlor's wife during her life.

The Trustees are authorized and empowered, from time to time, to pay to the Settlor's wife such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees, in their absolute discretion, deem in her best interests.

Upon the death of the Settlor's wife, the then principal of the trust shall pass to such of one or more of the Settlor's descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as the Settlor's wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon the Settlor's death if the Settlor's wife predeceases the Settlor, said principal shall be divided into shares, per stirpes, for such of the Settlor's children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, provided, however, that any share so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty shall be disposed of as provided in Article 4 of this Agreement.

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4. All shares or portions above or below directed to be set aside for a grandchild or more remote descendant of the Settlor and directed to be disposed of as provided in this Article 4 shall be held by the Trustees in further separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as the Trustees deem necessary or advisable, accumulating any balance of the income and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

The Trustees are authorized and empowered, from time to time, to pay to the beneficiary such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees shall deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for the beneficiary's then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of the Settlor and who has

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descendants then living, or, in default thereof, for the Settlor's then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of the Settlor who is then the beneficiary of a trust under this Article 4 shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article 4 shall be disposed of as provided in this Article 4.

5. The Trustees shall have the power, in their absolute discretion, at any time or from time to time: to apply for and to purchase contracts of insurance on the life of the Settlor; to make premium payments out of the income or principal on any policy of life insurance held by them hereunder; to exercise any of the rights or options with respect to any policy of life insurance held by them hereunder, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy, applying dividends against premiums or purchasing paid up additions, and exercising options with respect to conversion, surrender or payment of death proceeds.

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6. If ALBERT W. GORTZ ceases to be qualified as a Trustee hereunder, the Settlor's daughter PAMELA BETH SIMON shall be entitled to qualify as successor Trustee in his place.

The Trustees from time to time qualified hereunder are authorized and empowered to designate one or more co-Trustees and, subject to the foregoing, a sole surviving Trustee at any time qualified hereunder is authorized and empowered to designate one or more successor Trustees to succeed himself or herself; provided, however, that the Settlor may not serve as a Trustee hereunder and that the Settlor's wife may not serve as a sole Trustee hereunder, and, provided further, that JEANNIE BERNSTEIN shall never be designated as or serve as a Trustee of any trust created hereunder.

An individual Trustee shall cease to be qualified as Trustee hereunder if he or she is under a legal disability or if by reason of illness or mental or physical disability, in the written opinion of two doctors then practicing medicine, he or she is unable to manage his or her affairs. Each Trustee acting hereunder hereby waives any doctor-patient privilege that may exist and authorizes said doctors to release all medical information that may be requested by the Trustees acting hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

No bond or other security shall be required for any reason whatsoever of any Trustee named herein or designated as herein provided.

7. The Trustees hereunder shall have the following discretionary powers in addition to those conferred by law:

(a) To make any payment or distribution (required or authorized under this Agreement) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard to the income tax basis of property allocated to any beneficiary.

(b) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article, so long as they, in their absolute discretion, deem it advisable.

(c) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable, without regard to any duty to diversify or, except with respect to any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(d) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but the Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to any trust hereunder.

(e) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(f) Severally to resign, by delivering to any successor or co-Trustee written notice of such resignation, to take effect at such date as said resigning Trustee may specify in said notice, without necessity for prior accounting or judicial approval.

(g) Severally to authorize, by instrument in writing, any person or corporation, including any co-Trustee, bank or trust company, to act in the place of said Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Trustee.

(h) To credit to principal or income or to apportion between them in such manner as they deem advisable any distributions from partnerships, any extraordinary, wasting or liquidating dividends, any dividends payable in the stock of the corporation paying the dividend or payable in the stock of another corporation and any so-called "capital gains dividends" declared by investment companies or investment trusts.

(i) To charge to principal or income or to apportion between them any ordinary or extraordinary expenses in such manner as they deem advisable.

(j) To determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money.

(k) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute and extending beyond the duration of the trusts herein), exchange, grant options to lease or to

buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder.

(l) To borrow such sums as they deem advisable for the proper administration of the trusts and to give security therefor.

(m) With respect to any property distributable absolutely to an infant remainderman: in their absolute discretion, to retain possession of and manage the same during his or her minority, with all the rights, powers and compensation of Trustees hereunder, and from time to time to apply so much of the income and principal thereof to the use of said infant as they deem advisable, accumulating any balance of the income and adding the same to principal at convenient intervals; upon said infant's attaining majority (or sooner death), the then principal and any accumulated income shall be distributed to said infant (or his or her estate); this power shall not affect the vesting of said property in said infant.

(n) In determining the amount of income or principal applicable to the use of an infant, to disregard the duty or ability of the parent or parents of said infant to support said infant; and to make payment of any income or principal, applicable to the use of or payable to an infant, (1) to the Guardian (qualified in any jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her Guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act and to select age twenty-one for termination of custodianship, or (4) to apply the same for his or her benefit; the receipt of such Guardian, parent or Custodian or the evidence of the application of such income or principal shall be a full discharge to the Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of the Settlor's grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(o) To remove any of the property held hereunder to or from any jurisdiction; to change the situs of administration of any trust hereunder from one jurisdiction to another and to elect the law of such other jurisdiction to govern the same.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held hereunder in exchange for securities thereof.

(q) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts

own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as the Trustees, in their absolute discretion, shall deem advisable.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make all necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person or by proxy.

(t) To the extent permitted by law, to register any of the property held hereunder in their names as Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(u) To lend such sums out of the income (other than of any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or State law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that under no circumstances may any loan be made to the Settlor.

(v) To exercise any settlement option with respect to the proceeds of any policy of life insurance payable to them as beneficiaries and, in the event of any controversy concerning the payment of such proceeds (or any other controversy with the insurer), to compromise any claim they may have, without the necessity of court approval; to receive such sums as may become payable to them as beneficiaries of any policy of life insurance, with authority to execute all necessary receipts and releases to the insurer, and, upon being advised of the death of the insured, to make efforts to collect such sums as may appear to be due them, without any obligation to institute suit or maintain any litigation to collect the proceeds of any such policy unless in possession of funds sufficient for that purpose or unless indemnified to their satisfaction for attorneys' fees, costs, disbursements and other expenses and liabilities to which they may be subjected by reason of such action; provided, however, that the Trustees may utilize any property held by them hereunder to pay expenses incurred in connection with enforcing the payment of any such sums due them. Any insurer issuing such policy shall, upon payment of the proceeds to the Trustees, be released



and discharged of any obligation to see that such proceeds are applied as provided in this Agreement and of any further liability to the Trustees or to any beneficiary hereof.

(w) To guarantee loans made to any beneficiary hereunder.

(x) To trade on margin (but only with the approval of the Settlor's spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, the Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

8. (a) All the powers granted in this Agreement may be exercised after the termination of the trusts in connection with the proper administration and distribution thereof.

(b) Except as otherwise provided in subdivision (o) of Article 7 of this Agreement, this Agreement shall be governed by and its validity, effect and interpretation determined by the laws of the State of Florida.

(c) This Agreement shall be irrevocable.

(d) In any judicial proceeding involving any trust hereunder and in any non-judicial settlement of the account of a Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(e) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether said life beneficiary or said person died first, then, for the purposes of this Agreement, said person shall be deemed to have died before said life beneficiary.

(f) Upon the commencement of the trusts herein and upon the death of an income beneficiary, or any other termination of the trusts herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which the Trustees are authorized in their discretion to accumulate shall be added to principal.

(g) Any income or principal payable to a beneficiary hereunder may, in the discretion of the Trustees, be applied by them for the benefit of said beneficiary.

(h) Notwithstanding any provision in this Agreement to the contrary, any power (including discretionary powers) granted to the Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause the Settlor's estate to lose all or part of the tax benefit afforded the Settlor's estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to any trust for the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, (1) subdivisions (h), (i), (j), (p), and (q) of the preceding Article of this Agreement and subdivision (f) of this Article shall not apply, and (2) the Settlor's spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(i) Any Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Trustee(s).

(j) With respect to any Trustee who is interested, in his or her individual capacity, in any firm or corporation in which the Settlor's estate or any trust hereunder may have an interest, said Trustee may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but, if one or more of said Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of said trust shall be made by said disinterested Trustee(s).

(k) A person from time to time qualified as Trustee hereunder shall not be disqualified from purchasing assets of the trust, provided (1) said purchaser shall not participate as Trustee in the decisions of the Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Trustee(s); and (2) in fixing said price, conditions and terms said other Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Trustee.

(l) The Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of said Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of said Trustees has no such interest, then as to all such matters the decision of the trusts hereunder shall be made by said disinterested Trustee(s).

(m) During the minority of any beneficiary, notice of his or her right to withdraw principal from a trust hereunder shall be given to and such right shall be exercisable on his or her behalf by his or her natural or legal guardian, his or her conservator, or his or her committee (in each case, other than the Settlor); provided, however, that no such notice shall be given to or exercisable by JEANNIE BERNSTEIN in any capacity as such beneficiary's natural or legal guardian, conservator, committee, parent or Custodian.

(n) The Settlor or any other person may from time to time add assets to the principal of the trusts hereunder, provided only that said assets are acceptable to the Trustees.

(o) All testamentary powers of appointment granted in this Agreement shall be exercisable only by specific reference to this Agreement and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the power holder or his or her estate or his or her creditors or the creditors of his or her estate.

(p) Notwithstanding the provisions of Article 4 of this Agreement, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article 4.

(q) Whenever property is directed to be held in a trust hereunder, the Trustees are authorized and empowered to establish two or more separate trusts for such property, with said trusts to have identical provisions, to the end that the

Federal generation-skipping transfer tax inclusion ratio, as defined in Section 2642(a) of the Code, of each trust will be either zero or one after allocation of the Settlor's available GST exemption pursuant to Section 2631 of the Code. The Trustees are further authorized and empowered to make different tax elections with respect to each such separate trust (including the allocation of the Settlor's available GST exemption), to invest such trusts in the same or different manners, to exercise any and all discretionary powers granted to them hereunder with respect to such separate trusts in the same or different manners, and to take any and all other actions consistent with the fact that such trusts are separate entities. The Settlor recommends (but does not direct) that no distribution of principal be made to a beneficiary from his or her trust(s) with a generation-skipping transfer tax inclusion ratio of zero until the trust(s) for his or her benefit with a generation-skipping transfer tax inclusion ratio of one shall first have been exhausted.

(r) Wherever in this Agreement property is directed to be added to an existing trust for a descendant of the Settlor hereunder, the Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(s) If, at any time, there shall be a trust created under the Settlor's Will, the Will of the Settlor's spouse or a trust created by the Settlor or the Settlor's spouse (or both of them) during the Settlor's lifetime, for the same beneficiaries and subject to the same provisions as a trust under this Agreement (or as a trust intended to be created under this Agreement), or if there shall be more than one trust under this Agreement for the same beneficiaries and subject to the same provisions, the Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code) to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the

provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(t) Wherever the context permits, the word "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(u) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being the Settlor's intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(v) In no event shall any addition to the trust be made less than thirty days before the end of any calendar year.

(w) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of this Agreement) in effect at the date of this Agreement, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(x) In determining whether or not to exercise any discretionary power to pay income or principal of any trust hereunder, the Trustees may, but shall not be required to, (1) with respect to the trust created under Article 3 of this Agreement, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) The Trustees must own each policy of insurance purchased by the Trustees or contributed to the trust. The Trustees shall have no liability or responsibility for any loss resulting from the failure of any insurance company and inability to pay its claim under any insurance policy purchased by the Trustees. The Trustees shall have the power to borrow any sum in accordance with the provisions of any such insurance contracts; however, the Trustees shall be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust regardless of the investment yield on such value within the policy as compared to the net investment yield which could be

obtained outside the policy. Except as expressly provided otherwise herein, the Trustees shall be under no duty or obligation to exercise any benefit, option or privilege granted by any insurance policy and the Trustees shall not be liable or accountable to anyone for the exercise or non-exercise of any such benefit, option or privilege, including the ability to borrow against the cash values to obtain a higher investment yield outside the policy.

(z) The Trustees shall be responsible for the proceeds of the policies only when, as and if collected by them, and the Trustees shall not be liable or accountable to anyone if, because of default in premium payments, failure of the insurance company or for any other reason whatsoever, the policies, or any of them, shall lapse or be otherwise uncollectible. The Trustees shall not be deemed, because of this trust, to have entered into any covenant to keep any insurance policies in force.

(aa) In determining the amount of any power to withdraw principal that may lapse under this Agreement, the Trustees may rely upon the written statement of the Trustees of any other trust to which this Agreement refers as to the fair market value of the principal thereof at the end of any year and shall have no duty to inquire as to the correctness of such statement.

(bb) Wherever reference is made in this Agreement to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

9. The term "descendants" as used in this Agreement shall specifically exclude the Settlor's daughter PAMELA BETH SIMON and her descendants. The Settlor has not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

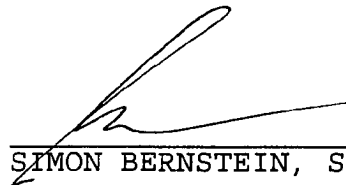
10. The Trustees hereby accept the trust herein and

agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.


Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor

  
GEORGE D. KARIJANIAN

 (L.S.)  
SIMON BERNSTEIN, Settlor


Print Name 183 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz  
Print Name  
2415 NW 32nd St.  
Address  
Boca Raton, FL

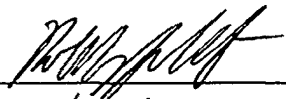
Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

 (L.S.)  
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486



Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

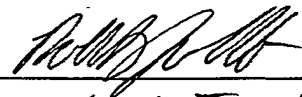
Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

*George D. Karibjanian*  
GEORGE D. KARIBJANIAN

*Albert W. Gortz* (L.S.)  
ALBERT W. GORTZ, Trustee

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486



Robert Jacobowitz

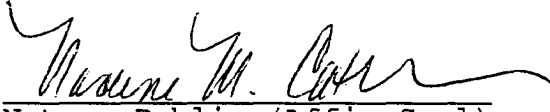
Print Name 2415 NW 32nd St.

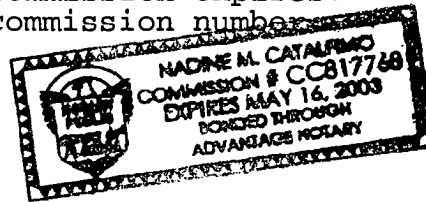
Address Boca Raton, FL



STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)

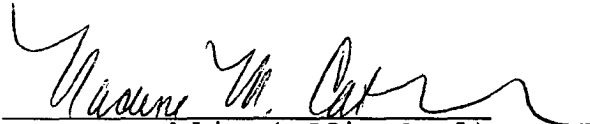
The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by SIMON BERNSTEIN, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_ as  
identification.

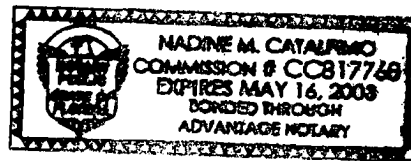
  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)


The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by SHIRLEY BERNSTEIN, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_  
as identification.

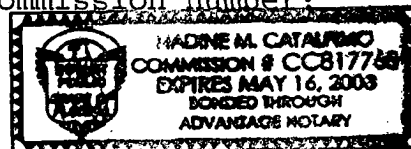
  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by ALBERT W. GORTZ, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_  
as identification.

  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



**SCHEDULE A**  
**TRUST AGREEMENT dated the 4th day**  
**of August, 2000, between**  
**SIMON BERNSTEIN, as Settlor,**  
**and SHIRLEY BERNSTEIN AND**  
**ALBERT W. GORTZ, as Trustees**

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,  
Policy No.: 1009208

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Tuesday, April 30, 2013 12:16 PM  
**To:** Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** Bernstein Estate

Do you communicate with your siblings other than Pam and Scooter? Below is an email to Robert from Jill and Lisa. In addition to being factually inaccurate, clearly indicates that they are not being kept in the loop. As a reminder, you were to obtain an appraisal from the jeweler as the one he gave you is inadequate. Also, you were to provide us with an accounting. How is that coming?

It has been over a month since we last heard any update on the Bernstein Estate, the insurance proceeds, the real estate, the law suit(s) and jewelry. It is our understanding that everything EXCEPT for the jewelry and insurance proceeds is under your jurisdiction as the Executor, so I am not clear on where that jewelry is or the appraisals I had asked for. I shared with my siblings, that once we have those appraisals I have several strong contacts that we will use to sell it, unless anyone of us wants to purchase it. We understand your Partner, Don has resigned from his duties regarding my Dad's estate. We would like to know why, so we fully understand what is going on. Please send us the sale information of the condo and where that money is going for our beneficiaries and the latest update with the insurance company and the proceeds.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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4/30/2013

000507

TS004429

## Robert Spallina

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**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** David (Scooter) Simon; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** Ted Bernstein [mailto:[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** **Bernstein**

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**

**Robert Spallina**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)



## Robert Spallina

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** asimon21@att.net; David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [<mailto:asimon21@att.net>]  
**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Trustee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:43 AM  
**To:** Ted Bernstein  
**Cc:** Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Ted – I'm done with this matter. I have bent over backwards for YOU to try to keep things in order out of respect for your father and mother but your family has gotten to the point of completely dysfunctional and I do not need the aggravation in my life. Handle the insurance matter as you please (or as your in-laws please which seems to be the case). I cannot and will not help people that do not want to help themselves. Don is a much more patient man than I so he may continue to assist you but I will not. Sorry.

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

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**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.  
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**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

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**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:36 AM  
**To:** 'Adam Simon'; David (Scooter) Simon  
**Cc:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Problem is that you NEVER did speak with us before you did what you did...shame on you guys!

---

**From:** Adam Simon [mailto:asimon21@att.net]  
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**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

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Adam Simon

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

May 10, 2013

*Personal & Confidential*

FEDERAL EXPRESS

Adam Simon, Esq.  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

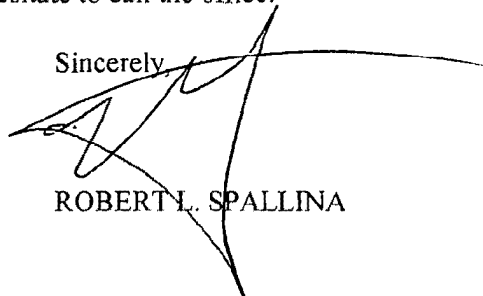
**Re: Simon Bernstein Estate**

Dear Adam:

Enclosed for your records is a copy of the Heritage Union Life Insurance file for the above referenced Estate.

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

Sincerely,



ROBERT L. SPALLINA

RLS/ac  
Enclosure



## Shipment Receipt

**Address Information****Ship to:**

Adam Simon, Esq.  
The Simon Law Firm  
303 E. Wacker Drive  
Suite 210  
CHICAGO, IL  
60601  
US  
312-819-0730

**Ship from:**

Lauren Galvani  
4855 Technology Way  
Suite 720  
Boca Raton, FL  
33431  
US  
5619977008

**Shipment Information:**

Tracking no.: 799732615270  
Ship date: 05/10/2013  
Estimated shipping charges: 33.50

**Package Information**

Service type: Standard Overnight  
Package type: FedEx Pak  
Number of packages: 1  
Total weight: 2 LBS  
Declared Value: 0.00 USD  
Special Services:  
Pickup/Drop-off: Drop off package at FedEx location

**Billing Information:**

Bill transportation to: MyAccount-343  
Your reference: e/o Bernstein - 11187.006  
P.O. no.:  
Invoice no.:  
Department no.:

**Thank you for shipping online with FedEx ShipManager at fedex.com.**

**Please Note**

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Friday, May 03, 2013 6:41 PM  
**To:** Welling, Scott  
**Cc:** Donald Tescher  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Scott there is no trust instrument to be found. That was what the Dec action was all about.

Sent from my iPhone

On May 3, 2013, at 5:58 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Hello,

Can you gentlemen pdf me a copy of the trust?

Thanks.

Scott

---

**From:** Donald Tescher [<mailto:dtescher@tescherspallina.com>]  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** [asimon21@att.net](mailto:asimon21@att.net); David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

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be imposed on the taxpayer, and (b) any statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

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Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

Bernstein - Life Ins.

**Donald Tescher**

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---

**From:** Welling, Scott [mailto:scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

---

**From:** adam simon [mailto:asimon21@att.net]

4/19/2013

000527

TS006547

**Sent:** Friday, April 19, 2013 5:25 PM

**To:** Welling, Scott

**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Tstee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

4/19/2013

000528

TS006548



Please give this matter your prompt attention.

---

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
P: (312) 819-0730  
F: (312) 819-0773  
E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013

000529

TS006549

**Donald Tescher**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498  
**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

---

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM

4/19/2013

000530

TS006550

**To:** Welling, Scott

**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company-  
Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013

000531

TS006551

# THE SIMON LAW FIRM

303 EAST WACKER DRIVE  
SUITE 210  
CHICAGO, IL 60601-5210  
PHONE: (312) 819-0730 • FAX: (312) 819-0773

April 19, 2013

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951

RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company, Case Number 2013L003498

Mr. Welling:

This email confirms that the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Very truly yours,  
THE SIMON LAW FIRM



Adam M. Simon

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** 'David (Scooter) Simon'; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
 TESCHER & SPALLINA, P.A.  
 4855 Technology Way, Suite 720  
 Boca Raton, FL 33431  
 Telephone: 561-997-7008  
 Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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---

**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]

4/19/2013

**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

Pursuant to the provisions of Internal Revenue Service Circular 230 that apply to written advice provided by Federal Tax practitioners, please be advised (a) that if any advice herein relating to a Federal tax issue would, but for this disclaimer, constitute a "reliance opinion" within the meaning of Circular 230, such advice is not intended or written to be used, and cannot be used by the affected taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer, and (b) any written statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

4/19/2013

000534

TS006554

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**

4/19/2013

000535

TS006555

**Donald Tescher**

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Tescher,

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

Pursuant to the provisions of Internal Revenue Service Circular 230 that apply to written advice provided by Federal Tax practitioners, please be advised (a) that if any advice herein relating to a Federal tax issue would, but for this disclaimer, constitute a "reliance opinion" within the meaning of Circular 230, such advice is not intended or written to be used, and cannot be used by the affected taxpayer, for the purpose of

4/19/2013

000536

TS006556



avoiding penalties that may be imposed on the taxpayer, and (b) any written statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

4/19/2013

000537

TS006557

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to  
[@jackson.com](mailto:)**

4/19/2013

000538

TS006558

**Donald Tescher**

**From:** Robert Spallina  
**Sent:** Thursday, April 18, 2013 9:19 PM  
**To:** Donald Tescher  
**Cc:** TBernstein@lifeinsuranceconcepts.com  
**Subject:** Fwd: Bernstein

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

30 days  
[ - helps ~~with~~ out next week ]

Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)

4/19/2013

**Donald Tescher**

---

**From:** Alexa Collevchio  
**Sent:** Thursday, April 18, 2013 3:09 PM  
**To:** Donald Tescher  
**Subject:** David Simon "Scooter" 312-819-0730

*dsimon@stpcorp.com*

Ted Mentioned to him that you called him and left him a voicemail but has no recollection of that happening

**Alexa Collevchio, Receptionist**  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561.997.7008  
Facsimile 561.997.7308

4/19/2013

000540

TS006560

## Robert Spallina

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 6:34 PM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

No, still not.

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Have you spoken to them now? We want the filing in Cook County withdrawn ASAP.

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 12:27 PM  
**To:** Robert Spallina  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Hmmmm - haven't spoken with him since being on phone in your office.

Ted  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** FW: Simon Bernstein Irrv Trust v Heritage Union

Ted – see below. Instructions from our clients??? Convenient how he didn't copy you.

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**To:** Adam Simon <[asimon21@att.net](mailto:asimon21@att.net)>  
**Cc:** Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)>; David (Scooter) Simon <[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)>; Donald Tescher <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed

Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank 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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at <http://www.tescherspallina.com/>

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**From:** Robert Spallina

**Sent:** Monday, April 08, 2013 1:59 PM

**To:** 'Adam Simon'

**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher

**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this

trust from the date of Mr. Bernstein s death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at <http://www.tescherspallina.com/>

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]

**Sent:** Monday, April 08, 2013 12:47 PM

**To:** 'Adam Simon'; Robert Spallina

**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.



Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

## Robert Spallina

---

**From:** Adam Simon [asimon21@att.net]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Adam Simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank 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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at <http://www.tescherspallina.com/>

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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 2:01 PM  
**To:** Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Appreciate it Bob. My assistant was actually assembling the file to send to outside counsel to file an interpleader.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** Adam Simon  
**Cc:** Welling, Scott; Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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Adam Simon

## Robert Spallina

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**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

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Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:58 PM  
**To:** Robert Spallina  
**Subject:** FW: Simon Bernstein Irrv Trust v Heritage Union  
**Attachments:** COMPLAINT AT LAW-heritage union.pdf

Hello,

Did you know anything about this?

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:19 PM  
**To:** Welling, Scott  
**Subject:** Fw: Simon Bernstein Irrv Trust v Heritage Union

I believe the complaint may have been missing from the prior email. Here it is. Thanks.

----- Forwarded Message -----

**From:** Adam Simon <asimon21@att.net>  
**To:** "scott.welling@jackson.com" <scott.welling@jackson.com>  
**Sent:** Monday, April 8, 2013 11:14 AM  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

- FREE Doc fees

- Ours - 1/2 X

- The last few days  
11 4

- SCOTT, WALTER @ JFCLEAN.COM



## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Thursday, March 14, 2013 7:17 AM  
**To:** Pam Simon  
**Cc:** David (Scooter) Simon; Ted Bernstein  
**Subject:** Re: Simon Bernstein

Waiting for carrier to clear up title and beneficiary designation. Did you get the email I sent everyone from the carrier last week? Scooter knows where we are in process.

Sent from my iPhone

On Mar 14, 2013, at 12:41 AM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Next step? By who? Or is it whom?

On Mar 13, 2013, at 7:42 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

Thanks.

Sent from my iPhone

On Mar 13, 2013, at 6:02 PM, "David \ (Scooter\ ) Simon"  
<[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

last of the docs we can dig up.

**Very Truly Yours,**  
**David B. Simon**  
**The Simon Law Firm**  
303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730  
Fax: (312) 819-0773  
E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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**From:** Cheryl Sychowski  
**Sent:** Wednesday, March 13, 2013 4:32 PM  
**To:** David (Scooter) Simon  
**Subject:** Simon Bernstein

<DOC (9).PDF>

## Robert Spallina

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,**

**David B. Simon**

**The Simon Law Firm**

303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730

Fax: (312) 819-0773

E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, March 08, 2013 1:44 PM  
**To:** Robert Spallina  
**Subject:** Bernstein; Policy No. 1009208

Hi Bob,

First, let me thank you for discussing this matter with me, and for your continued cooperation in helping ensure that the \$1 – million – plus proceeds of this policy are paid correctly.

As I noted during our conversation, Jackson recently acquired Reassure Life Insurance Company, and is now responsible for administering this policy. I have been working with former Reassure personnel to obtain the necessary documentation confirming the last-named owner and beneficiary of the policy. Unfortunately, due to the age of this policy, this is proving to be a difficult task.

My assistant, who is quite thorough, went through the policy file and prepared a detailed outline noting all policy activity, including owner changes and beneficiary changes. This outline revealed instances where letters were sent confirming ownership and/or beneficiary changes, for which no valid ownership change or beneficiary change directive could be found. I have sent the Reassure folks several emails pointing out these issues and I have asked them to provide all documentation substantiating the confirmation letters.

Clearly, Jackson wants to pay the proceeds of this policy to the correct beneficiary as swiftly as possible. If we need to seek the court's determination of who that beneficiary is, it is vitally important that we name in any pleading all entities which may have a claim to the proceeds. Hence the need to confirm, to the extent possible, all beneficiary designations which may (rightly or wrongly) have been recorded against the policy.

At this point, my hope is to resolve this matter by way of a Petition which (i) names all possible beneficiaries/claimants, and (ii) specifically asks for an order directing Jackson to pay a specific beneficiary. As I noted, the Petition should name Jackson as a party, so we will be bound by the Order. Assuming no hostile allegations are made against Jackson, I will not oppose the entry of the Order, but will simply await entry of the final Order, at which time payment can be made.

I will help you draft the Petition and Order.

Alternately, Jackson could simply interplead the funds and let the court decide who is entitled to the proceeds. I would like to avoid this if possible, as it would prove to be more expensive for both your clients and Jackson.

I pledge to work with you to resolve this matter as swiftly and economically as possible.

Please let me know if you need anything else.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

**Please note: Jackson's email address has changed to @jackson.com**

## Robert Spallina

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,**

**David B. Simon**

**The Simon Law Firm**

303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730

Fax: (312) 819-0773

E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:26 PM  
**To:** 'Ted Bernstein'; 'Pam Simon'; lisa.friedstein@gmail.com; Jill lantoni  
**Cc:** Donald Tescher  
**Subject:** Dec Action and Waivers  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf; Jill Waiver Consent and Joinder.pdf; Lisa Waiver Consent and Joinder.pdf; Pam Waiver Consent and Joinder.pdf

All – attached is the petition we intend to file along with the waivers that each of you will need to sign. We have not heard from the attorney at Heritage but as discussed we intend to file the attached on Monday regardless. We did check with his office and he is out until tomorrow so we will reach out to him again to see if he has any comments as a courtesy prior to filing. Please sign your waivers and send us the originals in the overnight mail so I can receive them on Friday. Ted does not need to sign a waiver as he is signing the petition.

If we need to have a call on any of this I am available tomorrow afternoon or on Friday most of the day.

Thanks,

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](mailto:rspallina@tescherspallina.com)

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## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:32 PM  
**To:** 'Scott.welling@jackson.com'  
**Subject:** Simon Bernstein Trust - Policy #1009208  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf

Scott – I understand you are out of the office until tomorrow. We sent this to you previously and in error addressed it to the wrong email address. We would like to file this on Monday so if you could take a few minutes to review it would be greatly appreciated. We have not attached a copy of the Order but it will obviously be in the form of the relief requested.

Thanks,

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  
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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

N:\WPDATA\estates\Bernstein, Simon\Life Insurance Trust\Declaratory Action to Establish a Lost Trust.wpd

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served via U.S.

Mail to the following individuals on this \_\_\_\_ day of \_\_\_\_\_, 2013:

TESCHER & SPALLINA, P.A.

By: \_\_\_\_\_

Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:

\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

The undersigned, a surviving child of SIMON BERNSTEIN and SHIRLEY BERNSTEIN, acknowledge receipt of the captioned pleading, waive formal service and join in and consent to the relief requested.

Dated this \_\_ day of March, 2013.

\_\_\_\_\_  
PAMELA BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:

\_\_\_\_\_ /

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Dated this \_\_ day of March, 2013.

\_\_\_\_\_  
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:  
\_\_\_\_\_ /

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AND APPOINT A SUCCESSOR TRUSTEE**

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Dated this \_\_ day of March, 2013.

\_\_\_\_\_  
JILL IANTONI

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:  
\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

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Dated this \_\_ day of March, 2013.

\_\_\_\_\_  
LISA S. FRIEDSTEIN

2/25/13 Bernstein      6/21, 1995      Trust execution date

Chapter 86 F.S.

~~Illinois resident?~~  
~~Trust executed there~~

736.0108 Principal place of admin.

736.0201  
736.0204(3) principal place of admin - FL.

INS - Heritage

- 1995 Trust reflected as bene  
in INS. Co docs

Both  
were  
FL  
residents

Sey owned policy      died 9/13/12  
Dinky was Trustee      died 12/8/10

Pam, Jill, Lisa - all Illinois residents  
Eliot, his minor children & Ted - FL residents

SS-4 6/21/95 - 65-6178916



# EXHIBIT G

**LDOCKET #244 – SIMON ESTATE**

**MOT - MOTION**

**FILING DATE: 28-AUG-2014**

**FILING PARTY: BERNSTEIN, ELIOT IVAN**

**DOCKET TEXT: (AMENDED) FOR REMOVAL OF PERSONAL REPRESENTATIVE AND TRUSTEE OF THE ESTATES AND TRUST OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE UNEXECUTED ORDER ATTACHED EFILED**

  
**EXHIBIT**  
**PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE**  
Friday, September 12, 2014

**000569**

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

IN RE: THE ESTATE OF  
SIMON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB  
HON. JUDGE MARTIN H. COLIN

\_\_\_\_\_/

ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED PERSONAL  
REPRESENTATIVE;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE PERSONALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS  
CHILDREN;  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN;  
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;  
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILDREN;  
PAMELA BETH SIMON, INDIVIDUALLY;  
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILDREN;  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT  
MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (THEODORE ADULT

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CHILD);  
ERIC BERNSTEIN (THEODORE ADULT CHILD);  
MICHAEL BERNSTEIN (THEODORE ADULT CHILD);  
MATTHEW LOGAN (THEODORE'S SPOUSE ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA ADULT CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR CHILD;  
CARLY FRIEDSTEIN - LISA MINOR CHILD;  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A. (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN – PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES – PROFESSIONALLY;  
THE ALLEGED “SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT” DATED JULY 25, 2012;  
JOHN AND JANE DOE’S (I-5000).

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**AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL CAPACITIES ON THE COURT'S OWN INITIATIVE – FLORIDA TITLE XLII 736.0706**

COMES NOW, Eliot Ivan Bernstein (“Eliot”) or (“Petitioner”), PRO SE, as Beneficiary and Interested Party both for himself personally and Guardian for his three minor children (who may also be Beneficiaries and Interested Parties of the Estates and Trusts of Simon Bernstein (“Simon”) and Shirley Bernstein (“Shirley”), and hereby files this

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**“AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES  
AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN IN ALL FIDUCIAL  
CAPACITIES ON THE COURT’S OWN INITIATIVE – FLORIDA TITLE XLII**

736.0706” and in support thereof states, on information and belief, as follows:

**736.0706 Removal of trustee.—**

- (1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, **or a trustee may be removed by the court on the court’s own initiative.**
- (2) **The court may remove a trustee if:**
  - (a) The trustee has committed a **serious breach of trust**;
  - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (c) Due to the **unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries**; or
  - (d) There has been a **substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, **the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.**
- (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court **may order such appropriate relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.**

History.—s. 7, ch. 2006-217.

- 1. That Eliot hereby incorporates by reference in entirety all pleadings before the Court to remove Theodore filed by Creditor Stansbury’s counsel and Eliot in this Motion for the Court to review in making its decision on its own initiative to remove Theodore.
- 2. That Eliot has filed this amendment and the Court in prior Orders recently issued did not Deny the prior motions and only denied other motions filed in the same pleading, therefore please accept this Amended pleading in so ruling on this matter.
- 3. That Eliot states that this Motion to Remove Theodore Bemstein as a fiduciary in the Estates of Simon and Shirley Bernstein must be ruled on by this Court before any other matters filed by the

alleged Trustee Theodore and his Attorneys, John Pankauski, Esq., Alan B. Rose and John Morrissey are heard for they may all soon be removed from the record if the fiduciary capacities of Theodore are wholly revoked for good and just cause presented already to this Court.

4. That because it serves Theodore and Alan best to avoid these UPCOMING AND NEXT TO BE HEARD hearings to remove Theodore and thereby Alan and they have already moved to try and prevent the Creditor's counsel Peter Feaman, Esq. from arguing for Theodore's removal, despite Feaman's knowledge of alleged criminal misconduct and more by Theodore that he is required under the Florida Bar rules to report to this Tribunal any misconduct of any Fiduciary that he is aware of, especially criminal and which he has already done in yet unheard motions. This Court in the August 19<sup>th</sup> 2014 hearing heard arguments on blocking Feaman and stated that more time was needed by the Court to determine if Feaman could argue the Motion to Remove Theodore.
5. This tactic was to attempt to force Eliot as a Pro Se litigant to argue the Motion to Remove where they would have more chance of somehow surviving and if the Court precludes Feaman's Motion to Remove Theodore, Eliot is asking this Court under Section 736.0706 to act first **on its own initiative** based on all the reasons contained herein, those stated in the Feaman and Eliot filings and from its own knowledge and evidence from the proceedings thus far to REMOVE Theodore instantly in the ESTATES AND TRUSTS OF SIMON AND SHIRLEY COMPLETELY and perhaps finally read him his Miranda Rights and stop the pain and suffering he is causing to everyone, including this Court.
6. That Feaman acting as an Officer of this Court and Counsel to the Creditor is obligated to report any MISCONDUCT of a fiduciary that he has knowledge of to the proper tribunal and authorities so the Court's recent decision to block him from arguing for the removal of Theodore and

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making his knowledge of these most serious breaches, including possible theft of estate assets under the fiduciaries control and more, seems to contradict and block his obligation to argue and bring forth his knowledge of these breaches and possible criminal acts as required by Attorney Conduct Codes, Law and morals.

7. That if the Court cannot remove Theodore based on these solid reasons Eliot will then move to remove Theodore and have his hearings heard but there appears and insurmountable amount of evidence to cause Theodore's instant removal without the Court burdening Eliot or any other party with further costly abusive hearings to accomplish this and act on the Court's own initiative to protect the beneficiaries and creditor from further harms.
8. That the delay in hearing to remove Theodore can no longer be allowed by this Court, as Peter Feaman, Esq. stated on the record in the August 19<sup>th</sup> 2014 hearing, he had to schedule the hearing that day to attempt to have Your Honor to force opposing counsel to schedule the LONG OVERDUE hearing to remove Theodore, due to as stated on the record, opposing counsels, Alan and others failing to cooperate in rescheduling the hearings to remove Theodore. This is an Emergency as it also involves assets of the Estate of Simon recently discovered missing and unaccounted for.
9. That as Your Honor will recall, Eliot too had similar problems with the cooperation of opposing counsel in attempting to schedule his hearings to remove Theodore that led to hearings in which Your Honor forced the hearings to be scheduled and opposing counsel to cooperate and we can continue to expect NO COOPERATION from opposing counsel as this again benefits Theodore and Alan and keeps them in Dominion and Control of the Estate of Shirley and Trusts of Shirley and Simon illegally, despite their knowing they are not legally qualified any longer to be

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Fiduciaries in any capacities in the Estates and Trusts of Shirley and Simon.

10. That these delays are not only leading to serious breaches that endanger the future of minors but now are alleged to be allowing assets of the Estate of Simon to be stolen off with and unaccounted for in violation of Court Order for re-inventorying.
11. That Theodore and his lawyers (all 6 of them thusfar) will not act in the interests of the beneficiaries that are pursuing him for Breaches and who have filed actions with State and Federal, civil and criminal authorities for his involvement in a series of frauds with some already proven and admitted to and a whole host more under ongoing investigations and proceedings.
12. That assets have been alleged stolen from the Estates and Trusts, including in the Illinois Federal Breach of Contract lawsuit that Theodore is the Plaintiff in, working against the interests of the Estates and Trusts beneficiaries to directly profit himself. That case is also filled with allegations against Theodore for Fraud on a Federal Court, Insurance Fraud, Fraud on the Beneficiaries and Creditor fraud, in a lawsuit he filed as an ALLEGED TRUSTEE of a trust he claims is missing and lost, that he has never seen a copy of and NO COPIES EXECUTED exist.
13. There is evidence that personal properties of Simon alleged to be worth millions of dollars are not where the Trustee and Alan stated to this Court, which led to the Court Order for re-inventorying at Simon's residence of the assets. That there are now statements made by Donald Tescher under sworn deposition and by Alan who was deposing him that directly contradict those statements made to the Court of where the assets are and the Court Order has been violated by Theodore to evade the inventory being done.
14. That Theodore was centrally involved with his Attorneys at Law, Tescher and Spallina, in the frauds that benefited him the most in Shirley and Simon's Trusts and Estates and also now is

under ongoing investigations for these illegal distributions he and others made knowingly and for other alleged criminal misconduct in both the Estates and Trusts of Simon and Shirley.

15. That Alan Rose emailed the Creditor's counsel Feaman to release his clients hold on some of the funds in the Simon Trust that he has interests in to make Welfare Payments to Eliot's family.

The Creditor's counsel Feaman simply asked Alan to provide an accounting of the Trust by the Alleged Trustee Theodore to agree to that but Alan refused to give him one and this Court should take Judicial Notice that **NO ACCOUNTING HAS BEEN PROVIDED TO ANY**

**BENEFICIARY or OTHER PARTY FOR FOUR YEARS NOW** in the Trusts of Shirley and Simon and the Estate of Shirley. The one accounting provided in the Estate of Simon by Court Order on removal of the former disgraced Fiduciaries has now been challenged by Eliot, the Creditor, the Curator Benjamin Brown and the new PR, Brian O'Connell in ENTIRETY as it wholly does not comport with generally accepted accounting principles as required under law.

16. That the Creditor's counsel, Peter Feaman, Esq. requested the accounting simply to prove that what Alan was claiming regarding the deficiency in the Trust to meet his claims were true, in efforts to try and help Eliot and his children. As the Court will note, this was a wonderful act of angelic kindness by Feaman and his client and close personal friend of Simon's, William Stansbury, where both are abhorred by the conduct of Theodore et al. and have so stated to the Court in their motions filed, claiming that Eliot is the only family member who has acted with unmoving integrity in the face of the hardships placed on him and his minor children and even recommended him in their pleadings to be the next successor Fiduciary. They were willing to reduce their interest in the trust by the Saint Andrews School amount due and this INTEGRITY is the reason Eliot believes that before all the Fraud and Forgery done in the dispositive

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documents, William Stansbury was who Simon elected as PR and Trustee.

17. That Simon's ALLEGED Trust has had NO ACCOUNTING PROVIDED TO ANY BENEFICIARY FOR TWO YEARS NOW and since Theodore has allegedly become the Successor Trustee, which is being challenged by Eliot in unheard Petitions and Motions before the Court, he has still failed to provide statutorily required and requested accountings to the beneficiaries.
18. That the ALLEGED 2012 Will and Trust of Simon that replaces Stansbury and attempts to change the beneficiaries (again to benefit Theodore primarily) have been found by the Governor Rick Scott's Office to be IMPROPERLY NOTARIZED, making them legally insufficient, along with several other problems making them legally void as pled in prior Petitions and Motions yet unheard since May of 2013. The improper notarizations of these documents was done by Theodore's personal assistant and are similar to problems with forged and fraudulently notarized documents already proven to have been posited with the Court by Theodore's former counsel Tescher & Spallina, P.A. now removed from these proceedings for admitting altering trust documents and whose notary was arrested for fraudulently notarizing documents and who admitted to forging SIX peoples names, including the Simon POST MORTEM.
19. That the Frauds on the Courts and the Estates and Trusts beneficiaries, interested parties and creditors run between both Simon and Shirley's Estates and Trusts in efforts to change beneficiaries Post Mortem and used by Theodore and his six or seven lawyers to seize Dominion and Control illegally and attempt to alter documents to benefit their client Theodore and his sister Pamela who are completely DISINHERITED from the Estates and Trusts. Theodore has no real interest in these matters and has created with his lawyers a mass of problems for the

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Beneficiaries, Interested Parties, Creditors, State and Federal Investigators and this Court.

20. The time is ripe to instantly remove Theodore and since this Court has blocked recently the Creditors counsel from arguing to remove Theodore on some technicality and Eliot is Pro Se and all the Creditor and Eliot's arguments are before the Court in numerous pleadings over the last year, Eliot is requesting that this Court determine the outcome to prevent further and ongoing crimes and cover-ups from occurring with Theodore allowed to be a reckless fiduciary by this Court.
21. That this Court may recall that it denied Eliot's Motion for Emergency Hearing filed in May 2013 and stated it was "ORDERED AND ADJUDGED that said Motion is hereby DENIED as an Emergency, the moving party is directed to address said Motion in the ordinary course" and where due to delay after delay in these proceedings with intent, it was finally being scheduled to be heard next, after the Motions to Remove Theodore as agreed by the Court, after months and months of trying to schedule it with opposing counsel.
22. That Eliot Bernstein states that Theodore is acting knowingly and ILLEGALLY as alleged Successor Trustee of the Simon Bernstein alleged Amended and Restated Trust, in violation of the terms of the Trust, which such terms explicitly exclude Theodore by name from acting as Trustee and therefore these pleadings he is filing is Simon's Trust are all PROHIBITED.
23. That the first question this Court must answer before considering ANY pleadings of Theodore in the Simon Trust is if he is acting with legal authority or if he has hijacked this position and these proceedings right under Your Honor's nose in violation of the terms of the Trusts and for other good and just reasons that now preclude him from being a fiduciary further.
24. That Theodore has illegally been anointed by the former removed and resigned Trustees, Tescher

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and Spallina, in a Successor of Criminals scheme that violates the very terms of the Trust that PROHIBIT TED EXPRESSLY FROM ACTING IN ANY FIDUCIARY CAPACITY.

25. That if Theodore has become Successor Trustee of the Simon Trust by fraudulent appointment, he should be removed and for many other reasons as well. First, Theodore is ineligible under the very terms of the ALLEGED Simon Trust to serve as successor trustee. Article IV, Section C. (3) (Page 16) of the ALLEGED Simon Trust states:

C. Appointment of Successor Trustee

3. A successor Trustee appointed under this subparagraph **shall not be a Related or Subordinate Party of the trust** (emphasis added)

26. That Theodore further was **specifically** disqualified to be a Successor Trustee by the terms of the ALLEGED Trust. Another provision of the ALLEGED Trust also disqualifies Theodore. Article III E(1) states:

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 ...** " (emphasis added)

Therefore, by the very language of the Alleged 2012 Amended and Restated Trust, Theodore Bernstein is disqualified by this provision to serve as Successor Trustee or in any capacity, as Ted is considered dead for all purposes of the Trust and the dispositions made thereunder and therefore Theodore is acting illegally knowing he cannot serve in any fiduciary capacity.

27. That if the ALLEGED 2012 Amended and Restated Trust is ruled legally invalid due to fraud and improper notarizations as pled to this Court and under ongoing investigations and the 2008 Trust of Simon is reverted to, Theodore will again remain wholly disinherited along with his lineal descendants, as they are in Shirley's IRREVOCABLE Trusts as it stands now and that

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language from the 2008 Simon Trust is as follows;

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.**

Under the 2008 Simon Trust, Eliot and his lineal descendants are Beneficiaries of Simon's Trust, as it would be the same Beneficiary Class as Shirley (Eliot, Lisa and Jill and their lineal descendants) and Theodore and Pamela and their lineal descendants would be wholly excluded, as was the case in Shirley's Trust when she died and the Trust became irrevocable and her Beneficiary Class was established as Eliot, Jill and Lisa and their lineal descendants, who at this time remain the ONLY beneficiaries in the Shirley Trust.

28. That if the 2012 alleged fraudulent documents are legally invalid, Eliot will be a beneficiary of both Estates and Trusts of Simon and Shirley, which was their intent, as stated in their documents prior to all the forged, fraudulent, fraudulently notarized documents were submitted to try and replace Eliot illegally.
29. That the alleged changes to Simon's Wills and Trusts took place allegedly 48 days prior to Simon's sudden and unexpected death. The Governor Rick Scott's Notary Public Division has already confirmed that these documents were improperly notarized. Again, improper notarizations in these proceedings are discovered, this time committed by Theodore's personal assistant, Lindsay Baxley aka Lindsay Giles on Wills and Trusts no less and due to the improper notarizations it cannot now or ever be stated that Simon was present at the signing of these alleged documents at all because she did not so state on the notarization that he was present at all.

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All of the witnesses to the document are involved in the prior criminal Fraudulent Notarizations, Admitted Forged and Altered documents in these proceedings and one has been arrested and convicted.

30. That the Court is aware of the facts and all parties who were involved in the advancement of these frauds and other crimes and torts against the Court and the beneficiaries should have been removed from the proceedings instantly, yet the Court has allowed Theodore and his counsel, Alan, to continue as fiduciaries, defying logic and causing a major OBSTRUCTION OF JUSTICE, since the fiduciary will not act against his own interests to the benefit of the beneficiaries, when the beneficiaries interests in certain cases are attempting to have Theodore and his counsel imprisoned and suing them for millions of dollars. This continuation of Successor Criminals, Theodore and Alan Rose who were involved directly and indirectly in the prior crimes and directly benefited from them, after the Court already accepted resignations from Theodore's other lawyers involved who are similarly under investigation like Theodore and Rose, is ludicrous and further damages the already damaged beneficiaries, interested parties and creditors.

**CONFLICT OF INTEREST FROM PROVEN AND ALLEGED CRIMINAL ACTS AND CIVIL TORTS THAT BENEFITED THEODORE AND THAT HE IS THE ALLEGED CENTRAL PARTICIPANT IN**

31. That there has been PROVEN FELONY CRIMINAL ACTS in the Shirley and Simon's Estates and Trusts and further allegations of conversion, comingling and theft of assets that are estimated to be crimes that have cost the Beneficiaries, Interested Parties and Creditors already millions upon millions of dollars. There are serious factual FRAUDS and FORGERIES, with certain felony crimes already proven and admitted and ongoing investigations of others in the Shirley

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and Simon Bernstein Estates and Trusts committed by former Personal Representatives, Trustees and Counsel and Theodore.

32. That there are ongoing criminal and civil actions against Theodore and Alan, including but not limited to,

- i. Palm Beach County Sheriff Report – Case No. 12121312 – Alleged Murder filed by Theodore Bernstein
- ii. Palm Beach County Sheriff Report – Case No. 13097087 - Forgery and Fraudulent Notarizations
- iii. State Attorney FL – - Case No. 13CF010745 - Forgery and Fraudulent Notarizations
- iv. Palm Beach County Sheriff Report – Case No. 13159967 - Theft of Assets of Estates
- v. Palm Beach County Sheriff Report – Case No. 14029489 - Continuation of Fraud, Extortion and more
- vi. Jacksonville, FL Police Department – Case No. #2014000865 – Insurance Fraud - Directed to Federal Authorities.
- vii. Case No. 13-cv-03643 United States District Court – Northern District II.
- viii. Florida Probate Simon – Case No. 502012CP004391XXXXSB
- ix. Florida Probate Shirley – Case No. 502011CP000653XXXXSB
- x. Heritage Union Fraud Investigation – Case No. TBD
- xi. Florida Medical Examiner – Autopsy Case No. 12-0913 – Filed by Theodore Bernstein
- xii. Governor Rick Scott Notary Public Division – Moran – Case No. Eliot and Simon Bernstein v. Moran
- xiii. Governor Rick Scott Notary Public Division – Baxley – Case No. Eliot and Simon Bernstein v. Baxley

33. That there are hosts of new alleged felonious misconduct, where Theodore Bernstein and his minion of Attorneys at Law again are centrally involved in and directly benefiting from these acts, while providing no benefit to the trusts or beneficiaries.

34. That the prior CRIMINAL FELONY MISCONDUCT committed by Theodore's Counsel, Tescher and Spallina, who were acting as Officers and Fiduciaries of this Court and committed numerous Frauds Upon this Court, now appears to be continuing with Theodore's new counsel and Theodore's new claims that he is a qualified Successor Trustee of the Simon Trusts despite numerous reasons he and his counsel and this Court are aware make him ineligible to serve in any fiduciary capacity in the Simon and Shirley Estates and Trusts going forward.

35. In one instance of the fraud going on in this Court by Theodore and his prior counsel, prior Co-Personal Representatives and Co-Trustees of Simon's Estate, Tescher and Spallina, is that

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documents were submitted to the Court bearing fraudulently notarized and forged signatures of Simon Bernstein on a date after he had passed away and there were fraudulently notarized and there were even forged signatures in the name of Theodore Bemstein himself and Theodore failed as an ALLEGED Fiduciary to notify any authorities until they contacted him and after he had converted monies to his family improperly and more.

36. This Court was apprised of these facts in a hearing conducted September 13, 2013 wherein the Court questioned whether the parties involved in perpetrating the Frauds, including Theodore and his Attorneys at Law, Donald Tescher, Esq., Robert Spallina, Esq. and Mark Manceri, Esq., should be read their Miranda Rights, see Exhibit 2 - Transcript of Proceedings, pages 15 and 16.)
37. That the Attorneys at Law for Theodore whom he introduced to the Bernstein Family, Tescher and Spallina, have now admitted to Palm Beach County Sheriff Investigators to conspiring to altering provisions of the Shirley Bernstein Trust POST MORTEM OF SHIRLEY AND SIMON, see the Sheriff's report fully incorporated by reference herein at <http://www.jviewiliv.20140131PBSORreport.pdf>, which had the effect of directly benefitting their client, affiliate, friend and business associate Theodore and directly damaging other Beneficiaries, including Plaintiff and led to fraudulent conversion and comingling monies to Theodore using fraudulent documents to make illegal and improper distributions knowingly to improper Beneficiaries, while fully cognizant that there were allegations of Fraud, Forgery and more and that the beneficiaries were alleged improper at that time they committed the conversions.
38. That additionally, Theodore's direct involvement in such criminal activity involving the Estate of Shirley and Simon should disqualify him from serving as Successor Trustee of the ALLEGED

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Simon Trust and disqualify him in any fiduciary capacity whatsoever in the Estates and Trusts of Simon and Shirley.

39. That Tescher and Spallina, upon their removal from these proceedings as both Fiduciaries and Counsel in Simon's Estate, in the wake of the frauds committed to benefit their client Theodore and themselves, then FRAUDULENTLY attempted to transfer Trusteeship to Theodore as their parting gift to these proceedings. This FRAUDULENT transfer of Trusteeship to Theodore when knowing he is a party that was directly involved in and who benefited directly from their fraudulent activities, in a Successor Criminal scheme.
40. That Tescher and Spallina knew Theodore and his counsel Alan who they recruited from the start to aid and abet their schemes would do everything as Successor Criminals to further cover up their crimes and those of Tescher and Spallina through this fraudulent transfer of Trusteeship scheme. Thus began another long and lengthy waste of time trying to get rid of the Successors Criminals and stop their continued fraud, waste and abuse.
41. That this attempted felonious transfer violates the very alleged Simon Trust terms that Tescher and Spallina wrote and this is reason alone for this Court to remove Theodore immediately and sanction all those involved in this felonious attempt to continue the frauds in and upon this Court, the Beneficiaries, Interested Parties and Creditors by attempting such a criminally shady and unlawful transfer of Trusteeship that violates even the very terms of the Alleged Trust and the definition of fiduciary.
42. That Alan has further been retained by Theodore who was only representing him as a Defendant in the Creditor Stansbury lawsuit against the Estate and Trusts prior, to now replace the capacities Tescher and Spallina were abdicating with their withdrawal and removal from all



Bernstein family related matters.

43. That Alan too has been involved and participated in the advancement of the fraudulent schemes to benefit himself and his client Theodore from the start in cahoots with Tescher and Spallina and advancing the fraudulent schemes, again acting opposite the best interests of the Beneficiaries and Creditors et al.
44. That Alan, despite knowing of the Florida Bar Rules against advancing frivolous pleadings and legally devoid and baseless arguments still allows Theodore to continue to act as ALLEGED Successor Trustee, even despite direct and explicit language excluding Theodore from acting in any capacities in the Trusts of Simon.
45. That Alan continues to represent Theodore as the alleged Trustee's counsel despite his knowledge that Theodore cannot serve and yet continues to advance pleadings in this matter that he knows are TOXIC, VEXATIOUS, FRIVOLOUS, MISLEADING AND PROHIBITED BY LAW AND THE TERMS OF THE SIMON TRUST.
46. That it is understandable that they would disregard law to maintain illegally gained Dominion and Control of the Estate and Trusts and as Alan's life too hangs in the balance in these matters, as if Theodore is ousted by this Court in all fiduciary capacities, so goes Alan. Then, the Estates and Trusts can finally begin to ascertain the damages done and begin hunting down those ripe for prosecution and hunting down the missing assets, documents and personal properties. No longer will Alan and Theodore be able to delay, stymie or derail these proceedings and misuse Estate and Trust assets to protect themselves whilst launching harassing campaigns against beneficiaries using their delayed and interfered inheritances against them, including Minor Children, as more fully defined herein.

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**THEODORE HAS BEEN DENIED BY THIS COURT TWO RECENT MOTIONS TO  
BECOME A FIDUCIARY IN THE ESTATE OF SIMON**

47. That this Court should take note that Theodore has TWICE attempted to become a fiduciary in the Estate of Simon despite knowing all the reasons he is unfit and further waste the courts time and the Estates and Trusts assets. Theodore's first Petition was to become Curator as Successor to Tescher and Spallina upon their termination and this was rejected on February 19th, 2014 by the Your Honor who stated in the Order, "DENIED, for the reasons stated on the record." This DENIAL was for just and sound reasons by the Court that should have applied to removal of Theodore in any and all fiduciary capacities in both Simon and Shirley's Estates and Trusts that Theodore was acting in already as a fiduciary or seeking nomination to become one.
48. That the second attempt to become a fiduciary of the Estate of Simon was made by Theodore in a hearing held in July 2014 in efforts to become Successor Personal Representative at the replacement of Benjamin Brown as Curator.
49. That he Court however strongly urged Theodore and Alan to WITHDRAW their TOXIC, VEXATIOUS, FRIVOLOUS, PROHIBITED and DOOMED pleading PRIOR to even hearing the pleading.
50. That after considerable waste of this Court, the Beneficiaries, Creditors and everyone's time, effort and monies in a frivolous pleading certain to fail, Alan and Theodore finally WITHDREW the pleading but only after the Court warned them that they would SANCTIONED if they lost for everyone's costs.
51. That the Court's Order dated July 11, 2014 reads, "Ted Bemstein's Petition For Appointment of Successor Personal Representative is hereby ~~DENIED~~ WITHDRAWN. Again, this Court

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suggested such withdrawal of their pleading at the hearing and this SECOND attempt was withdrawn for just and sound reasons urged by the Court and these reasons again should have applied to removal of Theodore in any and all fiduciary capacities Theodore was acting in or seeking nomination for at the time.

52. That for the same reasons the Court has deemed Theodore unfit in now two attempts to become a Successor Fiduciary forward, now constitute the same reasons that should serve for this Court to act on its own Motion under Fla. Stat. 736.0706 to remove Theodore from any/all fiduciary capacities in either the Estates or Trusts of Simon and Shirley, as further discussed herein.
53. That in addition to the fact that the Trust language precludes Theodore from becoming a Successor Trustee in Simon's Trusts, Theodore is further not qualified now or has ever been to be a fiduciary in the Estates and Trusts of both Simon and Shirley, including from a continued pattern and practice of fraudulent activity, breaches of fiduciary duties and more, that include but are not limited to all of the following:

**CONFLICTS OF INTEREST AND ADVERSE INTERESTS THAT PRECLUDE THEODORE FROM BEING A FIDUCIARY IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

54. Theodore has adverse interests and conflicts of interest that preclude him from acting as a fiduciary, including but not limited to:
- i. Theodore and his lineal descendants were wholly disinherited in Estate and Trust documents done in 2008 and only allegedly have been included through the use of forged, fraudulent, improperly notarized and legally invalid documents, all alleged to have been done only days before Simon passed. If these alleged 2012 documents and forged and fraudulent documents do not stand up, Theodore and his lineal descendants will be excluded entirely from the Estates and

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Trusts and this puts Theodore in conflict with other beneficiaries and impairs his ability to be impartial due to the conflicts.

- ii. Theodore and his counsel Alan Rose ("Alan") are both further adverse to Eliot Bernstein and his family, as it is through Eliot's Pro Se efforts that Theodore's prior counsel, the fiduciaries of Simon's Estate and Trusts and Alan's affiliates who brought him into these matters, Tescher and Spallina, have been forced out of these proceedings and removed as Fiduciaries and Counsel. Further, there has been an arrest of their employee made and where Eliot is still pursuing Tescher, Spallina, Manceri, Theodore and Alan, with criminal authorities and in state and federal civil actions for their direct involvement and benefit from the frauds, thefts, conversions and comingling of assets and more, severely impairs both Theodore and Alan's ability to be impartial to Eliot and has led to their continued retaliation and extortion of Eliot, as further defined herein. If Theodore is removed as a fiduciary in these matters by this Court and losses his illegally gained Dominion and Control of the Estates and Trusts and his ability to misuse Trust funds for his legal defenses of these actions, he and his Counsel Alan both may land in jail and lose their assets if successfully prosecuted in these matters forward.
- iii. That Theodore and Alan are both Respondents in the probate cases in Shirley and Simon's Estates and Trusts before this Court and are now also Defendants in a related Counter Complaint recently moved to Your Honor, Case #502014CP002815XXXXSB, with allegations that directly relate to these Probate and Trust matters, including; CIVIL CONSPIRACY, CIVIL EXTORTION, THEFT, FRAUDULENT CONVERSION, INTENTIONAL INTERFERENCE WITH AN INHERITANCE/EXPECTANCY, CIVIL FRAUD, BREACH OF FIDUCIARY DUTIES, ABUSE OF PROCESS, LEGAL MALPRACTICE and EQUITABLE LIEN.

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iv. That Theodore is conflicted with the Estates and Trusts sued under the Creditor William Stansbury's lawsuit against the Estate and Trusts of Simon and Theodore Professionally and Personally, as Theodore is the alleged primary cause of the torts claimed by Stansbury and Theodore is the primary Defendant in that action. Despite the possibility that Theodore may have or may, settle(d) his personal capacities with Stansbury, the Estate, the Trusts and the Beneficiaries will still have claims that may seek recovery from Theodore personally for any settlement with Stansbury that uses Simon or Shirley's Trust and/or Estate funds that further damage the Beneficiaries. The Estate and the Beneficiaries may make the claim that Theodore and not the Estates and Trusts are WHOLLY responsible for the torts and damages to Stansbury, as Petitioner is already making that claim and would seek immediate recovery from Theodore and this again makes irrefutable conflicts of interest.

Where evidence shows that Theodore may have benefited solely from the misconduct alleged by Stansbury and new evidence suggests that Simon was unaware that Stansbury had been defrauded by Theodore until approximately six weeks before his sudden and unexpected death. That at that time, Simon and Theodore are alleged to have been at extreme odds with each other, with Simon abandoning his offices with Theodore due to Theodore's extreme anger raged upon Simon by Theodore, his son, that was witnessed by others. Theodore was enraged at his exclusion from the Estates and Trusts and that Simon would not support him in his defense of the alleged bad faith acts against Stansbury.

Stansbury, whom Simon and Shirley loved and trusted, so much so, as to name Stansbury in their 2008 estate plans as the Personal Representative and Trustee over their entire Estates and Trusts, and not Theodore their own eldest son for good and just reasons. Where Stansbury may again be

in those fiduciary capacities if Theodore is successfully removed by this Court and the 2012 Will and Amended and Restated Trust of Simon fails due to the improperly notarized and perhaps forged documents, according to newly discovered 2008 documents of Simon's, including two new 2008 Simon Trusts and a Will, only recently produced by Tescher and Spallina, upon the Court's Order to turn over ALL of their records on their removal, after suppressing and denying these documents from Beneficiaries and this Court for almost two years despite repeated requests by beneficiaries and their counsel.

- v. That Theodore is further conflicted with the Estate and Trust of Simon and the Beneficiaries, Interested Parties and Creditors further due to a lawsuit IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION Case No. 13cv3643, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95 v. HERITAGE UNION LIFE INSURANCE COMPANY, adjudicated by Hon. Judge Amy St. Eve. The lawsuit filed by Theodore acting as Trustee of a NONEXISTENT TRUST is for Breach of Contract that he was advised by Tescher and Spallina et al. that he had no basis to file but Theodore filed anyway using yet another TOXIC, VEXATIOUS, FRIVOLOUS, FRAUDULENT and PROHIBITED pleading, this time acting as a "Trustee" of a NONEXISTENT TRUST that he claims he has never seen. Again Theodore effectuates this criminal illegal legal scheme to convert insurance proceeds into his own pocket is aided and abetted by his minion of Attorneys and this Fraud is now upon a Federal Court and as that crime attempts to remove an asset of the Estate of Simon out the back door, this is yet another Fraud on this Court that Theodore is smack in the middle of costing the Estates and Trusts time, monies and attorney fees, while providing no benefit to the Estates, Trusts and

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Beneficiaries. Theodore has paid Tescher and Spallina from Estate and Trusts assets to remove this insurance asset from the Estate where he and sister Pamela would get none of it and thus they tried this costly scheme and fraud on a federal court to convert it into he and his sister Pamela Simon's pockets, instead of their very own children.

It should be noted that remarkably, Theodore in a January 28, 2014 police interview stated to Palm Beach County Sheriff Investigators, "Ted confirmed that **he did not make any decisions in relation to Simon's insurance policy generated out of Chicago, Illinois [emphasis added]**.

However, Theodore is actually the Plaintiff that filed the lawsuit in 2012 trying to claim the insurance proceeds through the illegal Breach of Contract legal action, which puts Theodore again directly in conflict with the Estate Beneficiaries. If that baseless lawsuit fails, the Estate would receive the benefits due to the fact that no beneficiary can be found at the time of death.

The Court is already well aware of this lawsuit and has recently allowed the Personal Representative and Counsel to represent the Estate in that matter, again after over a year and half that the Estate was blocked from entry in the case to represent the Estates interest in the insurance proceeds by Tescher and Spallina, who were representing Ted initially in the Breach of Contract Lawsuit and are alleged to have made a FRAUDULENT INSURANCE DEATH BENEFIT CLAIM that led to the alleged breach.

That it should be noted that several weeks before filing the FRAUDULENT Breach of Contract Lawsuit, Robert Spallina filed an Insurance Death Benefit Claim as the Trustee of the same LOST trust that he claims to have never seen or possessed and this claim was DENIED by the carrier as Spallina could not prove his alleged beneficial interest as the alleged Trustee of a LOST Trust he claimed to the carrier not to possess. The DENIAL OF THE CLAIM led to

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Theodore then claiming he was now the “Trustee” of the LOST Trust he never saw and in such IMAGINARY FIDUCIARY CAPACITY filed the Breach of Contract lawsuit against Heritage for their failing to pay on Spallina’s DENIED and FRAUDULENT INSURANCE CLAIM.

Again, this insurance scheme inures benefits directly to the pocket of Theodore and his minion of counsel and where again, it is Theodore that is completely disinherited from both the 2008 and 2012 Estates and Trusts of Simon and Shirley (not Eliot as Alan repeatedly tries to sell this Court). Without this fraudulent insurance scheme to convert the insurance proceeds from the Estate of Simon’s Beneficiaries and Creditors, Theodore would receive nothing. These conflicts of interest further demand Theodore’s removal from these proceedings in any/all fiduciary capacities he has or alleges to have in both Simon and Shirley’s Estates and Trusts.

- vi. That further disqualifying Theodore from acting as fiduciary are further statements he made to PBSO investigators and this Court that show that he is perjuring himself and unfit to serve as a fiduciary and conflicted with these matters, whereby according to the PBSO Supplemental Report,

**“TED STATED THAT HE DID NOT READ ALL OF SHIRLEY’S TRUST DOCUMENTS [EMPHASIS ADDED]** and that Spallina and Tescher told him several times how Shirley’s Trust was to be distributed. **TED SAID THAT HE DID READ IN THE DOCUMENTS WHERE THE 10 GRANDCHILDREN WERE TO RECEIVE THE ASSETS FROM THE TRUST [EMPHASIS ADDED]**. He said that he did issue a partial distribution to the seven of the 10 grandchildren.”

Spallina stated to PBSO investigators that “SPALLINA STATED THAT AGAINST HIS ADVICE, A DISTRIBUTION WAS MADE FROM ONE OF THE TRUSTS AFTER SIMON'S DEATH. HE STATED THAT HE ADVISED AGAINST THIS...” and later states “SPALLINA



REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.”

That Theodore could not have read as he claims, language in the 2008 Shirley Trust (that he also claims not to have read?) that the grandchildren were to receive the assets from the Trust, as that language is NOT in the Trust anywhere at all. The only Beneficiaries defined in the Shirley Trust are Eliot, Jill and Lisa and their lineal descendants, as Theodore and Pamela and their lineal descendants are considered predeceased as evidenced already herein.

That the only possible way Theodore could have read in the Shirley Trust documents that the 10 grandchildren were to receive benefits, is if he would have read the newly alleged FRAUDULENTLY CRAFTED “Second First Amendment to Shirley’s Trust,” the very Trust document Spallina states to PBSO that he fraudulently altered for Shirley POST MORTEM by two years in January 2013. This fraud achieved allegedly by Spallina altering an alleged “First Amendment to Shirley’s Trust” whereby the altered document then fraudulently attempted to include the 10 grandchildren in Shirley’s Trust fraudulently.

The problem for Theodore here is also that he claims to PBSO in that same Supplemental Report,

“Ted said that he not spoken to Spallina about his withdrawing from being the attorney for the trusts, but that he did speak with Tescher. He said that Tescher told him he had been made aware of a fabricated document that was potentially problematic for the Estates [referencing the Second First Amendment]. He said that Tescher told him that Spallina created the fabricated document and it essentially impacted the ability for Simon to distribute funds to all 10 grandkids. Ted said that Tescher told him that he had only recently become aware of this document, approximately three weeks from today (01/28/14).”

Again, Theodore made the distributions in Sept 2013 to the 10 grandchildren before learning of the altered document, which directly contradicts his own prior claims and his illegal actions in

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distributing the funds to knowingly improper parties.

Theodore then wrote to Eliot further contradicting his statement that he saw language allowing him to make distributions in Shirley's documents to the grandchildren that does not exist and where he claims again not to have known of the altered document until way after his distributions by stating to Eliot,

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Tuesday, **January 14, 2014**[emphasis added] 5:23 PM  
**To:** Eliot Bernstein (iviewit@gmail.com)  
**Subject:** Update

Eliot,

You may have received a letter or email from Don Tescher today. Late last week I learned of **shocking developments concerning mom and dad's planning documents that were prepared by their counsel at the time [Ted fails to state they were his counsel too at the time]. In light of what I have learned,[emphasis added]** I will be obtaining new counsel, as Trustee and PR. Things are still unfolding. As a courtesy to you, please let me know if you would like to arrange a meeting with me and my counsel in an effort to bring you up to speed.

Sincerely,

Ted

---

Spallina then tells PBSO investigators in the already exhibited herein report,

Spallina told me that he and his Partner had discussions reference to fulfilling Simon's wishes of all 10 grandchildren receiving the benefit from both Simon and Shirley's Trust...

That Spallina said that **they** [referring to he and his partner Tescher] noticed that the first page of the document skipped from one to three, so he took it upon himself to add in number two, before sending it to Yates [Christine Yates of the most respectable Tripp Scott law firm that represented Eliot and his children and cost them over \$50,000.00 to chase around fraudulent documents sent to her and more]. The change that number two made to the trust, amended Paragraph E of Article III, making it read that only Ted and Pam were considered predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton, Florida. He said that no one

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else took part in altering the document.

So if Spallina sent this document to Yates in January 2013 and did not confess to it until January 2014 to PBSO investigators, how could Theodore have seen language in Shirley's Trust documents that would have allowed him to make distributions to 10 grandchildren on or about September 16, 2013, when even Ted claims he did know about the "Second First Amendment" until January of 2014.

That for Theodore's admitted **failure to even read** Shirley's Trust documents as stated to Palm Beach County Sheriff Investigators and then acting as the alleged Trustee and making fraudulent distributions upon language that does not exist, this Court should sanction and remove him instantly for this reckless, wanton and grossly neglect behavior.

This breach has led to fraudulent conversion and comingling of assets to profit Theodore and his six or seven lawyers directly and in fact use trust and estate funds for counsel and fiduciaries to advance and effectuate these fraudulent schemes that benefit both he and his counsel at the expense of the Beneficiaries and Creditors. Now Theodore tells lie after lie to various authorities attempting to cover up the crimes and further mislead the Court and others, which is outrageous conduct for an alleged fiduciary that is supposed to be held to a higher standard not a lower standard for their actions.

That Theodore further stated to PBSO investigators in contradiction to Spallina's prior exhibited statement herein where Spallina states he told Theodore to NOT make distributions that "He [Theodore] stated that Spallina told him it was OK to distribute the funds." That this contradiction of statements to investigators puts Theodore in direct contradiction with his own counsel's statements and shows that irrefutably, Theodore is now adverse to other beneficiaries

who are claiming the distributions were illegal conversions and a comingling of funds to improper parties and thus how can he now be impartial forward under Florida Statute 736.0803, where his actions as an alleged fiduciary may benefit his children at the expense of other beneficiaries in both the Estates and Trusts of Simon and Shirley.

**ACCOUNTING VIOLATIONS BY THEODORE AS ALLEGED FIDUCIARY IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY – FLORIDA STATUTE 736.0813 DUTY TO INFORM AND ACCOUNT**

55. That Theodore and his predecessors Tescher and Spallina have all failed to follow the very Terms of the Trusts he operates under, The Trust Code and Florida Probate Rules and Statutes, that all require a duty of accounting to beneficiaries.
56. To date, Theodore, nor Spallina and Tescher have ever sent any required accountings or administrative information for the trusts they claim to be trustees of to the beneficiaries, yet all have had several open checking accounts that they have administered freely with no supervision or accountability using them as their own personal accounts and reporting to no one in violation of statutes and law.
57. That Theodore has refused to turn over multiple trusts in the Estate and Trusts of Simon and Shirley and where Eliot still to this date is missing several of these important dispositive documents.
58. Theodore refuses to provide financial information of transactions he has done or any accountings despite repeated requests and therefore breaches all duties of loyalty and accounting under the terms of the trust.
59. THEODORE is self-dealing, converting and co-mingling trust funds and uses trust funds for his own personal use. Petitioner has reasons to believe THEODORE and others he has recruited to

the Estates and Trusts as either counsel or as Fiduciaries, in coordinated efforts are stealing Trust and Estate assets, failing to give accountings, suppressing and denying Trust documents, altering Trust and Estate documents and the Beneficiaries and Creditors need immediate relief from this Court by removing Theodore on the Court's own motion as required by law and appointing a qualified independent Trustee to marshal the assets and guarantee the terms of the trust are carried out in a non-conflicted and non-vindictive fashion against those Theodore and Alan are adverse to. No accountings have been provided for the Simon Trust for two years and in Shirley's Estate & Trusts for almost four years and Beneficiaries have been denied this information as part of the overall fraud and looting of the Estates and Trusts. Petitioner has requested accountings that are due to him under the terms of the Trusts, upon request, annually and when the PR and Trusteeship have changed according to Statute. There have been NO Annual accountings provided, NO requested accountings provided and NO accountings at the change of trusteeship by Theodore or the former removed Fiduciaries and Counsel in these matters in violation 736.0813 and 733.604.

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust

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instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

60. That Theodore upon accepting the PROHIBITED fiduciary capacity of ALLEGED Successor Trustee from Tescher via the Fraudulent Transfer of Trusteeship has failed to provide an accounting for the Trust since January 2014 and Tescher similarly failed to produce ANY Trust accountings while he was the ALLEGED Trustee.
61. That Theodore upon allegedly accepting his Letters of Administration most amazingly granted to him by Your Honor while there were serious allegations of breaches and criminal misconduct before the Court, in October 2013, has failed to provide an accounting when he became Successor PR of Shirley's Estate in violation of statutes and law. It should be noted that no FINAL ACCOUNTING of the Estate of Shirley was ever completed by Simon due to fraudulent and forged waivers being submitted and other closing documents filed by Simon while he was dead for four months and so NO ACCOUNTINGS have ever been done in Shirley's Estates and Trusts, in violation of Probate and Trust Rules and Statutes.

**BREACHES OF FIDUCIARY DUTIES BY THEODORE IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY**

62. On January 28, 2014, THEODORE, in the already Exhibited PBSO report admitted to PBSO investigators regarding distributions that he made that he had never read the Trust documents in full, "Ted stated that he did not read all of Shirley's Trust documents and that Spallina and

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Tescher had both told him several times how Shirley's Trust was to be distributed."

63. However, Spallina stated to PBSO, "Spallina reiterated that Ted was told to not make distributions." Then Theodore stated, "Ted stated that Spallina told him it "was OK to distribute the funds."

THEODORE however states in various emails produced by his counsel Tescher and Spallina in the Court Ordered production upon their termination that he had in fact read the trust document "carefully." From an alleged email dated October 25, 2013, months prior to his statements to PBSO that he had not read the Shirley Trust and only followed the advice of counsel we find Theodore again contradicting himself when he states,

**Robert Spallina**

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]

**Sent:** Friday, October 25, 2013 7:34 PM

**To:** Robert Spallina

**Subject:** RE: Withdrawal Activity Report

Good news is that on quick glance, all looks kosher but Deborah and I will tie everything out over the weekend. Bad news is that there is a steadily increasing amount of money being wasted on Eliot related matters. Once we get past Monday, I want to meet with you about my damages that I have incurred as a result of my role as trustee. I have read through the document carefully [emphasis added] and I have important questions and concerns about doing some things to counter the affects and I feel that there is time sensitivity involved. I hope Kim is doing as best as can be expected [this statement regarding Kimberly Moran and Eliot having her arrested by PBSO for fraudulent notarizations and admitted forgery]. I'm available over the weekend if you need me.

Ted

There are multiple ongoing investigations into felony criminal misconduct involving Theodore and Alan, including but not limited to, Frauds, Insurance Fraud, Fraud on a State and a Federal Court, Bank Fraud, Theft of Estate and Trust Assets of Simon and Shirley totaling millions of dollars, Falsifying Documents, Criminal Breaches of Fiduciary Duties and more, all relating to Simon and Shirley's Estates and Trusts and those who have administered them from the start.

64. That the next Breach of Fiduciary duties by Theodore is a direct attack on Eliot's three minor

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children and retaliation by Theodore and Alan against Eliot, whereby Theodore alleges the three minor children of Eliot's are Beneficiaries of the Shirley and Simon Trusts that he alleges to be Trustee for. In a sophisticated attempt to destroy their educational futures that were long planned and paid for by Simon and Shirley and as part of an extortive effort to get Eliot to participate in taking knowingly illegal distributions again, in the same manner he and Tescher and Spallina did, a new recent attempt was launched using the children as pawns this time with Theodore and Alan.

65. That Eliot contacted the alleged Trustee Theodore on July 25, 2014 for a Welfare Payment according to the terms of the alleged Trust as defined herein, which provides for distributions for schooling and requested a simple yes or no answer so that he could notify St. Andrew's school, who had notified Eliot that on August 09, 2014 his children would lose their enrollments for school for the 2014-2015 year for past due balances owed and current tuition due.

66. That the children have been in St. Andrew's school throughout most of their lives and which was contracted and paid for entirely by Simon and Shirley while they were alive and provisions were made to continue after their deaths that have been interfered with to cause this calamity with intent. Greater detail of this extortive attempt and fraud can be found in Eliot's recently filed Motion for Interim distributions filed in both Simon and Shirley's Estates and Trusts. See Motion for Interim Distribution @

<http://www.viewit.tv/Simon%20and%20Shirley%20Estate%2020140815EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf>

67. That despite knowing of the illegal distributions already made using the fraudulent documents and schemes to alter Shirley's Beneficiary Class by Tescher and Spallina, Alan now tried to get

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Eliot to take illegal distributions, this time by extorting him using his children's school tuition as the basis of the extortion play or pay this time and tried to keep the extortive attempt secreted from this Court and others by misleading Eliot with misstated and misquoted statutes regarding Settlements.

68. That even other Attorneys at Law that Alan attempted to recruit into this scheme are catching on to his schemes, as illustrated in the Creditor Stansbury's counsel, Peter Feaman, Esq.'s letter to Alan in response to his request to have the creditor release his hold on the assets in Simon's Estate and Trusts, since Eliot would not again partake in the fraudulent distribution scheme under Shirley's Trust, see Exhibit 3 - Feaman Letter to Alan. Whereby Feaman states after requesting an accounting from Alan of the alleged Simon Trust to confirm his claims about how little was left in the Trust and then being denied a copy, Feaman states to Alan,

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children. Heck, the house he bought for Eliot is within walking distance of the school! Whatever differences there are between Ted and Eliot, **the grandkids should not be used as pawns.** There is money to pay for the grandchildren's education. Stop playing games and get this done. At the end of the day, an adjustment can be made if necessary, **but stop putting the kids in the middle [emphasis added].**

69. That once Theodore and Alan could not get Eliot or Feaman to participate in their renewed extortive schemes and play be Alan's rules, Theodore then failed as an alleged Fiduciary to respond to Eliot's repeated request for a simple yes or no answer to the Welfare Payment, in order to notify the school of their decision and make preparations if necessary to relocate the children. No timely reply was given (talk about uncooperative) and they allowed the due date to pass and the children to lose their enrollments and enacted a new series of schemes to cover up

their new breaches.

70. That once they failed with scienter, in an attempt to cover up their breach of duties and failure to pay under the terms of the Trusts of Simon and/or Shirley, they then claimed they need all kinds of stipulations now from this Court to make any payment and stated they were seeking a Court Order to make the payments, which of course they have never did and so enrollment was compromised.
71. That instead of the promised Court filing to get the requested Welfare Payments, in efforts to now recruit the Court to aid and abet in the coverup of their breaches, they instead filed a Contempt Motion against Eliot, to act as if Eliot has somehow prevented them from making the Welfare Payments to keep the children in school and are using this new ABUSE OF PROCESS and TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY, EXTORTIVE pleading as an excuse for failing to act in a timely manner.
72. This breach of duties resulting in MASSIVE DAMAGES THEY HAVE NOW CAUSED TO THREE MINOR CHILDREN'S FUTURES. In fact, it appears they intentionally created these delays through this new Fraud on the Court to have Eliot take "distributions fraudulently to unknown and improper beneficiaries as Theodore et al. had already done, despite admitting to the Court in hearings repeatedly that they are unsure who the beneficiaries are in the Shirley Trust at this time due to the Fraud. In an email of Alan's dated August 01, 2014 he states that the Trustee does not Object to "Payment from the Trust Funds", whereby Alan states,

As Trustee, **Ted has no objection to making a payment from the Trust funds to St. Andrews School for each of Eliot's three kids [emphasis added]**, so long as (i) the Court enters an order directing and authorizing such payment, with the approval of a guardian ad litem if the Court decides to appoint one, and also holding the Trustee

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harmless for complying with such order and requiring repayment if needed; (ii) the payment for each child will reduce the amount to be distributed to that child's trust and with Eliot agreeing that if it is ultimately decided that the payments were to go to him and not his childrens' trusts (which we believe is not the case), then these same payments would count against Eliot's distribution; and (iii) each of you has the opportunity to be heard by responding to the email or by appearing in court."

73. That the Court should note that in that language Alan refers to the disbursements as PAYMENTS not DISTRIBUTIONS as he then tried to put into the proposed agreement he drafted where he consistently peppered the document with the word distributions, despite Your Honor on the record at the hearing telling him they were PAYMENTS not distributions.
74. Then Theodore and Alan filed yet another TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and MISLEADING Construction of Trust motion, recently filed in now a separate hearing to make it look like they could also not make the Welfare Payments without this Court's Order and a reconstruction of the Shirley Trust and to have this Court somehow now reconstruct Shirley's Irrevocable Trust to fit the crimes they already have committed in knowing violation by taking "distributions" to knowingly improper beneficiaries of that Trust with scienter. Yes, Alan and Theodore, who aided and abetted the prior frauds and benefited directly from them, now want to have this Court reconstruct Shirley's Trust four years later to attempt to make the illegal "distributions" Theodore made with others knowing they were improper no somehow legal.
75. That Alan claims they cannot make Welfare Payments without Eliot taking them as knowingly improper "distributions" to beneficiaries that have not been resolved by the Court and are currently admitted by all parties to be unknown.
76. That their claims that Welfare Payments cannot be made and must be made as knowingly

ILLEGAL “distributions” despite the fact that at the present time there are no legally qualified beneficiaries known to make legal distributions too are untrue.

77. That Donald Tescher stated in a letter dated, December 26, 2013, “Ted as trustee of Shirley's trust did make some partial distributions and that issue was also addressed at the first hearing where Judge Colin again addressed Eliot on the proper course of action. [KEEP IN MIND THAT WHEN THE COURT FIRST ADVISED ELIOT TO TAKE THE FUNDS YOUR HONOR WAS UNAWARE THAT THEY WOULD BE FRAUDULENT AND WHEN DISCOVERING THAT OUT THEN STATED WHEN ASKED BY ELIOT TO GIVE HIS LEGAL BLESSING TO THE ACT OF COMMITTING FRAUD, YOUR HONOR WOULD NOT BLESS THEM AND GIVE ELIOT PROTECTION.] Despite Eliot's refusal to open up trust accounts for your boys, Ted has paid necessities for your family (since the Oppenheimer trusts were depleted by your actions) to keep the house running.” Those Welfare Payments were made without a Court Order and any language to release them from anything.

78. That further, Theodore claimed in a letter to Candice dated December 26, 2013,

Because of my concern stemming from my fiduciary role as well as the fact that Joshua, Jacob and Danny are my nephews, Robert Spallina and **I agreed that I would pay some of the bills for your family that I deemed necessary for their well being, on a temporary basis. For example, I have paid for such things as health insurance, electric, water, phones and Internet. I have made these payments from the Shirley Trust account and I will deduct these amounts from any distributions that are ultimately made to the three boys' trusts.**

This statement shows that Alan and Theodore could have simply made the payments to St.

Andrews school and then deducted them later after the Court determined the true and proper

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beneficiaries and only after review of ALL the dispositive documents by forensic analysis and more but they chose instead to try a last attempt to use Eliot's children's schooling and futures to force him to take the illegal and improper distributions the way Theodore and his sisters Pam, Lisa and Jill knowingly did already with the help of Tescher, Spallina and Alan et al.

79. That Theodore and Alan's attempt to further again extort Eliot this time by using his children's schooling as leverage and force him to either take the distributions illegally or else his children would be forced out of school has been brought to this Court's attention in a yet another unheard pleading filed by Eliot, see

<http://www.viewit.tv/Simon%20and%20Shirley%20Estate/20140804EMERGENCYMOTIONFORINTERIMDISTRIBUTIONS.pdf>, which further defines the continued and ongoing Pattern and Practice of Fraud and Extortion being committed by Alan and Theodore against Eliot, his three minor children and lovely wife Candice.

80. This new and exotic extortive attempt began when Alan tried to trick Eliot into a meeting to extort him to take KNOWINGLY ILLEGAL DISTRIBUTIONS TO IMPROPER PARTIES in a meeting Alan tries to claim is about a settlement and Alan tries to claim nothing in the meeting can be used in anyway with any party, in efforts to keep the extortion a secret from the Courts and others.

81. The meeting was only to get a yes or no on if the ALLEGED Trustee Theodore would make the Welfare Payments as he has done in the past as provided for the in the ALLEGED trust he operates under and NOTHING TO DO WITH SETTLING ANY CLAIMS.

82. That Alan in fact cites to Eliot a law that he has knowingly fabricated by adding language to the law to make it appear that the meeting could not be used in any way in Court or elsewhere

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because he claims it is cloaked as a settlement conference and hoped Eliot as a Pro Se litigant would not fact check his legal citing and would comply with Alan's misrepresented law and be forced to keep the extortionary attempt in the dark.

83. That Alan's email to Eliot clearly shows that despite knowing that Shirley's beneficiaries were altered through illegal activity and despite the fact that the beneficiaries are now not known due to the fraud (again costing everyone a fortune to defend and expose), Alan tries to use Eliot's children's school tuition to extort him to take the monies illegally or else the children will be thrown out of school. Alan in his letter even claims he is aware the beneficiaries are not known at this time but in a last ditch effort to get Eliot to partake in illegal distributions to non legally qualified beneficiaries, he picks up where Spallina and Tescher's extortion of Eliot left off, as he demands Eliot take "distributions" to knowing improper beneficiaries, instead of, as Eliot suggested, making them as Welfare Payment until the Court rules on who the ultimate beneficiaries will be and then deduct it from those parties distributions, either Eliot or his children.
84. That all this renewed extortive effort to have Eliot in desperation with a proverbial "gun to the head" of he and his wife to keep their kids in the school they were put in by Eliot's parents and paid for by them for virtually their entire lives, once again force him to accept "distributions" illegally to gain an implied consent that Eliot too took illegal distributions as Theodore and others did and further participate in the crime leaving him perhaps no recourse against those who already took KNOWINGLY improper and illegal distributions. This is the same tactic that was tried by Theodore, Tescher, Spallina and Manceri several times before, using the children in several of the attempts as hostage, until they finally admitted to altering trust documents to make

the illegal distributions to improper parties and more and after lying to the Court and others for months until they finally confessed.

85. That finally, it was just learned from review of the production documents turned over by Tescher and Spallina upon their resignations and by Order of this Court that the school contract for the 2012-2013 was directly with Simon and should have been a liability of the Estate and instead these costs were shifted to Eliot's children to pay by Spallina and Tescher, which is yet another fraud that is more fully expanded on in the Counter Complaint filed in the related Oppenheimer v. Eliot and Candice Bernstein lawsuit now before this Court.
86. That both Theodore and Alan have profited and benefited from aiding and abetting in the advancement of the fraudulent schemes to enrich themselves and primarily Theodore at the expense of Beneficiaries, Interested Parties and Creditors from excessive billing, self-dealing and fraudulent transfers.
87. That Theodore, his sisters Pamela, Jill and Lisa, all knew that documents had been fraudulently notarized and forged in their names and in their deceased father's name POST MORTEM at least from May 2013 when Eliot first presented the evidence to the Court in his initial Petition to this Court and served it upon them and for months none of them notified authorities and instead began a rush to pillage and liquidate and walk off with assets in both Simon and Shirley's Estates and Trusts.
88. That despite knowing of these crimes, Theodore and the others who took the "distributions" failed to take any steps as alleged fiduciaries to report these crimes to the authorities or this Court, instead rushing to take the knowingly improper "distributions." Theodore only admitted he knew of the frauds to PBSO in January of 2014 when he was hauled in for questioning in

direct contradiction to the truth, which is he knew at least in May of 2013 when Eliot served the evidence. In fact, Theodore and his sisters then attempted to gloss over and pardon the criminal acts of proven Fraudulent Notarizations and admitted Forgeries of the arrested and convicted Legal Assistant/Notary Public of Tescher and Spallina, Kimberly Moran et al. by submitting further fraudulent waivers to this Court.

89. That from the time Theodore, Spallina, Manceri, Tescher and Alan knew of the allegations alleging the fraudulent distributions and a mass of other crimes launched against them. Theodore et al. began a further aggressive and forceful campaign of terror and retribution against Eliot, his three minor children and lovely wife Candice, in efforts to stop them from bringing these criminal acts and civil torts they partook in to Justice.

**CONTINUED MISREPRESENTATIONS, MISTATEMENTS OF FACTS AND WASTE, FRAUD AND ABUSE IN THE ADMINISTRATION OF THE ESTATES AND TRUSTS**

90. The court needs to act on its own Motion to Remove Theodore as Trustee and review those petitions and motions filed by Eliot and the Creditor Stansbury to stop these continuing and ongoing Frauds on the Court, again being committed by Fiduciaries and Officers of this Court under the Court's tutelage who are directly involved in and directly benefited from the prior frauds! This Court needs to put a stop this RECKLESS, WANTON and GROSSLY NEGLIGENT disregard for law, this Court, the Beneficiaries and Creditors and begin to prevent the ongoing attempts to cover up their crimes through further fraud, waste and abuse of process.
91. That this Court needs to stop them from committing additional new crimes instantly, including the new alleged thefts of Personal Properties (discussed further herein and in prior unheard Motions and Petitions) and round up and rid the Court of every single person who was involved

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in any way with the prior fraudulent activity, as is required by law when Fraud Upon the Court has been proven. This Court needs to clean up its own Court and provide for fair and impartial due process free of the fraudsters who operate cloaked as Officers and Fiduciaries of this Court and not wait for Stansbury or Eliot to file further Motions and Petitions to have him removed, IT IS THIS COURTS DUTY. Every day this Court leaves these reckless and unlawful Fiduciaries and Officers of this Court in place, is a day of suffering, damages and abusive costs for the already injured parties.

92. That the Court should note that all of these PROVEN AND ADMITTED FRAUDS on this Court, the Beneficiaries and the Interested Parties have ALL been committed through legal process abuse that allowed for illegal seizure of Dominion and Control of the Estates committed by OFFICERS OF THIS COURT and FIDUCIARIES, using this Court as the host for the CRIMES and ALL of these parties were APPROVED BY YOUR HONOR.
93. That despite knowing these facts, this Court continues to allow those involved and under investigation to now continue to act in Fiducial and Legal capacities, despite KNOWING THESE FACTS and knowing that under law they should have already resigned voluntary when requested and under law they should be removed by this Court on the Court's own Motion. These problems occurred and continue to occur in this Court and it is this Court's duty under law to clean up the mess it is responsible for, not wait for Eliot or others to do this.
94. That Alan and Theodore now pick up and continue the Pattern and Practice of Harassment, Extortion, ATTEMPTED NEW Illegal Distributions of Estate and Trust funds, Fraud on the Court, Fraud on Beneficiaries, Fraud on Creditors and more committed by Theodore and the prior PR's, Trustees and Counsel in the Estate and Trusts of Simon and Shirley, Tescher and

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Spallina, who have been removed from these matters after MASSIVE amount of time, effort and costs to Petitioner and others to have them removed.

95. That Theodore has brought ALL of these people who have participated in all these fraudulent activities into the Estates and Trusts of Simon and Shirley who have all BLED THE ESTATE of hundreds of thousands in legal fees already. Where Theodore and his cohorts have benefited and continue to benefit at the expense of everyone else involved. Again, THIS COURT NEEDS TO PUT AN END TO THE FRAUDS BEING COMMITTED BY OFFICERS OF THE COURT and remove them on the Court's own motion as allowed for in instances such as these, especially where the main frauds have all been effectuated by multiple Frauds on this Court. The only remedy at law is removal, award of damages, sanctions and more.
96. That the Court can no longer look the other way or wait for Pro Se Eliot to file proper legal pleadings and have hearings where PROHIBITED pleadings are filed fraudulently and argued wasting everyone's time and simply remove those who should voluntarily withdraw. Where the Court has legal obligations to act on its own motion to stop FRAUD, WASTE and ABUSE especially in its own Court committed by Officers of the Court.
97. That this Court allowing Theodore and Alan to continue to act as fiduciaries and counsel before the Court can only be viewed by the victims as aiding and abetting the crimes and attempting to cover up the crimes that took place in this Court, especially where all these felony crimes occurred in this Court by Officers and Fiduciaries that are under the tutelage of this Court and Your Honor. That Your Honor has a duty to protect the beneficiaries and interested parties and has failed to follow law and judicial canons to protect them.
98. That Theodore and Alan are violating a Court Order that involves now attempting to further and

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cover up the crime of THEFT, CONVERSION AND COMINGLING OF ESTATE ASSETS, in fact FELONY MISCONDUCT IN VIOLATING THE COURT ORDER as pled in Eliot Motion in Response to Theodore's Contempt Motion filed with this Court and yet unheard.

99. That Alan and his client Theodore have failed to follow the Court's Order. see Exhibit 4 – Court Order for Inspection of Residence and Accounting for Personal Property, for an re-inventorying of the Estate assets of Simon, after learning in a hearing before this Court that statements made by Theodore and Alan revealed that Estate assets were missing and unaccounted for. Where it appears that Theodore and others may have stolen off with these personal properties of Simon and then lied to this Court about where they had gone.
100. That the Court was told in the hearing that furnishings of Simon's estate that were held in a Condominium held in Shirley's Trust were moved to Simon's other residence when the Condominium was sold. Despite Theodore and Alan's claim that the furniture was moved to Simon's other residence, no records of such transaction were turned over by Spallina and Tescher who were the prior responsible parties for the personal properties and the items appear in the Final Accounting submitted upon their termination in these proceedings.
101. That no mention was made in the fraudulent estate Final Accounting prepared by Tescher and Spallina after their resignations and withdrawals that were turned over by Order of this Court that these personal property assets were disposed of in any way. The fact that the items were missing and Theodore who is alleged to be the Trustee responsible for the items could not state where they were are what led to the Court Order to verify that the assets were where they now stated. Spallina and Tescher were responsible for the items of Simon's estates and should be sanctioned.
102. That Theodore, alleging to be the Trustee of Shirley's Trust, knows that he is responsible for the

marshalling of those assets of Simon's Estate contained in Condominium, as he was informed of this obligation by Spallina in a letter dated September 14, 2012 (1 day after Simon passed) whereby it states,

On a separate note, as discussed, you are designated as the successor trustee to Simon your mother's trust document. In this regard, both the residence and the beach condo were titled in the name of her trust. **All of the contents in both places are the subject of your father's estate, over which Don and I have been named as Personal Representatives. Please make sure that both homes are secure and that the contents contained therein are protected. As a fiduciary of your mother's trust and during the period of administration of your father's estate, you owe a duty to the ultimate beneficiaries to protect the assets...**[emphasis added] It may be helpful to take pictures and even create an inventory of the contents so that when there is a division of the assets among the family there are no issues.

103. That after telling the Court that the furniture was moved to Simon's other residence and then knowing they were again going to be busted if the Court Order was complied with as the furniture is not there, Donald Tescher in his deposition on July 09, 2014, ordered by Alan (who throughout the deposition objected and represented Tescher several times), see Tescher Deposition Regarding Furniture excerpt and partial transcript and exhibits at <http://www.viewit.ly/Simon%20and%20Shirley%20Estate%20140709TescherDepositionAndExhibits.pdf>, fully incorporated by reference herein, then claimed and Alan chimed in now in direct contradiction to what was told to the Court that the contents were now sold with the Condominium without any accounting for the properties to the Beneficiaries or anyone or even including this information in the shoddy Final Accounting Tescher and Spallina produced. Where further evidence will prove that this claim is also untrue, as the Condominium was sold without any personal properties listed as part of the transaction.

104. That when the lies they told to the Court that the furniture and other properties were moved to the

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other residence did not hold up as they themselves seemed confused at the hearing, the Order for the Inspection was granted by Your Honor. They then claimed that the Court ORDER could not be complied with because the items were boxed in the garage and this somehow made them unaccountable for, then they were sold without any accounting and with each claim being proven false they have continued to try and make up new explanations for where the missing items went and continue to violate the Court Ordered Inspection.

105. That it is alleged that Theodore took the possessions to his own second home and then sold that home after selling the Condominium with the contents owned by Simon's Estate in them as part of a further elaborate scheme to steal millions of dollars of assets and/or Theodore disposed of these properties in other ways for his own personal gain, as beneficiaries were NOT notified of any such sale of these items. Again, this Court and everyone else involved are wasting precious time, effort and monies to expose these nonstop frauds and thefts, all again being perpetrated by Officers of this Court who were directly involved in the prior frauds, who again appear to have lied to this Court about Estate assets and now fail to follow the Court's Order to cover up and further their crimes.
106. That Eliot will be filing yet another criminal complaint for this GRANDTHEFT of the personal properties estimated worth millions and again will have to recruit law enforcement time and efforts to hunt down the missing items and contact all those parties involved in the transactions that Theodore, Alan and others did regarding the ILLEGAL sale of the Condominium and the subsequent missing personal properties of Simon's Estate.
107. That other crimes alleged and under investigation regarding the sale of the Condominium include Theodore signing documents as the PR of Shirley's Estate to make the sale complete when he

was not appointed as the Personal Representative at the time he made the sale and signed the documents in that fiduciary capacity knowingly and with scienter.

108. That Theodore at the time of the sale knew the Estate of his mother had been closed illegally through a Fraud on the Court using his deceased father as PR to close the Estate and knew no Successor PR was ever appointed by this Court due to that Fraud and thus knew he was signing the tax documents for the sale illegally. Again, the closing of the Estate of Shirley was achieved through fraud with a DEAD Personal Representative, Simon, acting as if alive to close his deceased wife's Estate, which was all part of an elaborate FRAUD ON THE COURT by OFFICERS of the Court that has already been proven in this Court.
109. That this Court will remember in the September 13, 2013 hearing that Your Honor upon learning of this Fraud on the Court and Fraud on the Beneficiaries using a dead PR to close an estate as if alive to then attempt to enact fraudulent changes to the beneficiaries stated that you had enough evidence at that time, almost a year ago, to read Theodore, Spallina and Tescher their Miranda rights, see Exhibit 2 and perhaps now it is that time for the reading of these Miranda Rights to protect the Estates and Trusts and prevent further criminal activity by Officers and Fiduciaries of this Court.
110. That Your Honor will also remember that it was proven that POST MORTEM FORGED documents for Simon were tendered to this Court by Spallina and Tescher as part of the elaborate scheme to change beneficiaries by Theodore's counsel that directly benefited Theodore the most, to the disadvantage of other beneficiaries.
111. That upon learning of these facts, the Court issued a second statement in the September 13, 2013 hearing that it had enough to read them their Miranda warnings and again the Court instead let

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them walk out the door and continue to practice law, continue to act as fiduciaries and counsel, allowed Successor Criminals to be anointed exposing all parties involved and the general public to these lawyers who have committed felony crimes in these proceedings and without sanctions or required reporting of their crimes as required under Judicial Canons and law, as of yet.

112. That further in the September 13, 2013 hearing it was further stated by Spallina that Moran's forgeries and fraudulent notarizations were a one off event and he knew of nothing else wrong in the Estates and Trusts, while knowing and CONCEALING FROM THE COURT that he and his partner Tescher had committed yet another FELONY CRIME by FRAUDULENTLY ALTERING TRUST documents that they failed to notify the Court of at that time they claimed they knew nothing else wrong and therefore bold face lied to the Court.
113. That Spallina, only later, in January 2014, three months after the hearing and wasting everyone's time and monies in the hundreds of thousands in that time period, then confessed to Palm Beach County Sheriff investigators that he and his partner Tescher had known they could not change the Shirley Trust Beneficiary Class (although Alan will now try and con everyone that he can do that in his new Motion for Construction) and together Spallina and Tescher had discussed their options and determined they would alter documents to perpetrate the fraud and Spallina then admitted that he ALTERED TRUST DOCUMENTS with scienter and sent them to various parties.
114. That again Spallina's confession only came when he and Tescher knew they were busted from Eliot's Pro Se pleadings and Eliot and Candice's excellent investigatory efforts that exposed their crimes and led to ongoing investigations of them and Theodore and Alan.
115. That again, the confession came only after everyone, including this Court, the Palm Beach

County Sheriff's office, the Governor Rick Scott's Notary Public Division, the State Attorney, the Beneficiaries and Interested Parties, wasted hundreds of thousands of dollars having to force the confessions. That Eliot questions the truthfulness of the confessions as well, as it appears that it was carefully crafted and fraught with further perjured statements to try and cover up their crime as best they could.

116. That Eliot again apologizes to the Court for having to file a lengthy pleading to unravel the web of lies and deceit in Alan's TOXIC, VEXATIOUS, FRIVILOUS, EXTORTIVE, PROHIBITED, COSTLY and MISLEADING pleading that is further an abuse of process but there are just so many false statements and attempts to twist things around by these Successor Criminals to somehow, now that they are all busted, make Eliot, the victim of their crimes already proven and admitted, look like the bad guy to the Court.

117. That it takes a lot of time to explain and unravel each of these schemes to this Court and unwind the lies in their pleadings and Eliot is doing the best he can Pro Se to comport with the statutes and rules he is not schooled in and thus admits his pleadings may fall short but Eliot has ALWAYS HAS TOLD THE TRUTH TO THIS COURT DESPITE HOW MANY PAGES IT TAKES AND HAS NEVER PUT FORTH ANY FORGED, FRADULENT, FRAUDULENTLY NOTARIZED DOCUMENTS or lied to the Court, nor has he violated any criminal codes or civil torts in these proceedings, unlike Theodore, Spallina, Tescher, Alan, Manceri, Pankauski et al..

118. That again Alan and Theodore and their cohorts costing everyone time and money on TOXIC, VEXATIOUS, FRIVILOUS, EXTORTIVE, MISLEADING, CRUEL and COSTLY pleadings that abuse process, and Eliot, despite his lengthy, yet poetically just pleadings that may be legally faulty as expected in Pro Se pleadings, has put forth nothing abusive, unless this Court considers



the length of truth abusive.

119. That if the Court wishes to stop the poetic pleadings of Eliot, the Court can simply, again on its own motion under the circumstances, demand that the Estates and Trusts provide funds for Eliot to retain counsel, as certainly the ALLEGED Fiduciaries and Counsel in these matters (excluding Brown and O'Connell) have already wasted fortunes on legal fees to further their criminal misconduct. Where these monies of the Estates and Trusts are either Eliot's or his children's and Theodore, Spallina, Tescher, Alan, Manceri and Pankauski have used these funds of Eliot's and his children for EXCESSIVE AND ABUSIVE legal fees to execute their crimes and then more Estate and Trust funds used to further protect and shield themselves from prosecution of their crimes.
120. That Theodore and his cohorts have nothing to lose spending the Trusts and Estate funds recklessly and illegally, which are not theirs and deny the victims counsel, which is provided for in the very documents they operate under to protect the Beneficiaries. Certainly, having Eliot and his children represented by separate counsel due to the Conflicts created through the frauds that make Eliot and his children in conflict for the proceeds, caused by Tescher and Spallina et al. with scienter will not only benefit this Court but further protect, the Estates, Trusts, Beneficiaries, Interested Parties and Creditors.
121. That there have been serious breaches of Trust already proven and many more alleged and under investigation, all involving Theodore Bernstein and Alan as central parties in the misconducts.
122. That it has been evidenced herein and in prior pleadings filed that Theodore is unfit and unwilling to follow probate and trust Rules and Statutes.
123. That it has been evidenced that Theodore cannot act as the Trustee in the Simon Trust as he is

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expressly prohibited and this may be even further fraud on this Court, the Beneficiaries and Interested Parties.

124. That it has been evidenced herein and in prior pleadings filed that Theodore has persistently failed as alleged Trustee to administer the Trust in Simon and Shirley's Trusts legally.
125. That Theodore and Alan are both in conflict and have adverse interests in these matters, especially in regard to Eliot.
126. That the Court removing Theodore instantly from ALL fiduciary capacities in the Estates and Trusts of Simon and Shirley for very serious breaches of fiduciary duties and alleged criminal misconduct from his direct participation in the prior frauds committed in this Court and now causing continued torts and alleged criminal misconduct regarding assets of the Estate causing continuing and ongoing harms to Beneficiaries, Interested Parties and Creditors.
127. That there has been substantial change of circumstances after discovering criminal misconduct and breaches of fiduciary duties that Theodore is directly involved in and benefited from and a continued Pattern and Practice of newly alleged criminal misconduct under ongoing investigations that justify the Court's instant removal of Theodore to protect the assets of the Estates and Trusts of Simon and Shirley to prevent further criminal acts and civil torts from occurring that damage the Beneficiaries, Interested Parties and Creditors further.
128. That the Court should find that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable co-trustee or successor trustee is available.
129. That for all of these reasons stated herein, this Court must act as legally obligated on its own motion under 736.0706 to remove Theodore and Alan from ALL Fiduciary and Legal capacities

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they have in both the Estates and Trusts of Simon and Shirley, in order to remove the conflicts and adverse interests and stop further violations of, Attorney Conduct Codes, Judicial Canons, State and Federal Law that are being committed by their continued allowance by this Court to remain as Fiduciaries and Counsel before this Court and continue acting as OFFICERS OF THIS COURT. Their continued actions are wasting estate assets due to their fraudulent misadministration and attempts to cover up their own and their friends and business associates prior crimes with one lie after another to this Court and the Beneficiaries, Interested Parties and Creditors.

130. That the remedies to cure the damages from the prior Frauds In and Upon this Court, the Beneficiaries, Interested Parties and Creditors, would mandate now that the Trustees and Fiduciaries sue themselves and when this type of situation arises the only remedy at law is to remove them from this irrefutable conflict of interest.
131. That the Fiduciaries and Counsel thus far in these matters have all (except Benjamin Brown and Brian O'Connell) acted in their own best interests, basking in ill-gotten legal and trustee fees, instead of acting the best interests of the Beneficiaries and Creditors and it is expected for them to continue misusing trust and estate assets to now protect themselves from further prosecution and therefore the Court must instantly remove them.
132. That failure of the Court to remove ALL tentacles from these proceedings of those who participated, profited and benefited from the prior CRIMINAL MISCONDUCT and FRAUD COMMITTED BY OFFICERS OF THIS COURT THAT HAS OCCURRED IN AND UPON THIS COURT, the BENEFICIARIES, INTERESTED PARTIES AND CREDITORS violates the sanctity and decorum of the Court, violates law and judicial canons and denies fair and

impartial due process and procedure under law to all the other parties and allows for continuing and ongoing crimes to be committed.

133. That Eliot demands the Court take Judicial Notice of the criminal misconduct and follow its own rules and act on its own motions to restore law and order to the Court and impart fair and impartial due process to all parties and begin by STRIKING all TOXIC, FRIVOLOUS, VEXATIOUS and MISLEADING filings of the Fiduciaries and Counsel acting as OFFICERS OF THIS COURT and Remove these fiduciaries and counsel in order to stop the further fraud, waste and abuse by those Officers of this Court and alleged Fiduciary, who knowingly and with scienter continue to act in violation of Probate and Trust Rules and Statutes, despite the Court's knowledge of their participation in the prior frauds, their overwhelming conflicts of interests and adverse interests that all legally preclude their continued involvement as Fiduciaries and Counsel.
134. That Theodore and Alan wholly ignore their duties to withdraw voluntarily due to their lack of qualification and continue to act despite repeated requests to withdraw for multitudes of legally valid reasons. These continued actions further misuse Estate and Trusts assets and are accruing damages to the Beneficiaries, Interested Parties and Creditors from the Court allowing this continuing Pattern and Practice of Fraud, Waste and Abuse started by the prior fiduciaries and counsel who worked together with Theodore and Alan to perpetrate the prior frauds from the start and again this will require the Beneficiaries to ultimately sue them all for damages. Certainly if they will not voluntarily withdraw knowing they are unfit to act as fiduciaries and officers of this Court, then they will not sue themselves either and thus this Court must smack down the gauntlet and forcefully and aggressively remove them.

135. That finally, Eliot, his lovely wife Candice and their three angelic boys have been tormented, lied

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to, defrauded, extorted and abused through legal process by these Officers of this Court and their crimes to deny, delay, stymie and steal off with assets of Eliot and his children's due to them as inheritance and deny them through further frauds to deny them entirely their inheritances, jeopardizing and exposing the Estates and Trusts to more and more risks from their actions, as they lack to administer these legally and this has caused major damages, including directly to THREE MINOR CHILDREN with intent, including withholding the KIA, failing to provide trust assets used for education, theft of millions of dollars of assets, failure to account under law, removing health insurance etc. that all border on child abuse by these alleged Fiduciaries and Officers of this Court and now threaten the minor children's school futures and more.

136. That Eliot and his family have refused to participate in knowingly fraudulent distributions to improper parties, while those improper parties have stolen off, converted and comingled assets they took knowingly improperly and illegally with scienter and now use Eliot and his children's family's inheritance monies to line their pockets and harass and extort Eliot in prayers that these criminal tactics will force Eliot to participate in illegal "DISTRIBUTIONS" and attempt to gain under FL Statute 736.1012 consent from Eliot through his participation to take "distributions" under great pressure and duress to attempt to keep his children in school as provided for under the Terms of the Trusts.

**Beneficiary's consent, release, or ratification.—A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:**

- (1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
- (2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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facts relating to the breach.

This all done despite the fact that (1) above negates any such extorted consent that may have gained. Despite that fact, Eliot will not commit a violation of law knowingly and also violate one or more of the Ten Commandments and participate in their crimes under ANY circumstances, except with this Court's blessing to participate in such fraud that the Court would not give in the September 13, 2013 hearing and so Eliot doubts the Court now will with all of this new information of criminal misconduct unfolding since that hearing decide that Eliot should participate in knowingly **FRAUDULENT ILLEGAL DISTRIBUTIONS TO ADMITTED UNKNOWN BENEFICIARIES AT THIS TIME.**

137. That until Eliot and others can review for further evidence of **FRAUD AND FORGERY, ALL** the records, court records, dispositive and other documents, accountings, inventories and re-inventory **ALL** assets of the Estates and Trusts of Shirley and Simon, this Court must provide **EMERGENCY WELFARE PAYMENTS TO ELIOT AND HIS FAMILY TO BE DEDUCTED LATER FROM HIS OR HIS CHILDREN INHERITANCES** when the Court determines the Beneficiaries or add them to **THE CONTINUING AND TOLLING DAMAGES ASSESSED TO THE RESPONSIBLE PARTIES OF THESE CRIMES.**

138. That this Court should and must act to protect Eliot and his family who are victims of the past and present Fiduciaries and their Counsel, who all took part and benefited from the prior Willful, Wanton, Reckless, Criminal and Egregious Acts of Bad Faith committed with Unclean Hands that again were done by Officers of this Court Under Your Direct Jurisdiction and in light of the Court's knowledge of these past and ongoing Crimes and Extortion after Extortion of Eliot to either take the improper proceeds and lose rights to claim damages against others by participating

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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in the knowingly fraudulent activity or watch his family be starved out through fraud after fraud by Fiduciaries approved by Your Honor, as now proven, admitted and evidenced in Eliot's pleadings since May 2013, it is time this Court act to release WELFARE PAYMENTS DUE TO THE INTENTIONAL INTERFERENCE WITH INHERITANCE THAT HAS DELAYED DISTRIBUTION until this Court can determine beneficiaries to make distributions legally to and until all of this grotesque Fraud can be sorted out due to CRIMINAL MISCONDUCT BY OFFICERS OF THIS COURT.

139. That since this Court is also partially responsible for these continued and ongoing damages caused by its Officers, damages inflicted by the delay and interference of life sustaining inheritances that were intended to be distributed to Eliot and his family over four years ago, as were the desires and wishes of both Simon and Shirley, due to special circumstances already defined in Eliot's initial pleadings with the Court.
140. The Extortions first started with Theodore, his former counsel, the former Fiduciaries and Counsel of the Estates and Trusts, seizing companies that were left to Eliot's families alone, acting with no legal authority and taking over a company responsible for paying the bills of Eliot's household for over 7 years while Simon and Shirley were alive and where the bills were even sent to others and controlled by others. Once the illegal corporate takeover was achieved by Tescher, Spallina, Theodore, members of Oppenheimer and others, Eliot's family's basic necessities were cut off without notice repeatedly by Tescher, Spallina, Theodore and others, including but not limited to shutting off, Security Services, Homeowners Insurance (this also exposing Simon's Estate to further MAJOR RISKS), Health Insurance for the entire Family, Electricity, Phones, School Services for the minor Children, School Tuition for the children,

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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Utilities, Food, etc.). The company also provided income and a monthly 10-20 thousand dollar monthly stipend to cover ALL expenses of Eliot's family and this too was shut off through a combination of frauds discussed further in the Oppenheimer Counter Complaint and in prior pleadings Eliot filed, see Answer and Counter Complaint Oppenheimer (@)

[http://www.iviewit.tv/Simon and Shirley Estate/20140730OppenheimerAnswerAndCounter.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140730OppenheimerAnswerAndCounter.pdf),

fully incorporated by reference herein.

141. That when this forced destitution or else failed to compel Eliot to participate in the fraud and take knowingly improper distributions as others had done, they next moved on to using Eliot's son's birthday gift, the KIA, as a lever to force Eliot to take distributions illegally or not get the gifted car back.
142. That when that failed, they have refused Welfare Payments as provided under the Trusts despite REPEATED requests to act even under the terms of the Alleged Documents they are touting, which are most likely fraudulent to begin with but even so they fail to act as required in the best interests of the Beneficiaries for items provided for the Beneficiaries in the terms thereunder.
143. Again, these criminal acts and breaches of duties are all being committed by the fiduciaries who are supposed to be protecting the beneficiaries as intended in the Estate plans but who are instead too busy forging, fraudulently notarizing, criminally altering trust documents, looting the Estates, committing Insurance Fraud and Bank Fraud, Fraud on this Court and Federal Court, Extorting Eliot and his family, Losing, Destroying and Suppressing Trust Documents, and more to care of the damages they are causing, even to minor children. They have even been alleged to have seized illegally and misused school trust funds of the children in yet another fraudulent scheme that Eliot's Counter Complaint in the new Oppenheimer Lawsuit more fully exposes.



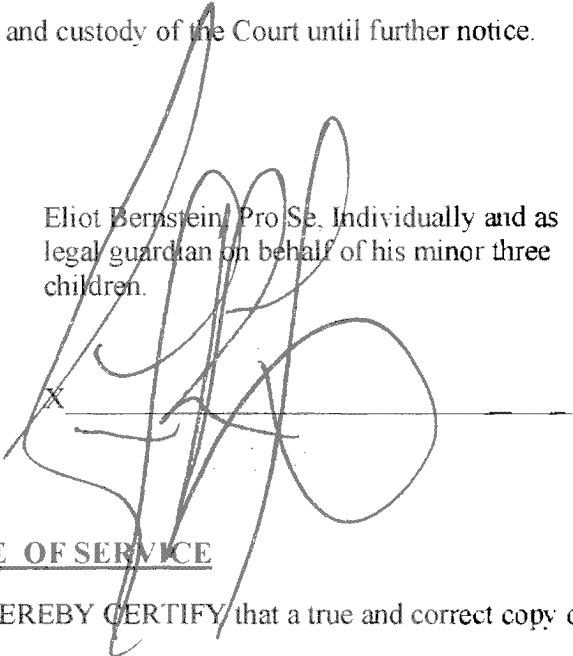
144. This Court must now act to allow to remove Theodore on its own initiative due to all of the reasons so stated herein.
145. That if the Court needs further evidence or anything from Eliot to further support this motion please feel free to request any other information necessary.

Wherefore, Eliot prays this Court enter an order similar to that attached hereto.

- i. FOR REMOVAL OF PR & TRUSTEE ON THE COURT'S OWN INITIATIVE in the Estates and Trusts of Simon and Shirley Bernstein – FLORIDA TITLE XLII 736.0706;
- ii. For an order for relief under s. 736.1001(2) as may be necessary to protect the trust and estate property and protect the interests of the beneficiaries.
- iii. For all records and properties of the Theodore and all of his present and former counsel to immediately, be turned over to the care and custody of the Court until further notice.

Filed on Thursday, August 28, 2014,

Eliot Bernstein Pro Se, Individually and as legal guardian on behalf of his minor three children.



**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Thursday, August 28, 2014.

Eliot Bernstein, Pro Se, Individually and as

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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legal guardian on behalf of his minor three children

X

**SERVICE LIST**

<p>RESPONDENT PERSONALLY, PROFESSIONALLY, AS A GUARDIAN AND TRUSTEE FOR MINOR/ADULT CHILDREN, AS AN ALLEGED TRUSTEE AND ALLEGED PERSONAL REPRESENTATIVE</p> <p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mehandler@mrachek-law.com">mehandler@mrachek-law.com</a> <a href="mailto:eklein@mrachek-law.com">eklein@mrachek-law.com</a> <a href="mailto:mrachek@mrachek-law.com">mrachek@mrachek-law.com</a> <a href="mailto:rfitzgerald@mrachek-law.com">rfitzgerald@mrachek-law.com</a> <a href="mailto:skonopka@mrachek-law.com">skonopka@mrachek-law.com</a> <a href="mailto:dthomes@mrachek-law.com">dthomes@mrachek-law.com</a> <a href="mailto:gweiss@mrachek-law.com">gweiss@mrachek-law.com</a> <a href="mailto:tbaker@mrachek-law.com">tbaker@mrachek-law.com</a> <a href="mailto:mehandler@mrachek-law.com">mehandler@mrachek-law.com</a> <a href="mailto:jchristian@mrachek-law.com">jchristian@mrachek-law.com</a> <a href="mailto:telarke@mrachek-law.com">telarke@mrachek-law.com</a> <a href="mailto:gdayjes@mrachek-law.com">gdayjes@mrachek-law.com</a> <a href="mailto:egilman@mrachek-law.com">egilman@mrachek-law.com</a> <a href="mailto:jocely@mrachek-law.com">jocely@mrachek-law.com</a> <a href="mailto:eklem@mrachek-law.com">eklem@mrachek-law.com</a> <a href="mailto:bvthamson@mrachek-law.com">bvthamson@mrachek-law.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:john@pankauski.com">john@pankauski.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> at <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> m <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> m</p>
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AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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<p>RESPONDENT -- ADULT STEPSON TO THEODORE</p> <p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:matt89@aol.com">matt89@aol.com</a></p>	<p>RESPONDENTS - MINOR CHILDREN OF PETITIONER Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:rviewit@viewit.tv">rviewit@viewit.tv</a></p>	<p>RESPONDENT - MINOR CHILD</p> <p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	
<p>RESPONDENT/REPRIMANDED BY FLORIDA GOVERNOR RICK SCOTT NOTARY PUBLIC DIVISION FOR FAILING TO NOTARIZE AN ALLEGED 2012 WILL AND TRUST OF SIMON AND SIGNING NOTARY UNDER FALSE NAME</p> <p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT MINOR CHILDREN</p> <p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>RESPONDENT -- MINOR CHILD INITIALLY NOW ADULT CHILD</p> <p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:mollysimon1233@gmail.com">mollysimon1233@gmail.com</a></p>	

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN

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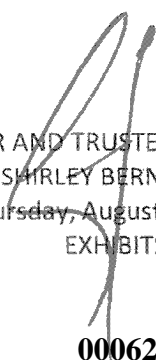
EXHIBIT 1 – ELIOT AND ALAN DISCUSSIONS REGARDING THE FAILED AGREEMENT

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 1 @

[WWW.IVIEWIT.TV/SIMON AND SHIRLEY ESTATE/20140820EXHIBIT1ROSEANDELIOTS EMAILS.PDF](http://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF)

OR

[WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF](http://WWW.IVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/20140820EXHIBIT1ROSEANDELIOTS%20EMAILS.PDF)



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

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AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
2 PROBATE/GUARDIANSHIP DIVISION IY  
3 CASE NO.: 502011CP000653XXXXSB  
IN RE: THE ESTATE OF:  
4 SHIRLEY BERNSTEIN,  
Deceased

5 \_\_\_\_\_/  
ELIOT IVAN BERNSTEIN, PRO SE,  
6 Petitioner,

vs.

7  
8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
11 DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE  
15 THE HONORABLE MARTIN H. COLIN  
16  
17 South County Courthouse  
200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 33344  
19  
20 Friday, September 13, 2013  
1:30 p.m. - 2:15 p.m.

21  
22  
23  
24 Stenographically Reported By:  
JESSICA THIBAUT

25  
♀

00002

1 APPEARANCES  
2  
3 On Behalf of the Petitioner:  
4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

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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

← The Court speaking  
about reading  
Miranda's to  
Theodore  
Bernstein, Robert  
Spallina, Esq.,  
Donald Tescher,  
Esq. (absent) and  
Mark Manceri, Esq.

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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.

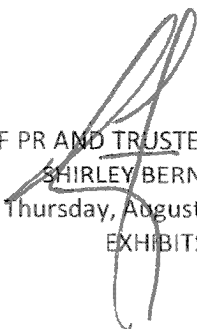
12 MR. SPALLINA: I'm sorry?

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

Again, Judge Colin  
states at that point he  
has enough to read them  
their Miranda's but yet  
has not done so to date.

EXHIBIT 3 - FEAMAN LETTER TO ALAN



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

000634

## Eliot Ivan Bernstein

---

**From:** Peter M. Feaman <pfeaman@feamanlaw.com>  
**Sent:** Tuesday, August 5, 2014 10:42 AM  
**To:** Alan Rose  
**Cc:** William Stansbury  
**Subject:** RE: Eliot's Demand

By the way, what about the Shirley Bernstein Trust?  
We know The Aragon Condominium Unit was sold which netted over \$1,000,000.

Where is that money?

This is an expense that the trusts clearly should pay.

My client tells me there are numerous witnesses who know that it was Simon's intent to provide for the St. Andrews schooling for Eliot's children.  
Heck, the house he bought for Eliot is within walking distance of the school!

Whatever differences there are between Ted and Eliot, the grandkids should not be used as pawns. There is money to pay for the grandchildren's education. Stop playing games and get this done.

At the end of the day, an adjustment can be made if necessary, but stop putting the kids in the middle.

*Peter M. Feaman*

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard  
Suite 9  
Boynton Beach, FL 33436  
Telephone: 561-734-5552  
Facsimile: 561-734-5554  
[www.feamanlaw.com](http://www.feamanlaw.com)

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**From:** Alan Rose [mailto:ARose@mrachek-law.com]  
**Sent:** Tuesday, August 5, 2014 10:05 AM  
**To:** Peter M. Feaman  
**Subject:** Re: Eliot's Demand

My question is much simpler than that. Would Mr. Stansberry ever consent to Elliot receiving an interim distribution without there being sufficient assets to pay Mr. Stansberry's claim in full. In other words, would he agreed to a preferential distribution to Elliot that could potentially diminish or defeat his ability to collect on a claim, if he is successful

Alan B. Rose

On Aug 5, 2014, at 9:53, "Peter M. Feaman" <[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)> wrote:

Until Mr. Stansbury sees an accounting of trust assets, he is not in a position to make a decision on the request.

Can you send me a trust accounting?

*Peter M. Feaman*

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard  
Suite 9  
Boynton Beach, FL 33436  
Telephone: 561-734-5552  
Facsimile: 561-734-5554  
[www.feamanlaw.com](http://www.feamanlaw.com)

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**From:** Alan Rose [<mailto:ARose@mrachek-law.com>]  
**Sent:** Tuesday, August 5, 2014 9:02 AM  
**To:** Peter M. Feaman  
**Subject:** Elliot's Demand

Elliot has demanded an interim payment from the Simon Bernstein Trust or Estate.

Based upon the facts as I understand them, there is not more than enough money in the Estate or Trust than the amount of the claim by Mr. Stansbury, and indeed, it appears that there is substantially less than needed to do so should Mr. Stansbury prevail.

Absent Mr. Stansbury's consent to an interim distribution to Elliot, there is no point in anyone (including the new successor PR) considering the request as from the assets of Simon's Trust or Estate.

Please advise asap if Mr. Stansbury would consent to a payment of +/- \$125,000 to St. Andrews School for Elliot's children's three private school tuitions.

Thanks

Alan B. Rose, Esq.  
[arose@Mrachek-law.com](mailto:arose@Mrachek-law.com)  
561.355.6991  
<image001.jpg>

505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401

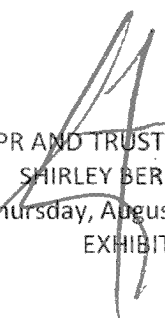
561.655.2250 Phone  
561.655.5537 Fax

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If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format. If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

EXHIBIT 4 -- COURT ORDER FOR INSPECTION OF RESIDENCE AND ACCOUNTING FOR PERSONAL  
PROPERTY



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

000638

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

PROBATE DIVISION  
CASE NO. 5021012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN  
\_\_\_\_\_ /

**ORDER ON CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION OF  
ESTATE TANGIBLE PERSONAL PROPERTY**

THIS MATTER came before the Court on the Curator's Motion to Inspect and Take Possession of Estate Tangible Personal Property dated June 10, 2014 ("Motion"), the Court having reviewed the Motion, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

The Motion is granted in part. Curator is authorized and directed to use Estate funds to retain Robert Hittel in order to inspect the tangible personal property at described on the January 22, 2013 Fair Market Value Appraisal of the Personal Property of Simon L. Bernstein (effective date September 13, 2012) ("Appraisal") located at 7020 Lions Head Lane, Boca Raton, FL ("House") and prepare a written report regarding whether such property is located at the House

and its condition (if different than described on the Appraisal). The Court defers decision on the remainder of the Motion.

*Mr. Hittel's fee shall not exceed \$500.00,  
Ted Bernstein and Eliot Bernstein may be present on the  
day Mr. Hittel conducts his inspection, but may not enter the  
House while Mr. Hittel conducts such inspection.*

DONE AND ORDERED in Chambers, Delray Beach, Palm Beach County, Florida, on  
June \_\_\_\_\_, 2014.

**SIGNED & DATED**

**JUN 19 2014**

**MARTIN H. COLIN  
CIRCUIT JUDGE**

\_\_\_\_\_  
Circuit Court Judge

Copies furnished to the parties on the attached service list

**SERVICE LIST**

Estate of Simon L. Bernstein  
Palm Beach County Case No. 502012CP004391XXXXSB

Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:john@PankauskiLawfirm.com">john@PankauskiLawfirm.com</a>	Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>
Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@ijblegal.com">ijb@ijblegal.com</a>	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>
Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Peter Feaman, Esquire Peter M. Feaman, P.A. 3615 Boynton Beach Blvd. Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a>	Eliot Bernstein 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>	William H. Glasko, Esq. Golden Cowan, P.A. 1734 South Dixie Highway Palmetto Bay, FL 33157 <a href="mailto:bill@palmettobaylaw.com">bill@palmettobaylaw.com</a>		



EXHIBIT 5 – FURTHER DISCUSSION BETWEEN ALAN AND ELIOT REGARDING NOTIFYING COURT OF  
IMPROPER AND MISTATED SIGNED ORDER

THAT DUE TO THE 300+ PAGES OF CORRESPONDENCES THIS EXHIBIT HAS BEEN LINKED TO A  
PRIVATE WEBSITE AND IS FULLY INCORPORATED BY REFERENCE HEREIN AS EXHIBIT 5 @

[HTTP://WWW.TVIEWIT.TV/SIMON%20AND%20SHIRLEY%20ESTATE/ROSE%20EMAIL%20RE%20EXTOR  
TION%20OF%20ELIOT.PDF](http://www.tviewit.tv/SIMON%20AND%20SHIRLEY%20ESTATE/ROSE%20EMAIL%20RE%20EXTORTION%20OF%20ELIOT.PDF)

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014  
EXHIBITS

000641

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

IN RE: THE ESTATE OF  
SIMON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB

HON. JUDGE MARTIN H. COLIN

ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
ROBERT L. SPALLINA, ESQ., PERSONALLY;  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY;  
DONALD R. TESCHER, ESQ., PERSONALLY;  
DONALD R. TESCHER, ESQ., PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED PERSONAL  
REPRESENTATIVE;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE PERSONALLY;  
THEODORE STUART BERNSTEIN, AS ALLEGED TRUSTEE  
AND SUCCESSOR TRUSTEE, PROFESSIONALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR HIS  
CHILDREN;  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A BENEFICIARY;  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER CHILDREN;  
JILL MARLA IANTONI, INDIVIDUALLY AS A BENEFICIARY;  
JILL MARLA IANTONI, AS TRUSTEE FOR HER CHILDREN;  
PAMELA BETH SIMON, INDIVIDUALLY;  
PAMELA BETH SIMON, AS TRUSTEE FOR HER CHILDREN;  
MARK MANCERI, ESQ., PERSONALLY;  
MARK MANCERI, ESQ., PROFESSIONALLY;  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL);  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT  
MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (THEODORE ADULT  
CHILD);  
ERIC BERNSTEIN (THEODORE ADULT CHILD);  
MICHAEL BERNSTEIN (THEODORE ADULT

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRKEY BERNSTEIN

Thursday, August 28, 2014 ORDER

000642

CHILD);  
MATTHEW LOGAN (THEODORE'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA ADULT  
CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR CHILD;  
CARLY FRIEDSTEIN – LISA MINOR CHILD;  
PAGE, MRACHEK, FITZGERALD & ROSE, P.A.  
(AND ALL PARTNERS, ASSOCIATES AND OF  
COUNSEL);  
ALAN B. ROSE, ESQ. – PERSONALLY;  
ALAN B. ROSE, ESQ. – PROFESSIONALLY;  
PANKAUSKI LAW FIRM PLLC, (AND ALL  
PARTNERS, ASSOCIATES AND OF COUNSEL);  
JOHN J. PANKAUSKI, ESQ. – PERSONALLY;  
JOHN J. PANKAUSKI, ESQ. – PROFESSIONALLY;  
KIMBERLY FRANCIS MORAN – PERSONALLY;  
KIMBERLY FRANCIS MORAN –  
PROFESSIONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PERSONALLY;  
LINDSAY BAXLEY AKA LINDSAY GILES –  
PROFESSIONALLY;  
THE ALLEGED “SIMON L. BERNSTEIN AMENDED  
AND RESTATED TRUST AGREEMENT” DATED  
JULY 25, 2012;  
JOHN AND JANE DOE’S (1-5000).

---

**ORDER ON: AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE  
OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN  
IN ALL FIDUCIAL CAPACITIES ON THE COURT’S OWN INITIATIVE –  
FLORIDA TITLE XLII 736.0706**

THIS CAUSE, having come before the Court on Eliot Bernstein’s “AMENDED MOTION FOR  
REMOVAL OF TRUSTEE ON THE COURT’S OWN INITIATIVE – FLORIDA TITLE XLII  
736.0706” and the Court having heard argument and pleadings of counsel and being otherwise duly  
advised in the premises, it is

ORDERED and ADJUDGED

THAT the Court APPROVES after careful review of the reasons stated herein on its own initiative to

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN

Thursday, August 28, 2014 ORDER

remove Theodore and having reviewed the matters before the court for the removal of Theodore Bernstein, the Court on the Court's own initiative hereby removes Theodore in any fiduciary capacities in the Estates and Trusts of both Simon and Shirley Bemstein, as this Court finds that Theodore Bemstein is not now qualified to act as a fiduciary in any capacity in any Estate or Trusts held by the Simon and Shirley Bernstein family.

The Court also order relief under s. 736.1001(2) as may be necessary to protect the trust property or the interests of the beneficiaries.

The Court also demands all records and properties of the Theodore and all of his present and former counsel to be turned over to the care and custody of the Court until further notice.

---

DONE AND ORDERED in Delray Beach, Palm Beach County, Florida

THIS \_\_ DAY OF AUGUST, 2014.

---

**MARTIN COLIN  
CIRCUIT COURT  
JUDGE**

***COPIES TO:***

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pmlaw.com](mailto:arose@pmlaw.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com) ;  
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Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) ;  
William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S.

AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN  
Thursday, August 28, 2014ORDER

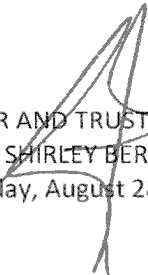
000644

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Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401,  
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Brian M O'Connell PA, 515 N Flagler Drive, West Palm Beach, FL 33401  
[boconnell@erklinfubitz.com](mailto:boconnell@erklinfubitz.com) .



AMENDED MOTION FOR REMOVAL OF PR AND TRUSTEE OF THE ESTATES AND TRUSTS OF SIMON AND  
SHIRLEY BERNSTEIN  
Thursday, August 28, 2014ORDER

000645

# EXHIBIT H

DOCKET #215 - SIMON ESTATE (SEE EXHIBIT H)

PET - PETITION

FILING DATE: 29-JUL-2014

FILING PARTY: STANSBURY, WILLIAM E

DOCKET TEXT: PETITION TO REMOVE TED BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE  
TRUST

EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000646

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

IN RE:

Case No. 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

---

**PETITION TO REMOVE TED BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SIMON BERNSTEIN REVOCABLE TRUST**

COMES NOW, William E. Stansbury (“Stansbury”), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §736.0706, Fla. Stat. (2013), files this Petition to Remove Ted Bernstein as Successor Trustee of the Simon Bernstein Revocable Trust Agreement dated July 25, 2012 (the “Revocable Trust” or “Trust”), and in support states as follows:

**I. Stansbury has standing to seek removal.**

Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein (“SIMON”), Ted Bernstein (“TED”) and several corporate defendants in August of 2012 to collect compensation, corporate distributions and other damages due Stansbury, arising out of a life insurance business in which Stansbury, SIMON and TED were principals. Stansbury asserts claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million. Shortly after the lawsuit was filed, SIMON BERNSTEIN passed away

in September of 2012. The Estate of Simon Bernstein (the “Estate”) was substituted as a party defendant.

The provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stats. (2014) govern the issue of who has standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on the court’s own initiative.*  
(emphasis added)

§736.0103, Fla. Stat. (2014), defines a “beneficiary”:

*(4) “Beneficiary” means a person who has a **present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee.* (emphasis added)

A “beneficial interest” is defined as: “A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing.” Black’s Law Dictionary 149 (7<sup>th</sup> ed. 1999). The issue then is, with regard to whether Stansbury has standing, does Stansbury have at least a contingent future beneficial interest in the Trust? The answer is a resounding “yes.”

§733.707(3), Fla. Stat. (2014), states:

*(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...*** (emphasis added)

Stansbury, as a claimant and creditor of the Estate, which claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon’s Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust. The assets of the Trust may be called upon to pay his claim under §733.707(3).



Stansbury has a claim against the Estate in excess of \$2.5 million. The most recent inventory of the Estate shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

Stansbury therefore has a contingent future beneficial interest in the assets of the Revocable Trust to the extent the assets of the Estate are insufficient to satisfy his claim when and if proven. This makes Stansbury, although not a named beneficiary of the Revocable Trust, a “beneficiary” nonetheless by virtue of his beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1<sup>st</sup> DCA 1970). There, a decedent bequeathed the major portion of his estate to the attorneys that prepared his probate documents, in trust, with unlimited discretion to distribute the income or corpus for such religious, educational, scientific, charitable, or literary purposes as they saw fit. The attorneys were not named beneficiaries of the will or trust other than in their capacity as executors and trustees. Family members contested the documents and claimed the attorneys had, by virtue of their anticipated future compensation for services as executors and trustees, a sufficient beneficial interest in the will so as to make them de facto beneficiaries.

The Florida First District Court agreed. Relying on Ziegler v. Coffin, 219 Ala. 586, 123 So.2d 22 (1929), a Supreme Court of Alabama case, the Florida court held that, as a matter of law, the compensation which the attorney would receive for their services rendered as executors and trustees, together with the almost unlimited discretion and control they had in the

management of the trust estate, constituted them as beneficiaries under the will even though they were not named as legatees or devisees therein.

While not entirely analogous to this case, the holding makes clear that courts may look beyond the written documents to ascertain a claimant's status as beneficiary, based on the interests involved and the circumstances of the matter before the court. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury has the status of trust beneficiary under the statute, thereby giving him standing to pursue removal of the trustee.

**II. This Court has the Authority Under Florida Law to Remove TED as Trustee of the Revocable Trust.**

Under Florida law, this Court has broad authority to affect trust administration. Under §736.0201, Fla. Stat. (2014), the Court has the following power:

**736.0201. Role of court in trust proceedings**

\* \* \* \*

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:
  - (a) Determine the validity of all or part of a trust;
  - (b) Appoint or remove a trustee;
  - (c) Review trustees' fees;
  - (d) Review and settle interim or final accounts;
  - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;
  - (f) Obtain a declaration of rights;
  - (g) Determine any other matters involving trustees and beneficiaries.

(emphasis added)

### III. Legal Standard for Removal of Trustee.

When removal of a trustee is at issue, the following statutory provisions of §736.0706, Fla. Stat. (2014) are to be considered:

#### **736.0706. Removal of trustee**

\* \* \* \* \*

- (2) The court may remove a trustee if:
- (a) The trustee has committed a serious breach of trust;
  - (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
  - (c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
  - (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

TED's removal is warranted by Subsections (2)(a), (c) and/or (d). Additionally, §736.0802, Fla. Stat. (2014) describes the primary duty of a trustee:

#### **736.0802. Duty of loyalty**

- (1) As between a trustee and the beneficiaries, a trustee shall administer the trust solely in interests of the beneficiaries.
- (2) Subject to the rights of persons dealing with or assisting the trustee as provided in s. 736.1016 a ... transaction ... which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction . . . (emphasis added)

*See Aiello v. Hyland*, 793 So. 2d 1150, 1152 (Fla. 4th DCA 2001) (removal of trustee was required where trustee had a conflict of interest with interests of the trust; the conflict of interest made the trustee unable to properly carry out his duty of loyalty to the trust).

**IV. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust by the Terms of the Trust and his Conflict of Interest.**

**A. Ted Bernstein is Not Eligible to Serve as a Successor Trustee under the very terms of the Revocable Trust, which means he is “unfit” under §736.0706(2)(c).**

**1. Ted Bernstein is a “related party” and therefore not eligible to serve.**

The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. A copy of the Trust is attached hereto as Exhibit “A.” By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust) and stated, “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.” A copy of the letter is attached hereto as Exhibit “B.”

If TED has become successor trustee of the Revocable Trust, he should be removed. He is ineligible under the very terms of the Revocable Trust to serve as successor trustee. Article IV, Section C.(3) (Page 16) of the Revocable Trust states:

**C. Appointment of Successor Trustee**

3. ... A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. (emphasis added)

Under Article III, Subsection E(7), A “Related or Subordinate Party” is defined in the Trust as follows:

**ARTICLE III. GENERAL**

**E. Definitions. In this Agreement,**

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).

The “Code” is defined as “the Internal Revenue Code of 1986...”

A “Related or subordinate party” under the Code means any nonadverse party who is “...(2) any one of the following: The Grantor’s father, mother, issue, brother or sister...”

TED is the son, or an “issue” of the Grantor, SIMON BERNSTEIN, and a related party (father) to a beneficiary, TED’s son, SIMON’s grandson. Therefore, TED is ineligible as a Related or Subordinate Party and is therefore unfit to serve as a successor trustee under §736.0706(2)(c).

**2. Ted Bernstein was specifically disqualified to be a Successor Trustee by the terms of the Trust.**

Another provision of the Trust also disqualifies TED. Article III E(1) states:

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 AIANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me ...” (emphasis added)

Therefore, by the very language of the Trust, Ted Bernstein is disqualified by this provision to serve as Successor Trustee.

**B. Ted Bernstein, as Trustee of the Revocable Trust, has a Conflict of Interest with the Estate of Simon Bernstein.**

At the time of SIMON’S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company (“Heritage”) allegedly payable to the Simon Bernstein Irrevocable Insurance Trust (the “Insurance Trust) as beneficiary.

Shortly after SIMON’S death in 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the

grown children of Simon Bernstein. Spallina submitted this claim despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “C” attached.) Under Florida law, if it is determined that no Irrevocable Insurance Trust existed at the time of SIMON’s death, the insurance proceeds would be payable to the personal representative of the Estate. As such, such insurance proceeds would be available to pay creditors of the Estate such as Stansbury. See §733.808(4), Fla. Stat. (2014)

Because no insurance trust instrument could be produced, Heritage refused to pay the life insurance proceeds to anyone without a court order. The lost Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the “Life Insurance Litigation”). The case has since been removed to the United States District Court for the Northern District of Illinois in Chicago.

The Estate of Simon Bernstein recently filed a Motion to Intervene in the Life Insurance Litigation to assert the Estate’s interest in the life insurance proceeds. The Plaintiffs filed a Memorandum of Law in Opposition to the Estate’s Motion to Intervene (the “Opposition Memorandum”) (See, Exhibit “D,” attached).

The opening paragraph of the Opposition Memorandum states as follows:

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), **TED BERNSTEIN, individually**, PAMELA B. SIMON, JILL IANTONI AND LISA FREIDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows: (emphasis added)

TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the Insurance Trust. Despite the opposition of TED

BERNSTEIN to the Intervention, the court has granted the Estate's Motion to Intervene. TED is now an opposing party of record to the Estate's interest in the Life Insurance litigation.

TED, individually and as the alleged trustee of the alleged Insurance Trust, has placed his personal interests above the interests of the Revocable Trust beneficiaries, who are the grandchildren of SIMON, through TED's open, notorious and public opposition to the Estate's intervention in the Life Insurance Litigation. This creates an inherent conflict of interest for TED. TED, as successor trustee of the Revocable Trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries, to administer the trust solely in their interest. The Estate and trust beneficiaries are the grandchildren of Simon Bernstein. This means TED must support, or at the least not obstruct, the efforts of the Estate to attempt to recover an additional \$1.7 million in life insurance benefits. If so recovered, this would dramatically reduce the exposure of the Revocable Trust's liability for any potential Estate shortfall to creditors. By opposing intervention by the Estate TED's actions will potentially expose the trust assets to liability should STANSBURY's claim exceed the assets in the Estate, a liability that can be avoided if the Estate is successful in the Life Insurance Litigation. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the \$1.7 million out of the estate and trust and to redirect the money to him and his siblings, people who are not beneficiaries of either the Estate or the Trust.

As a consequence of the foregoing, TED is in breach of his fiduciary duty to the beneficiaries of the Revocable Trust by opposing efforts to make the Estate more solvent, which in turn exposes the Trust to increased liability, and warrants his removal under §736.0706(2)(a). Additionally, this inherent and irreparable conflict of interest is a breach of his duty of loyalty and warrants removal under *Aiello, supra*, 793 So. 2d at 1152. *See also Brigham v. Brigham*, 11

So. 3d 374, 386 (Fla. 3d DCA 2009); *McCormick v. Cox*, 118 So. 3d 980, 987-88 (Fla. 3d DCA 2013) (removal of trustee was warranted where trustee had a conflict of interest and breach his fiduciary duties; trial court properly exercised its authority to remove trustee).

**C. Misconduct in the Shirley Bernstein Estate**

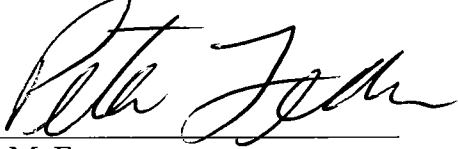
There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein on a date after he had passed away.

This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "E.")

Further, the attorney for TED BERNSTEIN as Personal Representative of the Estate of Shirley Bernstein has admitted to altering provisions of the Shirley Bernstein Trust which had the effect of benefitting TED BERNSTEIN.

Ted Bernstein's involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

WHEREFORE, William E. Stansbury requests that TED BERNSTEIN, the apparent successor trustee of the Simon Bernstein Trust, be removed, that the court appoint a Successor Trustee with no apparent conflicts of interest, and that the Court require the filing of a Trust Accounting.

  
Peter M. Feaman

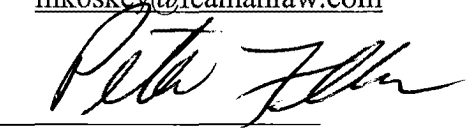


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 29 day of July, 2014.

PETER M. FEAMAN, P.A.  
3695 W. Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
Tel: 561-734-5552  
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[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_



Peter M. Feaman  
Florida Bar No. 0260347

**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
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(561) 997-7008  
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LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

**EXHIBIT 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

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**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.

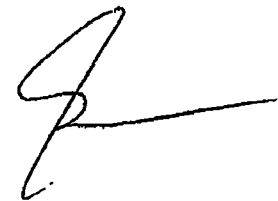
B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "*beneficiary*" with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

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES  
TESCHER & SPALLINA, P.A.



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

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

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

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

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

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

### ARTICLE III. GENERAL

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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**TESCHER & SPALLINA, P.A.**



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

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

C. **Substance Abuse.**

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

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

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

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

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

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



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 LA hereof, provided I otherwise have legal capacity to do so.

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

#### ARTICLE IV. FIDUCIARIES

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

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

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;

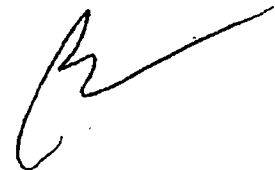
e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or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

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

-20-

LAW OFFICES

**TESCHER & SPALLINA, P.A.**

000678

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.

*[remainder of page intentionally left blank]*



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

SETTLOR and TRUSTEE:

*[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 21 day of July, 2012:

*[Handwritten signature of Robert L. Spallina]*  
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  
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 \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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

**ATTORNEYS**

DONALD R. TESCHER  
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WWW.TESCHERSPALLINA.COM

**SUPPORT STAFF**  
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 34<sup>th</sup> 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

**EXHIBIT** B

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.

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
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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

RLS/km

Enclosures

**EXHIBIT** C

000685

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Tstee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )  
Third-Party Defendants. )

Case No. 13 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

PLAINTIFFS MEMORANDUM OF LAW  
IN OPPOSITION TO ESTATE OF SIMON  
BERNSTEIN'S MOTION TO  
INTERVENE

EXHIBIT D

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually and  
as alleged Trustee of the Simon Bernstein  
Irrevocable Insurance Trust Dtd, 6/21/95

Cross-Defendant

and,

PAMELA B. SIMON, DAVID B.SIMON,  
both Professionally and Personally  
ADAM SIMON, both Professionally and  
Personally, THE SIMON LAW FIRM,  
TESCHER & SPALLINA, P.A.,  
DONALD TESCHER, both Professionally  
and Personally, ROBERT SPALLINA,  
both Professionally and Personally,  
LISA FRIEDSTEIN, JILL IANTONI  
S.B. LEXINGTON, INC. EMPLOYEE  
DEATH BENEFIT TRUST, S.T.P.  
ENTERPRISES, INC. S.B. LEXINGTON,  
INC., NATIONAL SERVICE  
ASSOCIATION (OF FLORIDA),  
NATIONAL SERVICE ASSOCIATION  
(OF ILLINOIS) AND JOHN AND JANE  
DOES

Third-Party Defendants.

---

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as “BERNSTEIN TRUST”), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein’s Motion to Intervene as follows:

### INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”<sup>1</sup>

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the “Estate” to further Stansbury’s own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury’s motion been granted in its entirety by the Florida court, Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14<sup>th</sup> Order to deny Stansbury’s second effort to intervene in this lawsuit.

---

<sup>1</sup> Order entered January 14, 2014 [Dkt. #110].



### FACTUAL BACKGROUND

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.<sup>2</sup>

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing.<sup>3</sup>

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.<sup>4</sup>

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.<sup>5</sup>

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<sup>2</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as Exh. A. See

<sup>3</sup> See Probate Court Order attached to the Estate's motion to intervene as Exhibit B (Dkt. # ).

<sup>4</sup> See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. Exh. A, pg. 13-14, 34-35, 39.

<sup>5</sup> See Transcript, Exh. A at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: “Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate.”

8. It has been over six months since the court entered its Order denying Stansbury’s motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate’s motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.<sup>6</sup> A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer’s Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated “Simon Bernstein’s estate” or “the Estate” as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, “on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as ‘LaSalle National Trust, N.A. as Successor Trustee’, and the Contingent Beneficiary was designated as ‘Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.’ ” (Aff. of Don Sanders, **Exh. B** at ¶62).

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<sup>6</sup> The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

### STANDARD OF REVIEW

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1<sup>st</sup>) 123025, 373 Ill. Dec. 620, 994 N.E.2<sup>nd</sup> 105 (1<sup>st</sup> Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

“Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value.” “Permissive intervention under Rule 24(b), permits “anyone to intervene who... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “*unduly delay or prejudice the adjudication of the original parties rights.*”<sup>7</sup> (emphasis added).

### ARGUMENT

**A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.**

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

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<sup>7</sup> See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7<sup>th</sup> Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2<sup>nd</sup> Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

“The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the "Estate".

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate's motion or complaint to intervene necessitates revisiting the issue.

**B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff's claim that it is the named beneficiary of the Policy proceeds and negates the Estate's claims. (go through the Paragraphs and cite in the statement of unrefuted facts).**

As indicated in Plaintiffs' Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

**C. The Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.**

As stated above, the Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

**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 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 in the manner provided in such designation which is incorporated herein by reference.<sup>8</sup>

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.<sup>9</sup>

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

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<sup>8</sup> See (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

<sup>9</sup> See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

**D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.**

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1<sup>st</sup> Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.



**E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.**

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of \$1,000,000.00."<sup>10</sup>

This language again mirrors the language in Stansbury's prior motion to intervene.<sup>11</sup> And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

**F. Public policy concerns mitigate against the Estate's motion.**

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

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<sup>10</sup> See Dkt. #110, Estate motion to intervene at ¶9.

<sup>11</sup> See Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

**CONCLUSION**

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

**By: /s/Adam M. Simon**  
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Attorneys for Plaintiffs and Third-Party  
Defendants  
*Simon L. Bernstein Irrevocable  
Insurance Trust Dtd 6/21/95; Ted  
Bernstein as Trustee, and individually,  
Pamela Simon, Lisa Friedstein and Jill  
Iantoni*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

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on the 28th day of June, 2014.

/s/ Adam M. Simon  
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Attorney for Plaintiffs

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
2 IN AND FOR PALM BEACH COUNTY, FLORIDA  
3 PROBATE/GUARDIANSHIP DIVISION 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  
26 200 West Atlantic Avenue, Courtroom 8  
27 Delray Beach, Florida 33344

28 Friday, September 13, 2013  
29 1:30 p.m. - 2:15 p.m.

30 Stenographically Reported By:  
31 JESSICA THIBAUT

32

33 ♀

34 00002

35 1 APPEARANCES

36 2

37 3 On Behalf of the Petitioner:

38 4 ELIOT IVAN BERNSTEIN, PRO SE  
39 2753 NW 34th Street  
40 5 Boca Raton, Florida 33434  
41 6

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

♀

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

♀

00027

1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon

♀

00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of

# EXHIBIT I

DOCKET #188 - SIMON ESTATE (SEE EXHIBIT I)

RESP - RESPONSE TO:

FILING DATE: 27-JUN-2014

FILING PARTY: STANSBURY, WILLIAM E

DOCKET TEXT: RESPONSE IN OPPOSITION TO THE APPOINTMENT  
OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE  
AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT  
THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE  
AND TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT F/B

 EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000703

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

IN RE:

Case No.: 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

---

**RESPONSE IN OPPOSITION TO THE APPOINTMENT  
OF TED BERNSTEIN AS SUCCESSOR PERSONAL REPRESENTATIVE  
AND MOTION FOR THE APPOINTMENT OF AN INDEPENDENT  
THIRD PARTY AS BOTH SUCCESSOR PERSONAL REPRESENTATIVE AND  
TRUSTEE OF THE SIMON BERNSTEIN TRUST AGREEMENT**

COMES NOW Petitioner, William E. Stansbury (“Stansbury”), a creditor and “Interested Person,” pursuant to the §731.201(23) Fla. Stat. (2013), by and through his undersigned counsel, and files this Response in Opposition to the Motion for Appointment of Ted Bernstein as Successor Personal Representative and Motion for the Appointment of an Independent Third Party as Successor Personal Representative and Successor Trustee of the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2014 (the “Revocable Trust.”). In support, Petitioner states as follows:

**I. Stansbury has standing to bring this Response and Motion**

1. When removal of a Personal Representative is at issue, Fla. Prob. R. 5.440 specifically provides that, “... **any interested person, by petition**, may commence a proceeding to remove a personal representative. ...” (Emphasis added.) By logical extension an “interested person” would also have standing to petition the court for, and to participate in the proceedings involving, the appointment of a successor fiduciary.

2. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”



3. Stansbury has filed a claim against the Estate of Simon Bernstein (the "Estate") and has sued the Estate in a separate lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida (the "Stansbury Lawsuit.") A copy of the Statement of Claim is attached as Exhibit "A." A copy of the Second Amended Complaint by Interlineation which forms the basis of the Statement of Claim is attached hereto as Exhibit "B."

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the successor fiduciary ultimately appointed will act without bias and in the best interests of the creditors and devisees of the Estate. The Fourth District Court of Appeal has recognized that a claimant to an estate is an "interested person" and has standing in a proceeding to approve the personal representative's final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004).

## **II. Ted Bernstein should not be appointed as Successor Personal Representative**

### **A. Misconduct in the Shirley Bernstein Estate**

5. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

6. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (*See* Transcript of Proceedings, pages 15 and 16, attached as Exhibit "C.")

7. This Court should not appoint Ted Bernstein to serve as Personal Representative in the Estate of Simon Bernstein under circumstances where allegations of fraud and wrongdoing

are unresolved and arise out of the performance of his fiduciary duties in the estate of his mother, Shirley Bernstein.

**B. The "lost" Insurance Trust**

8. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (See SS-4 Application for EIN as Exhibit "D.")

9. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of this Estate, submitted a claim form to Heritage on behalf of the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (See Exhibit "E") Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was "unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995." (See Exhibit "F" attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, could be available to pay creditors of the Estate such as Stansbury.

10. Spallina, with the knowledge of Ted Bernstein, represented that he was "Trustee" of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

11. Thereafter, Heritage refused to pay the life insurance proceeds to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook

County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still “lost,” alleges that Ted Bernstein is the “trustee” of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted’s representation, like that of Spallina, appears plainly false and should disqualify him from serving as a fiduciary in the Estate.

**C. Ted Bernstein has Conflicts of Interest ---**

**(a) The Insurance Litigation in Chicago**

12. Ted Bernstein, as well as his siblings (other than Eliot Bernstein) - Lisa Sue Friedstein, Pamela Beth Simon, and Jill Iantoni - have a conflict of interest precluding them from faithfully executing the duties of fiduciary on behalf of the Estate.

13. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

14. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 8 thru 11 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (*See*, selected e-mail messages, attached hereto as Composite Exhibit “G”.) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

15. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and

the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.)

16. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. *See Estate of Bell v. Johnson*, 573 So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative).

**(b) Stansbury’s Lawsuit Against the Estate**

17. The Stansbury Lawsuit filed against the Estate also named as Defendants Ted Bernstein individually and several entities with which Stansbury, Ted Bernstein and Simon Bernstein were associated. On June 9, 2014, through a mediation agreed upon by the parties, Stansbury settled with Ted and some entity Defendants.

18. Allegations of fraud are made against both Ted Bernstein and Simon Bernstein. The remaining Defendant of significance in the case is the Estate. As a consequence, Ted would have absolutely no objectivity serving as Personal Representative of the Estate when evaluating the Stansbury lawsuit.

**D. The Ted Bernstein and Eliot Bernstein Litigation**

19. The animus and “bad blood” that has surfaced between Ted Bernstein and Eliot Bernstein, and to a lesser extent the other Bernstein siblings, makes the selection of any of the

Bernstein siblings as successor Personal Representative ill-advised. Such an appointment would virtually guarantee that the Court's docket and courtroom will be continuously inundated with motions and other activities initiated by the warring factions, all to the detriment of the beneficiaries and creditors of the Estate such as Stansbury.

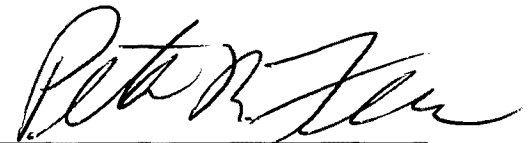
**E. The Court Should Appoint an Independent Successor Personal Representative.**

20. Stansbury moves this Court for the appointment of an independent, third party Successor Personal Representative that will administer the Estate in an objective, unbiased and fair manner, as set forth in § 733.5061, Fla. Stat. (2013) and in accordance with the procedure set forth in §733.501, Fla. Stat. (2013). Additionally, Stansbury moves this Court to appoint the same independent Successor Personal Representative to be Successor Trustee of the Simon Bernstein Revocable Trust as well.

21. In connection therewith, Stansbury offers the following individuals that have expressed a willingness to serve as both Successor Personal Representative and Trustee of the Revocable Trust:

- (a) Brian O'Connell, Esq.
- (b) Michael Mopsick, Esq.

22. The resumes setting forth the experience and qualifications of the aforementioned individuals are attached hereto as Exhibits "H" and "I".




Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished to parties listed on the attached Service list by U.S. Mail and via e-mail service at [arose@mrachek-law.com](mailto:arose@mrachek-law.com) and [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com) to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, and at [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com) to John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401; Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); and William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com), Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 27<sup>th</sup> day of June, 2014.

PETER M. FEAMAN, P.A.  
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By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No.: 0260347

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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

Division: IZ

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PALM BEACH COUNTY

**STATEMENT OF CLAIM BY WILLIAM E. STANSBURY**

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

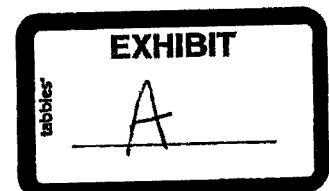
2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.

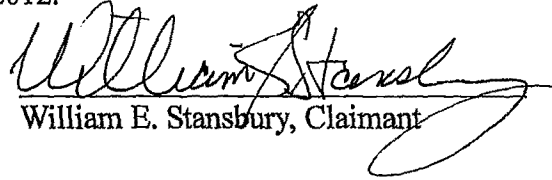
5. The claim is not secured.

*[Signature page follows this page]*

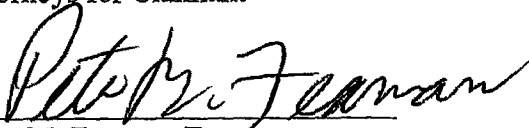


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.

  
William E. Stansbury, Claimant

Attorneys for Claimant

  
Peter M. Feaman, Esq.  
Florida Bar No.: 260347  
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Copy mailed to attorney for Personal  
Representative on \_\_\_\_\_  
2012.

**MUST BE FILED IN DUPLICATE**



IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,  
Plaintiff,

CASE NO: 50 2012 CA 013933 MB AA

v.

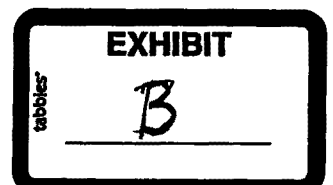
TED S. BERNSTEIN; DONALD TESCHER and  
ROBERT SPALLINA, as co-personal  
representatives of the ESTATE OF SIMON L.  
BERNSTEIN and as co-trustees of the SHIRLEY  
BERNSTEIN TRUST AGREEMENT dated  
May 20, 2008; LIC HOLDINGS, INC.;  
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,  
f/k/a ARBITRAGE INTERNATIONAL  
HOLDINGS, LLC; BERNSTEIN FAMILY  
REALTY, LLC,  
Defendants.

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**SECOND AMENDED COMPLAINT BY INTERLINEATION**

WILLIAM E. STANSBURY, by and through undersigned counsel, sues the Defendants  
and states:

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff (hereinafter referred to as "STANSBURY") is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendant TED S. BERNSTEIN ("TED BERNSTEIN"), is *sui juris*, and a resident of Palm Beach County, Florida.
4. SIMON L. BERNSTEIN ("SIMON BERNSTEIN") died on or about September 13, 2012, after the filing of the initial Complaint in this action. At the time of his death, SIMON BERNSTEIN was *sui juris*, and was a resident of Palm Beach County, Florida. Defendants



Donald R. Tescher and Robert L. Spallina are serving as co-personal representatives of the ESTATE OF SIMON L. BERNSTEIN (the "ESTATE") which ESTATE is presently open and pending in the Palm Beach County Circuit Court, *In re: Estate of Simon L. Bernstein*, Case No. 502012CP004391XXXXSB (the "Estate Proceeding"). In accordance with Section 733.705, Florida Statutes, STANSBURY hereby brings this independent action against the ESTATE with respect to his Statement of Claim that was filed and objected to in the Estate Proceeding.

5. Defendant, LIC HOLDINGS, INC. ("LIC Holdings") is a Florida corporation with its principal place of business in Palm Beach County, Florida.

6. Defendant, ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, formerly known as ARBITRAGE INTERNATIONAL HOLDINGS, LLC, ("ARBITRAGE") is a Florida limited liability company with its principal place of business in Palm Beach County, Florida.

7. Defendant, BERNSTEIN FAMILY REALTY, LLC is a Florida limited liability company doing business in Palm Beach County.

8. Defendant, the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008 ("SHIRLEY'S TRUST"), owns real property in Palm Beach County, Florida. Based upon information and belief, Donald R. Tescher and Robert L. Spallina are serving as co-trustees of SHIRLEY'S TRUST. This Court has personal jurisdiction over the trustees and the beneficiaries of SHIRLEY'S TRUST under Section 736.0202, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida. This court has subject matter jurisdiction over this action under Section 736.0203, Florida Statutes. Venue is proper in Palm Beach County, Florida, under Section 736.0204, Florida Statutes, as the principal place of administration of SHIRLEY'S TRUST is in Palm Beach County, Florida and one or more of the beneficiaries of SHIRLEY'S TRUST reside in Palm Beach County, Florida.

9. The acts and incidents giving rise to the causes of action alleged herein arose in Palm Beach County, Florida.

### General Allegations

10. STANSBURY has worked in the insurance industry for virtually all of his adult life. After 30 years, he had become well-known and highly regarded by major insurance companies, their principals and others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPA's, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with insurers, insurance brokers and life insurance products.

11. SIMON BERNSTEIN dealt at sophisticated levels of the insurance industry and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate into their wealth management and estate planning.

12. TED BERNSTEIN, the son of SIMON BERNSTEIN, was also actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into high net worth individuals' financial and estate planning.

13. TED BERNSTEIN, acting on his behalf and on behalf of, and in concert with, SIMON BERNSTEIN, approached STANSBURY in 2003, urging STANSBURY to spearhead the marketing of a unique insurance concept, newly developed by a prominent law firm, which was designed for use in the financial and estate planning of high net worth individuals.

14. TED BERNSTEIN told STANSBURY that he knew of STANSBURY's expertise and reputation in the insurance and related industries and that STANSBURY was skilled at and accustomed to speaking and marketing insurance products to groups of professionals. He realized that STANSBURY, because of his knowledge, reputation and abilities, would be well suited to market this concept nationwide through prominent and experienced professionals.

15. In 2006, SIMON BERNSTEIN and TED BERNSTEIN (collectively, "BERNSTEIN" or the "BERNSTEINS") formed, as sole shareholders, Defendants LIC Holdings and ARBITRAGE for the purpose of marketing and selling certain life insurance products to high net worth individuals for their wealth management and estate planning needs.

16. STANSBURY agreed to become an employee of LIC Holdings, Inc. and ARBITRAGE and agreed to a salary of 15% of net retained commissions received on all products sold, including renewals. STANSBURY at this time was responsible for, among other duties, calculating, on a monthly basis, the commissions due him in connection with new business generated in the current year and renewals on business generated in previous years.

17. STANSBURY worked with diligence and skill, traveling throughout the United States, generating ever-increasing sales and generating very large commissions. By 2006, nationwide sales were resulting in substantial commissions on new policies and renewal commissions.

18. Also in 2006, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with, TED BERNSTEIN, told STANSBURY that STANSBURY was being rewarded for his efforts and the explosive growth of the business, such that he would receive a 10% ownership interest in LIC Holdings, Inc. SIMON BERNSTEIN and TED BERNSTEIN, collectively, were majority shareholders while STANSBURY was a minority shareholder in LIC Holdings, Inc.

19. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

20. In February of 2008, SIMON BERNSTEIN, acting on his behalf and on behalf of, and in concert with TED BERNSTEIN, approached STANSBURY and told him his time would

be better spent building the business rather than performing monthly calculations of income. The plan proposed was that, rather than STANSBURY performing computations on a monthly basis as to how much should be paid to him based upon 15% of the net retained commissions derived from both new policies sold and renewals from previous years, the BERNSTEINS and STANSBURY all would forego monthly payouts and defer compensation until the end of 2008, when year-end computations could be made. It was represented that in December, year-end computations would be made and salaries would be paid in December 2008 or January of 2009. It was specifically represented to STANSBURY that:

a) neither SIMON BERNSTEIN, TED BERNSTEIN nor STANSBURY would take any compensation during fiscal year 2008 but rather they all would wait until the year-end accounting was performed in December of 2008 or January, 2009;

b) SIMON BERNSTEIN, TED BERNSTEIN, and STANSBURY would each be paid a minimum salary of \$1,000,000 at year end, and STANSBURY'S salary was to be applied against his earned commissions of 15%. Any compensation due STANSBURY over and above the \$1,000,000 would be paid as a distribution on his stock ownership interest in LIC Holdings.

21. In January of 2008, STANSBURY was paid \$420,018 for commissions earned on some 2007 sales. However, STANSBURY was not, and has never been, paid the commissions due him on sales in 2008 and thereafter, and he was not and has never been paid the renewal commissions due him on sales made in previous years that were paid to LIC Holdings or ARBITRAGE in 2008 and thereafter, other than a nominal payment of \$30,000 made in 2010.

22. When STANSBURY was not paid as agreed in late 2008/2009 and thereafter, SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, stated to STANSBURY that salary and ownership distributions due and owing to SIMON BERNSTEIN, TED BERNSTEIN and STANSBURY would be deferred to a future time. This

deferral of payment was represented to be important because, as a result of the virtual collapse of the capital lending markets in 2008, it was necessary to retain the funds in the corporate bank accounts to demonstrate to potential lenders the financial stability of the companies.

23. The false statements set forth in paragraphs 18 through 21, above, were made by SIMON BERNSTEIN and TED BERNSTEIN, in concert with each other, with knowledge of their falsity and with the intention of never to fulfilling such promises.

24. Despite the representations to STANSBURY set forth above to the contrary, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, authorized LIC Holdings and/or ARBITRAGE to pay themselves \$3,756,229.00 and \$5,225,825.00, respectively, in 2008. Contrary to the representations made as set forth in paragraph 20, STANSBURY received no compensation for first year commissions and renewal commissions due him in 2008.

25. The net retained commissions by LIC Holdings and ARBITRAGE, not including renewals, for 2008 were approximately \$13,442,549.00. As such, STANSBURY was entitled to, at the very minimum, 15% of \$13,442,549.00, or \$2,016,382.35.

26. Beginning late in 2007 or early in 2008, and continuing through at least 2012, LIC Holdings and/or ARBITRAGE became the alter ego of SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders, in that they disregarded corporate structure and wrongfully diverted, converted and depleted corporate assets of LIC Holdings and ARBITRAGE for their own personal benefit and the benefit of Bernstein family trusts and other entities as more specifically set forth below. Those trusts have since invested some of these wrongfully diverted and converted corporate assets in real estate, also as more particularly set forth below. The wrongful action of SIMON BERNSTEIN and TED BERNSTEIN in diverting and converting corporate assets rendered LIC Holdings, and possibly ARBITRAGE, insolvent.

27. Throughout 2009, SIMON BERNSTEIN and TED BERNSTEIN continued to make false statements to STANSBURY to hide the fact that LIC Holdings and/or ARBITRAGE was their alter ego, in that they converted corporate property and corporate assets of LIC and/or ARBITRAGE for their own personal benefit in 2008, 2009 and thereafter, all to the exclusion and financial detriment of STANSBURY, all the while fraudulently representing to STANSBURY that no money was being paid as salary or distributions to SIMON BERNSTEIN, TED BERNSTEIN or STANSBURY because it was necessary to hold the funds in the corporate bank accounts to show to potential lenders the financial stability of the company.

28. STANSBURY relied upon these continuing misrepresentations of Defendants to his detriment. Because STANSBURY was told that potential funding sources for the business needed to see that capital of the company was available, he took no action when he did not receive any compensation for 2009 and was paid only \$30,000 in 2010.

29. In order to continue their scheme to defraud, SIMON BERNSTEIN and TED BERNSTEIN failed and refused to account for renewal commissions and failed to supply any financial information to STANSBURY concerning LIC Holdings or ARBITRAGE.

30. In furtherance of their scheme to deprive STANSBURY of salary he had earned and shareholder distributions to which he was entitled, SIMON BERNSTEIN and TED BERNSTEIN intercepted mail addressed to STANSBURY, removing commission checks representing commissions due to STANSBURY, deposited the funds into their own accounts and otherwise converted the funds. SIMON BERNSTEIN and TED BERNSTEIN also opened STANSBURY's mail containing checks payable to him which were unrelated to them and the businesses.

31. In December, 2011 STANSBURY had been battling a painful and debilitating disease that could only be managed through the administration of potentially harmful

prescription medications. On December 22, 2011, the Defendants BERNSTEIN, with knowledge of STANSBURY's health issues and his debilitated condition, decided to take advantage of and deceive STANSBURY further. STANSBURY had for years been given K-1 statements reflecting his 10% ownership of LIC Holdings. At that time, TED BERNSTEIN told STANSBURY that the company accountant had discovered a potential significant taxable event which could cause STANSBURY, as one of the owners of LIC Holdings to pay taxes on phantom income. TED BERNSTEIN promised that if STANSBURY would sign a paper ceding his 10% interest in LIC Holdings, he would not have to pay the tax if in fact the tax was due. TED BERNSTEIN promised he would hold the paper, promising it would not become operative until STANSBURY and the Defendants BERNSTEIN discussed the situation further in the first quarter of 2012.

32. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon STANSBURY, STANSBURY reasonably believed that Defendants had complied, or intended to comply with their obligations to STANSBURY under the contract between them. STANSBURY, therefore, was prevented from knowing for a period of years that the causes of action asserted herein existed.

33. By the second quarter of 2012, STANSBURY developed the belief that the BERNSTEINS' representations over the years were wholly false and he sought legal counsel.

34. STANSBURY has retained the law firm of Peter M. Feaman, P.A. and has agreed to pay it a reasonable fee for its services rendered herein.

**COUNT I - ACCOUNTING**  
**(Against LIC Holdings and ARBITRAGE, for Accounting)**

35. STANSBURY hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.



36. The relationship between STANSBURY and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 19 through 27 created a situation where Defendants had sole access to receipts generated by STANSBURY's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to STANSBURY under his arrangement with Defendants.

37. The period of time during which STANSBURY has been deprived of monies due him spans approximately four and a half years. The various sources of revenue to Defendants of monies from which the amounts due STANSBURY may be calculated, the manner in which STANSBURY was to be paid, and the amount due STANSBURY all involve extensive and complicated accounts, and STANSBURY's remedy at law cannot be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff STANSBURY prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, LIC Holdings and ARBITRAGE, and for such orders of Court as will require such Defendants to provide STANSBURY with all records and copies of documents from January 1, 2006 to the present, in order to reveal his right to, and the amount of all sums: (a) received as commissions to which STANSBURY was entitled to a share; (b) due to STANSBURY, whether paid or not; (c) paid to STANSBURY, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the BERNSTEIN Defendants out of monies received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to STANSBURY, together with an award of court costs and such other and further relief as the Court may deem just and proper.

**COUNT II - BREACH OF ORAL CONTRACT**  
**(Against LIC Holdings, Inc., ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)**

38. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

39. The arrangement between STANSBURY and Defendants, as described in paragraphs 13 through 28 above, constituted a contract between them.

40. An express term of that contract involved the commitment of LIC Holdings and ARBITRAGE to calculate and pay to STANSBURY all sums due to him under the contract, whether as commissions, salary, distributions, expenses or any other reason.

41. The Defendants initially performed the duties required of them under said contract.

42. However, Defendants breached their contract with STANSBURY by withholding from STANSBURY monies due him under the contract for renewal commissions earned in 2007 and commissions and renewal commissions earned in 2008 and thereafter.

43. The withholding of such monies constitutes a material breach of the contract between STANSBURY and LIC Holdings and ARBITRAGE.

44. STANSBURY has sued both LIC Holdings and ARBITRAGE because the BERNSTEINS represented that his employment relationship was with LIC Holdings, the company in which he owned a 10% interest, but STANSBURY'S W-2 statements were issued by ARBITRAGE as his employer.

45. SIMON BERNSTEIN and TED BERNSTEIN are personally liable, jointly and severally, for the material breach of the oral employment contract with STANSBURY as LIC Holdings and/or ARBITRAGE were the alter ego of SIMON BERNSTEIN and TED

BERNSTEIN in that the BERNSTEINS depleted corporate assets for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN family trusts and other entities, at the expense of corporate creditors such as STANSBURY, to wit:

a) SIMON BERNSTEIN and TED BERNSTEIN caused LIC Holdings and/or ARBITRAGE to pay to them at least \$3,756,229.00 and \$5,225,825.00, respectively, in fiscal 2008 during which time STANSBURY, other than the amount referenced in paragraph 21, was paid nothing;

b) According to Palm Beach County public records, in December of 2007 TED BERNSTEIN purchased a property at 880 Berkeley Street, Boca Raton, Florida 33487, for \$4,400,000;

c) According to Palm Beach County public records, on December 28, 2008, TED BERNSTEIN paid off the mortgage in the amount of \$486,400.00 on a property he owned at 15807 Menton Bay Court, Saturnia Isles, Delray Beach, Florida 33446;

d) According to Palm Beach County public records, SIMON BERNSTEIN paid off the mortgage on property he and his wife owned, and subsequently transferred by quitclaim deed on May 20, 2008 to the trustee of SHIRLEY'S TRUST, at 7020 Lions Head Lane, Boca Raton, Florida, 33496. The amount of the mortgage pay-off is unknown, but in 2013 the property was listed for sale at \$2,399,000;

e) According to Palm Beach County public records, on June 18, 2008, BERNSTEIN FAMILY REALTY, LLC acquired a property located at 2753 N.W. 34 Street, Boca Madera Unit 2, Boca Raton, Florida 33432 (the "Boca Madera Property"). On July 8, 2008, SIMON BERNSTEIN loaned \$365,000 to BERNSTEIN FAMILY REALTY, LLC. The specific

purpose of the loan is unknown, but SIMON BERNSTEIN received a mortgage on the Boca Madera Property to secure the loan;

f) According to Palm Beach County public records, on May 20, 2008 SIMON BERNSTEIN and his wife transferred by quitclaim deed to the trustee of SHIRLEY'S TRUST a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2494 South Ocean Boulevard, Boca Raton, Florida. The mortgage on that property was paid off on September 27, 2010.

g) The legal descriptions for each of the above referenced properties are attached hereto as Exhibit "B."

46. There is due to STANSBURY from such Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against SIMON BERNSTEIN and TED BERNSTEIN declaring that Defendants, LIC Holdings, Inc. and ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, are or were the alter ego of SIMON BERNSTEIN and TED BERNSTEIN such that the corporate veil of LIC Holdings and/or ARBITRAGE should be pierced; for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in excess of \$1,500,000.00 for the amounts due to Plaintiff under the terms of their contract, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

**COUNT III - FRAUD IN THE INDUCEMENT- EMPLOYMENT AGREEMENT**  
**(Against SIMON BERNSTEIN and TED BERNSTEIN)**

47. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

48. At all material times hereto, SIMON BERNSTEIN and TED BERNSTEIN were officers and majority shareholders of LIC Holdings and ARBITRAGE.

49. The statements set forth in paragraphs 18 through 24, above, made by SIMON BERNSTEIN and TED BERNSTEIN, on behalf of and in concert with each other, and as officers and majority shareholders of LIC Holdings and ARBITRAGE, were false statements of material fact that SIMON BERNSTEIN and TED BERNSTEIN knew to be false at the time they were made, as SIMON BERNSTEIN and TED BERNSTEIN never intended to authorize LIC Holdings or ARBITRAGE to pay to STANSBURY the amounts due him as evidenced by the fact that the accountant for LIC Holdings and ARBITRAGE prepared financial worksheets for 2008 showing that the BERNSTEINS would receive compensation, but STANSBURY would not, for fiscal 2008, in direct contravention to their statements and promises to STANSBURY.

50. SIMON BERNSTEIN and TED BERNSTEIN intended for STANSBURY to rely on such statements that he would be ultimately be paid for his productivity in order to induce him into continuing his productive and revenue-generating sales activity as an employee of LIC Holding and/or ARBITRAGE and fraudulently created for STANSBURY the false expectation that STANSBURY would be paid as agreed.

51. STANSBURY in fact relied to his detriment on these false statements and was induced thereby to remain in his employment relationship with LIC Holdings and ARBITRAGE as he continued to sell, with the expectation of payment, products and generate revenue for LIC Holdings and/or ARBITRAGE until 2012, and was further induced not to pursue from LIC Holdings and/ARBITRAGE his right to payment of all amounts due him until after SIMON BERNSTEIN and TED BERNSTEIN had diverted and converted corporate assets for their personal benefit, rendering LIC Holdings, and possibly ARBITRAGE, insolvent.

52. STANSBURY was injured thereby as he was not and has not been compensated for his revenue-generating sales and other performance, and did not seek alternative employment, as a proximate result of his detrimental reliance on these false statements.

WHEREFORE, Plaintiff prays for judgment against Defendants SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint; for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

**COUNT IV - FRAUD IN THE INDUCEMENT -  
CEDING OF LIC HOLDINGS OWNERSHIP INTEREST  
(Against Ted Bernstein and LIC Holdings, Inc.)**

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

54. In the fourth quarter of 2011, TED BERNSTEIN embarked upon a plan to defraud from STANSBURY his 10% ownership interest in LIC Holdings, Inc. As set forth in paragraph 31 above, Defendant TED BERNSTEIN fraudulently induced STANSBURY to prepare and sign a document giving up his 10% interest in and to LIC Holdings, Inc.

55. The ceding of his shares in LIC Holdings, Inc. was procured by fraud and STANSBURY relied upon the representations made by BERNSTEIN with regard to signing the document apparently ceding his stock.

56. It was reasonable for STANSBURY to rely on the representations made by BERNSTEIN because at that time STANSBURY was unaware of the breaches of fiduciary duty and breaches of the oral contract that had taken place.

57. As a result of STANSBURY's reliance, STANSBURY has been damaged by the loss of 10% of the shares of LIC Holdings and the rights and remedies to a shareholder related thereto.

WHEREFORE, Plaintiff prays for a judgment for damages against Defendants BERNSTEIN and LIC Holdings, Inc. for the damages caused by the fraudulent conduct of BERNSTEIN as described herein, together with reasonable costs, pre-judgment interest and any other relief this Court deems just and proper.

**COUNT V - CIVIL CONSPIRACY**  
**(Against Simon Bernstein and Ted Bernstein)**

58. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, and Counts III and IV, paragraphs 47 through 57, inclusive.

59. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to continue his employment relationship with LIC Holdings and/or ARBITRAGE during 2008 and thereafter, without ever intending to authorize payment to STANSBURY for the amounts he was due, a relationship that generated substantial revenue for LIC Holdings and/or ARBITRAGE and, ultimately, SIMON BERNSTEIN and TED BERNSTEIN.

60. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to make fraudulent, false and misleading statements to STANSBURY intended to induce STANSBURY to delay pursuing his right to payment for all amounts due him until such time after SIMON BERNSTEIN and TED BERNSTEIN had converted and diverted corporate assets rendering LIC Holdings, and possibly ARBITRAGE, insolvent and uncollectible.

61. SIMON BERNSTEIN and TED BERNSTEIN, individually and as officers and majority shareholders of LIC Holdings and ARBITRAGE, knowingly, willfully, intentionally, and maliciously conspired, agreed, combined and confederated with each other to fraudulently induce STANSBURY, through false and misleading statements, to surrender and cede, without fair value payment, his 10% interest in LIC Holdings.

62. The numerous fraudulent, false and misleading statements made by SIMON BERNSTEIN and TED BERNSTEIN were all overt acts in furtherance of the conspiracy.

63. STANSBURY was injured thereby in that, as a proximate result of the conspiratorial conduct of SIMON BERNSTEIN and TED BERNSTEIN, he continued in his employment with LIC Holdings and/or ARBITRAGE, without payment of the compensation due him, he delayed pursuit of his right to collect the amounts due him, and ceded his 10% interest in LIC Holdings.

WHEREFORE, Plaintiff prays for judgment against Defendants, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, for damages in excess of \$1,500,000.00 together with prejudgment and post-judgment interest; for the imposition of an equitable lien and constructive trust on the Bernstein real estate described in paragraph 45 and Exhibit "B" as more fully set forth in Counts VII and VIII of this Second Amended Complaint;



for his court costs herein expended; and for such other relief as the Court may deem just and proper. STANSBURY reserves the right to move to amend to request punitive damages in accordance with Florida Law.

**COUNT VI - CIVIL THEFT**  
**(AGAINST ARBITRAGE INTERNATIONAL MARKETING, LLC)**

64. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

65. This is an action for Civil Theft under Chapter 772, Florida Statutes, more specifically §772.11, Fla.Stat.

66. In February, 2012 and March, 2012, Defendant ARBITRAGE intercepted two separate checks made payable to William STANSBURY intended as payment to STANSBURY for matters arising wholly outside his business transactions with the BERNSTEINS, LIC Holdings and ARBITRAGE.

67. Notwithstanding that the checks made payable to William STANSBURY was for sums due STANSBURY by a third party not in connection with the aforesaid business transactions, ARBITRAGE and/or someone acting on its behalf, caused the negotiation of STANSBURY's checks, wrongfully endorsing the checks and retaining the sums that should have been payable to STANSBURY.

68. As a result of the foregoing, Defendant ARBITRAGE has been guilty of criminal theft by conversion with the criminal intent to steal his money and deprive STANSBURY of his possession and use thereof.

69. Written demand for payment of all amounts due STANSBURY has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail. A copy of the demand letter is attached hereto as Exhibit "A."

WHEREFORE, Plaintiff prays for judgment against Defendant, ARBITRAGE for three times the full amount of the checks made payable to STANSBURY, together with pre-judgment interest and post-judgment interest, attorneys' fees, court costs and any other relief this Court deems just and proper.

**COUNT VII - CONVERSION**

70. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 34, inclusive.

71. Further, during 2012, Defendants TED BERNSTEIN, SIMON BERNSTEIN, LIC Holdings, Inc., ARBITRAGE, or someone acting on their behalves, received and cashed in excess of \$30,000.00 worth of commission checks otherwise payable to Plaintiff.

WHEREFORE, Plaintiff prays for judgment for damages against Defendant, ABRITRAGE, SIMON BERNSTEIN, LIC Holdings, Inc. and TED BERNSTEIN, together with pre-judgment interest and post-judgment interest, court costs and any other relief this Court deems just and proper.

**COUNT VIII - UNJUST ENRICHMENT**  
**(LIC HOLDINGS, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN)**

72. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, paragraphs 1 through 34, inclusive, and the allegations of Count III.

73. STANSBURY conferred a benefit on LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN by continuing his employment relationship with LIC Holdings and/or ARBITRAGE as a direct and proximate result of the fraudulent representations of SIMON BERNSTEIN and TED BERNSTEIN, as more fully set forth in Count III herein.

74. STANSBURY's continued employment resulted in the generation of substantial revenue for LIC Holdings and/or ARBITRAGE, which was then diverted and converted by the BERNSTEINS for their own personal use to the financial detriment of STANSBURY.

75. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN, as officers and majority shareholders of LIC Holdings and ARBITRAGE, had knowledge of the benefit of STANSBURY's continued employment with LIC Holdings and/or ARBITRAGE as they fraudulently induced STANSBURY to continue his productive employment activity while never intending to pay him the compensation he was due.

76. LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN accepted the revenues generated by STANSBURY in his capacity as employee.

77. There exists no adequate remedy at law as the conduct of the BERNSTEINS in diverting and converting the corporate assets of LIC Holdings and/or ARBITRAGE has resulted in the insolvency of LIC Holdings and possibly ARBITRAGE.

78. The circumstances are such that it would be inequitable for LIC Holdings, ARBITRAGE, SIMON BERNSTEIN and TED BERNSTEIN to retain the benefits of the STANSBURY's productive revenue-generating labor without paying fair value for it.

WHEREFORE, Plaintiff prays for judgment against Defendants, LIC Holdings, Inc., ARBITRAGE INTERNATIONAL MANAGEMENT, LLC, SIMON BERNSTEIN and TED BERNSTEIN, jointly and severally, in an amount in excess of \$1,500,000.00 which the evidence shows Plaintiff is entitled for the fair value of the services Plaintiff provided to LIC Holdings and ARBITRAGE, together with prejudgment and post-judgment interest; for his court costs herein expended and for such other relief as the Court may deem just and proper.

**COUNT IX - EQUITABLE LIEN**  
**(AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)**

79. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, the allegations set forth in paragraphs 1 through 34, paragraph 45 and Counts III and VII, above.

80. STANSBURY has alleged essential facts in his General Allegations and Count III that show that SIMON BERNSTEIN and TED BERNSTEIN committed fraud by fraudulently inducing STANSBURY to continue in an employment relationship that proved to be highly lucrative for SIMON BERNSTEIN and TED BERNSTEIN.

81. STANSBURY has alleged essential facts in his General Allegations and Count VII that show that SIMON BERNSTEIN and TED BERNSTEIN were unjustly enriched by STANSBURY's uncompensated continued employment with LIC Holdings and/or ARBITRAGE.

82. The conduct of the BERNSTEINS in depleting the corporate assets of LIC Holdings and ARBITRAGE for their personal benefit by causing the corporation or corporations to make exorbitant and inappropriate distributions to themselves, family members, and BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT, at the expense of corporate creditors such as STANSBURY, rendered LIC Holdings and possibly ARBITRAGE insolvent. Therefore STANSBURY has no adequate remedy at law.

83. BERNSTEIN FAMILY REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT were the transferees of some of the corporate assets of LIC Holdings and/or ARBITRAGE wrongfully diverted and converted by the BERNSTEIN and thus are proper parties to this action and this Count.

84. An equitable lien on the real estate described in paragraph 45 herein and Exhibit "B" attached hereto is justified as an equitable remedy for the wrongful conduct of the BERNSTEINS.

WHEREFORE, Plaintiff prays for the Court to declare and establish an equitable lien in favor of Plaintiff in an amount equal to the funds wrongfully diverted, on the property described in paragraph 45 and Exhibit "B" attached hereto, and on all other assets of the Defendants named in this Count IX, or third parties as yet unknown, which assets have been purchased wholly or in part, improved or benefitted by the diverted funds due Plaintiff, together with his costs herein expended, and such other and further relief as this Court may deem just and proper.

**COUNT X - CONSTRUCTIVE TRUST**  
**(AS TO SIMON BERNSTEIN, TED BERNSTEIN, BERNSTEIN FAMILY**  
**REALTY, LLC and SHIRLEY BERNSTEIN TRUST AGREEMENT)**

85. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 79 through 84 above.

WHEREFORE, Plaintiff prays for the Court to declare and establish a constructive trust in favor of Plaintiff on the property described in paragraph 45 and Exhibit "B" attached hereto in an amount equal to the funds wrongfully diverted and on all assets of Defendants or third parties as yet unknown, which assets have been purchased wholly or partly, improved or mortgaged by the diversion of said funds due Plaintiff. Plaintiff further prays for an award of court costs and such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

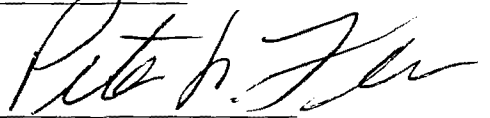
86. Plaintiff reiterates his demand for trial by jury on all issues so triable.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that the above and foregoing has been forwarded via e-mail service at [mrmlaw@comcast.net](mailto:mrmlaw@comcast.net); and [mrmlaw1@gmail.com](mailto:mrmlaw1@gmail.com) to Mark R. Manceri, Esq., Mark R. Manceri, P.A., *Attorney for Donald Tescher and Robert Spallina as Co-Personal Representatives*, 2929 E. Commercial Blvd., Suite 702, Fort Lauderdale, FL 33308; at [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com) to Alan Rose, Esq., PAGE, MRACHEK, *Attorneys for Defendants, Ted Bernstein, LIC Holdings, Inc. and Arbitrage International Management, LLC*, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, on this 20 day of November, 2013.

PETER M. FEAMAN, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

By: \_\_\_\_\_



Peter M. Feaman  
Florida Bar No. 0260347

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 THIBAUT

26

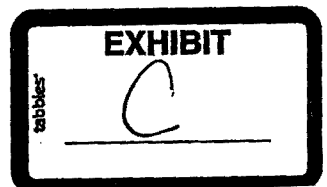
♀

00002

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



In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

♀

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

♀

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

♀

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

10/22/95

0964

Form **SS-4**  
(Rev. August 1989)  
Department of the Treasury  
Internal Revenue Service

### Application for Employer Identification Number

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

OMB No. 1545-0043  
Expires 7-31-91

1) Name of applicant (True legal name) (See instructions.)  
**Simon Bernstein Irrevocable ~~Life~~ Insurance Trust**

2) Trade name of business, if different from name in line 1  
**Shirley Bernstein**

3) Executor, trustee, "date of name"  
**Shirley Bernstein**

4a) Mailing address (street address) (room, apt., or suite no.)  
**7020 Lions Head**

4b) City, state, and ZIP code  
**Boca Raton, FL 33496**

5a) Address of business (See instructions.)

5b) City, state, and ZIP code

6) County and state where principal business is located

7) Name of principal officer, grantor, or general partner (See instructions.)  
**Simon Bernstein Sec. 2518**

8a) Type of entity (Check only one box.) (See instructions.)

<input type="checkbox"/> Individual SSN	<input type="checkbox"/> Estate	<input checked="" type="checkbox"/> Trust
<input type="checkbox"/> RESMIC	<input type="checkbox"/> Public administrator SSN	<input type="checkbox"/> Partnership
<input type="checkbox"/> State/local government	<input type="checkbox"/> Personal service corp.	<input type="checkbox"/> Other corporation (specify)
<input type="checkbox"/> Other nonprofit organization (specify)	<input type="checkbox"/> Federal government/military	<input type="checkbox"/> Church or church controlled organization
<input type="checkbox"/> Other (specify) <b>☐</b>	If nonprofit organization enter GEN (if applicable)	

9) If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated

Foreign country	State
-----------------	-------

10) Reason for applying (Check only one box)

<input type="checkbox"/> Started new business	<input type="checkbox"/> Changed type of organization (specify) <b>☐</b>
<input type="checkbox"/> Hired employees	<input type="checkbox"/> Purchased going business
<input type="checkbox"/> Created a pension plan (specify type) <b>☐</b>	<input checked="" type="checkbox"/> Created a trust (specify) <b>Insurance Trust</b>
<input type="checkbox"/> Banking purpose (specify) <b>☐</b>	<input type="checkbox"/> Other (specify) <b>☐</b>

11) Date business started or acquired (Mo., day, year) (See instructions.) **June 1, 1995**

12) Enter closing month of accounting year. (See instructions.) **December 31**

12) First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

13) Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."

Nonagricultural	Agricultural	Household
-----------------	--------------	-----------

14) Does the applicant operate more than one place of business?  
If "Yes," enter name of business. **☐** Yes **☐** No

15) Principal activity or service (See instructions.) **☐**

16) Is the principal business activity manufacturing?  
If "Yes," principal product and raw material used **☐** Yes **☐** No

17) To whom are most of the products or services sold? Please check the appropriate box.

<input type="checkbox"/> Public (retail)	<input type="checkbox"/> Other (specify) <b>☐</b>	<input type="checkbox"/> Business (wholesale)	<input type="checkbox"/> N/A
--	---	---	------------------------------

18) Has the applicant ever applied for an identification number for this or any other business?  
Note: If "Yes," please complete lines 18b and 18c. **☐** Yes **☑** No

18b) If you checked the "Yes" box in line 18, give applicant's true name and trade name, if different than name shown on prior application.

True name <b>☐</b>	Trade name <b>☐</b>
--------------------	---------------------

18c) Enter approximate date, city, and state where the application was filed and the previous employer identification number, if known.

Approximate date when filed (Mo., day, year)	City and state where filed	Previous EIN
--	----------------------------	--------------

19) Name and title (Please type or print clearly) **Shirley Bernstein, Trustee**

Telephone number (include area code) **407-477-9991**

Signature **X** **[Signature]** Date **June 21, 1995**

Please leave blank **☐**

Org.	Ind.	Class	Size	Reason for applying
------	------	-------	------	---------------------



BT000104

# CLAIMANT STATEMENT

<b>DECEASED INFORMATION</b>	
1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>	2. Last 4 digits of Deceased's Social Security No. <span style="background-color: black; color: black;">[REDACTED]</span>
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, or a name derivative form of first and/or middle name or an alias, please provide them below	
4. Policy Number(s) <b>1009208</b>	5. If policy is lost or not available, please explain: <b>unable to locate, policy is 30 years old</b>
6. Deceased's Date of Death <b>09/13/12</b>	7. Cause of Death <b>natural causes</b>
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	

<b>CLAIMANT INFORMATION</b>			
9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
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			

<b>CLAIMANT INFORMATION (to be completed by 2nd claimant, if any)</b>			
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.**



BT000100

# CLAIMANT STATEMENT

## 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 my 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

BT000101

# CLAIMANT STATEMENT

## TRUSTEE CERTIFICATION

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming benefits)**

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 Simon Bernstein Irrevocable Insurance Trust		Date of Trust Agreement 06/01/1995
Date of all Amendments		Trust Tax ID [REDACTED]
Printed Name of Trustee(s)	Signature(s)	
a. [Signature]	Robert L. Spallina	
b.		
c.		
d.		

BT000103

000741

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

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

RLS/km

Enclosures



BT000083

## 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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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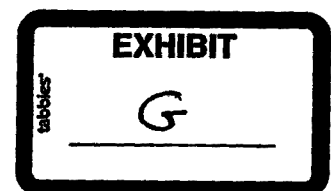
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**From:** Robert Spallina  
**Sent:** Wednesday, January 23, 2013 1:14 PM  
**To:** Ted Bernstein  
**Cc:** Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

Kim will send.

Sent from my iPhone

On Jan 23, 2013, at 1:11 PM, "Ted Bernstein" <[tbernstein@lifeinsuranceconcepts.com](mailto: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  
[jill@ne.bah.com](mailto:jill@ne.bah.com)  
Recruiting Services  
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto: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 frame 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](mailto: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:[jilli\\_anti@gmail.com](mailto:jilli_anti@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 todays 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, Elliot, 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

**PROFESSIONAL RESUME  
BRIAN M. O'CONNELL**

**EDUCATION**

University of Florida, Holland Law Center, Masters of Law in Taxation. Graduated December, 1980. Class Rank: First out of six.

University of Florida, Holland Law Center, Juris Doctor. Graduated August, 1979 with honors. Class Rank: Top 10%.

Florida State University, Bachelor of Science. Graduated June, 1976, Summa cum laude. Average 4.0 (A = 4.0). Major: Government. Minor: Communications.

**ADMITTED TO PRACTICE**

Florida, 1980. United States Tax Court, 1981. Colorado, 1997.

**CERTIFICATIONS**

Board certified by the Florida Bar in Wills, Trusts and Estates (1990 – Present).

**RATINGS**

AV. Martindale-Hubbell.

**SPECIFIC AREAS OF PROFESSIONAL EXPERTISE**

Litigation, including appeals, regarding Estates, Trusts and Guardianships.

Estate Planning; Administration of Estates, Trusts and Guardianships.

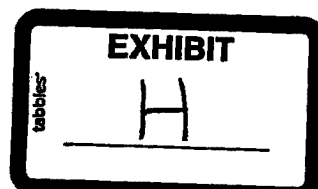
**WORK EXPERIENCE**

Partner, Ciklin Lubitz Martens & O'Connell, West Palm Beach, Florida. Probate, Guardianship, Business Law, Tax and Real Property Practice (October 1, 1985 - Present). Head of Wills, Trusts, Estates and Guardianships Department consisting of three associate attorneys, five paralegals, and two secretaries.

Shareholder, O'Connell & O'Connell, P.A., West Palm Beach, Florida. Probate, Tax, Real Property and Business Law practice (January, 1980 – October 1, 1985).

**PROFESSIONAL MEMBERSHIPS/ACTIVITIES**

- American Bar Association (Member, Taxation and Real Property, Probate and Trust Law Sections).



## Florida Bar

- Member, Executive Council, Taxation Section (1984-1985).
- Member, 15th Circuit Fee Arbitration Committee (1998-1999).
- Member, Probate & Trust Litigation Committee (1991-1992; 1999-2010).
- Member, Wills, Trusts and Estates Certification Committee (1997-2003).
- Member, Guardianship Law & Powers of Attorney Committee (1992-Present).
- Member, Probate Rules Committee (1989-1994; 2002-2005).

## Palm Beach County Bar Association

- Chairman, Probate and Guardianship CLE Committee (1988-2010; Vice-Chairman, 1986-87; Member 2010 -- Present).
- Co-Chairman, Guardianship Education Committee (2012-Present).
- Member, Probate and Guardianship Practice Committee (1985-Present).
- Member, Mental Health Practice Committee (1994-1999).
- Member, Probate-Marchman Act Subcommittee (1993-1994).

## **LEGAL PUBLICATIONS**

- Chapter Author, "Helping Clients Prepare for Future Trends and Challenges in Relation to Florida Estate Plans," Thomson Reuters/Aspatore (2012).
- Chapter Author, "Casualty and Theft Losses," Matthew Bender Tax Service (1990).
- Chapter Author, "Real Estate Valuation," Bender's Federal Tax Service, (1989).
- Chapter Author, "Liquidation Distributions," Matthew Bender Florida Corporate Law and Practice (1985).
- Article, "Keeping It All In the Family: The Use of Section 704(b)(2) Special Allocations and Family Partnerships to Control Estate Tax Valuation," 33 University of Florida Law Review 1 (1981) (co-author).
- Article, "The Due on Sale Clause in Florida: A Potential Battleground for Borrowers and Lenders," 31 University of Florida Law Review 933 (1980).

## **LECTURES & SEMINARS**

Acted as chair and panelist of numerous seminars and lectures, including, but not limited to:

- 2010 Estate Tax Legislation: Tips and Solutions, sponsored by Palm Beach County Bar Association, 28<sup>th</sup> Annual Estate and Probate Seminar, Part 2 (May 17, 2011);
- Practicing Guardianship Law in the New Millennium, sponsored by Florida Bar Association (March, 2000);
- Myths and Realities of Estate Planning and Probate, sponsored by Palm Beach County Bar Association (April 29, 1998);
- Protecting Your Assets, sponsored by Mental Health Association of Palm Beach County (May, 1997);

Ten Commonly Asked Estate Planning Questions, sponsored by Palm Beach County Bar Association (April, 1997);

Don't Be a Victim, Navigating the Shoals of Serving as a Guardian ad Litem, sponsored by Florida Bar Association (February, 1997);

Estate Planning, sponsored by ABC, Channel 25 (February, 1996);

Probate for the 90's, sponsored by Palm Beach Post, St. Mary's and the Palm Beach County Bar (March, 1994);

Florida Probate - Beyond the Basics, sponsored by the National Business Institute (May, 1991);

Surviving Spouse Seminar, sponsored by The Miami Herald (June, 1989);

Ask a Lawyer, sponsored by WXEL - Public Television, Channel 34 (August, 1989).

### **EXPERT WITNESS TESTIMONY**

Retained as expert on over forty (40) occasions in the areas of professional negligence, fee disputes, fiduciary liability issues, administration of estates, trusts and guardianships, and tax matters regarding estates and trusts.

### **MEDIATION**

Served as a mediator on multiple occasions since 1996. Area of concentration is probate litigation. Experience also includes general civil litigation. Cases have included complex, multiple parties, and multi-day mediations.

**Michael D. Mopsick, Esq.**  
**Shapiro, Blasi, Wasserman & Gora, P.A.**



Michael D. Mopsick has over 40 years of practice experience, having begun his legal career in New Jersey in 1972. He has been a member of the Florida Bar since 1984. Mr. Mopsick represents clients at all levels of trust, probate, and guardianship disputes, from advising and counseling beneficiaries and pursuing beneficiary claims to defending fiduciaries in complex trust and estate litigation. His experience also includes a broad range of business and commercial litigation, including breach of contract, fraud, construction, real estate, and corporate and partnership issues. He is a Florida Supreme Court Certified Circuit Civil Mediator.

Mr. Mopsick attended Rutgers College, New Brunswick, New Jersey, where he was valedictorian of his class and graduated with highest honors in 1969; he was elected to Phi Beta Kappa in his junior year. He received his J.D. degree from the University of Virginia School of Law in 1972.

Prior to joining Shapiro Blasi Wasserman & Gora as Of Counsel, Mr. Mopsick was a member of the firm of Buckingham, Doolittle & Burroughs, where he served as Managing Partner of its Boca Raton office for many years and as Vice President of the firm and member of the firm's Board of Managers.

He has been recognized since 2007 as one of the Top Lawyers in South Florida by the *South Florida Legal Guide* and has been selected for inclusion in *Florida's Super Lawyers* as voted by his peers. His Martindale-Hubbell Peer Review Rating is "AV Preeminent," which is the highest possible rating in both legal ability and ethical standards as established by confidential opinions from members of the Bar. His AVVO rating is "10", "Superb".

Mr. Mopsick is Past President of the South Palm Beach County Bar Association and served on the Board of Directors of the Palm Beach County Bar Association. He is the immediate past Co-Chair of the Palm Beach County Bar Association's Professionalism Committee and serves as Chair of Florida Bar Grievance Committee "D" for Palm Beach County. He previously served on and was Chair of Grievance Committee "C". He is a member of the Palm Beach County Judicial Campaign Practices Commission, which hears and resolves complaints of improper conduct in judicial election campaigns. He serves as a Palm Beach County representative on the Joint Civility Committee, a project promoting the joint resolution of more than 40 voluntary bar associations and dozens of courts throughout Southern Florida advocating and fostering civility and professionalism among practicing attorneys. He is also a member of the Palm Beach County Bar's Alternative Dispute Resolution Committee.

While practicing in New Jersey, Mr. Mopsick was a member of the New Jersey State Bar Association and the Passaic County Bar Association (Trustee, 1985-86). He was



appointed by the Supreme Court of New Jersey to the District XI Ethics Committee for Passaic County and served as Vice Chair and Chair, 1984-1986.

Mr. Mopsick is honored to be a member of the Greater Boca Raton Estate Planning Council, one of the few litigators to be accepted as a member.

Mr. Mopsick has lectured on the topics of probate litigation and civility in litigation and mediation. Among his published articles are:

- "Managing Client Expectations: A Key to Successful Mediation," *Daily Business Review*, November 11, 2011.
- "Courtesy v. Clients' Rights: Drawing the Line," *Palm Beach County Bar Association Bulletin*, March, 2012.
- "Recent Case Gives Lesson in Navigating Florida's Homestead Laws," *Daily Business Review*, March 30, 2012 (with George Frank).
- "Civility in Mediation: The Mediator's Role," *Daily Business Review*, May 3, 2013.

**Areas of Practice:**

Probate Litigation  
Trust Litigation  
Guardianship Litigation  
Commercial Litigation  
Certified Circuit Civil Mediator

**Current Position:**

Of Counsel, Shapiro, Blasi, Wasserman & Gora, P.A.

**Bar Admissions:**

New Jersey, 1972  
Florida, 1984  
U.S. District Court:  
District of New Jersey  
Southern District of Florida  
Northern District of Florida

**Education:**

Rutgers College, B.A. 1969  
University of Virginia, J.D. 1972

**Representative Appellate Cases:**

*Ligran, Inc. v. Medlawtel, Inc.*, 174 NJ. Super. 597 (App. Div. 1980), 86 N.J. 583, 432 A.2d 502 (N.J. 1981)  
*Aronson v. Aronson*, 81 So. 3d 515 (Fla. 3d DCA 2012)  
*Aronson v. Aronson*, 930 So. 2d 766 (Fla. 3d DCA 2006)

# EXHIBIT J

DOCKET #126 - SIMON ESTATE (SEE EXHIBIT J)

NOF - NOTICE OF FILING

FILING DATE: 22-MAY-2014

FILING PARTY: WILLIAM STANSBURY

DOCKET TEXT: JOINDER IN PETITION FILED BY ELIOT IVAN  
BERNSTEIN FOR REMOVAL OF TRUSTEE AND FOR TRUST  
ACCOUNTING F/B WILLIAM E. STANSBURY, CREDITOR OF THE E/O  
SIMON BERNSTEIN E-FILED

EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000752



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

IN RE:

Case No.: 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

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**JOINDER IN PETITION FILED BY ELIOT IVAN BERNSTEIN FOR  
REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING**

COMES NOW, William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to §733.308, Fla. Stat. (2013) and Fla. Prob. R. 5.120 (2013), files this Motion to Join the Petition filed by Eliot Ivan Bernstein for Removal of Trustee and for a Trust Accounting (the “Eliot Petition”), and in support states as follows:

**I. Stansbury has standing to Join the Eliot Petition**

1. Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars.

2. Simon Bernstein died in September of 2012 and his estate was substituted as a party defendant in Stansbury’s lawsuit. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in this Court.

3. The provisions of §731.201(23), Fla. Stat. (2013) define an “interested person” as:

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved...”

4. Stansbury, as a claimant of the Estate, has an interest in ensuring that the Estate is administered without bias and in the best interests of the devisees and creditors of the Estate. This means Stansbury has an interest in ensuring that the Estate marshals all the assets to which the Estate is entitled for the benefit of devisees and creditors.

5. The Fourth District Court of Appeal has recognized that a claimant or creditor to an estate is an “interested person” and has standing in a proceeding to approve the personal representative’s final accounting and petition for discharge. *See, Arzuman v. Estate of Prince Bander BIN Saud Bin, etc.*, 879 So.2d 675 (Fla. 4<sup>th</sup> DCA 2004). *See also, Montgomery v. Cribb*, 484 So.2d 73 (Fla. 2d DCA 1986) (Wrongful death claimant was entitled to notice of hearing as an “interested person” under the probate code even though case was dismissed by trial court and disputed settlement was on appeal.)

6. Pursuant to §733.707(3), Fla. Stat.:

Any portion of the trust with respect to which a decedent who is the grantor has at the decedent’s death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent’s estate to the extent the decedent’s estate is insufficient to pay them...**” (emphasis added)

7. As a matter of law, the assets of the Revocable Trust are available to pay creditors of the Estate such as Stansbury under §733.707(3) in the event the Estate has insufficient assets to meet all its obligations. Stansbury is therefore an “interested person” in the Estate, and therefore he is entitled to file this Motion to Join the Eliot Petition. Further, Stansbury has standing to argue before the Court for the appropriate resolution of the issues affecting the Revocable Trust.

**II. This Court has the Authority Under Florida Law to Resolve the Issues Raised in the Eliot Petition Relating to the Revocable Trust.**

8. Under Florida law, this Court has broad authority to affect trust administration.

More specifically, under §736.0201, Fla. Stat. (2013), the Court has the following power:

**736.0201 Role of court in trust proceedings**

\* \* \* \* \*

- (4) A judicial proceeding involving a trust may relate to the validity, administration, or distribution of a trust, including proceedings to:**
  - (a) Determine the validity of all or part of a trust;**
  - (b) Appoint or remove a trustee;**
  - (c) Review trustees' fees;**
  - (d) Review and settle interim or final accounts;**
  - (e) Ascertain beneficiaries; determine any question arising in the administration or distribution of any trust, including questions of construction of trust instruments; instruct trustees; and determine the existence or nonexistence of any immunity, power, privilege, duty or right;**
  - (f) Obtain a declaration of rights;**
  - (g) Determine any other matters involving trustees and beneficiaries.**

9. The two issues raised in the Eliot Petition pertain to: a) the removal of current putative trustee of the Revocable Trust, Ted Bernstein; and, b) the right of the Petitioner to an accounting relating to the administration of the trust. Both issues are within the authority of this Court to resolve.

**III. Ted Bernstein Should Be Removed as Trustee of the Revocable Trust.**

**A. Ted Bernstein is Not Eligible to Serve as Trustee under the very terms of the Revocable Trust.**

10. The previous co-trustees of the Revocable Trust were Donald Tescher and Robert Spallina by virtue of the Successor Trustee provision set forth in Article IV, Section C of the Revocable Trust. By letter dated January 14, 2014 addressed to the five children of Simon Bernstein, Donald Tescher for himself and on behalf of Robert Spallina, resigned as co-trustees of the Revocable Trust (and the Shirley Bernstein Trust and stated, "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.”

11. Whether Ted Bernstein was actually appointed trustee is not clear. The Revocable Trust, at Article IV, Section C(3), specifically states, “The appointment [of the successor trustee] 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...” Whether such document was ever executed with respect to Ted’s appointment is not known to Stansbury, but Stansbury assumes Ted Bernstein has assumed the role of successor trustee, either *de facto* or *de jure*, based on the exercise of the power by the previous trustee.

12. If Ted Bernstein has succeeded as trustee of the Revocable Trust, he should be removed as he was ineligible under the terms of the Revocable Trust to serve as successor trustee. Article IV, Section C(3) of the Revocable Trust states:

**A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust.**

13. The Revocable Trust, under Article II, Subsection E(7) defines a “Related or Subordinate Party” as follows:

**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).**

Under Subsection E(2), “Code” is defined as “**the Internal Revenue Code of 1986...**”

14. A “**Related or subordinate party**” under the Code means any **nonadverse party** who is “. . . **(2) any one of the following: The Grantor’s father, mother, issue brother or sister; . . .**”

15. Ted Bernstein is the son, or an "issue" of the Grantor, Simon Bernstein, and a related party to the beneficiary, Ted's son, Simon's grandson. Therefore, Ted Bernstein is ineligible as a Related or Subordinate Party to serve as a successor trustee.

**B. Misconduct in the Shirley Bernstein Estate**

16. There are serious allegations of fraud and forgery in the Shirley Bernstein Estate where Ted Bernstein is now the Personal Representative. Documents were submitted to the Court bearing notarized signatures of Simon Bernstein, alleged signatures by him, but on a date after he had passed away.

17. This Court was apprised of these allegations in a hearing conducted September 13, 2013 wherein the Court questioned whether the potential parties involved should be read their Miranda Rights. (See Transcript of Proceedings, pages 15 and 16, attached as Exhibit "A.")

18. Ted Bernstein's involvement in such activity involving the Estate of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Revocable Trust.

**C. The "lost" Insurance Trust**

19. At the time of Simon Bernstein's death, it was determined that there existed a life insurance policy issued by Heritage Mutual Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust as beneficiary (the "Insurance Trust"). According to an SS-4 Application for EIN form submitted to the IRS on June 21, 1995, Shirley Bernstein was represented as Trustee of the Insurance Trust. (See SS-4 Application for EIN as Exhibit "B.")

20. Notwithstanding the earlier SS-4 EIN form, on November 1, 2012, Robert Spallina, one of the resigning Co-Personal Representatives of the Estate of Simon Bernstein and a resigning Co-Trustee of the Revocable Trust, submitted a claim form to Heritage on behalf of

the Insurance Trust for the benefit of the grown children of Simon Bernstein. In doing so, Spallina represented that he was the Trustee of the Insurance Trust. (See Exhibit “C”) Spallina made this representation despite having informed Heritage by letter shortly thereafter that he was “unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.” (See Exhibit “D” attached.) If the Trust instrument cannot be found, the insurance proceeds would be payable to the Simon Bernstein Estate, and as such, would be available to pay creditors of the Estate of Simon Bernstein such as Stansbury.

21. Spallina, with the knowledge of Ted Bernstein, represented that he was “Trustee” of the Insurance Trust in an effort to collect the insurance proceeds on behalf the Insurance Trust and for the benefit of the grown children of Simon Bernstein, so as to circumvent the Simon Bernstein Estate.

22. Heritage refused to pay the life insurance proceeds to anyone without a court order. The Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois (the case has since been removed to Federal Court). In paragraph 2 of the Complaint, the Plaintiff, the Insurance Trust, although apparently still “lost,” alleges that Ted Bernstein is the “trustee” of the Insurance Trust. Yet, there exists no trust document establishing the continued existence of the Insurance Trust, let alone that Ted is the Trustee. As a result, Ted’s representation, like that of Spallina, appears plainly false.

23. Ted Bernstein’s misrepresentations in connection with the Insurance Trust should disqualify him from serving as Successor Trustee of the Revocable Trust.

**C. Ted Bernstein has a Conflict of Interest in The Insurance Trust Case.**

24. Ted Bernstein has a conflict of interest precluding him from faithfully executing the duties of fiduciary on behalf of the Revocable Trust.

25. One of the considerations for removal of a Personal Representative as set forth in §733.504(9) (2013) is, “**(9) Holding or acquiring conflicting or adverse interests against the estate that will or may interfere with the administration of the estate as a whole.**”

26. A trail of e-mails indicates that Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni were advocating and scheming to keep the proceeds from the Heritage life insurance policy, as described above in paragraphs 9 thru 12 from being paid to the Estate. The stated purpose of this scheme was to avoid making the life insurance proceeds available to pay creditors of the Estate such as Stansbury. (See, selected e-mail messages, attached hereto as Composite Exhibit "E".) The residuary beneficiaries of the Will, that is, the grandchildren of Simon Bernstein, would also be prejudiced by such a determination.

27. Section 733.602(1), Fla. Stat. (2013), expressly provides that “. . . A personal representative shall use the authority conferred by this code, the authority in the will, if any, and the authority of any order of the court, **for the best interests of interested persons, including creditors.**” (Emphasis added.) Additionally, a conflict of interest is a proper basis for the removal of a trustee. See DeMello v. Buckinan, 914 So. 2d 1090 (Fla. 4<sup>th</sup> DCA 2005).

28. While the ultimate outcome of the adjudication of the issues surrounding the Heritage life insurance proceeds is uncertain, what is clear is that each of the children of Simon Bernstein, other than Eliot Bernstein, have advocated, and continue to advocate a position that is contrary to the best interests of the Estate, its creditors and beneficiaries. These two conflicting and contrary positions between the interests of the children of Simon Bernstein (other than Eliot) and the duty of the successor fiduciary to act in the best interests of the Estate, including the creditors and beneficiaries, render Ted Bernstein, Lisa Sue Friedstein, Pamela Beth Simon and Jill Iantoni unqualified to serve as successor fiduciaries. See Estate of Bell v. Johnson, 573

So.2d 57 (Fla. 1<sup>st</sup> DCA, 1990) (conflict between personal representative, in that capacity, and as power of attorney, necessitated removal as personal representative). This means Ted Bernstein is similarly conflicted as Trustee of the Revocable Trust and should be removed.

**E. Ted Bernstein has a Conflict of Interest as a Co-Defendant with the Estate in the William Stansbury Case.**

29. Ted Bernstein and his father Simon Bernstein were initially joined as Co-Defendants in the case brought by Stansbury captioned *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida. The Estate was substituted as the party Defendant upon Simon Bernstein's death in September of 2012.

30. The allegations against Ted and Simon Bernstein, among others, are that they made false misrepresentations relied upon by Stansbury to his detriment, and, contrary to those representations, siphoned capital from the Arbitrage International Management, LLC and LIC Holdings, Inc., the Defendant Companies, for their own personal use to the further detriment of Stansbury.

31. The Estate of Simon Bernstein and Ted Bernstein have potential cross-claims against each other for contribution or indemnity that could further conflict Ted Bernstein. If he is permitted to remain Trustee of the Revocable Trust, which is a significant asset of the Estate, he will find himself in the conflicted position of managing a significant asset of the Estate against whom he potentially is a claimant. Additionally, it raises the further risk that funds of the Revocable Trust could be used for the prosecution of Ted's cross-claim, or the defense of a cross-claim by the Estate, both of which violate the trust documents. For this reason this Court should recognize that Ted Bernstein has an additional conflict of interest that warrants his removal as Trustee.



**IV. Stansbury Supports Eliot Bernstein's Efforts to Secure an Accounting of the Revocable Trust.**

32. Qualified beneficiaries are entitled to an accounting pursuant to §736.0813(1)(c), Fla. Stat. (2014). According to the Revocable Trust, the beneficiaries are separate Trusts established for his various grandchildren. Upon information and belief, Eliot Bernstein is the Trustee of the Trust established for the benefit of his children.

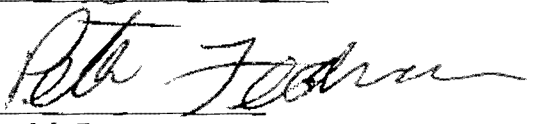
33. Under the circumstances, Eliot Bernstein is entitled to an accounting.

WHEREFORE, William E. Stansbury joins in the Petition of Eliot Bernstein and prays that the apparent successor trustee Ted Bernstein be removed and that the Court require the filing of a Trust Accounting.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above Motion was forwarded via e-mail service to: Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com); John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [eservice@palmcttobaylaw.com](mailto:eservice@palmcttobaylaw.com), and to Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 N. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [hbrown@mathrolaw.com](mailto:hbrown@mathrolaw.com) on this 22 day of May, 2014.

PETER M. FEAMAN, P.A.  
3695 W. Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
Tel: 561-734-5552  
Fax: 561-734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By:   
Peter M. Feaman  
Florida Bar No. 0260347

In Re\_ The Estate of Shirley Bernstein.txt

00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

2 PROBATE/GUARDIANSHIP DIVISION IY

3 CASE NO.: 502011CP000653XXXXSB

4 IN RE: THE ESTATE OF:

5 SHIRLEY BERNSTEIN,  
Deceased

6 \_\_\_\_\_/  
ELIOT IVAN BERNSTEIN, PRO SE,

Petitioner,

7 vs.

8 TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
9 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD  
10 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);  
THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
11 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE  
DOE'S (1-5000),  
Respondents.

12 \_\_\_\_\_/  
13 TRANSCRIPT OF PROCEEDINGS

14 BEFORE

15 THE HONORABLE MARTIN H. COLIN

16 South County Courthouse  
17 200 West Atlantic Avenue, Courtroom 8  
18 Delray Beach, Florida 33344

19 Friday, September 13, 2013  
20 1:30 p.m. - 2:15 p.m.

21 Stenographically Reported By:  
22 JESSICA THIBAUT  
23

24

♀

00002

1 APPEARANCES

2

3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE  
2753 NW 34th Street  
5 Boca Raton, Florida 33434  
6

In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was  
8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.  
14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's  
16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by  
19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of

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1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They

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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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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

10/22/95

Form **SS-4**

### Application for Employer Identification Number

(Rev. August 1989)  
Department of the Treasury  
Internal Revenue Service

(For use by employers and others. Please read the attached instructions before completing this form.) Please type or print clearly.

OMB No. 1545-0043  
Expires 7-31-91

1 Name of applicant (True legal name) (See instructions.)  
Simon Bernstein Irrevocable Insurance Trust

2 Trade name of business, if different from name in line 1  
Shirley Bernstein

3a Mailing address (street address) (room, apt., or suite no.)  
7020 Linnis Head

3b City, state, and ZIP code  
Boca Raton, FL 33496

4 County and state where principal business is located  
Boca Raton, FL

5 Name of principal officer, grantor, or general partner (See instructions.)  
Simon Bernstein, SOC, SPC #

6a Type of entity (Check only one box.) (See instructions.)  
 Individual SSN  
 REMIC  
 State/local government  
 Other nonprofit organization (specify)  
 Other (specify)

Estate  
 Trust  
 Plus administrator SSN  
 Partnership  
 Other corporation (specify)  
 Farmers' cooperative  
 Federal government/military  
 Church or church controlled organization  
If nonprofit organization enter GEN (if applicable)

7 If a corporation, give name of foreign country (if applicable) or state in the U.S. where incorporated  
Foreign country: \_\_\_\_\_ State: \_\_\_\_\_

8 Reason for applying (Check only one box)  
 Started new business  
 Hired employees  
 Created a pension plan (specify type)  
 Banking purposes (specify)  
 Changed type of organization (specify)  
 Purchased going business  
 Created a trust (specify) Insurance Trust  
 Other (specify)

9 Date business started or acquired (Mo., day, year) (See instructions.)  
June 1, 1995

10 Enter closing month of accounting year. (See instructions.)  
December 31

11 First date wages or annuities were paid or will be paid (Mo., day, year). Note: If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (Mo., day, year).

12 Enter highest number of employees expected in the next 12 months. Note: If the applicant does not expect to have any employees during the period, enter "0."  
Nonagricultural: \_\_\_\_\_ Agricultural: \_\_\_\_\_ Household: \_\_\_\_\_

13 Does the applicant operate more than one place of business?  
If "Yes," enter name of business. Yes  No

14 Principal activity or service (See instructions.)

15 Is the principal business activity manufacturing?  
If "Yes," principal product and raw material used. Yes  No

16 To whom are most of the products or services sold? Please check the appropriate box.  
 Public (retail)  Other (specify)  Business (wholesale)  N/A

17 Has the applicant ever applied for an identification number for this or any other business?  
Note: If "Yes," please complete lines 18b and 18c. Yes  No

18a If you checked the "Yes" box in line 17, give applicant's true name and trade name, if different than name shown on prior application.  
True name: \_\_\_\_\_ Trade name: \_\_\_\_\_

18b Enter approximate date, city, and state where the application was filed and the previous employer identification number if known.  
Approximate date when filed (Mo., day, year): \_\_\_\_\_ City and state where filed: \_\_\_\_\_ Previous EIN: \_\_\_\_\_

18c Under penalty of perjury, I declare that I have examined this application, true to the best of my knowledge and belief, it is true, correct, and complete.  
Telephone number (include area code): 407-477-9991

Name and title (Please type or print clearly): Shirley Bernstein, Trustee

Signature: X Date: June 21, 1995

Please leave blank: Gov. Fed. Class Size Reason for applying

EXHIBIT **B**

000104

# CLAIMANT STATEMENT

1. Name of Deceased (Last, First, Middle) <b>Bernstein, Simon Leon</b>		2. Last 4 digits of Deceased's Social Security [REDACTED]	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, or any alternative form of first and/or middle name or an alias, please provide them below			
4. Policy Number(s) <b>1009208</b>		5. If policy is lost or not available, please explain: <b>Unable to locate policy 30 years old</b>	
6. Deceased's Date of Death <b>09/13/12</b>		7. Cause of Death <b>natural causes</b>	
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Other			

<b>CLAIMANT INFORMATION</b>			
9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
10. Street Address		11. City	12. State and Zip
14. Date of Birth		15. Social Security or Tax ID Number <b>65-6178916</b>	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			

<b>CLAIMANT INFORMATION (to be completed by 2<sup>nd</sup> Claimant, if any)</b>			
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
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.**

EXHIBIT C

3T000100

# CLAIMANT STATEMENT

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 my 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

TRUSTEE CERTIFICATION (to be completed only if trust is claiming benefits)

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

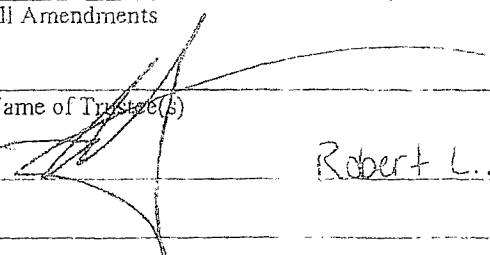
I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

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	Date of Trust Agreement
Simon Bernstein Irrevocable Insurance Trust	06/01/1995
Date of all Amendments	Trust Tax ID Number
	[REDACTED]

Printed Name of Trustee(s)	Signature(s)
a. _____	 Robert L. Spallina
b. _____	_____
c. _____	_____
d. _____	_____

BT000103



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

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

RLS/km

Enclosures

EXHIBIT D

BT000083

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We are going to do what is necessary. Have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under [Article IV 2] and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Ted Bernstein - President



Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833  
Email: [Tbernstein@lifeinsuranceconcepts.com](mailto:Tbernstein@lifeinsuranceconcepts.com)  
[www.LifeInsuranceConcepts.com](http://www.LifeInsuranceConcepts.com)

EXHIBIT E

## 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](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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**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](mailto: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](mailto:iantoni_jill@ne.bah.com)  
Recruiting Services  
Booz | Allen | Hamilton

On Jan 29, 2013, at 2:03 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto: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](mailto: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:jilli\_anti@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 todays 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:** Robert Spallina  
**Sent:** Tuesday, January 22, 2013 12:38 PM  
**To:** 'Jill Iantoni'  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** RE: Heritage Policy

We can discuss on Thursday but yes and no

**From:** Jill Iantoni [mailto:jilliantoni@gmail.com]  
**Sent:** Tuesday, January 22, 2013 12:36 PM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran  
**Subject:** Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks  
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

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](tel:561-997-7008)

Facsimile: [561-997-7308](tel:561-997-7308)

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

## 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

# EXHIBIT K

DOCKET # - SIMON ESTATE (SEE EXHIBIT K)

PET - PETITION

FILING DATE: 07-APR-2014

FILING PARTY: ELIOT IVAN BERNSTEIN

DOCKET TEXT: PETITION FOR CONSTRUCTION OF  
TESTAMENTARY TRUST, FOR REMOVAL OF TRUSTEE AND FOR  
TRUST ACCOUNTING BY ELIOT IVAN BERNSTEIN

EXHIBIT  
PETITION TO REMOVE THEODORE BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE  
Friday, September 12, 2014

000776



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

IN RE: THE ESTATE OF  
SIMON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB

HON. JUDGE MARTIN H. COLIN

ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL),  
ROBERT L. SPALLINA, ESQ., PERSONALLY,  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY,  
DONALD R. TESCHER, ESQ., PERSONALLY,  
DONALD R. TESCHER, ESQ., PROFESSIONALLY,  
THEODORE STUART BERNSTEIN, INDIVIDUALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
PERSONAL REPRESENTATIVE,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE PERSONALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE,  
PROFESSIONALLY  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR  
HIS CHILDREN,  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A  
BENEFICIARY,  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER  
CHILDREN,  
JILL MARLA IANTONI, INDIVIDUALLY AS A  
BENEFICIARY,  
JILL MARLA IANTONI, AS TRUSTEE FOR HER  
CHILDREN,  
PAMELA BETH SIMON, INDIVIDUALLY,  
PAMELA BETH SIMON, AS TRUSTEE FOR HER  
CHILDREN,  
MARK MANCERI, ESQ., PERSONALLY,  
MARK MANCERI, ESQ., PROFESSIONALLY,  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL)  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT

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SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

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

IN RE: THE ESTATE OF  
SIMON BERNSTEIN,  
Deceased

CASE NO. 502012CP004391XXXXSB

HON. JUDGE MARTIN H. COLIN

\_\_\_\_\_  
ELIOT IVAN BERNSTEIN, PRO SE  
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL),  
ROBERT L. SPALLINA, ESQ., PERSONALLY,  
ROBERT L. SPALLINA, ESQ., PROFESSIONALLY,  
DONALD R. TESCHER, ESQ., PERSONALLY,  
DONALD R. TESCHER, ESQ., PROFESSIONALLY,  
THEODORE STUART BERNSTEIN, INDIVIDUALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
PERSONAL REPRESENTATIVE,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE PERSONALLY,  
THEODORE STUART BERNSTEIN, AS ALLEGED  
TRUSTEE AND SUCCESSOR TRUSTEE,  
PROFESSIONALLY  
THEODORE STUART BERNSTEIN, AS TRUSTEE FOR  
HIS CHILDREN,  
LISA SUE FRIEDSTEIN, INDIVIDUALLY AS A  
BENEFICIARY,  
LISA SUE FRIEDSTEIN, AS TRUSTEE FOR HER  
CHILDREN,  
JILL MARLA IANTONI, INDIVIDUALLY AS A  
BENEFICIARY,  
JILL MARLA IANTONI, AS TRUSTEE FOR HER  
CHILDREN,  
PAMELA BETH SIMON, INDIVIDUALLY,  
PAMELA BETH SIMON, AS TRUSTEE FOR HER  
CHILDREN,  
MARK MANCERI, ESQ., PERSONALLY,  
MARK MANCERI, ESQ., PROFESSIONALLY,  
MARK R. MANCERI, P.A. (AND ALL PARTNERS,  
ASSOCIATES AND OF COUNSEL)  
JOSHUA ENNIO ZANDER BERNSTEIN (ELIOT



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MINOR CHILD)  
JACOB NOAH ARCHIE BERNSTEIN (ELIOT  
MINOR CHILD)  
DANIEL ELIJSHA ABE OTTOMO BERNSTEIN  
(ELIOT MINOR CHILD)  
ALEXANDRA BERNSTEIN (THEODORE  
ADULT CHILD)  
ERIC BERNSTEIN (THEODORE ADULT  
CHILD)  
MICHAEL BERNSTEIN (THEODORE ADULT  
CHILD)  
MATTHEW LOGAN (THEODORE'S SPOUSE  
ADULT CHILD)  
MOLLY NORAH SIMON (PAMELA ADULT  
CHILD)  
JULIA IANTONI – JILL MINOR CHILD  
MAX FRIEDSTEIN – LISA MINOR CHILD  
CARLY FRIEDSTEIN – LISA MINOR CHILD  
JOHN AND JANE DOE (1-5000)

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**PETITION FOR CONSTRUCTION OF TESTAMENTARY TRUST,  
FOR REMOVAL OF TRUSTEE AND FOR TRUST ACCOUNTING**

Petitioner, ELIOT IVAN BERNSTEIN, individually and on behalf of his minor children ("Petitioner"), who are alleged qualified beneficiaries of the testamentary trust ("Settlor's Trust")<sup>1</sup> that is the alleged residuary beneficiary of the Estate of Simon L. Bernstein (the "Estate"), hereby petitions this Court for the construction of Settlor's Trust as permitted by Section 736.0201(5) of the Florida Statutes, for the removal of TED S. BERNSTEIN ("Ted"), as purported trustee of the Trust, and for a trust accounting with respect to Settlor's Trust, and in support thereof, Petitioner alleges as follows:

1. SIMON L. BERNSTEIN ("Settlor") is the decedent of this Estate.

---

<sup>1</sup> Settlor's Trust is known as the Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012. A copy of Settlor's Trust is at URL [www.iviewit.tv/Simon and Shirley Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf](http://www.iviewit.tv/Simon_and_Shirley_Estate/20120725SimonBernsteinAmendedRestatedTrust.pdf) and is hereby incorporated in entirety by reference herein.

2. The alleged Will of Settlor dated July 25, 2012 (“Settlor’s Will”)<sup>2</sup> was admitted to probate in this proceeding<sup>3</sup>.

3. The alleged 2012 Settlor’s Will, allegedly executed weeks before Settlor’s death has been challenged by Petitioner, as well as, the alleged 2012 Amended and Restated Trust of Settlor. Petitioner has challenged these documents both civilly and criminally, along with other documents allegedly executed in 2012 by Settlor and claims they are part of a Fraud to change beneficiaries of Settlor’s Estate and his wife Shirley Bernstein’s (“Shirley”) Estate from three of five of Settlor’s children to Settlor’s ten grandchildren and illegally seize Dominion and Control of the Estate to further loot Estate and Trust assets. Evidence of Fraud and Forgery has already been discovered and proven in the Estates and Trusts of Settlor and Shirley and Ted and other Respondents and others are subjects of ongoing state and federal civil and criminal investigations and actions.

4. That Petitioner will however argue forward in this Petition in the alternative, assuming that the documents are valid, while granting no validity to them until the court can determine the ultimate beneficiaries after forensic document analysis can be completed and all Estate and Trust documents turned over to the beneficiaries and interested parties as required by Probate Rules and Statutes.

5. By Article III of alleged 2012 Settlor’s Will, upon Settlor’s death, Settlor directed that his residuary estate be distributed to the then serving trustee of Settlor’s Trust. Thus, Settlor’s Trust is a testamentary trust that is the residuary beneficiary of the Estate.

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<sup>2</sup> A copy of Settlor’s alleged July 25, 2012 Will is at the URL [www.iviewit.tv/Simon and Shirley Estate/20120725WillSimonBernstein.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120725WillSimonBernstein.pdf) and is hereby incorporated by reference herein.

<sup>3</sup> Petitioner in May of 2013 contested both the 2012 alleged Settlor’s Will and an alleged 2012 Amended and Restated Trust of Settlor in Petitions to this Court that remain unheard. Petitioner and other beneficiaries have never been given the prior 2008 Will of Settlor and the 2008 Trust of Settlor as required by Florida Probate Rules and Statutes by the former Personal Representatives despite repeated demands by Petitioner and Petitioner’s former counsel.

6. Upon Settlor's death, Settlor's Florida counsel, DONALD R. TESCHER ("Tescher") and ROBERT L. SPALLINA ("Spallina") of the law firm of Tescher & Spallina, P.A., accepted their alleged roles as the designated successor co-trustees of Settlor's Trust.

7. Tescher and Spallina were also appointed as and served as the initial co-personal representatives of the Estate.

8. Tescher & Spallina, P.A. and Spallina also acted as their own counsel to themselves as co-personal representatives and co-trustees.

9. In the wake of certain unethical, egregious and potentially criminal conduct perpetrated by Tescher and Spallina (some of which conduct is explained more fully below and in Petitioner's prior unheard Petitions and Motions before this Court), Tescher and Spallina resigned as co-trustees of Settlor's Trust, as co-personal representatives of Settlor's estate and as counsel in all capacities, as exhibited in Tescher and Spallina's Resignation Letter at the URL @ <http://www.iviewit.tv/20140114%20Tescher%20and%20Spallina%20Resignation%20Letter%20as%20PR%20in%20estates%20of%20Simon%20and%20Shirley.pdf>, fully incorporated by reference herein and Tescher and Spallina's Withdrawal as Counsel and Personal Representatives Orders @ <http://www.iviewit.tv/20140218SignedOrdersDischargeTescherSpallinaRejectionTedSuccessor.pdf>, fully incorporated by reference herein.

10. The alleged 2012 Settlor's Trust does not designate a successor trustee in the event that Tescher and Spallina cease to serve, but it does provide under Subparagraph C.3 of Article IV that the last serving trustee may appoint his or her successor.

11. Based upon information and belief, upon their resignation, Tescher and/or Spallina purported to appoint Ted as successor trustee of Settlor's Trust. Thus, Petitioner

believes that Ted is currently serving as the purported trustee of Settlor's Trust, although no formal notice or other evidence of his appointment has been provided to the beneficiaries as proscribed by Probate Rules and Statutes.

12. Subparagraph E.1 of Article III of Settlor's Trust provides, in relevant part, as follows:

"Notwithstanding the foregoing, **for all purposes of [Settlor's] Trust** and the dispositions made hereunder, [Settlor's] children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, **shall be deemed to have predeceased** [Settlor] . . ."

13. It is a well-established rule of will/trust construction that the intent of the testator/settlor must govern and be given full force and effect to the extent possible when it does not violate law or public policy. See, e.g., *First Union National Bank of Florida, N.A., as trustee v. Frumkin, et. al.*, 659 So. 2d 463 (Fla. 3d DCA 1995).

14. Settlor's alleged intent in Subparagraph E.1 of Settlor's Trust is clear and unambiguous: Settlor allegedly intended that his children, including Ted, **shall** be treated as if they predeceased Settlor for **all purposes** of Settlor's Trust. As Settlor allegedly intended for Ted to be treated as having predeceased him for all purposes of Settlor's Trust, Ted cannot serve as successor trustee of Settlor's Trust due to this and other conflicts. Thus, the purported appointment of Ted as successor trustee is void and Ted must be removed as purported trustee.

15. In addition to Ted being prohibited under the trust terms from serving as successor trustee of Settlor's Trust, Ted should be removed as purported trustee of Settlor's Trust for the following reasons:

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(a) Ted has failed to keep the qualified beneficiaries of Settlor's Trust reasonably informed of Settlor's Trust and its administration despite reasonable requests for information from Petitioner, in violation of Section 736.0813 of the Florida Statutes.

(b) As explained more fully below, Ted has failed to administer Settlor's Trust in good faith and solely in the interests of the beneficiaries of Settlor's Trust by depriving certain beneficiaries of Settlor's Trust of certain assets to which they are entitled and by allowing such assets to instead be distributed to trusts for Ted's children created under Settlor's Trust, which conduct violates Sections 736.0801 and 736.0802 of the Florida Statutes:

(i) Ted is currently serving as trustee of the testamentary trust of his mother, SHIRLEY BERNSTEIN ("Shirley"). Shirley's testamentary trust is known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust"). A copy of Shirley's Trust is found at the URL [www.iviewit.tv/Simon and Shirley Estate/Simon and Shirley Trusts.pdf](http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Simon%20and%20Shirley%20Trusts.pdf) (pages 26-56) and is hereby incorporated by reference herein.

(ii) Two separate trusts were created under Shirley's Trust upon her death: the Family Trust and the Marital Trust. By Subparagraph E.1 of Article II of Shirley's Trust, Settlor was granted a limited testamentary power of appointment over the remaining assets of the Family Trust and Marital Trust at Settlor's death. Said power of appointment was exercisable in favor of Shirley's lineal descendants and their spouses; provided, however, that by Subparagraph E.1 of Article III of Shirley's Trust, Shirley specifically provided that Ted and his lineal descendants and PAMELA B. SIMON ("Pam", who is Shirley's daughter) and her lineal descendants **shall** be treated as if they predeceased the survivor of Shirley and Settlor (i.e., Settlor as he survived Shirley).

"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."

(iii) Thus, by the express terms of Shirley's Trust, Ted, the lineal descendants of Ted, Pam and the lineal descendants of Pam are considered to have predeceased Settlor. Therefore, no assets of Shirley's Trust are permitted to be distributed to Ted, Pam or their respective lineal descendants.

(iv) On or about November 18, 2008, Shirley allegedly executed an alleged First Amendment to Shirley's Trust, by which she deleted a specific gift to Ted's stepson, MATTHEW LOGAN under Subparagraph B of Article II of Shirley's Trust.

(v) Spallina admitted to investigators at Palm Beach County Sheriff that, after Shirley's death, he **altered** the First Amendment to Shirley's Trust dated November 18, 2008 before sending it to Petitioner's prior counsel. Specifically, Spallina admits that he inserted paragraph 2 of the Purported Second First Amendment such that only Ted and Pam, and **not** their respective children, would be treated as having predeceased the survivor of Settlor and Shirley. See page 5 of that certain Offense Report dated January 23, 2014 by Detective Ryan W. Miller, a copy of is located at the URL [www.iviewit.tv/Sheriff\\_Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) and is hereby incorporated by reference herein ("Spallina's Police Report"). A copy of the purported Second First Amendment to Shirley's Trust that was provided to Petitioner's prior counsel is located at the URL

<http://www.iviewit.tv/FIRST%20AMENDMENT%20TO%20SHIRLEY%20BERNSTEIN%20T>



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RUST%20AGREEMENT.pdf and is hereby incorporated by reference herein (the "Purported Second First Amendment to Shirley's Trust"). The Purported First Amendment to Shirley's Trust has not been provided to beneficiaries and interested parties since Shirley passed away on December 08, 2010 in violation of Probate Rules and Statutes. By Article II of Settlor's alleged 2012 Will, Settlor allegedly exercised the power of appointment granted to him under Shirley's Trust in favor of his grandchildren from all five children who survived him. Specifically, Settlor's alleged Will directs all remaining assets of the Marital Trust and the Family Trust created under Shirley's Trust to be divided into equal shares for Settlor's grandchildren who survived him, and that each grandchild's share be distributed to the separate trust created for him or her under Settlor's Trust.

(vi) Notwithstanding that the true version of Shirley's Trust (i.e., Shirley's Trust as amended by the First Amendment but without the alleged alteration by Spallina) precludes any distributions to Ted's lineal descendants and Pam's lineal descendants, Ted, as alleged trustee of Shirley's Trust, distributed an equal share of the remaining assets of Shirley's Trust to the trusts created under Settlor's Trust for Ted's lineal descendants and Pam's lineal descendants breaching his alleged fiduciary duties and creating conflicts that preclude and any further involvement of Ted.

(vii) Ted alleges that Spallina instructed him to distribute a portion of the remaining assets of Shirley's Trust to the trusts for Ted's children and Pam's children created under Settlor's Trust. Ted further alleges that Tescher and Spallina advised him on how to set up such trust accounts to receive such assets. See pages 2-3 of that certain Offense Report dated January 29, 2014 by Detective Ryan W. Miller, a copy located at the URL

[www.iviewit.tv/Sheriff\\_Reports.pdf](http://www.iviewit.tv/Sheriff_Reports.pdf) and is hereby incorporated by reference herein ("Ted's Police Report").

(viii) Ted further alleges that acting as alleged Trustee he "did not read all of Shirley's Trust documents and that Spallina and Tescher had both told him several times how Shirley's Trust was to be distributed." See page 2 of Ted's Police Report.

(ix) Conversely, Spallina alleges that "[Ted] was told not to make [the] distributions [from Shirley's Trust to the trusts for Settlor's grandchildren created under Settlor's Trust]." See page 6 of Spallina's Police Report. Indeed, Spallina admits that "all [Settlor] can do with Shirley's Trust is give it to Lisa, Jill, and [Petitioner's] children." See page 3 of Spallina's Police Report.

(x) Ted colluded with Tescher and Spallina to allow a portion of the assets of Shirley's Trust to be distributed to the trusts created for his and his sister Pamela's children under Settlor's Trust, in violation of his duty to administer Settlor's Trust in good faith and solely in the interests of the beneficiaries of Settlor's Trust. Said conduct by Ted as purported trustee of Settlor's Trust has deprived Petitioner's children and other beneficiaries of Settlor's Trust of certain assets of Shirley's Trust to which they are entitled and has caused and continues to cause irreparable harms.

(c) Tescher and Spallina therefore should be prohibited from appointing the successor trustee of Settlor's Trust in light of their conduct more specifically described above in knowingly and with intent to defraud fabricating the Purported Second First Amendment to Shirley's Trust, for closing the Estate of Shirley with a deceased Personal Representative (Settlor) and for their part in Fraudulent Notarizations and Forgery of six signatures, including a forged document for Settlor Post Mortem and therefore Ted should be removed as purported

  
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trustee since he is believed to have been appointed by Tescher and Spallina and to have colluded with them in egregious acts of bad faith, leaving them all with unclean hands. Further, Ted has conflicts in that he has a strong business and personal relationship with both Tescher and Spallina and was in fact the person who brought them to his father to attempt to have him make changes to the Estates and Trusts of Settlor and Shirley and has expressed anger at Petitioner for exposing the criminal acts in the Estates and Trusts committed by his close personal friends, Tescher and Spallina, further prejudicing Ted against Petitioner and other beneficiaries.

(d) Ted's actions more specifically described above demonstrate multiple conflicts of interest and egregious acts of bad faith that warrant his removal as purported trustee of Settlor's Trust.

(e) Petitioner is prepared to offer additional grounds for the removal of Ted as purported trustee of Settlor's Trust upon the Court's request. However, Petitioner believes that a proper construction of Settlor's Trust and the grounds set forth above are sufficient to warrant Ted's removal and prohibited from further involvement in Settlor's Trust.

16. Petitioner requests that Tescher and Spallina, as the initial alleged successor trustees of Settlor's Trust, and Ted, as the current purported successor trustee of Settlor's Trust, serve a full and complete trust accounting with respect to Settlor's Trust on all alleged qualified beneficiaries of Settlor's Trust that covers the periods of their respective service.

WHEREFORE, Petitioner respectfully requests that this Court enter an Order:

(i) removing Ted as purported trustee of Settlor's Trust based on Settlor's clear intent as expressed in Settlor's Trust and/or based on the serious breaches of trust described above committed by Ted as purported trustee;

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(ii) requiring Tescher, Spallina and Ted to provide a full and complete trust accounting to each qualified beneficiary of the Trust that covers their respective periods of service; and

(iii) granting such other and further relief as the Court deems just and proper.

Signed on April 07, 2014.

Respectfully submitted,

By: Eliot Bernstein, individually and on behalf of his minor children, who are qualified beneficiaries of Settlor's Trust, Petitioner (*pro se*)  
 2753 N.W. 34th St.  
 Boca Raton, Florida 33434-3459  
 (561) 245.8588 (telephone)  
 Email address: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Petition was served via electronic mail on April 07, 2014 to the parties listed in the attached Service List.

Eliot Bernstein, Pro Se Petitioner

**EMAIL SERVICE LIST**

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Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200	William M. Pearson, Esq. P.O. Box 1076 Miami, FL 33149 <a href="mailto:wpearsonlaw@bellsouth.net">wpearsonlaw@bellsouth.net</a>	Robert L. Spallina, Esq., RESPONDENT Tescher & Spallina, P.A. Boca Village Corporate Center I

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Eric Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:edb07@fsu.edu">edb07@fsu.edu</a>	Michael Bernstein 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:mchl_bernstein@yahoo.com">mchl_bernstein@yahoo.com</a>	Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 <a href="mailto:molly.simon1203@gmail.com">molly.simon1203@gmail.com</a>	
Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:matl89@aol.com">matl89@aol.com</a>	Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	

# **PALM BEACH COUNTY SHERIFF REPORTS**

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 14029489 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:  
ECONOMIC CRIMES \* \* \*  
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: QT CODE: 9546 01/23/14 THURSDAY  
ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER RYAN ASSIST: TIME D 1020 A 1020 C 1021  
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700  
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: OTHER  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

NAME LIST:

ROLE:  
OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER SHIRLEY BERNSTEIN DOB: 06/29/1939  
SEX: F RACE: W HT: 502 WT: 102 HR: BLOND EYE: BLUE  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD RD BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
COMPLAINANT ROBERT L SPALLINA DOB: 06/09/1965  
SEX: M RACE: W HT: 511 WT: 175 HR: BLACK EYE: BROWN  
RESIDENTIAL ADDRESS: 7387 WISTERIA AV PARKLAND FL 33076 HOME PHONE: 561 997-7008  
BUSINESS PHONE: 561 000-0000  
OTHER ALAN B ROSE DOB: 10/23/1965  
SEX: M RACE: W HT: 509 WT: 170 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 21145 ORMOND CT BOCA RATON FL 33433 HOME PHONE: 561 000-0000  
BUSINESS ADDRESS: 505 S. FLAGLER DR., STE. 600, WEB, FL 33401 BUSINESS PHONE: 561 355-6991  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 800 BERKELEY ST BOCA RATON FL 33464 HOME PHONE: 561 213-2322  
BUSINESS PHONE: 561 968-8984

ON 01/21/13 AT 1:45 PM I MET WITH ROBERT SPALLINA AND HIS ATTORNEY DAVID ROTH. SGT. DAVID GROOVER WAS ALSO PRESENT DURING THE INTERVIEW. WE MET AT

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CASE NO. 14029489 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
OFFENSE REPORT CASE NO. 14029489  
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THE PALM BEACH COUNTY SHERIFF'S OFFICE, DISTRICT 1 CONFERENCE ROOM, WHICH IS LOCATED AT 3228 GUN CLUB ROAD, WEST PALM BEACH, FL. ROBERT SPALLINA STATED THAT HE AND HIS PARTNER, DONALD TESCHNER, MET SIMON AND SHIRLEY BERNSTEIN IN 2007. HE SAID THAT IN 2008 THE BERNSTEIN'S CAME TO THE TESCHNER AND SPALLINA FIRM. HE SAID THAT THEY (THE ATTORNEY'S OFFICE) CREATED WILLS AND TRUSTS FOR BOTH SIMON AND SHIRLEY IN 2008, AMONG OTHER PLANNING. SPALLINA TOLD US THAT SIMON HAD BEEN IN THE INSURANCE BUSINESS FOR 40 YEARS.

HE SAID THAT THE SUBJECT OF THE FIRST MEETINGS WAS THE SALE OF THE INSURANCE BUSINESS DOWN THE ROAD, AS WELL AS MOVING AROUND SOME STOCKS. SPALLINA STATED THE CONVERSATIONS WITH SIMON AND THE THOUGHT PROCESS WAS THAT ONCE SIMON SOLD THE INSURANCE BUSINESS HE OWNED, ALL THE FAMILY WOULD BENEFIT FROM IT (FINANCIALLY). HE SAID THE BUSINESS WAS NEVER SOLD, BUT A LOT OF PLANNING AND PREPARATION WAS DONE FOR IT, TO INCLUDE SETTING UP A FLORIDA LIMITED PARTNERSHIP AND A DELAWARE ASSET PROTECTION TRUST. SPALLINA STATED THAT SIMON WAS ALWAYS CONCERNED WITH CREDITOR PROTECTION. HE SAID THAT IS QUITE COMMON IN THE INSURANCE BUSINESS WORLD.

SPALLINA REITERATED THAT IN 2008, THE LAW FIRM DID THE DOCUMENTS FOR THE WILLS AND TRUSTS. HE STATED THEY (SIMON & SHIRLEY) HAVE FIVE CHILDREN AND 10 GRANDCHILDREN, AS WELL AS A STEP-GRANDCHILD.

SPALLINA SAID THAT THE ESTATE PLAN WAS SIMILAR TO MOST OTHERS, IT SAID SHOULD ONE SPOUSE DIE FIRST, THE OTHER WILL RECEIVE EVERYTHING (ALL ASSETS). HE SAID THAT UNDER BOTH TRUSTS, THE INITIAL DOCUMENTS READ THAT UPON THE SECOND DEATH, TWO CHILDREN (TED AND PAM) WERE EXCLUDED. HE TOLD US THIS TOOK PLACE SINCE BOTH TED AND PAM WERE SET UP WITH LIFE INSURANCE BUSINESSES AND THEY WANTED TO MAKE THE REMAINING CHILDREN (ELIOT, LISA, AND JILL) AS WHOLE AS THEY COULD. NOTE: TED WAS WORKING WITH SIMON IN THE INSURANCE BUSINESS DOWN HERE IN FLORIDA AND PAM RECEIVED A COMPANY IN ILLINOIS.

SPALLINA REITERATED THAT UPON THE DEATH OF THE SECOND SURVIVOR, EVERYTHING FROM BOTH TRUSTS GOES TO JILL, LISA, AND ELIOT ADDING THAT SHIRLEY HAD ONE OTHER STIPULATION IN HER TRUST, WHICH STATED THAT TED'S STEPSON, (MATTHEW LOGAN) RECEIVED \$200,000. HE TOLD ME THAT SHIRLEY HAD A LIKING TO MATTHEW SO SHE ADDED THAT TO HER TRUST, BUT THAT SIMON DID NOT BELIEVE IN THAT, THAT HE FELT EVERYTHING SHOULD GO TO BLOOD (A BIOLOGICAL CHILD). SPALLINA SAID THAT LATER ON IN 2008, SHIRLEY STATED SHE WANTED TO CHANGE HER TRUST DOCUMENTS IN REFERENCE TO THE MONEY LEFT TO MATTHEW LOGAN. HE STATED THAT AN AMENDMENT WAS CREATED, WHICH WAS SIGNED BY SHIRLEY ON NOV. 19, 2008 TAKING LOGAN OUT OF THE TRUST.

SPALLINA STATED THAT HE FELT THAT SIMON'S WISHES OVERRODE SHIRLEY'S IN THIS SITUATION. SPALLINA SAID THAT HE AND KIMBERLY MORAN (HIS EMPLOYEE & A NOTARY) WENT TO SHIRLEY'S HOME FOR THE DOCUMENT TO BE SIGNED. HE SAID THAT RACHEL WALKER, SHIRLEY'S ASSISTANT, WAS PRESENT WHEN THE DOCUMENT WAS SIGNED.

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SHE AND SPALLINA ARE ON THE DOCUMENT AS WITNESSES, MORAN IS THE NOTARY FOR SHIRLEY'S SIGNATURE. HE TOLD ME THAT WAS THE LAST CHANGE SHIRLEY EVER MADE TO HER DOCUMENTS AND THAT SHE PASSED ON DECEMBER 2010. SIMON WAS STILL ALIVE AND THE TRUST READ THAT EVERYTHING WENT TO HIS BENEFIT. SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.

SPALLINA STATED THAT IN 2012, SIMON CONTACTED HIM STATING THAT HE WAS HAVING CONCERNS ABOUT HOW HE HAD ELIMINATED TED AND PAM FROM HIS TRUST. HE STATED THAT IT IS POSSIBLE THAT THESE THOUGHTS CAME ON BECAUSE PAM STARTED SENDING HIM LETTERS. HE SAID THAT SHE (PAM) HAD A LAWYER CONTACT HIS OFFICE AND ASK FOR COPIES OF SHIRLEY'S TRUST DOCUMENTS. SPALLINA SAID THAT HE MET WITH SIMON, WHO SAID THAT HE WAS CONSIDERING CHANGING HIS DOCUMENTS. HE SAID THAT ONE OF THE CHANGES DISCUSSED WAS HOW TO INCLUDE TED AND PAM'S CHILDREN.

SPALLINA STATED THAT SIMON HAD A LIFE INSURANCE POLICY WITH THE BENEFIT OF \$1,600,000. HE SAID THAT THE POLICY READ THAT IF SIMON PASSED BEFORE SHIRLEY SHE RECEIVED THE BENEFIT, BUT IF SHIRLEY PASSED BEFORE HIM, THE FIVE CHILDREN RECEIVED THE BENEFITS ONCE HE PASSED. THIS POLICY ORIGINATED OUT OF ILLINOIS. SPALLINA ADDED THAT THIS POLICY AND ITS DISTRIBUTION OF FUNDS ARE CURRENTLY IN A FEDERAL COURT BATTLE.

SPALLINA STATED THAT A DISCUSSION TOOK PLACE WITH HIM AND SIMON IN 2012; REFERENCE THE FACT THAT SIMON HAD ISSUES ON HOW AND WITH WHOM FUNDS WERE GOING TO BE DISTRIBUTED TO UPON HIS DEATH. HE TOLD ME SIMON WAS HAVING RESERVATIONS ABOUT TED AND PAM NOT BEING IN HIS TRUST, AS WELL AS THAT FACT THAT HE THEN HAD A GIRLFRIEND BY THE NAME OF MARITZ PUCCIO THAT HE WANTED TO PROVIDE FOR. HE ADDED THAT NO ONE IN THE FAMILY WAS HAPPY THAT PUCCIO WAS IN SIMON'S LIFE. HE ALSO TOLD ME THAT SIMON WANTED HIS GRANDCHILDREN TO RECEIVE BENEFITS FROM THE TRUST.

SPALLINA SAID THAT SIMON FIRST SUGGESTED MAKING BENEFICIARY CHANGES ON THE AFOREMENTIONED LIFE INSURANCE POLICY. SPALLINA SAID THAT HE TOLD SIMON THAT WAS A VERY BAD IDEA. HE TOLD ME THAT THERE WAS SOMETHING CALLED AN EXERCISE OF POWER OF APPOINTMENT, PUT IN BOTH SIMON AND SHIRLEY'S TRUST DOCUMENTS. HE SAID THIS GAVE THE LIVING SPOUSE THE ABILITY TO MAKE CHANGES ON THE DECEASED SPOUSE'S DOCUMENTS. HE SAID THAT HE TOLD SIMON, THAT MAYBE THEY SHOULD EXPLORE OPTIONS WITH THAT. HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (ST AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST.

SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN. HE SAID THAT SIMON WAS NOT HAPPY ABOUT THIS. HE SAID THAT SIMON

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WAS VERY ADAMANT ABOUT LEAVING EVERYTHING IN THE ESTATES TO THE GRANDCHILDREN. HE ALSO SAID THAT HE ADVISED SIMON TO NOT MAKE CHANGES TO THE LIFE INSURANCE POLICY OR THE ESTATES, MAKING PUCCIO A BENEFICIARY. HE STATED THAT THIS WILL ONLY CAUSE PROBLEMS AND CREATE LITIGATION. SPALLINA SAID THE AFOREMENTIONED DISCUSSION AND MEETING TOOK PLACE IN FEBRUARY 2012. HE SAID THE MEETING CONCLUDED WITH SIMON SAYING HE NEEDED TO THINK ABOUT THINGS.

HE TOLD ME THAT THREE MONTHS LATER, SIMON CONTACTED HIM STATING HE KNEW WHAT HE WANTED TO DO. HE SAID THAT SIMON TOLD HIM HE WANTED TO LEAVE HIS INSURANCE POLICY ALONE, BUT THAT HE WANTS BOTH TRUSTS TO GO TO HIS 10 GRANDCHILDREN. SPALLINA SAID THAT HE EXPLAINED TO HIM AGAIN, THAT ONLY HIS TRUST, NOT SHIRLEY'S CAN GO TO BOTH GRANDCHILDREN, UNLESS HE TAKES ALL OF THE ASSETS OUT OF THE SHIRLEY TRUST AND PUTS THEM INTO HIS NAME. HE SAID THE COST OF TAKING THE ASSETS OUT OF SHIRLEY'S TRUST WOULD HAVE BEEN SIGNIFICANT, BECAUSE SHIRLEY'S DEATH OCCURRED BEFORE FEDERAL ESTATE TAX CHANGES TOOK PLACE, SO AS LONG AS IT STAYED IN HER ESTATE IT WOULD BE FREE OF TAX, BUT SHOULD IT GO TO SIMON'S TRUST IT WILL BE TAXED.

THERE WAS ALSO AN ISSUE OF SUBJECTING THE ASSETS FROM SHIRLEY'S ESTATE TO CREDITORS IF IT WENT TO SIMON'S ESTATE. SPALLINA TOLD ME THAT AT THIS TIME, SIMON SAID "GET MY CHILDREN ON THE PHONE". HE SAID THAT SIMON TOLD HIM THAT HE WANTED HIS CHILDREN TO AGREE THAT ALL ASSETS FROM BOTH TRUSTS GO TO THE 10 GRANDCHILDREN. HE SAID THAT SIMON TOLD HIM HE (SIMON) COULD GET THEM TO AGREE. SPALLINA CONFIRMED THAT THIS CONVERSATION OCCURRED ON THE SAME DATE, DURING THE SAME PHONE CALL (CONFERENCE CALL), REGARDING THE WAIVER OF ACCOUNTING FORM FOR SHIRLEY'S ESTATE IN PBSSO CASE #13-097087.

FROM A PREVIOUS INVESTIGATION DONE BY ME, I FOUND THAT SIMON SIGNED THE WAIVER OF ACCOUNTING ON 04/09/12, SO IT IS POSSIBLE THAT THE PHONE CALL OCCURRED ON THAT DATE. I HAD ALSO NOTED IN MY REPORT THAT THERE WAS SOME DISCUSSION OF INHERITANCE AND WHO WAS TO GET WHAT. SPALLINA SAID THAT DURING THE PHONE CALL, ALL FIVE KIDS AGREED THAT CHANGING THE INHERITANCE OF BOTH ESTATES TO THE GRANDCHILDREN WAS A GREAT IDEA. HE SAID THAT ELIOT SPOKE THE MOST, STATING THINGS SUCH AS, GREAT IDEA DAD, WHATEVER YOU WANT TO DO, WHATEVER MAKES YOU FEEL BEST, WHATEVER IS BEST FOR YOUR HEALTH DAD.

SO, AFTER THE AFOREMENTIONED PHONE CALL, NEW DOCUMENTS WERE DRAWN UP FOR SIMON'S ESTATE. THESE NEW DOCUMENTS GAVE EVERYTHING TO ALL 10 GRANDKIDS. HE ALSO EXERCISED HIS POWER OF SHIRLEY'S ESTATE, LEAVING EVERYTHING TO ALL 10 GRANDKIDS, EVEN THOUGH LEGALLY HE COULD NOT INCLUDE TED AND FAM'S KIDS BECAUSE OF THE PREDECEASED LIMITATION. HE SAID THESE DOCUMENTS WERE EXECUTED AT THE END OF JULY 2012. HE SAID SEVEN WEEKS LATER SIMON DIES, UNEXPECTEDLY. I FOUND THAT SIMON PASSED ON SEPTEMBER 13, 2012 OF A HEART ATTACK.

SPALLINA SAID APPROXIMATELY TWO MONTHS AFTER THAT, HIS OFFICE RECEIVED A REQUEST FROM ELIOT'S ATTORNEY, CHRISTINE YATES, FOR ALL DOCUMENTS RELATING TO

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SIMON AND SHIRLEY BERNSTEIN, TO INCLUDE DOCUMENTS RELATING TO BERNSTEIN FAMILY REALITY, WHICH OWNS A HOME THAT ELIOT AND HIS FAMILY LIVE IN. HE SAID THAT HIS HOME IS ACTUALLY OWNED AND IS FUNDED BY THREE TRUSTS THAT SIMON CREATED. THE THREE TRUSTS ARE IN THE NAME OF ELIOT'S THREE CHILDREN, (JACK, JAKE, AND DAN).

SPALLINA TOLD ME THAT HE AND HIS PARTNER HAD DISCUSSIONS REFERENCE TO FULFILLING SIMON'S WISHES OF ALL 10 GRANDCHILDREN RECEIVING THE BENEFITS FROM BOTH SIMON AND SHIRLEY'S TRUSTS. HE SAID THAT HE AND HIS PARTNER, DONALD TESCHNER, DISCUSSED DOING A SCRIVENER'S AFFIDAVIT REFERENCE REINSTATING TED AND PAM'S CHILDREN INTO SHIRLEY'S TRUST, SINCE THEIR NOTES WERE UNCLEAR TO AS IF THE GRANDCHILDREN WERE OR WERE NOT DEEMED PREDECEASED, AS TED AND PAM WERE. HE TOLD ME THAT THE DECISION WAS MADE TO NOT DO THE SCRIVENER'S AFFIDAVIT, DUE TO THE CHANCE THAT IT MAY NOT WORK. HE SAID THOUGH, THAT AGAINST HIS BETTER JUDGMENT HE ALTERED THE FIRST PAGE OF THE FIRST AMENDMENT TO THE SHIRLEY BERNSTEIN TRUST AGREEMENT, BEFORE HE TURNED IT OVER TO YATES. THE ORIGINAL WAS MENTIONED EARLIER ON IN THIS REPORT AND STATES THAT SHIRLEY SIGNED IT ON NOVEMBER 18, 2008. IT TOOK MATTHEW LOGAN OUT OF THE TRUST.

SPALLINA SAID THAT THEY NOTICED THAT THE FIRST PAGES OF THE DOCUMENT SKIPPED FROM ONE TO THREE, SO HE TOOK IT UPON HIMSELF TO ADD IN NUMBER TWO, BEFORE SENDING IT TO YATES. THE CHANGE THAT NUMBER TWO MADE TO THE TRUST, AMENDED PARAGRAPH 2 OF ARTICLE III, MAKING IT READ THAT ONLY TED AND PAM WERE CONSIDERED PREDECEASED, NOT THEIR CHILDREN. HE SAID THE ORIGINAL TRUST STATES THAT TED, PAM, AND THEIR CHILDREN ARE DREAMED PREDECEASED. SPALLINA SAID HE DID THIS AT THIS OFFICE IN BOCA RATON, FLORIDA. HE SAID THAT NO ONE ELSE TOOK PART IN ALTERING THE DOCUMENT. HE SAID THAT HE DID IT TO MAKE SIMON'S WISHES AND THE VERBAL AGREEMENT FROM THE APRIL 2012 PHONE CONVERSATION COME TRUE. SPALLINA STATED THAT ALTHOUGH HE CREATED THE ALTERED FORM AND ATTACHED IT TO THE ORIGINALLY SIGNED/NOTARIZED FORM, HE RECEIVED NO INCOME OR GAIN FROM IT. HE STATED HE SOLELY DID IT TO FULFILL SIMON'S WISHES. HE CONFIRMED THAT THIS ALTERED DOCUMENT DID NOT GET FILED WITH THE COURTS.

SPALLINA STATED THAT AGAINST HIS ADVICE, A DISTRIBUTION WAS MADE FROM ONE OF THE TRUSTS AFTER SIMON'S DEATH. HE STATED THAT HE ADVISED AGAINST THIS AND WHEN SIMON PASSED, A FORMER PARTNER FILED A CLAIM AGAINST THE ESTATE FOR \$2,500,000.

SPALLINA ALSO TOLD ME THAT IN 2006, ALL OF THE GRANDCHILDREN RECEIVED TRUSTS FROM SHIRLEY AND SIMON. HE STATED THAT YATES WAS ACTUALLY THE ATTORNEY FOR ELIOT'S CHILDREN'S TRUSTS. SPALLINA STATED THAT SIMON WANTED ELIOT'S KIDS TO HAVE A HOME, BUT DID NOT WANT THE HOME IN ELIOT'S NAME.

SPALLINA ALSO TOLD ME THAT IN 2009 SIMON CAME TO HIM AND SAID HE IS BUYING A HOUSE FOR ELIOT AND HIS FAMILY TO LIVE IN, BUT HE DOES NOT WANT ELIOT TO OWN THE HOME. HE SAID THAT SIMON TOLD HIM THAT HE WANTED ELIOT'S

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CHILDREN'S THREE TRUSTS TO OWN THE HOME. HE THEN SET UP A LIMITED LIABILITY COMPANY, WHICH IS BERNSTEIN FAMILY REALTY. HE SAID THAT SIMON SET UP AN ACCOUNT AT LEGACY BANK. HE SAID THAT SIMON FUNDED THE ACCOUNT, TO PAY FOR THE EXPENSES AT THE HOUSE. RACHEL WALKER WAS IN CHARGE OF PAYING THOSE EXPENSES. HE SAID THAT AT SIMON'S DEATH THE ACCOUNT HAD VERY LITTLE MONEY IN IT. HE SAID THIS WAS THE TYPE OF ACCOUNT THAT ONLY ENOUGH MONEY WENT INTO IT EACH MONTH TO COVER THE NECESSARY EXPENSES FOR THE HOME, SUCH AS POWER, WATER, AND MORTGAGE.

SPALLINA STATED THAT PRIOR TO SIMON'S DEATH, HE WAS THE MANAGER OF BER, BUT AFTER HIS DEATH IT WAS TRANSFERRED TO OPPENHEIMER TRUST COMPANY, BECAUSE NO ONE IN THE FAMILY WANTED TO MANAGE IT. HE STATED THIS WAS BECAUSE NO ONE WANTED TO DEAL WITH ELIOT. HE SAID OTC BECAME THE TRUSTEE AND THE LEGACY BANK ACCOUNT GOT CLOSED OUT SINCE THE ACCOUNT HAD MINIMAL FUNDS IN IT AND SIMON WAS NO LONGER ALIVE TO FUND IT. HE STATED THAT OTC OPENED UP THEIR OWN BER TRUST ACCOUNT. HE SAID THAT WHEN THIS OCCURRED, THERE WAS APPROXIMATELY \$80,000 IN EACH OF ELIOT'S CHILDREN'S TRUSTS. HE SAID THAT ELIOT STARTED CALLING UP OTC ASKING FOR THEM TO PAY BILLS.

SPALLINA SAID THE PROBLEM IS THAT SINCE NEITHER ELIOT NOR HIS WIFE WERE WORKING, THEY WERE ALSO ASKING FOR THEIR CREDIT CARD BILLS TO BE PAID, ALONG WITH THE NORMAL LIVING EXPENSES. HE STATED THAT THE CREDIT CARD BILLS SHOWED CHARGES TO HIGH END RESTAURANTS, SUCH AS CAPITAL GRILL. SPALLINA SAID THAT DUE TO THE EXPENSES BEING PAID BY THE THREE CHILDREN'S TRUST, TO INCLUDE PRIVATE SCHOOL, THE TRUSTS WERE DRAINED BY AUGUST 2013.

SPALLINA STATED THAT TED BERNSTEIN IS THE TRUSTEE FOR SHIRLEY'S TRUST. HE SAID THAT SHIRLEY HAD A CONDO THAT WAS SOLD FOR \$1,400,000 AND THAT MONEY WENT INTO THE TRUST. HE SAID THAT TED DISCUSSED WITH HIS SIBLINGS, POSSIBLY EXCLUDING ELIOT, THAT THERE WAS CONCERN ABOUT A CREDITOR GETTING SOME OF THE MONEY. HE SAID THAT TED MADE A DISTRIBUTION TO SEVEN OF THE 10 GRANDCHILDREN'S TRUSTS. FOUR OF WHICH INCLUDE TED'S THREE CHILDREN AND PAM'S CHILD. SPALLINA SAID THAT TED ONLY FUNDED SEVEN OF THE GRANDCHILDREN, BECAUSE ELIOT REFUSED TO OPEN ACCOUNTS FOR HIS THREE KIDS SO THAT TED COULD FUND THEM. HE SAID THAT IN SEPTEMBER OF 2013, \$80,000 WAS DISTRIBUTED TO EACH OF THE SEVEN TRUSTS, WHICH IS A TOTAL OF \$560,000. SPALLINA REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.

SPALLINA WAS ASKED AND CONFIRMED THAT THE ALTERED DOCUMENT REFERENCE SHIRLEY'S TRUST, IS THE ONLY MISTAKE THAT HE MADE. HE IS NOT AWARE OF ANY OTHER MISTAKES.

I WAS SUPPLIED A COPY OF THE ALTERED DOCUMENT BY SPALLINA ON 01/22/14. THIS NARRATIVE IS NOT A VERBATIM ACCOUNT OF THE INTERVIEW WITH SPALLINA. FURTHER INVESTIGATION WILL CONSIST OF MEETING WITH SIMON AND SHIRLEY'S CHILDREN, IN ATTEMPT TO GAIN STATEMENTS FROM THEM.

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 7  
CASE NO. 14029489 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

DETECTIVE RYAN W. MILLER #7704  
01/24/14 @ 1153 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 01/29/2014/MDR/#6405

.....  
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.....

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
 CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489

DISPOSITION: ZULU  
 DIVISION: DETECTIVE

911:

ECONOMIC CRIMES

SIGNAL CODE: 14 CRIME CODE: \* NON CRIME CODE: \* OF CODE: 9546 01/29/14 THURSDAY  
 ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1020 A 1020 C 1021  
 OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS  
 EXCEPTION TYPE:

INCIDENT LOCATION: 4655 TECHNOLOGY WY APT. NO.: 700  
 CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
 LOCATION: OTHER  
 NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

ON JAN. 26, 2014 I MET WITH TED BERNSTEIN WHO WAS ACCOMPANIED BY ATTORNEY ALAN ROSE. ROSE IS A CIVIL ATTORNEY, SPECIALIZING IN PROBATE AND BUSINESS LITIGATION. THIS INTERVIEW TOOK PLACE AT THE PALM BEACH COUNTY SHERIFF'S OFFICE, SPECIAL INVESTIGATIONS DIVISION'S CONFERENCE ROOM, LOCATED AT 3228 GUN CLUB ROAD, WEST PALM BEACH, FLORIDA 33406 AT 11:46 A.M. THE FOLLOWING IS A NON-VERBATIM ACCOUNT OF THE INTERVIEW:

TED STATED THAT HE AND HIS FATHER SIMON HAD AN OFFICE TOGETHER. HE TOLD ME THAT IN 2007 HE HAD NOTICED THAT TESCHER AND SPALLINA STARTED FREQUENTING THE OFFICE AND THEY CONTINUED TO VISIT THE OFFICE QUITE OFTEN INTO 2008. HE SAID THAT HE THEN REALIZED THAT HIS PARENTS WERE CONDUCTING THEIR ESTATE PLANNING. HE SAID THAT HE WAS NOT ASKED TO BE PART OF THE PLANNING, NOR DID HE INQUIRE ABOUT IT. TED TOLD ME THAT HE IS THE ELDEST CHILD OF FIVE, TO INCLUDE JILL, LYSA, PAM, AND ELIOT. THE OFFICE FOR THE INSURANCE AGENCY THAT TED AND SIMON WORKED TOGETHER AT IS LOCATED AT 950 PENINSULA CORPORATE CIRCLE, BOCA RATON, FL 33487.

TED STATED THAT HE FOUND OUT UPON HIS FATHER'S DEATH, THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S TRUST. HE TOLD ME THAT THE ATTORNEY'S (TESCHER AND SPALLINA) MADE HIM AWARE OF THIS. HE SAID HE WAS ALSO INFORMED HE WAS A CO-TRUSTEE FOR SOME OTHER ACCOUNT. HE TOLD ME THAT HE IS NOT GOING TO INHERIT AN INSURANCE AGENCY, BUT THAT HE AND HIS FATHER WERE PARTNERS. HE STATED THAT HE OWNS STOCK IN THE AGENCY WITH NO OPTION FOR HIM TO INHERIT OR PURCHASE HIS FATHER'S INTEREST IN THE COMPANY. HE COMMENTED ON THE FACT THAT THE BUSINESS MAKES LITTLE INCOME THESE DAYS.

TED STATED THAT IN THE FIRST PART OF 2012, HIS FATHER (SIMON) HAD A

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CASE NO. 14029489 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

DISCUSSION WITH HIM, REFERENCE AN ISSUE THAT PAM RAISED WITH SIMON ABOUT HOW THE DOCUMENTS FOR THE TRUSTS WERE DRAWN UP. HE TOLD ME THAT HE BELIEVED PAM HAD SENT SIMON SOME INFORMATION OR A BOOK RELEVANT TO HER VIEW ON HOW YOU DO ESTATE PLANNING WHEN CHILDREN AND GRANDCHILDREN ARE INVOLVED. HE SAID THAT HIS FATHER DID ASK HIM HIS OPINION ON THINGS AND TED TOLD HIM THAT HE DID FEEL THAT THE GRANDCHILDREN MAY NOT UNDERSTAND IF IF THEY DID NOT RECEIVE AN INHERITANCE. HE STATED THAT HIS FATHER TOLD HIM THAT HE MADE A REALLY GOOD POINT AND SOMETHING TO CONSIDER. TED SAID THAT SOON AFTER THAT CONVERSATION HIS FATHER ANNOUNCED THAT HE WANTED TO TALK WITH HIS CHILDREN ABOUT THE DISTRIBUTION OF HIS AND SHIRLEY'S ASSETS UPON HIS DEATH. HE TOLD ME THAT A CONFERENCE CALL MEETING TOOK PLACE INCLUDING HIS (SIMON'S) FIVE CHILDREN, SIMON, AND SPALLINA. HE SAID THAT THE CONVERSATION WENT REALLY WELL AND SIMON GOT TO PROVIDE HIS WISHES VERY CLEARLY.

HE STATED THAT SPALLINA EXPLAINED THE PROCESS LEGALLY, BUT HIS FATHER MADE A STATEMENT AND ASKED EACH CHILD DIRECTLY, HOW THEY FELT ABOUT IT. TED SAID THAT IT WAS TOLD TO HIM AND HIS SIBLINGS THAT SIMON WAS LEAVING ALL OF HIS WEALTH TO HIS 10 GRANDCHILDREN EQUALLY. HE SAID THAT SIMON TOLD THEM THAT THEY (THE CHILDREN) WERE EACH GETTING 1/5 OF A LIFE INSURANCE POLICY. TED SAID THAT IT WAS OBVIOUS THAT HIS FATHER WAS NOT ASKING FOR PERMISSION, BUT STATING CLEARLY WHAT HE THOUGHT WAS RIGHT. TED SAID THAT EACH CHILD STATED THEY FELT OK ABOUT THE DECISION AND THAT IT WAS HIS WEALTH TO MAKE DECISIONS WITH. TED STATED THAT HE BELIEVES THIS WAS THE SAME PHONE CALL WHERE HE WAS TOLD BY SPALLINA HE, AS WELL AS SIBLINGS, WOULD BE RECEIVING FORMS THEY NEEDED TO SIGN AND RETURN. HE STATED THAT SOON AFTER THIS CALL HE RECEIVED THE WAIVER OF ACCOUNTING FORM FOR HIS MOTHER'S ESTATE. THIS IS THE DOCUMENT DISCUSSED IN PBSO CASE # 13-097087.

TED STATED THAT HE WAS NOT INVOLVED IN ANY OTHER DISCUSSIONS REFERENCE ESTATES UNTIL HIS FATHER'S PASSING ON SEPTEMBER 13, 2012. HE SAID THAT TESCHER AND SPALLINA TOLD HIM AFTER HIS FATHER'S DEATH THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S ESTATE. HE SAID OVER MANY IN PERSON MEETINGS AND PHONE CALLS HE WAS GIVEN GUIDANCE BY THE ATTORNEYS ON HOW TO PERFORM HIS DUTIES AS A TRUSTEE, BECAUSE THIS WAS ALL NEW TO HIM. HE HAD NEVER BEEN IN THIS ROLE BEFORE. HE STATED HE WAS NOT PROVIDED A CHECKLIST OR BOOK ON HOW TO PERFORM THESE DUTIES. TED SAID THAT HE MADE IT CLEAR TO HIS SIBLINGS THAT HE IS THE TRUSTEE ON SHIRLEY'S TRUST. TED STATED THAT HE WAS TOLD THAT SHIRLEY'S TRUST WAS TO BE DISTRIBUTED AMONGST HER 10 GRANDCHILDREN. TED STATED THAT HE DID NOT READ ALL OF SHIRLEY'S TRUST DOCUMENTS AND THAT SPALLINA AND TESCHER HAD BOTH TOLD HIM SEVERAL TIMES HOW SHIRLEY'S TRUST WAS TO BE DISTRIBUTED.

TED SAID THAT HE DID READ IN THE DOCUMENTS WHERE THE 10 GRANDCHILDREN WERE TO RECEIVE THE ASSETS FROM THE TRUST. HE SAID THAT HE DID ISSUE A PARTIAL DISTRIBUTION TO THE SEVEN OF THE 10 GRANDCHILDREN. HE DID NOT ISSUE

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

DISTRIBUTIONS TO ELIOT'S CHILDREN BECAUSE ELIOT REFUSED TO SET UP ACCOUNTS FOR THE FUNDS TO BE SENT TOO. HE ALSO TOLD ME THAT ELIOT TOLD JUDGE COLIN IN COURT THAT HE DID NOT WANT TO SET UP THE ACCOUNTS FOR HIS CHILDREN TO RECEIVE THE FUNDS, BECAUSE THE FUNDS BELONG TO HIM, NOT HIS CHILDREN. HE STATED THAT ELIOT HAD MENTIONED OTHER REASONS IN E-MAILS FOR NOT TAKING THE MONEY. HE ALSO STATED THAT ELIOT REFERENCED THE MONEY AS CRIME OR BLOOD MONEY.

HE STATED THAT SPALLINA TOLD HIM IT WAS OK TO DISTRIBUTE THE FUNDS. HE STATED THAT TESCHER AND SPALLINA RESPONDED VIA E-MAIL ON HOW TO RECEIVE THE FUNDS, SUCH AS SETTING UP TRUST ACCOUNTS FOR THE FUNDS TO GO INTO. TED TOLD ME THAT THERE WERE CONVERSATIONS, WHERE HE WAS TOLD THAT SIMON'S ASSETS COULD NOT BE DISTRIBUTED DUE TO CREDITORS FILING AGAINST THE ESTATE, BUT HE WAS LEAD TO BELIEVE IT WAS OK TO MAKE A PARTIAL DISTRIBUTION OF FUNDS FROM SHIRLEY'S ESTATE, BUT THAT THEY WOULD NEED TO BE CAREFUL IN REGARDS TO DISTRIBUTING FUNDS THAT WERE OBTAINED THROUGH LIQUIDATING HER JEWELRY AND PERSONAL PROPERTY. TED ALSO COMMENTED THAT ONE OF THE GOALS OF MAKING THE DISTRIBUTIONS WAS TO ASSIST ELIOT AND HIS FAMILY, BECAUSE THEY WERE RUNNING LOW ON FUNDS. HE STATED THIS DERIVED FROM ELIOT'S POTENTIAL MISUSE OF FUNDS THAT WERE IN HIS CHILDREN'S TRUSTS IN RELATION TO BERNSTEIN FAMILY REALITY (ELIOT'S HOME) AND ELIOT'S SPENDING AND EXPENSES.

TED CONFIRMED THAT HE DID NOT MAKE ANY DECISIONS IN RELATION TO SIMON'S INSURANCE POLICY GENERATED OUT OF CHICAGO, ILLINOIS. HE STATED THAT HE UNDERSTOOD THE POLICY TO BE OWNED BY SIMON PERSONALLY. HE STATED HE UNDERSTOOD THE POLICY TO READ AS, SHOULD SHIRLEY PASS BEFORE HIM, THE BENEFITS WOULD GO TO THE FIVE CHILDREN.

TED CONFIRMED THAT HE WAS NOT THE TRUSTEE FOR SIMON'S ESTATE, BUT THAT IT WAS EXPLAINED TO HIM, VERBALLY, THAT ALL 10 GRANDCHILDREN WILL RECEIVE THE ASSETS FROM THAT ESTATE IN AN EQUAL DISTRIBUTION AT SOME POINT IN TIME. WE DID DISCUSS THE POWER OF APPOINTMENT PUT IN THE TRUST DOCUMENTS. IT APPEARED AS IF TED WAS NOT AWARE OF ANYTHING CALLED A POWER OF APPOINTMENT, UNTIL THE LAST FEW WEEKS. THAT WAS WHEN SPALLINA NOTIFIED THE COURTS OF HIS WITHDRAW FROM BEING THE ATTORNEY FOR SIMON AND SHIRLEY'S ESTATES. IT APPEARS IT WAS EXPLAINED TO HIM AT THAT TIME.

TED TOLD ME THAT HE AND HIS FATHER HAD A GOOD BUSINESS AND PERSONAL RELATIONSHIP. HE SAID THAT HE HAS A GOOD RELATIONSHIP WITH ALL OF HIS SIBLINGS, EXCEPT FOR ELIOT. HE SAID THAT HE GOT ALONG WITH HIS MOTHER, PRIOR TO HER PASSING. HE TOLD ME THAT RACHEL WALKER WAS EMPLOYED BY HIS MOTHER AND FATHER. HE SAID THAT HE GOT ALONG WITH WALKER AND THAT SHE HELPED HIS MOTHER, SHIRLEY, PRIOR TO SHIRLEY'S PASSING. TED TOLD ME THAT MARITZA PUCCIO WAS SOMEONE THAT WORKED FOR HIM AND AS WELL AS HIS PARENTS. HE STATED THAT SHE HELPED AROUND THE HOMES, CLEANING AND/OR CARING FOR CHILDREN. HE STATED THAT HE MET HER AROUND 2003 OR 2005. HE SAID THAT HE NO LONGER HAS A RELATIONSHIP

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 4  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

WITH HER. HE SAID THAT SIMON DID HAVE AN INTIMATE RELATIONSHIP WITH PUCCIO AFTER SHIRLEY PASSED. HE STATED THAT PUCCIO DID RECEIVE SOME TYPE OF FINANCIAL BENEFIT FROM SIMON, PRIOR TO HIM PASSING. HE SAID THAT PUCCIO WAS LIVING WITH SIMON AND HER BILLS WERE BEING PAID FOR. THIS MAY OR MAY NOT BE THE FINANCIAL BENEFIT; TED DID NOT SEEM TO BE SURE. HE DID STATE THAT IT APPEARED THAT SIMON WAS GENUINELY INVESTED INTO THE RELATIONSHIP HE HAD WITH PUCCIO.

TED SAID THAT HE HAS NOT SPOKEN TO SPALLINA ABOUT HIM WITHDRAWING FROM BEING THE ATTORNEY FOR THE TRUSTS, BUT THAT HE DID SPEAK WITH TESCHER. HE SAID THAT TESCHER TOLD HIM HE HAD BEEN MADE AWARE OF A FABRICATED DOCUMENT THAT WAS POTENTIALLY PROBLEMATIC FOR THE ESTATES. HE SAID THAT TESCHER TOLD HIM THAT SPALLINA CREATED THE FABRICATED DOCUMENT AND IT ESSENTIALLY IMPACTED THE ABILITY FOR SIMON TO DISTRIBUTE FUNDS TO ALL 10 GRANDKIDS. TED SAID THAT TESCHER TOLD HIM THAT HE HAD ONLY RECENTLY BECOME AWARE OF THIS DOCUMENT, APPROXIMATELY THREE WEEKS AGO FROM TODAY (01/28/14).

ATTORNEY ALAN ROSE PROVIDED A STATEMENT, STATING HE WISHED TO CLARIFY SOME THINGS IN REGARDS TO HOW THE ESTATE DOCUMENTS READ IN HIS OPINION. HE STATED THAT SHIRLEY'S ASSETS WENT TO LISA, JILL, AND ELIOT OR THEIR LINEAL DECEDENTS. HE STATED THAT ONCE SHIRLEY PASSED HER ASSETS WENT INTO HER TRUST. HE STATED THAT SIMON WAS THE SOLE BENEFICIARY FOR HIS LIFE. HE STATED THAT SIMON DID HAVE A POWER OF APPOINTMENT THAT HE COULD EXERCISE; REFERENCE SHIRLEY'S TRUST, CHANGING THE BENEFITS TO LISA, JILL, AND ELIOT'S CHILDREN. SIMON COULD CHANGE HIS DOCUMENTS AT ANY TIME UP TO HIS DEATH. ALAN STATED THERE IS QUESTION AS TO WHETHER OR NOT SIMON HAD THE POWER TO DISTRIBUTE THE FUNDS FROM THE TRUST TO SIX GRANDCHILDREN OR 10. THE 10 WOULD INCLUDE THE CHILDREN OF ALL FIVE OF SIMON'S KIDS.

HE STATED THAT SHIRLEY'S ORIGINAL DOCUMENTS STATE THAT TED AND PAM AND THEIR LINEAL DECEDENTS ARE CONSIDERED PREDECEASED. HE STATED THAT WERE OTHER WAYS TO MAKE SIMON'S WISHES COME TRUE FOR THE ESTATES. HE SAID THAT CHANGES COULD HAVE BEEN MADE TO SIMON'S DOCUMENTS TO REFLECT SHIRLEY'S SO THAT EQUAL DISTRIBUTIONS WERE MADE AMONGST THE 10 GRANDCHILDREN. THIS EXPLANATION OF THE DOCUMENTS GENERATED A SIMILAR IF NOT THE SAME CONCLUSION AS THAT OF SPALLINA'S FROM LAST WEEK.

I ALSO COMMUNICATED WITH ELIOT BERNSTEIN SEVERAL TIMES THIS WEEK AND LAST WEEK IN ATTEMPT TO ARRANGE AN INTERVIEW WITH HIM IN PERSON. HE CANCELED THE LAST TWO MEETINGS WE HAD SET. AT THIS TIME HE HAS REFUSED TO SET A NEW MEETING DATE.

THIS CONCLUDES MY SUPPLEMENTAL REPORT.  
DETECTIVE RYAN W. MILLER #7704  
01/29/14 @ 1425 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 01/29/2014/MDR/#6405

Printed by Employee Id #: 5264 on February 11, 2014 02:26:57PM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 14029489 SUPPLEMENT 2 OFFENSE REPORT CASE NO. 14029489

DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:

ECONOMIC CRIMES \* \* \*

SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OF CODE: 9546 01/31/14 THURSDAY  
ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1020 A 1020 C 1021  
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS

EXCEPTION TYPE:

INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700  
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: OTHER  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

ON 01/29/14 I ATTEMPTED TO MAKE CONTACT WITH LISA FRIEDSTEIN, JILL LANTONI, AND PAMELA SIMON VIA E-MAIL. THEY ARE THE THREE DAUGHTERS OF SIMON AND SHIRLEY BERNSTEIN. I USED THE INFORMATION THAT WAS PROVIDED TO ME BY ELIOT ON 09/10/13. I ATTACHED READ RECEIPTS TO THE E-MAIL. I RECEIVED A READ RECEIPT FROM PAMELA 01/30/14 AT 4:59 AM. ON 01/30/14 I PLACED PHONE CALLS TO JILL AND LISA, USING THE PHONE NUMBERS ELIOT HAD PROVIDED ME. I LEFT MESSAGES ASKING THEM TO CALL ME BACK. ON 01/31/14 I BRIEFLY SPOKE WITH LISA, BUT ASKED THAT SHE CALL BACK SO WE CAN FURTHER DISCUSS THIS CASE. TO DATE, I HAVE NOT RECEIVED A CALL OR E-MAIL FROM PAM OR JILL.

THIS CONCLUDES MY SUPPLEMENTAL REPORT.

DETECTIVE RYAN W. MILLER #7704

01/31/14 @ 1430 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 02/04/2014/MDR/#6405

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CASE NO. 13097087 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: ROAD PATROL

911:  
IMPRNTE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: 4 NON CRIME CODE: CODE: 260D 07/15/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7657 NAME: LONGSWORTH BRYA ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 18901 S STATE RD 7 APT. NO:  
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

NAME LIST:  
ROLE:

COMPLAINANT ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 245-8588  
BUSINESS PHONE: 561 886-7628  
OTHER ROBERT L SPALLINA DOB: 06/09/1965  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 4855 TECHNOLOGY WY BOCA RATON FL 33431 HOME PHONE: 561 997-7008  
BUSINESS PHONE: 561 000-0000  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 800 BERKELEY ST BOCA RATON FL 33484 HOME PHONE: 561 988-8988  
BUSINESS PHONE: 561 000-0000  
OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
ARRESTEE KIMBERLY MORAN DOB: 10/24/1972  
SEX: F RACE: W HT: 505 WT: 135 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 6362 LAS FLORES DR APT. 4 BOCA RATON FL 33493 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000

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CONFIDENTIAL

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
OFFENSE REPORT

PAGE 2  
CASE NO. [REDACTED]

DISPOSITION: OPEN

ROLE:

OTHER ROLE NO. 4

*NAMES*	LAST	FIRST	MIDDLE	J/S	R/S	DOB		
REAL...	SIMON	FAMELA			W F			
*ADDRESS*	NO.	STREET	SFX	DIR	APT#	CITY	ST	ZIP
BUSINESS	950	MICHIGAN	AV	N	2603	CHICAGO	IL	60035
*PHONE #S*	HOME	OTHER	BUSINESS					
	000 0000	000 0000	(312) 819 7474					

ROLE:

OTHER ROLE NO. 5

*NAMES*	LAST	FIRST	MIDDLE	J/S	R/S	DOB		
REAL...	IANTONI	JILL			W F			
*ADDRESS*	NO.	STREET	SFX	DIR	APT#	CITY	ST	ZIP
BUSINESS	2101	MAGNOLIA	LA			HIGHLAND PARK	IL	60035
*PHONE #S*	HOME	OTHER	BUSINESS					
	(847) 831 4915	000 0000	(312) 804 2318					

ROLE:

OTHER ROLE NO. 6

*NAMES*	LAST	FIRST	MIDDLE	J/S	R/S	DOB		
REAL...	FRIEDSTEIN	LISA	S		W F			
*ADDRESS*	NO.	STREET	SFX	DIR	APT#	CITY	ST	ZIP
BUSINESS	2142	CHURCHILL	LA			HIGHLAND PARK	IL	60035
*PHONE #S*	HOME	OTHER	BUSINESS					
	(847) 877 4633	000 0000	(312) 000 0000					

OFFENSE INDICATOR: OFFENSE 1 VICTIM NUMBER: 1  
 VICTIM TYPE: UNKNOWN  
 RESIDENCE TYPE: NOT APPLICABLE RESIDENCE STATUS: NOT APPLICABLE

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
OFFENSE REPORT

PAGE 3  
CASE NO. 13097087

DISPOSITION: OPEN

EXTENT OF INJURY: NONE  
INJURY TYPE(1): NOT APPLICABLE  
INJURY TYPE(2): NOT APPLICABLE  
VICTIM RELATION: NOT APPLICABLE

ON 071513, I RESPONDED TO THE DISTRICT VII SUBSTATION LOCATED AT 17901 SOUTH STATE ROAD 7, UNINCORPORATED BOCA RATON, FLORIDA IN REFERENCE TO A REPORT OF FRAUD.

UPON ARRIVAL, I MADE CONTACT WITH THE COMPLAINANT INSIDE OF THE DISTRICT VII LOBBY. THE COMPLAINANT VERBALLY IDENTIFIED HIMSELF AS ELLIOT I. BERNSTEIN. ELLIOT STATED THAT SINCE SEPTEMBER OF 2012, THERE HAVE BEEN SEVERAL FRAUDULENT AND FORGED DOCUMENTS THAT HAVE BEEN FILED IN THE SOUTH COUNTY COURTHOUSE LOCATED AT 200 WEST ATLANTIC AVENUE, DELRAY BEACH, FLORIDA. ELLIOT ADVISED THAT THESE FRAUDULENT/FORGED DOCUMENTS WERE FILED WITH THE SOUTH COUNTY COURTHOUSE TO MISAPPROPRIATE ASSETS ILLEGALLY FROM THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN (DECEASED PARENTS). ELLIOT TOLD ME THAT THESE DOCUMENTS WERE PREPARED AND EXECUTED BY ATTORNEYS DONALD TESCHER AND ROBERT SPALLINA OF TESCHER AND SPALLINA AND THAT THESE DOCUMENTS WERE FOR POWER OF ATTORNEY OVER THE TWO (2) ESTATES WHICH WERE VALUED BETWEEN 20 TO 50 MILLION DOLLARS. ACCORDING TO ELLIOT, HIS BROTHER, THEODORE STUART BERNSTEIN, ALSO HAD INVOLVEMENT WITH THE FILING OF THESE FRAUDULENT/FORGED DOCUMENTS.

WHILE SPEAKING TO ELLIOT, HE SHOWED ME SEVERAL COURT DOCUMENTS WHICH HE ALLEGED ARE COPIES OF THE FRAUDULENT/FORGED DOCUMENTS THAT WERE FILED AT THE COURT HOUSE. ELLIOT COMPLETED A SWORN WRITTEN STATEMENT AND I COMPLETED A VICTIM/WITNESS CASE INFORMATION FORM IN WHICH ELLIOT WAS GIVEN ALONG WITH COPIES OF HIS FOUR (4) PAGE SWORN WRITTEN STATEMENT.

DUE TO THE MONETARY AMOUNT AND THE ALLEGATIONS THAT WERE MADE REGARDING THE FILING OF FRAUDULENT/FORGED DOCUMENTS AT THE SOUTH COUNTY COURTHOUSE, THIS CASE WILL BE FORWARDED TO THE PBSO FINANCIAL CRIMES DIVISION. THIS CASE WAS COMPLETED AT THIS TIME FOR DOCUMENTATION PURPOSES ONLY.

D/S B.E. LONGSWORTH/ID 7657/TRANS:072313/ALS  
DICT:071613/2115HRS.

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 4 of 11  
CASE NO. 13097087 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: ZULU  
DIVISION: DETECTIVE

911: \* \* \*  
IMPERATE PUB OF  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 260D 08/14/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1210 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS CASE,  
I ATTEMPTED TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE ON BOTH 08/13/13  
AND 08/14/13. MESSAGES WERE LEFT FOR HIM TO CONTACT ME ON BOTH NUMBERS  
PROVIDED IN THE ORIGINAL REPORT. THIS CONCLUDES MY SUPPLEMENTAL REPORT.  
DETECTIVE RYAN W. MILLER #7704  
08/14/13 @ 1241 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/15/2013/MOR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:32AM

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 13097087 SUPPLEMENT 2 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: ZULU  
DIVISION: DETECTIVE

911: IMPERSONATE PUB OF \*  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: OT CODE: 260D 08/20/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1213 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:

INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS INCIDENT, I WAS ABLE TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE. ELLIOT SUPPLIED ME WITH AN E-MAIL WHICH CONTAINED 567 DOCUMENTS WHICH HE STATES ARE PERTINENT TO THIS CASE. I AM CURRENTLY REVIEWING THE DOCUMENTS AND STATEMENT HE PROVIDED. FURTHER INVESTIGATION WILL CONSIST OF MEETING WITH ELLIOT IN THE NEAR FUTURE TO GO OVER HIS STATEMENT AND THE DOCUMENTS HE SUPPLIED. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
08/20/13 @ 1430 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/21/2013/MR/#6405

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 01  
CASE NO. 13097087 SUPPLEMENT 3 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:  
IMPRINTE PUB OF  
SIGNAL CODE: S3 CRIME CODE: \* NON CRIME CODE: OT CODE: 260D 09/25/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON AUGUST 23, 2013 I MET WITH ELIOT BERNSTEIN REFERENCE HIS COMPLAINT. HE STATED THAT DUE TO SOME DOCUMENTS BEING FRAUDULENTLY NOTARIZED A LARGER FRAUD HAS OCCURRED. HE SUPPLIED ME WITH COPIES OF A DOCUMENT TITLED: WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE: WAIVER OF SERVICE OF PETITION FOR DISCHARGE: AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE FOR THE ESTATE OF SHIRLEY BERNSTEIN, WHO IS ELIOT'S DECEASED MOTHER.

ELIOT STATED THAT IN THE FIRST PART (BELIEVED TO BE APRIL) OF 2012, HIS FATHER HAD A MEETING WITH HIM AND HIS FOUR SIBLINGS (TED, PAMELA, JILL, & LISA). I HAVE SINCE FOUND OUT THAT THIS WAS A CONFERENCE CALL WHICH TOOK PLACE AT THE OFFICE OF ATTORNEY ROBERT SPALLINA, WHO IS/WAS THE ATTORNEY FOR SIMON AND SHIRLEY BERNSTEIN. IT SHOULD BE NOTED THAT SIMON HAS SINCE PASSED, WHICH OCCURRED ON OR ABOUT SEPTEMBER 13, 2012. AT THIS CONFERENCE CALL, WHICH WAS IN THE FIRST PART OF 2012, SIMON BERNSTEIN REVEALED TO HIS CHILDREN THAT HE WOULD LIKE THEM TO SIGN THE AFOREMENTIONED WAIVER. IT IS BELIEVED THAT THERE WAS ALSO SOME DISCUSSION OF INHERITANCE AND WHO WAS TO GET WHAT UPON SIMON'S PASSING.

INVESTIGATION REVEALED THAT ALL FIVE CHILDREN AND SIMON SIGNED THE AFOREMENTIONED WAIVER THAT WAS SENT TO THEM BY SPALLINA'S LEGAL ASSISTANT, KIMBERLY MORAN. I SPOKE WITH MORAN ON 09/24/13 AND SHE ADMITTED TO SENDING OUT THE WAIVER AS TOLD TO BY HER BOSS. THE WAIVERS WERE THEN SIGNED AND RETURNED. SIMON'S WAS SIGNED ON 04/09/12 AND ELIOT'S ON MAY 15, 2012. IT WAS FOUND THAT THE OTHER SIBLINGS DID NOT RETURN THEIR DOCUMENT FOR SEVERAL MONTHS. MORAN STATED SHE HAD TO CONDUCT FOLLOW-UP E-MAILS AND PHONE CALLS TO GET THE

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CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 3 OFFENSE REPORT

PAGE 2  
CASE NO. 13097087

DISPOSITION: OPEN

DOCUMENTS RETURNED. THEY WERE FINALLY RETURNED IN AUGUST AND OCTOBER OF 2012. MORAN STATED SHE FILED THE DOCUMENTS WITH THE COURT IN OCTOBER OF 2012. SHE RECEIVED A MEMORANDUM FOR JUDGE MARTIN COLIN'S CASE MANAGER, A STRIDE LIMOUZIN, STATING THE DOCUMENTS WERE NOT NOTARIZED AND THEY NEED TO BE. MORAN STATED THAT AT THIS TIME, SHE TOOK IT UPON HERSELF TO TRACE EACH SIGNATURE OF THE SIX MEMBERS OF THE BERNSTEIN FAMILY ONTO ANOTHER COPY OF THE ORIGINAL WAIVER DOCUMENT. SHE THEN NOTARIZED THEM AND RESUBMITTED THEM TO THE COURTS. WHEN I INTERVIEWED HER ON 09/24/13, SHE STATED SHE DID NOT REALLY HAVE A REASON WHY SHE FORGED THE SIGNATURES, OTHER THAN TO MAYBE SAVE TIME.

I SPOKE WITH LISA AND JILL VIA PHONE ON SEPTEMBER 10, 2013. THEY STATED THAT AS FAR AS THEY KNOW, THE FRAUDULENT NOTARIZATION CHANGED NOTHING WITH THE ESTATE SINCE THEY WILLINGLY AND KNOWINGLY SIGNED THE ORIGINAL DOCUMENTS. THEY STATED THAT THEY DO NOT WISH TO PURSUE ANYTHING CRIMINALLY. I SPOKE WITH TED ON 09/24/13. HE ALSO STATED THAT THE MISTAKE DID NOT AFFECT THE ESTATE AND DOES NOT WISH TO PURSUE ANYTHING CRIMINALLY. TO DATE PAMELA HAS NOT RESPONDED TO MY PHONE MESSAGES OR E-MAILS.

D/S MARK BEREY WAS PRESENT DURING MY INTERVIEWS WITH MORAN, TED, AND SPALLINA. WE SPOKE TO MORAN ALONE. THE INTERVIEW WAS RECORDED. SHE ADMITTED TO MAKE A POOR DECISION, BUT STATED SHE DID NOT BENEFIT FINANCIALLY FROM HER ACTIONS. WE ALSO SPOKE WITH SPALLINA ALONE. SPALLINA STATED HE WAS NOT AWARE OF MORAN'S ACTIONS UNTIL SHE TOLD HIM. MORAN STATED SHE WAS MADE AWARE THAT OTHERS HAD CAUGHT ONTO WHAT SHE DID ONCE SHE RECEIVED NOTICE FROM THE GOVERNOR'S OFFICE, NOTARY EDUCATION DIVISION. ELIOT FILED A COMPLAINT ON HER WITH THE STATE. I WAS SUPPLIED WITH A COPY OF THE COMPLAINT AND CORRESPONDENCE BY ELIOT. I ALSO SPOKE WITH ERIN TUPER MAKING HER AWARE OF MY INVESTIGATION. ELIOT SUPPLIED A SWORN WRITTEN STATEMENT TO THE ORIGINAL REPORTING DEPUTY, STATING THAT HE WISHES TO PURSUE CRIMINAL CHARGES. ELIOT ALSO TOLD ME HIMSELF THAT HE WISHES TO PURSUE CHARGES ANY CRIMINAL WRONGDOINGS IN THIS CASE. IN SPEAKING WITH SPALLINA, WE FOUND THAT THE DOCUMENT IN QUESTION CHANGES THE INHERITANCE OF PERSONAL PROPERTY IN THE ESTATE OF SHIRLEY BERNSTEIN FROM SIMON AND SHIRLEY'S CHILDREN TO THEIR GRANDCHILDREN.

D/S BEREY AND I ALSO REVIEWED ALL E-MAILS AND ATTACHMENTS (MAINLY COURT DOCUMENTS) SUPPLIED BY ELIOT. WE FOUND THAT MOST OF THE INFORMATION WAS RELATED TO THE ONGOING CIVIL CASE INVOLVING THE TRUSTS AND ESTATES OF SHIRLEY AND SIMON BERNSTEIN. THE ONLY CRIMINAL WRONGDOINGS FOUND ARE THE AFOREMENTIONED FRAUDULENTLY NOTARIZED DOCUMENTS.

IT SHOULD BE NOTED THAT ON 9/25/13 ELIOT'S WIFE, CANDICE BERNSTEIN CALLED ME AND MENTIONED THAT SHE WAS FEELING A CONCERN FOR THE SAFETY OF HER AND ELIOT. SHE STATED IT IS JUST A FEELING SHE HAD DUE TO RISING TENSIONS IN THIS ONGOING COURT BATTLE. I ASKED HER IF ANYONE HAS THREATENED HER OR HER HUSBAND AND SHE SAID NO, JUST PEOPLE INVOLVED KNOW PEOPLE WHO HAVE HIGH INFLUENTIAL

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
CASE NO. 13097087 SUPPLEMENT 3 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: OPEN

ABILITIES. ELIOT WOULD NOT ELABORATE, BUT DID STATE THAT HE HAS ONGOING FEDERAL COURT BATTLES AND BELIEVES HE IS BEING TARGETED BY PEOPLE DUE TO HIS PATENTS AND INVENTIONS. AT THIS TIME, I HAVE NO EVIDENCE TO SHOW THEY ARE IN ANY HARM'S WAY REGARDING MY INVESTIGATION OR GENERALLY SPEAKING.

BASED ON THE FACTS AND FINDINGS OF THIS INVESTIGATION, I FIND PROBABLE CAUSE FOR THE ARREST OF MORAN FOR CRIMINAL ACTIONS UNDER THE COLOR OF LAW OR THROUGH USE OF SIMULATED LEGAL PROCESS, F.S.S. 843.0855 (3), DUE TO THE FACT THAT SHE DID WILLINGLY AND KNOWINGLY SIMULATE A LEGAL PROCESS OF A LEGAL DOCUMENT REGARDING PERSONAL PROPERTY, KNOWING THAT THE DOCUMENT CONTAINED FRAUDULENT SIGNATURES. THIS CASE REMAINS OPEN.

DETECTIVE RYAN W. MILLER #7704  
09/25/13 @ 1433 HRS.

TRANS. VIA EMAIL/COBY/PASTE: 09/25/2013/MD/#6405

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 13097087 SUPPLEMENT 4 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911: \* \* \*  
IMPRISON PUB OF \* \* \*  
SIGNAL CODE: 53 \* \* \* \* \*  
ZONE: F52 GRID: CRIME CODE: NON CRIME CODE: OF CODE: 260D 09/27/13 MONDAY  
DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1213 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13, 1241 HOURS AND DATE: 07/15/13 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

THIS CASE WAS FILED WITH THE PALM BEACH COUNTY STATE ATTORNEY'S OFFICE ON  
09/27/13. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
09/27/13 @ 1311 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 09/30/2013/MDR/#6405

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CASE NO. 13097087 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 11  
SUPPLEMENT 5 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911: \* \* \*  
IMPRSNTE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 260D 10/08/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 121 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS

EXCEPTION TYPE:  
INCIDENT LOCATION: 87901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/07/13 I RECEIVED AN E-MAIL FROM THE STATE ATTORNEY'S OFFICE STATING  
THEY HAVE REVIEWED THE CASE AND CHARGES WILL BE FILED. ON 10/08/13 I SPOKE  
WITH ELIOT AND MADE HIM AWARE OF MY FINDINGS IN THIS CASE. HE ALSO SUPPLIED  
ME WITH NEW COURT DOCUMENTS, WHICH WERE FORWARDED TO THE SAO. THIS CASE  
REMAINS OPEN.

DETECTIVE RYAN MILLER #7704  
10/08/13 @ 1033 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 10/08/2013/MDR/#6405

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CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 6 OFFENSE REPORT

PAGE 11  
CASE NO. 13097087

DISPOSITION: CLEARED BY ARREST  
DIVISION: DETECTIVE

911: IMPRISONED FOR OF  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: OT CODE: 260D 10/29/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1210 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 1 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/25/13 KIMBERLY MORAN TURNED HERSELF IN REFERENCE A CAPIAS ISSUED IN  
THIS CASE. THIS CASE IS NOW CLEARED BY ARREST.  
DETECTIVE RYAN W. MILLER #7704  
10/29/13 @ 1505 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 10/30/2013/MDR/#6405

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PALM BEACH COUNTY SHERIFF'S OFFICE  
CENTRAL RECORDS  
FSS EXEMPTIONS/CONFIDENTIAL

- 119.071(2)(c) Active criminal intelligence/active criminal investigative Information
- 119.071(5)(g)1 Biometric Identification Information (Fingerprints, palm prints, and footprints)
- 119.071(2)(e) Confession
- 119.071(2)(f) Confidential Informants
- 365.171(15) Identity of 911 caller or person requesting emergency service
- 316.066(5)(a) Crash reports are confidential for period of 60 days after the report is filed
- 119.071(2)(d) Surveillance techniques, procedures, and personnel; inventory of law enforcement resources, policies or plans pertaining to mobilization, deployment or tactical operations
- 119.071(2)(h)(1) Identity of victim of sexual battery, lewd and lascivious offense upon a person less than 16 years old, child abuse, sexual offense
- 119.071(2)(l) Assets of crime victim
- 985.04(1) Juvenile offender records
- 119.071(5)(a)(5) Social security numbers held by agency
- 119.0712(2) Personal information contained in a motor vehicle record
- [REDACTED] (b) Bank account #, debit, charge and credit card numbers held by an agency
- 119.071(2)(b) Criminal intelligence/investigative information from a non-Florida criminal justice agency
- 395.3025(7)(a) and/or 456.057(7)(a) Medical information
- 394.4615(7) Mental health information
- 943.053/943.0525 NCIC/FCIC/FBI and in-state FDLE/DOC
- 119.071(4)(c) Undercover personnel
- 119.07(4)(d) Extra fee if request is voluminous or requires extensive personnel, technology
- 119.071(4)(d)(1) Home address, telephone, soc. security #, photos of active/former LE personnel, spouses and children

Other:

Case No:12-121312

Tracking No.: n/a

Clerk Name/ID: Hall/9205

Date: 1/31/2013

Revised 03/04/2011

000814

01/31/2013 12:08 5618883163 CENTRAL RECORDS #2517 P.001/004

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU  
DIVISION: ROAD PATROL

POLICE SERVICE CALL \* \* \*  
SIGNAL CODE: 68 CRIME CODE: NON CRIME CODE: PS CODE: 9568 09/13/12 THURSDAY  
ZONE: C21 GRID: DEPUTY I.D.: 8826 NAME: HAUGH VINCENT ASSIST: TIME D 1155 A 1211 C 1522  
OCCURRED BETWEEN DATE: 09/12/12 , 0830 HOURS AND DATE: 09/13/12 , 0100 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 7020 LIONS HEAD LA APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 00 NO. OFFENDERS: 0K NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: RESIDENCE - SINGLE FAMILY  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..  
NAME LIST:  
ROLE:

OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 12344 MELROSE WY BOCA RATON FL 33428 HOME PHONE: 561 213-2322  
BUSINESS PHONE: 561 000-0000  
OTHER ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 886-7627  
BUSINESS PHONE: 561 000-0000  
OTHER RACHEL WALKER DOB: 03/05/1984  
SEX: F RACE: W HT: 508 WT: 130 HR: BLOND EYE: BLUE  
RESIDENTIAL ADDRESS: 99 SE MIZNER BD BOCA RATON FL 33434 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER MARITZ UCCIO DOB: 04/23/1966  
SEX: F RACE: W HT: 502 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LYONS HEAD LA BOCA RATON FL 33496 HOME PHONE: 561 305-2999  
BUSINESS PHONE: 561 000-0000  
OTHER LISA FRIEDSTEIN DOB: 03/15/1967  
SEX: F RACE: W HT: 501 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 2142 CHURCHHILL LA HIGHLAND IL 60035 HOME PHONE: 847 877-4633  
BUSINESS PHONE: 561 000-0000  
..

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOSPY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOSPY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE, WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ONTO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF. THERE WERE 90.5 PILLS IN THE

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

BOTTLE SHOWING THAT SIMON DID NOT TAKE MORE THAN PRESCRIBED.  
IT SHOULD ALSO BE NOTED THAT I SPOKE WITH ELLIOT, WHO SAID  
HE WAS AT DINNER WITH SIMON AND MARITZA ON 9/8/12 AND OBSERVED  
HIS FATHER TELL MARITZA THAT HE WANTED ONE OF HER ~~DRUGS~~ SLEEPING  
PILLS BECAUSE HE COULD NOT SLEEP. ELLIOT SAID THEY HAD A BRIEF  
ARGUMENT OVER THIS AS MARTIZA REFUSED TO ALLOW SIMON TO TAKE ONE OF  
HER PILLS INITIALLY. AT THIS TIME SGT. CASTELLI ARRIVED ON SCENE  
AND WAS ADVISED OF THE CASE.

HE MADE CONTACT WITH VCD AND THE MEDICAL EXAMINER'S OFFICE.  
HE WAS ADVISED TO HAVE ME CONTACT DELRAY COMMUNITY HOSPITAL TO PUT  
A HOLD ON SIMON'S BODY FOR ~~THE NIGHT~~ FROM THE MEDICAL EXAMINER'S OFFICE  
WHO WOULD CHECK ON THE SITUATION THE NEXT DAY. I WAS ALSO ADVISED  
TO EMAIL A COPY OF THE REPORT TO ~~THE MEDICAL EXAMINER'S~~ WITH THE MEDICAL EXAMINER'S  
OFFICE. DELRAY COMMUNITY HOSPITAL WAS CONTACTED AND A HOLD WAS PLACED  
ON SIMON'S BODY AND ~~THE MEDICAL EXAMINER'S~~ WAS EMAILED.

THIS REPORT IS FOR INFORMATION PURPOSES.

D/S HAUGH #8826  
TRANS: 9/14/12 DG#4495  
DICT: 9/13/12 @ 1700 HRS.

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03/03/14

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O F F E N S E R E P O R T C A S E N O . 1 3 1 5 9 9 6 7

DISPOSITION: ZULU  
DIVISION: ROAD PATROL

CIVIL MATTER CODE: 9566 DATE: 12/23/13 MONDAY  
ZONE: C21 GRID: DEPUTY ID.: 5189 ASSIST: TIME D 1624 A 1632 C 1716  
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496  
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0  
LOCATION: RESIDENCE - SINGLE FAMILY  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

COMPLAINANT ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434  
HOME PHONE: 561 886-7628  
BUSINESS PHONE: 561 254-8588

OFFENSE INDICATOR: OFFENSE 1 VICTIM NUMBER: 1  
VICTIM TYPE: ADULT  
RESIDENCE TYPE: COUNTY RESIDENCE STATUS: FULL YEAR  
EXTENT OF INJURY: NONE  
INJURY TYPE(1): NOT APPLICABLE  
INJURY TYPE(2): NOT APPLICABLE  
VICTIM RELATION: UNDETERMINED

ON 12/23/13 THE VICTIM/COMPLAINANT CAME TO THE DISTRICT 7 OFFICE TO FURTHER REPORT A CRIME OF THEFT THAT HAS BEEN OCCURRING FOR A FEW YEARS. THE VICTIM MR. BERNSTEIN STATED THAT HIS FAMILY MEMBERS HAVE TAKEN THOUSANDS OF DOLLARS IN ASSETS, A VEHICLE, JEWELRY, CLOTHING, FURNITURE, AND MANY OTHER ITEMS. THE VICTIM ALSO STATED HE HAS AN ONGOING CASE WITH DET. RYAN MILLER OF THE PALM BEACH COUNTY SHERIFF'S OFFICE, THE CASE NUMBER IS 13-097087. THE VICTIM/COMPLAINANT ALSO GAVE ME A 3 PAGE WRITTEN ,DATED AND SIGNED STATEMENT THAT I WILL FORWARD VIA INTEROFFICE MAIL TO DET. MILLER. HE ALSO ADVISED HE WILL FURTHER CONTACT DET. MILLER REF THIS NEW CASE NUMBER WHICH HE WAS ADVISED TO GET THRU HIS ATTORNEY. IT SEEMS THIS MATTER HAS BEEN IN LITIGATION FOR SOME TIME AND WILL CONTINUE TO BE. I WILL ALSO FORWARD TO DET. MILLER THE LIST OF SUSEPTS WHICH ALSO WAS QUIT LONG, ALL FAMILY MEMBERS. I ADVISED THE VICTIM I WOULD FORWARD ALL THIS INFO TO DET. RYAN MILLER.

D/S RAINERI 5189. 12/23/13 AT 1735 HRS  
TRANS: PAP 7123. 12/27/13

6903

03/03/14

E000

PALM BEACH COUNTY SHERIFFS OFFICE PAGE 2  
SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13159967

DISPOSITION: ZULU  
DIVISION: DETECTIVE

CIVIL MATTER CODE: 9566 DATE: 01/07/14 MONDAY  
ZONE: C21 GRID: DEPUTY ID.: 7704 ASSIST: TIME D 1624 A 1632 C 1716  
OCCURRED BETWEEN DATE: 01/01/10 , 0900 HOURS AND DATE: 12/23/13 , 1600 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 2753 NW 34 ST APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496  
NO. OFFENSES: 00 NO. OFFENDERS: 00 NO. VEH. STOLEN: 0 NO. PREM. ENTERED: 0  
LOCATION: RESIDENCE - SINGLE FAMILY  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

I RECEIVED AN INTER-OFFICE PACKET FROM D/S RAINERI REFERENCE THIS CASE.  
I HAVE NOT BEEN ASSIGNED THE FOLLOW-UP IN REGARDS TO THIS CASE AND IT HAS NO  
BEARING ON 13-097087 WHICH I INVESTIGATED. THE PACKET WAS SENT BACK TO D/S  
RAINERI. I ALSO INFORMED BERNSTEIN THAT I WAS NOT ASSIGNED THIS CASE AND HE  
WOULD NEED TO FOLLOW UP WITH D/S RAINERI OR DISTRICT 7.  
DETECTIVE RYAN W. MILLER #7704  
01/07/14 @ 1010 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 01/08/2014/MDR/#6405

**PALM BEACH COUNTY CORONER  
REPORTS**

It was alleged by Theodore Bernstein on 9/13/2012 the day Simon died to Palm Beach Sheriff's that his girlfriend Maritza Puccio had murdered him via poisoning her, yet no poison screen was done until 3/10/14 and not transmitted to Eliot Bernstein until 7/22/2014. On page 11 Simon goes from 76 yrs old to 113 and some of the poisons seem to be in the reportable range like Cadmium and Arsenic.



**OFFICE OF THE DISTRICT MEDICAL EXAMINER  
DISTRICT 15 – STATE OF FLORIDA  
PALM BEACH COUNTY  
3126 GUN CLUB ROAD  
WEST PALM BEACH, FLORIDA 33406-3005  
(561) 688-4575  
(561) 688-4592 FAX**

**NAME:** BERNSTEIN, SIMON

**CASE NUMBER:** 12-0913

**DATE OF DEATH:** September 13, 2012

**AGE:** 76

**SEX:** M

**RACE:** W

**DATE OF AUTOPSY:** September 14, 2012 / 11:00 a.m.

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**AUTOPSY FINDINGS:**

1. Acute subendocardial myocardial infarct.
2. Status post coronary artery bypass grafting, remote.
3. Severe calcific coronary atherosclerosis.
4. Focal myocardial fibrosis.
5. Bronchopneumonia.
6. Severe aortic atherosclerosis.
7. Fibrous pericarditis.
8. Calcific aortic valve annulus.
9. Nephrosclerosis.
10. Cirrhosis with chronic hepatitis.
11. Old splenic infarct.
12. Pleural effusions.
13. Sternum fracture.
14. Anterior rib fractures.
15. Osteoporosis.
16. Status post appendectomy, remote.
17. Status post cholecystectomy, remote.

**NAME:** BERNSTEIN, SIMON

**CASE NUMBER:** 12-0913

**CAUSE OF DEATH:** Myocardial infarct due to severe coronary atherosclerosis

**CONTRIBUTORY CAUSE OF DEATH:** Bronchopneumonia, cirrhosis

**MANNER OF DEATH:** Natural

**OPINION:** Simon Bernstein, a 76-year-old man, died from a heart attack due to blockage of the arteries that feed his heart. He also had pneumonia and cirrhosis. His blood hydrocodone concentration was therapeutic. There was no overdose. He did not have meningitis.



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Michael D. Bell, M.D.  
District Medical Examiner

Date Signed: November 8, 2012

MDB:df

**NAME:** BERNSTEIN, SIMON

**CASE NUMBER:** 12-0913

**EXTERNAL EXAMINATION:**

The body is that of a 5 foot 7 inch, 191 pound, overweight, white man who appears the reported age of 76 years. His body mass index is 29.9.

The body is well preserved and cold. Mild rigor mortis is detected in the extremities. Purple livor mortis is on his back.

The decedent is normocephalic without apparent injury to the face or scalp. The decedent has short, gray-brown hair. He has brown irides with no conjunctival petechiae. There is slight chemosis. The corneas are clear. The sclerae are nonicteric. No facial, nasal or mandibular fractures are palpated. The nasal septum is intact. No froth or fluid escapes from the nose or mouth. The teeth are natural and in good repair. There is no trauma of the lips, gums or frenulum.

The neck is symmetrical and has no trauma or injury. There is no palpable crepitus or hypermobility. No neck masses are observed.

The thorax is symmetric. The abdomen is protuberant with small ecchymoses on the abdomen. The external genitalia and anus are unremarkable. The decedent is circumcised.

The arms are symmetrical and normally developed. The arms have no needle tracks. The fingernails are short. The legs are symmetrical, and there is slight pedal edema. The back shows a symmetrical external contour and the spine is straight. The back has no trauma. The skin shows no rashes.

**IDENTIFICATION:**

No tattoos are on the body. A vertical 9 inch scar is in the midline of the chest. A vertical 10 inch scar is on the right abdomen. A transverse 3 inch scar is in the left groin. Three vertical scars run along the inside of the left leg, and they are 3 inches, 4 inches, and 18 inches, respectively.

The decedent is unclothed.

**EVIDENCE OF MEDICAL INTERVENTION:**

Two hospital blood tubes accompany the body, and they are dated 9/12/2012. The decedent has multiple needle punctures on the right and left antecubital fossa, lower arms and right hand, and all of them are surrounded by small ecchymoses. An identification band is on his right wrist.

NAME: BERNSTEIN, SIMON

CASE NUMBER: 12-0913

**INTERNAL EXAMINATION:**

**BODY CAVITIES:**

The sternum is fractured. Anterior ribs 2 through 6 are fractured bilaterally. There is a small amount of extravasated blood surrounding the fracture sites. There is extravasated blood in the anterior mediastinal soft tissues. The bones are osteoporotic, and the soft tissue is friable. There are no fractures of the clavicles, vertebral column or pelvis. The right and left pleural cavities each contain an estimated 200 to 300 milliliters of clear, straw-colored fluid. There is no blood within the peritoneal cavity. The pericardial cavity is obliterated by fibrous adhesions. The pericardial sac and diaphragm are intact. There are no fibrous or fibrinous adhesions involving the intestines. No aromatic or unusual odors are detected inside the body. The intravascular blood is liquid and clotted.

**HEAD AND CENTRAL NERVOUS SYSTEM:**

The scalp has no edema. The subgaleal tissues have no contusions or injuries. The temporal muscles have no contusions. The skull is intact and has no fractures. No epidural or subdural hematomas are present. The dura mater is intact and has no discoloration.

The 1400 gram brain has thin, transparent leptomeninges with no subarachnoid blood or exudate seen. The leptomeninges are not congested or hyperemic. The cerebral and cerebellar gyri and sulci are of normal size and configuration and have no edema or swelling. No cingulate, uncinata or cerebellar tonsil herniation is present. No contusions or defects are on the surface of the brain. The olfactory bulbs and rest of the cranial nerves are intact. The vertebral, basilar and cerebral arteries, including the arterial circle of Willis, have a moderate amount of atherosclerosis.

The cerebral hemispheres have a thin, gray, cortical ribbon with no slit-like or punctate hemorrhages. The subjacent white matter, including the centrum ovale and corpus callosum, has no discoloration, hematomas or masses. The lateral ventricles are enlarged but have normal configuration and contain no blood. The third ventricle is enlarged. The caudate and lenticular nuclei are unremarkable, as is the thalamus. The mammillary bodies have no discoloration or hemorrhage. The hippocampal gyri are symmetric and have no sclerosis. The occipital lobes are normal. The midbrain, pons and medulla oblongata are unremarkable. The folia cerebelli are neither atrophic nor swollen. The cerebellar white matter and deep midline nuclei are normal. The fourth ventricle and cerebral aqueduct are of normal size and contain no tumor, blood or exudate.

**NECK:**

The oropharynx is light red-yellow with no trauma or injuries. The epiglottis is light red-yellow and leaf-like, and there is a small amount of aryepiglottic edema. No food or foreign objects obstruct the oropharynx, larynx, trachea or bronchi. The hyoid bone and thyroid cartilages are intact. The anterior cervical neck strap muscles and soft tissues have no contusions or injuries. The prevertebral muscles, fascia and soft tissues have no contusions. The anterior cervical vertebral column is intact. The thyroid gland has its normal anatomic size and location. The thyroid gland is slightly nodular. The cervical lymph nodes are not enlarged.



**CARDIOVASCULAR:**

The 650 gram heart is covered by easily broken fibrous adhesions. No petechiae or contusions are on the epicardial surface. There is an increased amount of epicardial fat. The heart is right coronary artery dominant. The native coronary arteries arise normally from the aortic root, and their ostia are patent. The native coronary arteries have severe calcific coronary atherosclerosis. A stent is in the native right coronary artery. A clot is in this stent. The native left anterior descending coronary artery has 90-95% intraluminal narrowing by atherosclerosis. The native left circumflex coronary artery has 95% intraluminal narrowing by atherosclerosis. A left thoracic artery graft inserts in the left anterior descending coronary artery. This graft is patent. Two saphenous vein grafts arise from the ascending aorta. One inserts into the posterior descending coronary artery and the other into the left marginal coronary artery. The former saphenous vein graft is occluded at its ostium. The saphenous vein graft to the left marginal coronary artery is narrowed to a pinpoint at its ostium. A stent is in the proximal graft and beyond the stent distally the lumen is narrowed to a pinpoint again.

The free left ventricular wall, ventricular septum, and right ventricular wall are 1.8, 2.0, and 0.3 centimeters thick, respectively. The atria and right ventricles are dilated. The left ventricle chamber is 4 centimeters in diameter. The myocardium is red-brown and firm, with focal scarring in the posterior and lateral left ventricle walls. The scars are up to 1 centimeter in greatest dimension. The endocardium is smooth and transparent with a 1 centimeter area of endocardial thickening in the right ventricle. There is no endocardial hemorrhage or mural thrombosis.

The tricuspid, pulmonic, mitral and aortic valve circumferences are 12.9, 9.0, 11.0, and 7.0 centimeters, respectively. The valves have no ballooning, deformities or vegetations. The commissures are normal. The chordae tendineae are neither ruptured nor thickened. There is moderate calcification of the aortic valve annulus. The rest of the valves and annuli have no calcification.

The aorta has no trauma or injuries. The aorta has severe calcific and ulcerative atherosclerosis. There is no aortic dissection or aneurysm formation.

**RESPIRATORY:**

The right and left lungs weigh 1180 and 910 grams, respectively. The lungs are normally inflated and occupy most of the pleural cavities. Both lungs have smooth, glistening, transparent pleural surfaces, except for fibrous adhesions involving the posterior lateral left upper lobe. No anthracotic pigment is on the pleural surfaces. No depressions, nodules or bullae are seen. The lungs are light brown anteriorly and dark red posteriorly. The parenchyma has focal nodular areas of consolidation in the posterior segments of the lower lobes. The parenchyma exudes red fluid. No tumor, abscesses, granulomas or pulmonary thromboemboli are seen. The bronchial tree contains red fluid. The pulmonary arteries are normal. The hilar lymph nodes are normal.

**NAME:** BERNSTEIN, SIMON

**CASE NUMBER:** 12-0913

**HEPATOBIILIARY SYSTEM:**

The 1990 gram liver has an intact nodular capsule, and its normal parenchyma is replaced by 2 to 4 millimeter in diameter brown, cirrhotic nodules. No infarcts, granulomas or tumors are seen. The gallbladder is surgically absent.

**HEMOLYMPHATIC SYSTEM:**

The 340 gram spleen has a smooth, intact capsule with no trauma or injury. A 4 x 1 centimeter shrunken, yellow infarct is present. No granulomas or tumors are seen within the otherwise red-purple, firm parenchyma. Gray-white follicles are not identified.

**ENDOCRINE SYSTEM:**

The pancreas is pale brown, lobular and soft with no fat necrosis, extravasated blood, tumor or fibrosis. The adrenal glands are thin and have yellow cortices and gray-white medullae. No hemorrhage or tumor is seen in the adrenal glands.

**GASTROINTESTINAL SYSTEM:**

The esophagus is lined by a smooth, gray-white mucosa with no ulcers, tumors or esophageal varices. The stomach is intact and contains 150 milliliters of red fluid. No aromatic or unusual odors are detected. No pills, capsules or granular material are seen. No blood is in the stomach. The gastric mucosa is red-brown with normal rugae and no ulcers, polyps or tumors. The duodenum has no ulcers. The small and large bowel has no perforation, obstruction or infarction. No mass or tumor is seen in the gastrointestinal tract. The appendix is not identified.

**UROGENITAL SYSTEM:**

The right and left kidneys weigh 200 and 190 grams, respectively. Both kidneys are enlarged and have scarred, pitted and granular, red-brown surfaces. There is no trauma or injury to the kidneys. The cortices are reduced in thickness to 4 millimeters, and there is an indistinct corticomedullary junction. There are no infarcts, granulomas or tumor. There is no hydronephrosis or renal calculi. There is an increased amount of peripelvic fat. The ureters and bladder are normal. The bladder is intact but contains no urine.

**NAME:** BERNSTEIN, SIMON

**CASE NUMBER:** 12-0913

**DATE:** October 18, 2012

**NUMBER OF SLIDES:** 8

**MICROSCOPIC EXAMINATION**

**HEART:** Myocyte disarray and focal myocardial fibrosis. Myocyte hypertrophy. Acute subendocardial infarction with scant neutrophil infiltration.

**LEFT CORONARY ARTERY:** 90-95% intraluminal narrowing by atherosclerosis.

**LEFT ANTERIOR DESCENDING CORONARY ARTERY:** 90-95% intraluminal narrowing by atherosclerosis.

**LUNGS:** Bronchopneumonia. Rare fat emboli in pulmonary arteries.

**LIVER:** Cirrhosis with chronic hepatitis.

**KIDNEY:** Arteriosclerosis.

**SPLEEN:** Old infarct.

**LYMPH NODE:** Unremarkable.



Michael D. Bell, M.D.  
District Medical Examiner

Date Signed: 10/29/12

MDB:df

**Patient:** BERNSTEIN, SIMON  
**Client Patient ID:** 15-12-913  
**Physician:** BELL, MICHAEL

**Age:** 76 **Sex:** M  
**Account#:** 7230586  
**Client:** DIST 15 MEDICAL EXAMINER

**TOXICOLOGY**

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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VOLATILE PANEL - VOLP 98245

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 1035

ETHANOL	NONE DETECTED	g/dL	0.020
ACETONE	NONE DETECTED	mg/dL	7.5
METHANOL	NONE DETECTED	mg/dL	15.0
ISOPROPANOL	NONE DETECTED	mg/dL	15.0

Analysis by Gas Chromatography (GC) Headspace Injection

BLOOD DRUG SCREEN - BDSME 98216

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

GC/MS

Quantity Not Sufficient

LC/MS/MS

HYDROCODONE, ZOLPIDEM, ACETAMINOPHEN, CAFFEINE, CAFFEINE METABOLITE

BLOOD IMMUNOASSAY SCREEN

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

AMPHETAMINES	NEGATIVE	mg/L	0.100
BARBITURATES	NEGATIVE	mg/L	0.100
BENZODIAZEPINES	NEGATIVE	mg/L	0.050
BUPRENORPHINE	NEGATIVE	mg/L	0.001
CANNABINOIDS	NEGATIVE	mg/L	0.050
COCAINE METABOLITE	NEGATIVE	mg/L	0.100
FENTANYL	NEGATIVE	mg/L	0.001
METHADONE	NEGATIVE	mg/L	0.050
OPIATES	<b>POSITIVE</b>	mg/L	0.050
SALICYLATES	NEGATIVE	mg/L	50.0

**Patient:** BERNSTEIN, SIMON  
**Client Patient ID:** 15-12-913  
**Physician:** BELL, MICHAEL

**Age:** 76 **Sex:** M  
**Account#:** 7230586  
**Client:** DIST 15 MEDICAL EXAMINER

**TOXICOLOGY**

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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TRICYCLICS	NEGATIVE	mg/L	0.100
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ACETAMINOPHEN - ACMP 98203

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ACETAMINOPHEN	16.3	mg/L	10
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**Therapeutic range:**  
10.0 - 20.0 mg/L

**Analysis by Enzyme Immunoassay.**

FREE OPIATES PANEL - OPPF 98182

SPECIMEN TYPE

ANTEMORTEM BLOOD LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

CODEINE	NONE DETECTED	mg/L	0.025
MORPHINE	NONE DETECTED	mg/L	0.025
HYDROCODONE	0.094	mg/L	0.025
6-MONOACETYLMORPHINE	NONE DETECTED	mg/L	0.005
HYDROMORPHONE	NONE DETECTED	mg/L	0.025
OXYCODONE	NONE DETECTED	mg/L	0.025
OXYMORPHONE	NONE DETECTED	mg/L	0.025

**Analysis by GC/MS**

ZOLPIDEM - ZONMS 98621

SPECIMEN TYPE

ANTEMORTEM PLASMA LABELED "BERNSTEIN, SIMON L" DATED 9/12/12 @ 1035

ZOLPIDEM	NONE DETECTED	ng/mL	4.0
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Plasma concentrations following single oral 5 mg and 10 mg immediate release doses range from 29 - 110 ng/mL (mean, 59 ng/mL) and 58 - 270 ng/mL (mean, 120 ng/mL), respectively, occurring at a mean time of 1.6 hours. Peak plasma concentrations following a single oral 12.5 mg extended release dose ranged from 69 - 190 ng/mL (mean = 130 ng/mL) occurring at a mean time of 1.5 hrs.

The ratio of whole blood concentration to serum or plasma concentration is unknown for this analyte.



**Wuesthoff Reference Laboratory**

6800 Spyglass Court  
Melbourne, Florida 32940  
Julie Bell, M.D., Laboratory Director

Patient: **BERNSTEIN, SIMON**  
Client Patient ID: **15-12-913**  
Physician: **BELL, MICHAEL**

Age: **76** Sex: **M**  
Account#: **7230586**  
Client: **DIST 15 MEDICAL EXAMINER**

**TOXICOLOGY**

Specimen Collected :09/14/2012

Lab Order No: 21171453

Reg Date: 10/23/12

Test Name	Result	Units	Cutoff/Reporting Limits
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Testing performed by NMS Labs, 3701 Welsh Rd, Willow Grove, PA 19090-2910

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 10-23-12

**FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE**

TOXICOLOGY\_REPORT

**BERNSTEIN, SIMON**

Is Simon getting older as he is Dead, this is similar to him notarizing and signing documents post mortem.

Patient: **BERNSTEIN, SIMON** Age: **113** Sex: **M**  
 Client Patient ID: **15-12-913** Account#: **VX39518**  
 Physician: **BELL, MICHAEL** Client: **DIST 15 MEDICAL EXAMINER**

**TOXICOLOGY**

Specimen Collected :02/11/2014 Lab Order No: 381300564 Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
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COMMENTS: Test performed on postmortem specimen. The validity of the test, clinical significance, and criteria for interpretation have not been established for this sample type. Normal ranges may not apply.

METALS/METALLOIDS PANEL 3 - M3NMS

SPECIMEN TYPE

**BLOOD**

CHROMIUM NONE DETECTED mcg/L 2.0  
 reporting limit, reporting limit is 1.0

Normally:  
 Less than 2 mcg/L.

**CADMIUM** **8.5** mcg/L 1.0

Normally:  
 Less than 5 mcg/L

Refer to the OSHA website for workplace information. Various states require that Blood Cadmium levels above certain cutoffs must be reported to the state in which the patient resides.

Please contact NMS Labs if you need assistance in supplying your state with the required information.

ZPP **130** mcg/dL 2.0

OSHA occupational threshold:  
 100 mcg/dL blood at hematocrit of 42.

LEAD NONE DETECTED mcg/dL 1.1

Reporting limit, reporting limit is 0.50

Reported geometric mean blood lead concentration for US population (both adults and children) is less than 3 mcg/dL (taking into account the 95% CI).

The following are the reported age-based 50th and 95th percentiles (with 95% CI)\*:

- Age 1 - 5 years:
- 50th Percentile: 1.50 mcg/dL (1.40 - 1.70)
- 95th Percentile: 5.80 mcg/dL (4.70 - 6.90)
- Age 6 - 11 years:
- 50th Percentile: 1.10 mcg/dL (1.00 - 1.30)
- 95th Percentile: 3.70 mcg/dL (3.00 - 4.70)

**Patient:** BERNSTEIN, SIMON  
**Client Patient ID:** 15-12-913  
**Physician:** BELL, MICHAEL

**Age:** 113 **Sex:** M  
**Account#:** VX39518  
**Client:** DIST 15 MEDICAL EXAMINER

**TOXICOLOGY**

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
-----------	--------	-------	-------------------------

**Age 12 - 19 years:**

50th Percentile: 0.80 mcg/dL (0.800 - 0.900)

95th Percentile: 2.70 mcg/dL (2.30 - 2.90)

**Age 20 years and above:**

50th Percentile: 1.60 mcg/dL (1.50 - 1.60)

95th Percentile: 4.60 mcg/dL (4.20 - 4.90)

\*National Health and Nutrition Examination Survey, 2001-2002 data; Third National Report on Human Exposure to Environmental Chemicals, Department of Health and Human Services, Centers for Disease Control and Prevention.

It is reported that blood levels in the range of 5 - 9 mcg/dL have been associated with adverse health effects in children aged 6 years and younger. Additionally, the following guidelines are offered by US Centers for Disease Control and Prevention, especially in respect to children:

10 - 14 mcg/dL is moderately high and may require re-screening.

20 - 44 mcg/dL is high and may require immediate medical attention.

45 - 69 mcg/dL requires urgent attention.

Greater than 70 mcg/dL is a medical emergency.

Refer to OSHA's website for workplace information. Various states require that blood lead concentrations above certain mandated cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

ARSENIC

18

mcg/L

11

reporting limit, reporting limit is 5.0

Does 18 have to be reported? Cutoff 11.
--

Normally: Less than 10 mcg/L.

Seafood consumption within 2 to 3 days before specimen collection can markedly increase total Arsenic levels.

Various states require that levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

MERCURY

4.1

mcg/L

3.0

Normally: Less than 10 mcg/L.





**Wuesthoff Reference Laboratory**

6800 Spyglass Court  
Melbourne, Florida 32940  
Julie Bell, M.D., Laboratory Director

**Patient:** BERNSTEIN, SIMON  
**Client Patient ID:** 15-12-913  
**Physician:** BELL, MICHAEL

**Age:** 113 **Sex:** M  
**Account#:** VX39518  
**Client:** DIST 15 MEDICAL EXAMINER

**TOXICOLOGY**

Specimen Collected :02/11/2014

Lab Order No: 381300564

Reg Date: 02/13/14

Test Name	Result	Units	Cutoff/Reporting Limits
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Various States require that Blood Mercury levels above certain cutoffs must be reported to the state in which the patient resides. Please contact NMS Labs if you need assistance in supplying your state with the required information.

Specimens were intact upon receipt. Chain of custody, specimen security and integrity has been maintained. Testing has been performed as requested

Reviewed by: *Susan Rade* Date: 3-10-14

**FINAL REPORT - THIS COMPLETES REPORTING ON THIS CASE**

TOXICOLOGY\_REPORT

**BERNSTEIN, SIMON**

Form: MM Single RLIT

Page 3 of 3

Printed: 03/10/14 15:14

**From:** [Eliot Ivan Bernstein](#)  
**To:** "Michael Bell"  
**Cc:** [Caroline Prochotska Rogers Esq. \(caroline@cprogers.com\)](#); [Michele M. Mulrooney ~ Partner @ Venable LLP \(mmulrooney@Venable.com\)](#); [Andrew R. Dietz @ Rock It Cargo USA](#); [Marc R. Garber Esq. \(marcrgarber@gmail.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marc.garber@flastergreenberg.com\)](#); [Marc R. Garber Esq. @ Flaster Greenberg P.C. \(marcrgarber@verizon.net\)](#)  
**Bcc:** [Undisclosed List; Eliot I. Bernstein, Inventor ~ Iviewit Technologies, Inc.; Patrick "Pat" Hanley \(cpsvm@yahoo.com\)](#); [Pat Handley \(svm231@aol.com\)](#); [""tourcandy@gmail.com" \(tourcandy@gmail.com\)"](#)  
**Subject:** RE: CASE NUMBER: 12-0913 --- Simon Bernstein Autopsy  
**Date:** Friday, January 10, 2014 3:45:00 PM

---

Hello Dr. Bell,

Thank you for your reply and continued efforts on my behalf and I would like to clarify a few statements in your email below. First, I did not ever tell the police I was worried about my father getting too much of his medication or that he was being poisoned. These claims came from my brother Theodore and my father's assistant Rachel Walker who believed he was murdered by his companion and so stated to the police and the hospital the day my father died on September 13, 2012. In fact, I stated that I did not believe my father was being poisoned by either over medication or other poisons by his companion Maritza Puccio as evidenced in the Police Report. I reviewed the drug toxicology you provided and agree with your assessment of that. As for what poisons may have been used when the, alleged by others, switching of pills with pills of an unknown substance took place and I agree with you that it could have been anything and which is why I requested the Police take all of his medications into evidence but they did not. I am not sure what a heavy metal screen is and what it tests for or what other poison screening tests are available, could you please clarify this for me? Further, did you review the records of my father in the 8 weeks prior to his hospitalization, which may also have significant information and may further provide evidence of possible poisoning, as he was suddenly and unexpectedly suffering during that time from a wide range of symptoms in those weeks and he was taken to several of his doctors to evaluate who were all perplexed and this led to brain scans at the hospital just days before his death. Did you get a chance to review the report on the brain scan done? I am not sure but it appears prudent in ruling out foul play that these records be reviewed from all of his doctors during that time for information that could reveal what, if any, poisons were used based on the symptoms he was suffering and the battery of tests run on him concerning all these problems. I am not represented by an attorney in this matter as there appears at this stage of inquiry no need to spend money on one and so please continue to deal directly with me as Simon's son via email or feel free to call me at my contact info below.

I pray you had a wonderful holiday season with your family and again thank you for your time, effort and consideration of these matters,

Eliot I. Bernstein  
Inventor  
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2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
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000834

(561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
<http://www.iviewit.tv>

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**From:** Michael Bell [<mailto:mbell@pbcbgov.org>]  
**Sent:** Friday, January 10, 2014 1:21 PM  
**To:** Eliot Ivan Bernstein  
**Subject:** RE: CASE NUMBER: 12-0913 --- Simon Bernstein

The autopsy was done at the Palm Beach ME office.

All drugs are "poisons" when given in sufficient doses. You initially told police you were worried about your father getting too much of his medications. The toxicology clearly shows that did not happen. There are thousands of drugs(poisons) and therefore it is impossible to test for all of them. If you think you know what was given, then please share that information. I will do a heavy metal screen which will take several weeks.

I have reviewed all the records of your father's hospitalization. My opinion is unchanged.

All further communication should be through your attorney who can call me at 561-688-4575.

**From:** Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]  
**Sent:** Monday, January 06, 2014 12:23 PM  
**To:** Michael Bell  
**Cc:** Caroline Prochotska Rogers Esq.; Michele M. Mulrooney ~ Partner @ Venable LLP; Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq.; Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C.  
**Subject:** RE: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I have not heard back on my email to you below. Can you please provide me a timeframe for your getting back to me? Please also include information regarding if the poison screening was done when the autopsy was conducted, not just a drug screening, as evidence exists that contact was made with the hospital on the night my father died that he may have been poisoned and similar claims were made to the Palm Beach County Sheriff the day he died. The remainder of the questions in my email still need to be addressed and as I am currently in ongoing civil and criminal complaints regarding my father, a prompt reply with an ETA would be greatly appreciated.

Thank you,  
Eliot Bernstein

**From:** Eliot Bernstein [<mailto:iviewit@gmail.com>]  
**Sent:** Monday, November 11, 2013 6:23 AM  
**To:** Michael D. Bell, M.D. ~ Medical Examiner @ Office of the District Medical Examiner - District 15 - State of Florida ([mbell@pbcgov.org](mailto:mbell@pbcgov.org))  
**Cc:** Caroline Prochotska Rogers Esq. ([caroline@cprogers.com](mailto:caroline@cprogers.com)); Michele M. Mulrooney ~ Partner @ Venable LLP ([mmulrooney@Venable.com](mailto:mmulrooney@Venable.com)); Andrew R. Dietz @ Rock It Cargo USA; Marc R. Garber Esq. ([marcrgarber@gmail.com](mailto:marcrgarber@gmail.com)); Marc R. Garber, Esquire @ Flaster Greenberg P.C.; Marc R. Garber Esq. @ Flaster Greenberg P.C. ([marcrgarber@verizon.net](mailto:marcrgarber@verizon.net))  
**Subject:** FW: CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

Thank you for your prompt reply to my inquiry. A few more questions arose after reviewing your report. First I would like to state that there has been an arrest made in my parents' estates of the Notary Public Kimberly Moran who acted on behalf of the law firm Tescher & Spallina in forging and fraudulently creating documents for my father, after he was deceased. I have alleged to the court that these documents were part of a conspiratorial effort by primarily my brother and his friends Donald Tescher and Robert Spallina to seize control of Simon's estate post mortem and change the beneficiaries using post mortem documents. It should also be noted that in a September 13, 2013 hearing before Judge Martin H. Colin in the Del Ray Beach courthouse, it was found that the estate of my mother was closed by my father months after he was deceased, as if he were alive at the time and thus perpetrating a fraud on the court, which prompted Judge Colin to state twice that he should read Robert Spallina, Esq., Donald Tescher, Esq., Mark Manceri, Esq. and my brother Theodore Bernstein their Miranda rights for the crimes he identified at the hearing that they committed. That after Simon was deceased these fraudulent and forged documents that gave

fiduciary control to Tescher, Spallina and Ted then provided the way for far more serious felony crimes to be committed. The Palm Beach County Sheriff has made an arrest of Moran thus far and that report is filed as case # 13097087.

With that said, after reviewing your report I noted that you received my father's body, the day after he died on September 14, 2013. The reason I ask if this is correct, is that we were informed after my father died that his body had been taken to Miami to have an autopsy performed, which delayed the burial by several days as we waited for the autopsy to be performed. The autopsy was alleged by my brother, Spallina and others to be being conducted in Miami and after reviewing your report it was clear that you indicate the body never was transported to Miami. Therefore, please verify the information regarding the transportation of the body after the hospital to your offices with any/all stops in between.

I requested in my original letter to you if a poison screening had been completed, your letter stated a toxicology report was run but it appears to be a drug only test, not a poison screening. The reason this is now important is that immediately following my father's death as noted in your report materials, a claim was made to Palm Beach County Sheriff by Rachel Walker and Theodore Bernstein primarily that my father was murdered by his girlfriend, Maritza Puccio, via either overdosing or poisoning. Walker claimed that Maritza was switching pills in containers and may have been switching the pills with other substances and other substances may have been given to him, which may have included poisons or other drugs. I also note that after the officer interviewing Walker counted out the pills he was on and everything seemed in order, Walker claimed that the pain medication was not the only drug that may have been tampered with and that other substances may have been given to Simon in the weeks leading up to his death.

I do not doubt your conclusion that my father died of a heart attack but there can be many substances, including poisons that can induce a heart failure, I am trying to assess if the poison screening might have unearthed any substances in addition to the drug screen run by your agency. I am confused by some of your claims as to what occurred at the hospital that day as they contradict in part what we were told by the doctors who handled my father that day, including the following;

1. You claimed that evidence of a heart attack was found in the reports on admission to the hospital but that turned out to be wholly disproved by the end of the day.
2. Initially in the morning when we first took my father into the hospital, the first doctor attending him thought he was having a heart attack due to his prior history, despite my father claiming that he was not having a heart attack and that he knew what a heart attack felt like and he was not having one and thought he was fine, stating he was just confused and in pain from other ailments he was having.
3. Later in the afternoon the initial doctor claimed that he did not find any signs of a heart attack after running a battery of tests and called in an infectious disease doctor to evaluate and run tests, as he thought something else was going on other than heart related as he was having several other readings regarding other major organs that were highly abnormal.
4. We were assured by the cardiologist in charge of my father's care in the evening, before he let us go home that Simon's heart was fine and that NO markers were found indicating a heart attack. Instead he claimed he had "West Nile Virus" or some other virus of an unknown origin or that something else was wrong entirely, as many of his other levels he tested were off the charts, indicating something else was going on. He stated Simon would be fine, he was stable and they would begin testing in the morning.

5. We were called back to the hospital several hours later early the next morning. When I arrived my father's girlfriend Maritza had been ejected from the ICU where she was staying with Simon overnight as someone had informed the hospital that Simon might be poisoned and they had shut his room off visitors until security could arrive. When I arrived at ICU they would not at first let me in until security could escort me to my father where he was being resuscitated for a second time.

Finally, my father began developing a series of ailments several weeks prior to his death that had me and others running him to a variety of doctors to be tested for a variety of ailments, including a brain scan a few weeks prior to his death. That brain scan was run by the same cardiologist who treated my dad at the hospital the day he died and his symptoms prior to that day included strange screaming pains in his head, delusions, hallucinations and more. I wondered if you had reviewed any of his prior doctor reports in the two months leading up to his death, as we never determined the exact cause of what was making him melt down over the last weeks of life in such bizarre fashion. In fact, the cardiologist at the hospital the day he died was confused how his charts appeared fine when he did the brain scan only a few days earlier and stated he could not believe it was the same man when he got the reports at the hospital that day. Did you get a chance to review all the reports from the hospital that day and all the test results run or did you just review the admission report? If you reviewed all of the records and reports what were the other problems and tests run and what were the results. These results were of concern to the doctors that day and I wonder if any of those other problems could come from poisoning. If you ran a poison screening please provide me with the results as you did with the drug toxicology. Please feel to write back to me as I do not answer my phone much and am far easier to reach via email. I look forward to hearing from you soon. Thank you again in advance for your continued time, effort and consideration of these matters. Eliot

---

**From:** Michael Bell <[mbell@pbcgov.org](mailto:mbell@pbcgov.org)>  
**Date:** November 7, 2013 at 11:17:02 AM EST  
**To:** Eliot Ivan Bernstein <[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)>  
**Cc:** "Caroline Prochotska Rogers Esq." <[caroline@cprogers.com](mailto:caroline@cprogers.com)>  
**Subject: RE: CASE NUMBER: 12-0913 --- Simon Bernstein**

Hi Mr Bernstein,

I tried to call your cell phone, but it would not accept anymore messages because it was full.

Your father died of a heart attack that was evident at autopsy and in the hospital records (he had elevated cardiac enzymes on admission).

He did NOT have West Nile virus. This disease causes a meningoencephalitis. This was NOT present at autopsy. I have attached the additional microscopic examination report as I did not see it in the pdf you sent me.

We did a toxicology screen which showed therapeutic concentrations of acetaminophen and hydrocodone. Zolpiden was detected but the level was too low to be measured. The toxicology testing can detect hundreds of different drugs.

If you have any other questions, please call me at 561-688-4575.

**From:** Eliot Ivan Bernstein [<mailto:iviewit@iviewit.tv>]  
**Sent:** Saturday, November 02, 2013 7:02 PM  
**To:** Michael Bell  
**Cc:** Caroline Prochotska Rogers Esq.  
**Subject:** CASE NUMBER: 12-0913 --- Simon Bernstein

Dear Dr. Bell,

I write to you after review of your attached autopsy report on my father that raises some questions regarding the cause of death that I hope you can help answer. On September 12, 2013 when we brought my father into the hospital the first diagnoses we received in the morning was that he had a mild heart attack. After testing an infectious disease doctor was brought in who claimed it could be instead some sort of virus as it was not looking like a heart attack. Later that evening while in intensive care, a doctor came and told my family that he did not have a heart attack and that his heart was fine and instead they thought my dad had West Nile Virus or some other exotic virus and that we could go home. The doctor claimed he was stable, we could go home and they would begin testing the next day. In fact, the doctor asked me if it was I who brought my father in for a brain procedure several weeks earlier and stated that when he reviewed the file to compare to his earlier records he was stunned to see the results and stated that Simon had perfect test results just days earlier for the brain procedure and now he was off the chart on several levels. The doctor stated his problems definitely were not due to his heart as he found no markers of heart attack or other heart complications. Several hours later, I was called to the emergency room where they were attempting to resuscitate my dad but to no avail and he passed.

I was informed when he passed that they were going to do a test for West Nile Virus and other similar infectious diseases and I was wondering if these tests were also performed post mortem to rule all those causes out. Finally, I was wondering if a poison screening had been done and if one can now be done if requested.

Thank you for your time, effort and consideration in the handling of this matter.

Eliot I. Bernstein  
Inventor  
Iviewit Holdings, Inc. – DL  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245.8588 (o)  
(561) 886.7628 (c)

(561) 245-8644 (f)

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**VERIFIED RETURN OF SERVICE**

State of Florida

County of Palm Beach

Circuit Court

Case Number: 502014CP003698XXXXSB

Plaintiff:

**Simon Bernstein 2000 Insurance Trust, et al**

vs.

Defendant:

**Alan B. Rose, Esquire, et al**

Received by Agency for Civil Enforcement Corporation on the 3rd day of September, 2014 at 5:55 pm to be served on **Law Firm of Page, Mrachek, Fitzgerald & Rose, P.A. c/o Alan B. Rose, Esquire as Partner, 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401.**

I, Michael Rocco, being duly sworn, depose and say that on the **5th day of September, 2014 at 2:42 pm, I:**

served the within named **CORPORATION** by delivering a true copy of the **Summons, Counter Complaint, Declaration that this Proceeding and Others related are Adversary, Service List, Answer**, with the date, time and hour of service, my initials and license number ID endorsed thereon by me, to: **Alan B. Rose as Esquire for Law Firm of Page, Mrachek, Fitzgerald & Rose, P.A.**, at the address of: **505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401**, and informed said person of the contents therein, in compliance with state statutes.

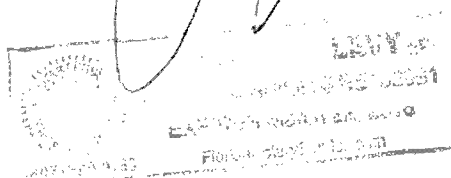
**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'10", Weight: 200, Hair: Black, Glasses: N

Under penalty of perjury, I declare that I have read the foregoing Verified Return of Service and that facts stated in it are true. I certify that I am of adult age, have no interest in the above action and a Private Process Server in the judicial circuit in which this process was served.

\*\*\* FILED: PALM BEACH COUNTY, FL. SHARON R BOCK, CLERK. \*\*\*

Subscribed and Sworn to before me on the 5 day of September 2014 by the affiant who is personally known to me.

NOTARY PUBLIC



**Michael Rocco**  
# 1378 C.P.S.

**Agency for Civil Enforcement Corporation**  
D.B.A., A.C.E., Inc.  
1615 S. Congress Ave., Suite 103  
Delray Beach, FL 33445  
(561) 447-7638  
Our Job Serial Number: JML-2014411384

CIVIL ACTION SUMMONS

SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe's (1-5000),

*Sent  
9/5/2014  
2:42 PM  
Michael Roeder  
#1378801*

Counter Defendants,

Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you.

Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

CIVIL ACTION SUMMONS

THE STATE OF FLORIDA

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this action on Defendant

Alan B. Rose, Esq. – Personally:  
Alan B. Rose, Esq. – Professionally:  
Alan B. Rose, Esq., as a Partner at the Law Firm of ✓  
Page, Mrachek, Fitzgerald & Rose, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
(561) 355-6991

Each Defendant is required to serve written defenses to the Complaint on Plaintiffs Attorney, whose address is:

Eliot Ivan Bernstein, Pro Se  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

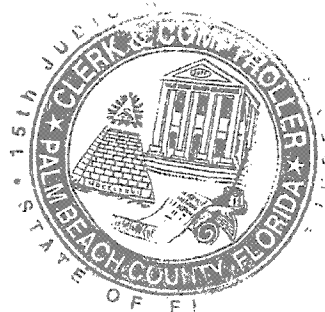
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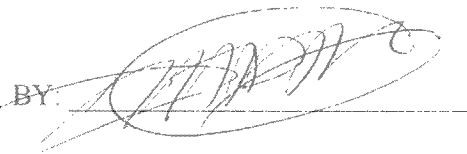
Primary: iviewit@iviewit.tv  
Secondary: tourcandy@gmail.com  
iviewit@gmail.com

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED: September 3, 2014.

SHARON R. BOCK  
CLERK & COMPTROLLER



BY: 

## CIVIL ACTION SUMMONS

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### **IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante O Abogado del Demandante).

### **IMPORTANTE**

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous requerriez les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.

**VERIFIED RETURN OF SERVICE**

State of Florida

County of Palm Beach

Circuit Court

Case Number: 502014CP003698XXXXSB

Plaintiff:

**Simon Bernstein 2000 Insurance Trust, et al**

vs.

Defendant:

**Alan B. Rose, Esquire, et al**

Received by Agency for Civil Enforcement Corporation on the 3rd day of September, 2014 at 5:55 pm to be served on **Theodore Stuart Bernstein As Trustee, 950 Penninsula Corporate Circle, Suite 3010 (Life Insurance Concepts), Boca Raton, FL 33487.**

I, Michael Rocco, being duly sworn, depose and say that on the **8th day of September, 2014 at 2:31 pm, I:**

**INDIVIDUALLY/PERSONALLY** served by delivering a true copy of the **Summons, Counter Complaint, Declaration that this Proceeding and Others related are Adversary, Service List, Answer**, with the date, time and hour of service, my initials and license number ID endorsed thereon by me, to: **Theodore Stuart Bernstein As Trustee** at the address of: **950 Penninsula Corporate Circle, Suite 3010 (Life Insurance Concepts), Boca Raton, FL 33487**, and informed said person of the contents therein, in compliance with state statutes.

**Description of Person Served:** Age: 50+, Sex: M, Race/Skin Color: White, Height: 5'9", Weight: 195, Hair: Black, Glasses: Y

Under penalty of perjury, I declare that I have read the foregoing Verified Return of Service and that facts stated in it are true. I certify that I am of adult age, have no interest in the above action and a Private Process Server in the judicial circuit in which this process was served.

Subscribed and Sworn to before me on the 8 day of September, 2014 by the affiant who is personally known to me.

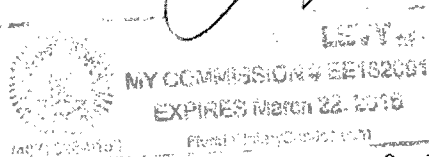
NOTARY PUBLIC

MY COMMISSION # EE182004  
EXPIRES March 22, 2016



**Michael Rocco**  
# 1378 C.P.S.

**Agency for Civil Enforcement Corporation**  
D.B.A., A.C.E., Inc.  
1615 S. Congress Ave., Suite 103  
Delray Beach, FL 33445  
(561) 447-7638  
Our Job Serial Number: JML-2014411383



\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

CIVIL ACTION SUMMONS

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JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe's (1-5000),

*Journal*  
*9/13/12*  
*2:31*  
*Michael Mocco*  
*#1378 CP*

Counter Defendants,

Judge Martin Colin, Personally;  
Judge Martin Colin, Professionally;  
Judge David French, personally;  
Judge David French, professionally;

Material and Fact Witnesses who may  
become Defendants in any amended  
complaint.

**SUMMONS**  
**IMPORTANT**

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you.

Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

CIVIL ACTION SUMMONS

THE STATE OF FLORIDA  
To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint in this action on Defendant

THEODORE STUART BERNSTEIN, INDIVIDUALLY;  
THEODORE STUART BERNSTEIN, AS TRUSTEE; ✓  
THEODORE STUART BERNSTEIN, AS OFFICER, DIRECTOR AND SHAREHOLDER.  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

Each Defendant is required to serve written defenses to the Complaint on Plaintiffs Attorney, whose address is:

Eliot Ivan Bernstein, Pro Se  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

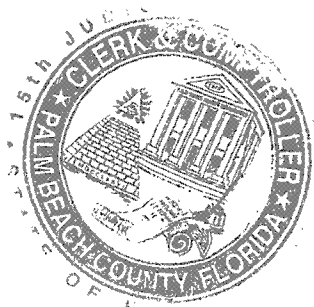
E-mail designations:


Primary: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
Secondary: [tourcandy@gmail.com](mailto:tourcandy@gmail.com)  
[iviewit@gmail.com](mailto:iviewit@gmail.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED: September 3, 2014.

SHARON R. BOCK  
CLERK & COMPTROLLER



BY: 

CIVIL ACTION SUMMONS

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**IMPORTANTE**

Usted ha sido demandado legalmente. Tiene 20 Días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefonica no lo protegera. Si usted desea que el tribunal considere su defensa, debe presentar su resquesta por escrito, incluyendo el numero del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, podiese perder el caso y podria ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede Hamar a una de las oficinas de asistencia legal que aparecen en la guia telefonica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, debera usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiffs Attorney" (Demandante O Abogado del Demandante).

**IMPORTANTE**

Des poursuites judiciairesont etc entreprises contre vous. Vous avez 20 jours consecutifs a partir de la date de l'assignationjointe aupres de ce tribunal. Un simple coup de telephone est insuffisant pour vous proteger. Vous estes obligé de déposer votre response ecrite, avec mention du numero de dossier ci-dessus et du nom des parties nommees ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne deposez pas votre response ecrite dans le ralai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun preavis ulterieur du tribunal. Il ya d'autres obligations juridiques et vous requerir les services immediats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez telephoner a un service de reference d'avocats ou a un bureau d'assistance juridique (figurant a l'annuaire de telephones).

Si vous choisissez de déposer vous-meme une response ecrite, il vous faudra également, en meme temps que cette formalite, faire parvenir ou expedier une copie de votre response ecrite au "Plaintiff/Plaintiffs Attorney" (Plaignant ou a son avocat) nomme ci-dessous.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

2014 SEP 18 PM 2:55  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

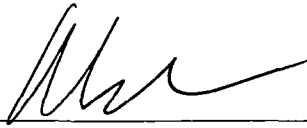
**ORDER PROHIBITING NEW FILINGS AND STAYING  
PENDING COMPLAINT AND COUNTERCLAIM  
UNTIL FURTHER ORDER OF THE COURT**

THIS CAUSE came before the Court on its own request at another hearing held September 15, 2013, involving certain of these parties. Based upon the Court's review of the record, the Court hereby orders and adjudges:

1. No party to this action shall file any new claims or petitions for relief unless such party has first sought and obtained permission from the Court at a properly noticed hearing. Any document filed without compliance with this Order shall be stricken from the record.

2. All proceedings already pending in this case, specifically including the Complaint filed by Ted S. Bernstein, as Successor Trustee, and the Counterclaim filed by Eliot Bernstein in various capacities, are hereby stayed, effective as of September 15, 2014, pending further order of the Court. If any party wishes to have the stay lifted to enable any claim to proceeds, such party must first seek permission from the Court at a properly noticed hearing.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 18 day of September, 2014.



---

Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
(john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: eservice@palmettobaylaw.com;  
bill@palmettobaylaw.com;  
tmealy@gcprobatelaw.com  
Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Alan Rose, Esq.  
Mrachek Fitzgerald Rose Konopka Thomas &  
Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: arose@mrachek-law.com

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: psimon@stpcorp.com

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

CASE #502014CP003698XXXXSB  
Probate

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

Plaintiff,

-vs-

ALEXANDRA BERNSTEIN, etc., et al.,

Defendants.

---

2014 SEP 24 PM 2:52  
HARRIS COUNTY CLERK  
PALM BEACH COUNTY FILED  
SOUTH CITY BRANCH

**ORDER ON PANKAUSKI LAW FIRM PLLC'S MOTION TO WITHDRAW  
AS COUNSEL FOR TED BERNSTEIN**

THIS CAUSE came before the Court on the Pankauski Law Firm PLLC's Motion to Withdraw as Counsel for Ted Bernstein dated August 29, 2014 ("Motion"). The Court, having reviewed the file, the Motion, and being otherwise advised of the premises, it is

**ORDERED AND ADJUDGED** that:

1. Pankauski Law Firm PLLC's Motion is GRANTED.
2. Pankauski Law Firm PLLC is hereby permitted to withdraw as attorneys for

Ted Bernstein in all matters and is relieved of all further obligations, responsibilities, and liability, including all orders of this court.

3. All further pleadings, notices and other papers in the matter on behalf of Ted Bernstein shall be served c/o Alan B. Rose, Esq., Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 South Flagler Drive, Suite 600, West Palm Beach, FL 33401 (arose@mrachek-law.com); telephone number: (561) 655-2250, fax number (561) 655-5537.

**DONE AND ORDERED** in chambers at Delray Beach, Palm Beach County, Florida, this 27 day of SEPT., 2014.



THE HONORABLE MARTIN H. COLIN  
CIRCUIT JUDGE

Copies to:

Donald Tescher, Esq.  
Tescher & Spallina  
Boca Village Corporate Center I  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431

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

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401

Alan Rose, Esq.  
Mrachek Fitzgerald Rose Konopka  
Thomas Weiss  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401

William H. Glasko, Esquire  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

Daniel Bernstein, a Minor  
c/o Eliot and Candice Bernstein,  
His Parents and Natural Guardians  
2753 NW 34th Street  
Boca Raton, FL 33434

Joshua Bernstein, a Minor  
c/o Eliot and Candice Bernstein,  
His Parents and Natural Guardians  
2753 NW 34th Street  
Boca Raton, FL 33434

Jacob Bernstein, a Minor  
c/o Eliot and Candice Bernstein,  
His Parents and Natural Guardians  
2753 NW 34th Street  
Boca Raton, FL 33434

Irwin J. Block, Esquire  
700 South Federal Highway, Suite 200  
Boca Raton, FL 33432

John J. Pankauski, Esquire  
Pankauski Law Firm P.L.L.C.  
120 South Olive Avenue, Suite 701  
West Palm Beach, FL 33401

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**AMENDED COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

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

Plaintiff hereby sues Defendants, and states:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust (“Trustee.”)
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley’s Trust”).
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley’s Trust.
5. An authentic copy of Shirley’s Trust is attached as Exhibit “A”.
6. Shirley’s Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.



9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one or more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

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 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 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.

27. In essence, through his Special Power, 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 each such grandchild under Simon's Trust.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, *per stirpes*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment

by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "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 [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

**Defendants and Potential Beneficiaries**

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

---

<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.



**COUNT I –DECLARATORY AND OTHER RELIEF**

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley’s Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley’s Trust; whether and to what extent Simon L. Bernstein’s exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley’s Trust is valid; to whom the Trustee should distribute the assets of Shirley’s Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of

appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY  
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley Trust”, attached as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of October, 2014.

**ATTORNEYS FOR PLAINTIFF**

**MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.**

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By: /s/ Alan B. Rose  
Alan B. Rose  
Fla. Bar No. 961825

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
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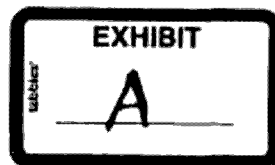
### **COURTESY COPY ONLY:**

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**SHIRLEY BERNSTEIN**  
**TRUST AGREEMENT**

*Prepared by:*

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**TESCHER & SPALLINA, P.A.**

**000871**

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**SHIRLEY BERNSTEIN**

**TRUST AGREEMENT**

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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

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(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

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.**

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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

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.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.

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.


*[remainder of page intentionally left blank]*

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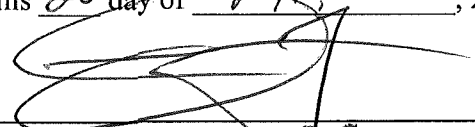
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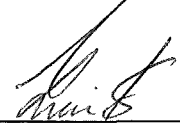
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

**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

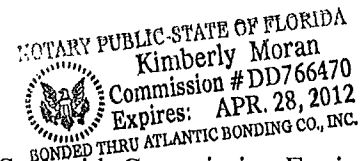
  
\_\_\_\_\_  
Print Name: TRACI KRATISH  
Address: 16068 CIENCRESS AVENUE  
DELRAY BEACH, FL 33446

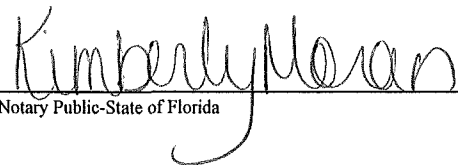
STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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

  
[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 \_\_\_\_\_

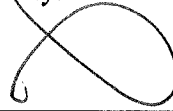
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**ATTACHMENT**

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.



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SHIRLEY BERNSTEIN, Settlor and Trustee

F

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**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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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).

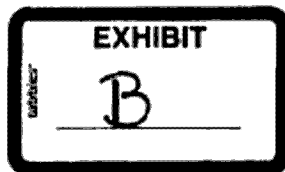
WHEREAS, on May 20, 2008, I created and funded the SHIRLEY BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

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.

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*[remainder of page intentionally left blank]*




FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT

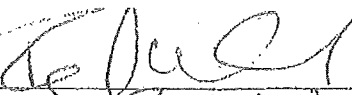
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

  
SHIRLEY BERNSTEIN

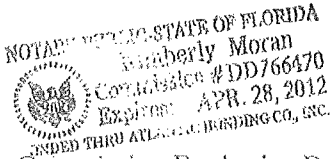
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

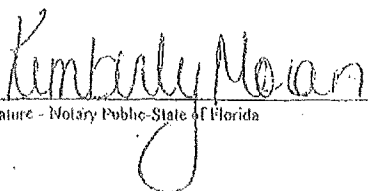
  
Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

  
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.



  
Signature - Notary Public - State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

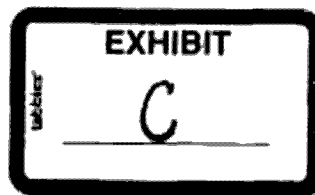
Personally Known  or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

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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](http://www.tescherspallina.com)



LAW OFFICES  
TESCHER & SPALLINA, P.A.

000902

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.

000903

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] 7387 Wisteria Avenue  
Parkland, FL 33076  
[Witness Address]

/s/ Kimberly Moran residing at Kimberly Moran  
[Witness Signature] 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]

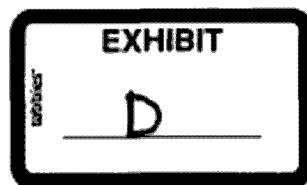
/s/ Lindsay Baxley  
Signature - Notary Public-State of Florida

Lindsay Baxley  
Print, type or stamp name of Notary Public

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

*Prepared by:*

Teschler & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)



LAW OFFICES  
TESCHLER & SPALLINA, P.A.

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SIMON L. BERNSTEIN

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AMENDED AND RESTATED TRUST AGREEMENT

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This Amended and Restated Trust Agreement is dated this 25 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

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

## ARTICLE II. AFTER MY DEATH

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

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

SARAH BERKES, ESQ.  
ATTORNEY AT LAW

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LAW OFFICES

TESCHER & SPALLINA, P.A.



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

SIGNATURE PAGE  
WILLS AND PROBATE AGREEMENT

LAW OFFICES  
TESCHER & SPALLINA, P.A.

A. **Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor or 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 [ ] 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 (C)(3).

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 (C)(3). 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 (C)(3), 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 (C)(3), 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, HEDS, BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JULIAN LION 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 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 1.g. 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)(5).

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.

S. W. & J. BERNSTEIN  
ATTORNEYS AT LAW, P. A.

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

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

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

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

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

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

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

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. Exoneratoin. To provide for the exoneratoin 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.

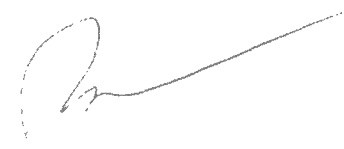
20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action 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 2(a), 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

SWORN BY: \_\_\_\_\_  
WITNESSED BY: \_\_\_\_\_

\_\_\_\_\_  
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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 (b)(2), 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

SAOUL BERSTEIN  
MEMBER OF THE ABA DIS. VOICE

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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.

**II. 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 there 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 or 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 received 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 trust for taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to: a) 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)(5) 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(c)(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 665 (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.

*[remainder of page intentionally left blank]*



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

SETTLOR and TRUSTEE:

*[Handwritten Signature]*  
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:

*[Handwritten Signature]*  
Print Name: **ROBERT L. SPALLINA**  
Address: **7387 WISTERIA AVENUE  
PARKLAND, FL 33076**

*[Handwritten Signature]*  
Print Name: **Kimberly Moran**  
Address: **6362 Las Flores Drive  
Boca Raton, FL 33433**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

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

*[Handwritten Signature]*  
*[Handwritten Signature]*

[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 \_\_\_\_\_

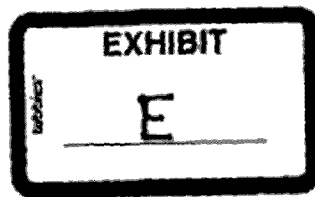
SIMON L. BERNSTEIN  
AMENDED AND RE-STATED TRUST AGREEMENT

LAW OFFICES  
**TESCHER & SPALLINA, P.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](http://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

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LAST WILL  
OF SHIRLEY BERNSTEIN



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

SHARON R. BOGGS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

2014 OCT -7 PM 3:44

**ORDER ON AMENDMENTS TO PLEADINGS AND STAY  
UNTIL FURTHER ORDER OF THE COURT**

THIS CAUSE came before the Court at a hearing held on September 24, 2014, to consider various matters and to conduct a status conference. The Court, based upon the status conference and the oral motion of the Trustee's counsel to amend, and having heard argument and being fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Trustee's counsel is granted leave to amend the existing Complaint, and shall amend the existing Complaint solely to add a second count, which count shall seek a determination

as to the validity or invalidity of the trust and estate documents of Simon Bernstein and Shirley Bernstein.

2. Eliot Bernstein and other Defendants shall serve a response to Count II of the Amended Complaint within 10 days of service. No additional counterclaims or amendments to counterclaims shall be filed at this time, other than the Court has granted permission for Eliot Bernstein to amend his counterclaim solely to remove references to judges being involved in the style of the case. Otherwise, the Counterclaim remains stayed.

3. Upon the filing of answers to Count II of the Amended Complaint, the Court hereby severs Count II from the remaining claims in this action; will set Count II for a hearing or trial consistent with the Court's schedule; and hereby stays all other proceedings, including the other counts of the complaint and any counterclaim, pending further order of this Court.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 6 day of September, 2014.

SCA



\_\_\_\_\_  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
(john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.  
Golden & Cowan, P.A.  
17345 S. Dixie Highway  
Palmetto Bay, FL 33157  
(305) 856-5440 - Telephone  
(305) 856-9388 - Facsimile  
Email: eservice@palmettobaylaw.com;  
bill@palmettobaylaw.com;  
tmealy@gcprobatelaw.com  
Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

Alan Rose, Esq.  
Mrachek Fitzgerald Rose Konopka Thomas &  
Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401.  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: arose@mrachek-law.com

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: psimon@stpcorp.com

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

---

**NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that the undersigned appears as counsel for Defendants,  
MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL  
BERNSTEIN in the above referenced action, and copies of all pleadings, orders, correspondence  
and other papers should be served on the undersigned at the address set forth hereinbelow and at  
the primary e-mail address designated as follows: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com).

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:  
ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); WILLIAM H. GLASKO, Esquire, 17345 South Dixie Highway, Palmetto  
Bay, Florida 33157 ([wglasko@palmettobaylaw.com](mailto:wglasko@palmettobaylaw.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup>  
Street, Boca Raton, Florida 33434 ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); and PAMELA SIMON, 303 East  
Wacker Drive, Suite 2725, Chicago, Illinois 60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)), this 10<sup>TH</sup> day of  
October, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

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**NOTICE OF JOINDER IN AMENDED COMPLAINT**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN  
and MICHAEL BERNSTEIN (collectively “decedent’s adult grandchildren”), by and  
through their undersigned attorney, file this notice of joinder in the Amended Complaint  
filed by Plaintiff, TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust  
Agreement dated May 20, 2008, as amended, and state:

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

1. Plaintiff commenced this action by filing a one-count Complaint for declaratory and other relief on or about August 6, 2014.

2. On October 3, 2014, Plaintiff filed an Amended Complaint, adding a second count for declaratory judgment as to the validity of certain testamentary documents.


3. The decedent's adult grandchildren join in the Amended Complaint filed by Plaintiff, incorporate by this reference all allegations made and exhibits referenced in said Amended Complaint, and request the same relief sought by Plaintiff in said Amended Complaint.

4. The decedent's adult grandchildren have retained the undersigned attorney to represent them in this action and are entitled to an award of attorney's fees and costs pursuant to applicable law, including F.S. §§ 736.1004, 736.1005 and/or all other relevant statutory sections.

WHEREFORE, the decedent's adult grandchildren join in the Amended Complaint filed by Plaintiff, request that this Court award all of the relief sought in said Amended Complaint, and further request that this Court award the decedent's adult grandchildren their reasonable attorney's fees and costs, as well as such further relief as this Court deems just.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401 ([arose@pm-law.com](mailto:arose@pm-law.com)); WILLIAM H. GLASKO, Esquire, 17345 South Dixie Highway, Palmetto Bay, Florida 33157 ([wglasko@palmettobaylaw.com](mailto:wglasko@palmettobaylaw.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434 ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); and PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois 60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)), this 10<sup>TH</sup> day of October, 2014.

JOHN P. MORRISSEY, P.A.

By:   
John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S NOTICE OF FILING WAIVERS OF SERVICE**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing three *Acceptance and Waiver of Service of Process* forms (the "Waivers") executed by the following defendants:

1. LISA FRIEDSTEIN; LISA FRIEDSTEIN, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12; and LISA FRIEDSTEIN on behalf of her minor child, C.F.;

2. MAX FRIEDSTEIN; and

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

3. JILL IANTONI; JILL IANTONI, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12; and JILL IANTONI on behalf of her minor child, J.I.

As specified in the Waivers, each of these Defendants shall have twenty days from the date of signing the Waiver within which to file a responsive pleading or authorized motion in response to the Amended Complaint.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 4th day of November, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
[john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_/

**ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS**

The undersigned parties, LISA FRIEDSTEIN, Individually; LISA FRIEDSTEIN, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12; and LISA FRIEDSTEIN on behalf of her minor child, C.F. ("Defendants"), hereby acknowledges that she has authority to accept service and waives service of process of the Amended Complaint filed by Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, in the above captioned action.



Having accepted service, Defendants shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

For service of court filings upon these parties, Lisa Friedstein hereby designates service to be made at the following email address:

Email: \_\_\_\_\_

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.

\_\_\_\_\_  
LISA FRIEDSTEIN

\_\_\_\_\_  
LISA FRIEDSTEIN, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12

\_\_\_\_\_  
LISA FRIEDSTEIN on behalf of her minor child, C.F.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_/

**ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS**

The undersigned party, MAX FRIEDSTEIN, being over the age of 18 years old, hereby acknowledges that he has authority to accept service and waives service of process of the Amended Complaint filed by Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, in the above captioned action.

Having accepted service, Defendant shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

For service of court filings upon Max Friedstein, he hereby designates service to be made at the following email address:

Email: \_\_\_\_\_

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.



\_\_\_\_\_  
MAX FRIEDSTEIN

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS

The undersigned parties, JILL IANTONI, Individually; JILL IANTONI as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12; and JILL IANTONI on behalf of her Minor child J.I. ("Defendants"), hereby acknowledges that she has authority to accept service and waives service of process of the Amended Complaint filed by Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, in the above captioned action.

Having accepted service, Defendants shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

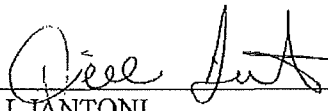


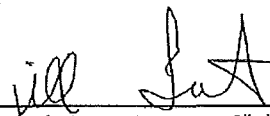
For service of court filings upon these parties, Jill Iantoni hereby designates service to be made at the following email address(es):

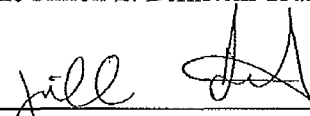
Email: jilliantoni@gmail.com

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.

  
\_\_\_\_\_  
JILL IANTONI

  
\_\_\_\_\_  
JILL IANTONI, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12

  
\_\_\_\_\_  
JILL IANTONI on behalf of her minor child, J.I.

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

Case No. 502014CP003698XXXXSB  
Honorable Judge Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his  
minor children, JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

TESCHER & SPALLINA, P.A., and all Partners,  
Associates and of Counsel;  
et al.

Counter Defendants.

*I*

ANSWER AMENDED COMPLAINT COUNT II

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Plaintiff"), beneficiary of the Shirley  
Bernstein Trust Agreement, dated May 20, 2008 ("Shirley Trust" or "Trust") and Eliot Bernstein as



ANSWER AMENDED COMPLAINT COUNT II  
Thursday, November 20, 2014  
Page 1 of 7

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK.\*\*\*

Legal Guardian of his three minor children and files this "Answer Amended Complaint Count II," and in support, on information and belief, states as follows:

COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY OF TESTAMENTARY DOCUMENTS

1. 79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

**ANSWER:** See Answer to Count I filed with the Court.

2. 80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached as Exhibit "A");
  - b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", Exhibit "B");
  - c. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", Exhibit "C");
  - d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", Exhibit "D");
  - e. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", Exhibit "E").
- (collectively, the "Testamentary Documents").

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

Counter Plaintiff states that it cannot be stated at this time that a-e above are valid legally binding documents due to the fact that there has been fraud upon the Court and the Beneficiaries

COMMITTED by Officers of this Court Robert L. Spallina, Esq., Donald R. Tescher, Esq.,

Theodore Stuart Bernstein, Kimberly Moran and others, acting as counsel and/or Fiduciaries of

the Simon and Shirley Bernstein Estates and Trusts, including but not limited to, proven, Forgery, Fraudulent Notarizations, Fraud on the Court, Altercation of Trust Documents and thus until each dispositive document is presented for forensic inspection with original signatures and all attachments, codicils, amendments, etc. to the beneficiaries, these exhibited COPIES of the alleged dispositive documents are not presumed valid.

3. 81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Not only have potential beneficiaries raised questions to the legal validity of these documents in whole but there are also admissions from and prosecutions of, fiduciaries and others, of FELONY misconduct with the alleged Testamentary Documents.

4. 82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The ALLEGED Trustee of the ALLEGED Testamentary Documents, Theodore Stuart Bernstein, has participated with his former counsel, TESCHER and SPALLINA et al. in fraud upon the court and fraud upon the beneficiaries through a series of document frauds that directly benefited TED's family to the detriment of other beneficiaries. There are ongoing actions to remove TED as a fiduciary for his involvement in fraud, breach of fiduciary duties and more. Therefore, since

TED's opinion may significantly affect his family personally so as they may get nothing from the Estates and Trusts of Simon and Shirley, TED's opinion should be stricken. TED also cannot be trusted to opine that the documents are not valid, since it is his FORMER COUNSEL as a fiduciary that committed FELONY crimes to benefit their client TED.

5. 83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

6. 84. The Shirley Will has been admitted to probate.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. 85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. 86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. 87. The Simon Will has been admitted to probate.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. 88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and


were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**ANSWER:** Deny. Eliot lacks sufficient information, documents and knowledge, in order to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That 48+ days prior to his death and at the time of the alleged signing of the alleged Simon 2012 Testamentary documents, Simon was suffering from mental health issues caused by elder abuse by four of five of his children and compounded by severe and unexplained headaches that caused him to go for a brain scan weeks before his untimely death, claiming he felt that he had tumors in his brain. Simon weeks before his death and at the time of the alleged signing also underwent a battery of other medical tests with a host of medical professionals, including but not limited to mental health experts and was having vivid hallucinations, massive depression and loss of memory and thereby lost all decisional capacity and was incapable of understanding the nature and effect of all legal and financial transactions, including executing documents, gifting, investing, withdrawal of funds, transfer of funds between accounts, etc.


**WHEREFORE**, Counter Plaintiff requests that this Court;

- 1) Deny all relief sought by Counter Defendants,
- 2) Sanction TED for attempting to plead matters that he is conflicted in as a Trustee and thereby breaching his fiduciary duty under Florida Probate and Trust Rules and Statutes.

Dated: Thursday, November 20, 2014



Eliot Bernstein, Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

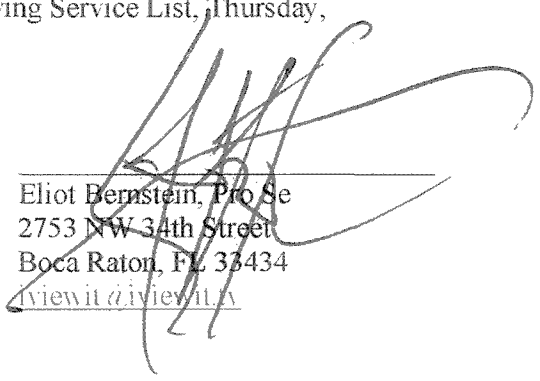


ANSWER AMENDED COMPLAINT COUNT II  
Thursday, November 20, 2014  
Page 5 of 7

000966

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Thursday, November 20, 2014.



Eliot Bernstein, Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434  
iviewit@iviewit.com

**SERVICE LIST**

<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM AND AS FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY, COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mhandler@mrachek-law.com">mhandler@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY AND LAW FIRM and COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>RESPONDENT INDIVIDUALLY, PROFESSIONALLY, FORMER COUNSEL TO THEODORE BERNSTEIN IN VARIOUS CAPACITIES</p> <p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@slpcorp.com">psimon@slpcorp.com</a></p>	<p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:thebernstein@lifeinsuranceconcepts.com">thebernstein@lifeinsuranceconcepts.com</a></p>	<p>RESPONDENT INDIVIDUALLY AND PROFESSIONALLY</p> <p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 <a href="mailto:mmlaw@comcast.net">mmlaw@comcast.net</a> <a href="mailto:mmlaw1@gmail.com">mmlaw1@gmail.com</a></p>	<p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="http://ijb@ijblegal.com">ijb@ijblegal.com</a> <a href="http://marfin@kolawyers.com">marfin@kolawyers.com</a></p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jil.iantoni@gmail.com">jil.iantoni@gmail.com</a> Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a> <a href="http://lisa@friedsteins.com">lisa@friedsteins.com</a> Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>Kimberly Moran Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>COUNSEL TO ALEXANDRA, ERIC AND MICHAEL BERNSTEIN AND MOLLY SIMON</p> <p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 <a href="http://john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p>
<p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:matt89@aol.com">matt89@aol.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="http://iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>		
<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>			



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S MOTION FOR DEFAULT WITH NOTICE**  
**AGAINST PAM SIMON; LISA FRIEDSTEIN INDIVIDUALLY AND AS TRUSTEE;**  
**MAX FRIEDSTEIN; AND JILL IANTONI, INDIVIDUALLY AND AS TRUSTEE**

Plaintiff, Ted S. Bernstein, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, moves for a default against the following Defendants for failure to plead or otherwise defend as provided by the Florida Rules of Civil Procedure: (i) Pamela B. Simon, Individually, and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; (ii) Lisa Friedstein, Individually, and as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.; (iii) Max Friedstein,

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

individually; and (iv) Jill Iatoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I., and states:

1. Pam Simon was served by process server on August 27, 2014. A return of service was filed in the court at DE 14. (Exhibit "A")

2. Lisa Friedstein, Individually, and as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., waived service by notice dated October 31, 2014, agreeing to answer the Complaint within 20 days of that date. A waiver form is filed in the Court as part of DE 30. (Exhibit "B")

3. Max Friedstein, waived service by notice dated October 31, 2014, agreeing to answer the Complaint within 20 days of that date. A waiver form is filed in the Court as part of DE 30. (Exhibit "B")

4. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I., waived service by notice dated October 31, 2014, agreeing to answer the Complaint within 20 days of that date. A waiver form is filed in the Court as part of DE 30. (Exhibit "B")

5. None of the Defendants is in active duty in the military service of the United States of America. Plaintiff will file an Affidavit affirming that fact before the hearing.

6. The above listed Defendants have not answered or responded to the Complaint in any way in the time afforded by Florida law. Moreover, each of the above defendants have indicated to Plaintiff that they do not intend to appear or defend this case. Based upon a failure to plead in the time allowed by Florida law, Plaintiff is entitled to, and hereby moves for, entry of a default against the above listed Defendants.

7. Under Florida Rule 1.500(b), each of the Defendants against whom this Motion for Default is being filed is being served with notice of this Motion for Default and of the hearing on this Motion.

8. A proposed Order is attached.

WHEREFORE, Plaintiff moves for a default against the above Defendants.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 24th day of November, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

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(561) 833-0867 - Facsimile  
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[\(john@jmorrisseylaw.com\)](mailto:john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

Affidavit of Process Server

Filed 09/03/2014 04:01:53 PM

Ted Bernstein vs Alexandra Bernstein et al. 502014CP003698
Plaintiff/Petitioner Defendant/Respondent Case#

Being duly sworn, on my oath, I declare that I am a citizen of the United States, over the age of eighteen and not a party to this action.

Service: I served Pamela B. Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated 9/13/12

with the (documents) Summons, Complaint and Exhibits A-C

by serving (NAME) Pamela Simon at Business 303 E. Wacker Drive, Suite 2725, Chicago IL on (DATE) Aug. 27, 2014 at (TIME) 4:30 AM

Thereafter copies of the documents were mailed by prepaid, first class mail on (DATE) From (CITY) (STATE)

Manner of Service: By Personal Service By delivering, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof, namely, By leaving a copy at the defendant's usual place of abode, with some person of the family or a person residing there, of the age of 13 years or upwards, and informing that person of the general nature of the papers By posting copies in a conspicuous manner to the address of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s): Unknown at Address Address does not exist Moved, Left no forwarding Evading Service cancelled by litigant Unable to serve in a timely fashion Other:

Service Attempts: Service was attempted on: DATE TIME DATE TIME DATE TIME DATE TIME

Description: Male Female White Skin Black Skin Brown Skin Yellow Skin Red Skin White Hair Black Hair Blond Hair Gray Hair Red Hair Black Hair Brown Hair Blond Hair Gray Hair Red Hair White Hair Balding Mustache Beard 14-20 Yrs. 21-35 Yrs. 36-50 Yrs. 51-65 Yrs. Over 65 Yrs. Under 5' 5'-5'3" 5'4"-5'8" 5'9"-6' Over 6' Under 100 Lbs. 100-130 Lbs. 131-160 Lbs. 161-200 Lbs. Over 200 Lbs.

OTHER IDENTIFYING FEATURES:

State of Illinois County of Cook Subscribed and sworn to before me A notary public, this 28 day of August 2014

SERVED BY LASALLE PROCESS SERVERS ILLINOIS PRIVATE DETECTIVE LICENSE# 117-001432

Notary Public



CHARTER MEMBER NATIONAL ASSOCIATION OF PROFESSIONAL PROCESS SERVERS



CIVIL ACTION SUMMONS [Individual]

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

SUMMONS  
IMPORTANT

A lawsuit has been filed against you. You have (20) calendar days after this summons is served on you to file a written response to the attached Complaint with the Clerk of this Court. A phone call will not protect you. Your written response, including the case number given above and the names of the parties, must be filed if you want the court to hear your side of the case. If you do not file your response on time, you may lose the case, and your wages, money, and property may thereafter be taken without further warning from the court. There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office which is listed in the phone book.

If you choose to file a written response yourself, at the same time you file your written response to the Court you must also mail or hand deliver a copy of your written response to the Plaintiff/Plaintiffs attorney named below.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

**THE STATE OF FLORIDA**

To Each Sheriff of the State:

**YOU ARE COMMANDED** to serve this summons and a copy of the complaint in this action on Defendant

PAMELA B.SIMON, Individually  
and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12  
950 N. Michigan Avenue, Apartment 2603  
Chicago, IL 60611

Each Defendant is required to serve written defenses to the Complaint on Plaintiff's Attorney, whose address is:

Alan B. Rose, Esq.  
MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 / FAX (561) 655-5637

E-mail designations:

Primary: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

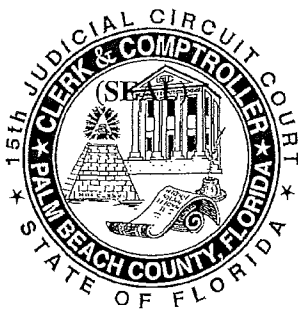
Secondary: [mhandler@mrachek-law.com](mailto:mhandler@mrachek-law.com)  
[blewter@mrachek-law.com](mailto:blewter@mrachek-law.com)

within twenty (20) calendar days after service of this Summons is served on that Defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiffs' attorney or immediately thereafter. If a Defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

DATED :           AUG 26 2014          , 2014.

**SHARON R. BOCK**  
**CLERK & COMPTROLLER**

BY: *Susan Lobello*  
Deputy Clerk  
Susan Lobello



SHARON R. BOCK  
Clerk & Comptroller  
P.O. Box 3406  
West Palm Beach, FL 33402

### IMPORTANTE

Usted ha sido demandado legalmente. Tiene 20 Días, contados a partir del recibo de esta notificación, para contestar la demanda adjunta, por escrito, y presentarla ante este tribunal. Una llamada telefónica no lo protegerá. Si usted desea que el tribunal considere su defensa, debe presentar su respuesta por escrito, incluyendo el número del caso y los nombres de las partes interesadas. Si usted no contesta la demanda a tiempo, pudiese perder el caso y podría ser despojado de sus ingresos y propiedades, o privado de sus derechos, sin previo aviso del tribunal. Existen otros requisitos legales. Si lo desea, puede usted consultar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a una de las oficinas de asistencia legal que aparecen en la guía telefónica.

Si desea responder a la demanda por su cuenta, al mismo tiempo en que presenta su respuesta ante el tribunal, deberá usted enviar por correo o entregar una copia de su respuesta a la persona denominada abajo como "Plaintiff/Plaintiff's Attorney" (Demandante O Abogado del Demandante).

### IMPORTANTE

Des poursuites judiciaires ont été entreprises contre vous. Vous avez 20 jours consécutifs à partir de la date de l'assignation jointe auprès de ce tribunal. Un simple coup de téléphone est insuffisant pour vous protéger. Vous êtes obligé de déposer votre réponse écrite, avec mention du numéro de dossier ci-dessus et du nom des parties nommées ici, si vous souhaitez que le tribunal entende votre cause. Si vous ne déposez pas votre réponse écrite dans le délai requis, vous risquez de perdre la cause ainsi que votre salaire, votre argent, et vos biens peuvent être saisis par la suite, sans aucun préavis ultérieur du tribunal. Il y a d'autres obligations juridiques et vous requérez les services immédiats d'un avocat. Si vous ne connaissez pas d'avocat, vous pourriez téléphoner à un service de référence d'avocats ou à un bureau d'assistance juridique (figurant à l'annuaire de téléphones).

Si vous choisissez de déposer vous-même une réponse écrite, il vous faudra également, en même temps que cette formalité, faire parvenir ou expédier une copie de votre réponse écrite au "Plaintiff/Plaintiff's Attorney" (Plaignant ou à son avocat) nommé ci-dessous.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

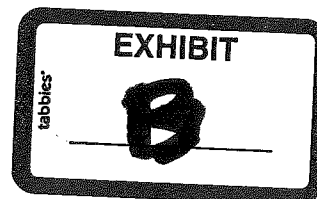
Defendants.

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**PLAINTIFF'S NOTICE OF FILING WAIVERS OF SERVICE**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing three *Acceptance and Waiver of Service of Process* forms (the "Waivers") executed by the following defendants:

1. LISA FRIEDSTEIN; LISA FRIEDSTEIN, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12; and LISA FRIEDSTEIN on behalf of her minor child, C.F.;
2. MAX FRIEDSTEIN; and



3. JILL IANTONI; JILL IANTONI, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12; and JILL IANTONI on behalf of her minor child, J.I.

As specified in the Waivers, each of these Defendants shall have twenty days from the date of signing the Waiver within which to file a responsive pleading or authorized motion in response to the Amended Complaint.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 4th day of November, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
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(561) 833-0867 - Facsimile  
Email: [John P. Morrissey  
\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
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(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

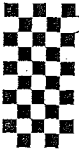
v.

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

Defendants.

ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS

The undersigned parties, LISA FRIEDSTEIN, Individually; LISA FRIEDSTEIN, as Trustee  
f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12; and LISA  
FRIEDSTEIN on behalf of her minor child, C.F. ("Defendants"), hereby acknowledges that she has  
authority to accept service and waives service of process of the Amended Complaint filed by  
Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008,  
as amended, in the above captioned action.



Having accepted service, Defendants shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

For service of court filings upon these parties, Lisa Friedstein hereby designates service to be made at the following email address:

Email: \_\_\_\_\_

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.

\_\_\_\_\_  
LISA FRIEDSTEIN

\_\_\_\_\_  
LISA FRIEDSTEIN, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12

\_\_\_\_\_  
LISA FRIEDSTEIN on behalf of her minor child, C.F.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_/

**ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS**

The undersigned party, MAX FRIEDSTEIN, being over the age of 18 years old, hereby acknowledges that he has authority to accept service and waives service of process of the Amended Complaint filed by Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, in the above captioned action.

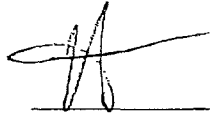
Having accepted service, Defendant shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

For service of court filings upon Max Friedstein, he hereby designates service to be made at the following email address:

Email: \_\_\_\_\_

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.



\_\_\_\_\_  
MAX FRIEDSTEIN

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

ACCEPTANCE AND WAIVER OF SERVICE OF PROCESS

The undersigned parties, JILL IANTONI, Individually; JILL IANTONI as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12; and JILL IANTONI on behalf of her Minor child J.I. ("Defendants"), hereby acknowledges that she has authority to accept service and waives service of process of the Amended Complaint filed by Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, in the above captioned action.

Having accepted service, Defendants shall have twenty (20) days from the date hereof within which to file a responsive pleading or authorized motion in response to the Complaint.

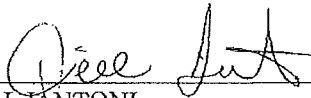


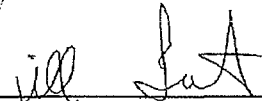
For service of court filings upon these parties, Jill Iantoni hereby designates service to be made at the following email address(es):

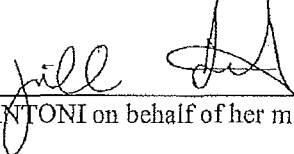
Email: jilliantoni@gmail.com

Alternate 1: \_\_\_\_\_

Dated: October 31, 2014.

  
\_\_\_\_\_  
JILL IANTONI

  
\_\_\_\_\_  
JILL IANTONI, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12

  
\_\_\_\_\_  
JILL IANTONI on behalf of her minor child, J.I.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

**ORDER ENTERING DEFAULT AGAINST PAMELA B. SIMON,  
LISA FRIEDSTEIN, MAX FRIEDSTEIN, AND JILL IANTONI**

THIS CAUSE came before the Court upon the Plaintiff's Motion for Entry of Default Against certain defendants. The Court, having reviewed the Motion and the record, having heard argument of counsel, and being otherwise fully advised in the premises, hereby ORDERS and ADJUDGES:

1. Default is entered against **Pamela B. Simon**, Individually, and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; **Lisa Friedstein**, Individually, and as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf

of her minor child, C.F.; **Max Friedstein**; and **Jill Iatoni**, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.

2. The Court enters default because none of the above Defendants have timely answered or responded to the Complain filed in this case.

3. The Court finds that each of the Defendants has either been properly served or has waived service of process. Moreover, the Court finds that each Defendant was given notice of the motion and notice of the hearing.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this \_\_\_ day of December, 2014.

---

Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: [John P. Morrissey  
\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF TRIAL AND MOTION TO SET TRIAL  
ON COUNT II OF AMENDED COMPLAINT**

Plaintiff, Ted S. Bernstein (the "Trustee"), gives notice that this action is at issue and ready to be tried and request that the Court set a trial on Count II of the Amended Complaint and states:

1. This is a two count Complaint for declaratory judgment and construction of a trust.

By Order dated October 6, 2014, this Court ordered the Complaint to be amended to assert a Count II addressing the validity and efficacy of the testamentary documents signed by Simon and Shirley

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

Bernstein, and ordered that Count II be severed and set for separate trial before the remaining issues are addressed.

2. All of the Defendants now have either answered Count II of the Amended Complaint or are in default.

3. Accordingly, the action is at issue and should be set for trial at the earliest opportunity. The Plaintiff estimates that the trial of this case will take approximately one day.

WHEREFORE, Plaintiff respectfully requests that this Court set this case for a one day, non jury trial on Count II.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 24th day of November, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
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Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0866 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
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Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Wednesday, December 3, 2014

**TIME:** 8:45 a.m.

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray  
Beach, FL 33444

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*



**MATTER(S) TO BE HEARD:**

**PLAINTIFF'S MOTION FOR DEFAULT WITH NOTICE AGAINST  
PAM SIMON; LISA FRIEDSTEIN INDIVIDUALLY AND AS  
TRUSTEE; MAX FRIEDSTEIN; AND JILL IANTONI,  
INDIVIDUALLY AND AS TRUSTEE**

**-and-**

**TED S. BERNSTEIN'S MOTION TO SET TRIAL ON COUNT II OF  
AMENDED COMPLAINT**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 24th day of November, 2014.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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West Palm Beach, FL 33401  
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Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
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Konopka Thomas & Weiss, P.A.  
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Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediateamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

---

**FIRST REQUEST TO PRODUCE  
TO DEFENDANT, LISA FRIEDSTEIN**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney and pursuant to Fla.R.Civ.P.  
1350, request that Defendant, LISA FRIEDSTEIN, produce the following documents for  
inspection and copying in accordance with the aforementioned rule:

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

### **Definitions**

1. The term "Jill" shall refer to Defendant, Jill Iantoni, individually, as Trustee f/b/o J.I. under the Simon I. Bernstein Trust dated September 13, 2012, and on behalf of her minor child, J.I.
2. The term "Lisa" shall refer to Defendant, Lisa Friedstein, individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust dated September 13, 2013, and on behalf of her minor child, C.F.
3. The term "Jeff" shall refer to Lisa's husband, Jeff Friedstein.
4. The term "Pam" shall refer to Defendant, Pamela Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated September 13, 2013.
5. The term "Ted" shall refer to Plaintiff, Ted Bernstein.
6. The term "Simon" shall refer to Simon Bernstein, Deceased.
7. The term "Shirley" shall refer to Shirley Bernstein, Deceased.
8. The term "Shirley's Trust" shall refer to the Shirley Bernstein Trust Agreement dated May 28, 2008, as amended.
9. The term "Simon's Trust" shall refer to the Simon L. Bernstein Trust dated September 13, 2012.

### **Document Requests**

1. All documents which indicate or evidence any financial support that Lisa received from either Simon or Shirley during the period from Lisa's high school graduation through September 30, 2012, including (without limitation) airline tickets or receipts, hotel receipts, cruise tickets or receipts, college tuition statements, and housing payments or rental receipts.
2. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Lisa during the period from Lisa's high school graduation through September 30, 2012.
3. All documents which constitute, refer or relate to any checks, business distributions, and/or corporate shares evidencing payments and/or transfers to Lisa from any

business owned in whole or in part by Simon.

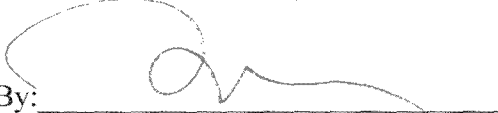
4. All documents which indicate or evidence any financial support that any member of Lisa's family (including Jeff, Max or C.F.) received from either Simon or Shirley.
5. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to any member of Lisa's family (including Jeff, Max or C.F.).
6. All documents which indicate or evidence any financial support that Shirley received from Lisa during Shirley's lifetime.
7. All documents which indicate or evidence any financial support that Simon received from Lisa during Simon's lifetime.
8. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Pam during the period from Pam's high school graduation through September 30, 2012.
9. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Ted during the period from Ted's high school graduation through September 30, 2012.
10. All documents which refer or relate to Simon's business interests from 1987 through 2012, including the name of the company owned (if any), the business conducted by the company, and the financial position of the company (including assets, liabilities, net worth and liquidity).
11. All documents refer or relate to Simon's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
12. All documents which refer or relate to Shirley's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
13. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by Simon, either individually or jointly with any other person.
14. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by any Trust established by Simon.

15. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by Shirley, either individually or jointly with any other person.
16. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by any Trust established by Shirley.
17. All document which constitute, refer or relate to Simon's exercise of his power of appointment in Shirley's Trust.
18. All documents which refer or relate to the validity, authenticity and/or enforceability of Simon's Trust.
19. All documents which refer or relate to the validity, authenticity and/or enforceability of Simon's Trust.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:

ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>th</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff.

vs.

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

Defendants.

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**FIRST REQUEST TO PRODUCE  
TO DEFENDANT, JILL IANTONI**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney and pursuant to  
Fla.R.Civ.P. 1350, request that Defendant, JILL IANTONI, produce the following documents for  
inspection and copying in accordance with the aforementioned rule:

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*



### **Definitions**

1. The term "Jill" shall refer to Defendant, Jill Iantoni, individually, as Trustee f/b/o J.I. under the Simon I. Bernstein Trust dated September 13, 2012, and on behalf of her minor child, J.I.
2. The term "Lisa" shall refer to Defendant, Lisa Friedstein, individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust dated September 13, 2013, and on behalf of her minor child, C.F.
3. The term "Jeff" shall refer to Lisa's husband, Jeff Friedstein.
4. The term "Pam" shall refer to Defendant, Pamela Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated September 13, 2013.
5. The term "Ted" shall refer to Plaintiff, Ted Bernstein.
6. The term "Simon" shall refer to Simon Bernstein, Deceased.
7. The term "Shirley" shall refer to Shirley Bernstein, Deceased.
8. The term "Shirley's Trust" shall refer to the Shirley Bernstein Trust Agreement dated May 28, 2008, as amended.
9. The term "Simon's Trust" shall refer to the Simon L. Bernstein Trust dated September 13, 2012.

### **Document Requests**

1. All documents which indicate or evidence any financial support that Jill received from either Simon or Shirley during the period from Jill's high school graduation through September 30, 2012, including (without limitation) airline tickets or receipts, hotel receipts, cruise tickets or receipts, college tuition statements, and housing payments or rental receipts.
2. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Jill during the period from Jill's high school graduation through September 30, 2012.
3. All documents which constitute, refer or relate to any checks, business

distributions, and/or corporate shares evidencing payments and/or transfers to Jill from any business owned in whole or in part by Simon.

4. All documents which indicate or evidence any financial support that any member of Jill's family (including J.I.) received from either Simon or Shirley.
5. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to any member of Jill's family (including J.I.).
6. All documents which indicate or evidence any financial support that Shirley received from Jill during Shirley's lifetime.
7. All documents which indicate or evidence any financial support that Simon received from Jill during Simon's lifetime.
8. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Pam during the period from Pam's high school graduation through September 30, 2012.
9. All documents which indicate or evidence any gifts or other transfers of assets from either Simon or Shirley to Ted during the period from Ted's high school graduation through September 30, 2012.
10. All documents which refer or relate to Simon's business interests from 1987 through 2012, including the name of the company owned (if any), the business conducted by the company, and the financial position of the company (including assets, liabilities, net worth and liquidity).
11. All documents refer or relate to Simon's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
12. All documents which refer or relate to Shirley's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
13. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by Simon, either individually or jointly with any other person.
14. All documents which indicate or evidence any assets, whether real or personal,

tangible or intangible, owned by any Trust established by Simon.

15. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by Shirley, either individually or jointly with any other person.
16. All documents which indicate or evidence any assets, whether real or personal, tangible or intangible, owned by any Trust established by Shirley.
17. All document which constitute, refer or relate to Simon's exercise of his power of appointment in Shirley's Trust.
18. All documents which refer or relate to the validity, authenticity and/or enforceability of Simon's Trust.
19. All documents which refer or relate to the validity, authenticity and/or enforceability of Simon's Trust.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:

ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>TH</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

---

**NOTICE OF SERVICE OF FIRST SET OF  
INTERROGATORIES TO DEFENDANT, JILL IANTONI**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney, file this notice that they  
have served their First Set of Interrogatories to Defendant, JILL IANTONI, on November 25,  
2014, to be answered in writing, under oath, within the time set forth in Fla.R.Civ.P. 1.340.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:

ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>TH</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

---

**FIRST SET OF INTERROGATORIES  
TO DEFENDANT, JILL IANTONI**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney and pursuant to  
Fla.R.Civ.P. 1340, propound the following interrogatories to be answered by Defendant, JILL  
IANTONI, in writing, under oath, within the time set forth in the aforementioned rule.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:  
ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arosc@pm-law.com](mailto:arosc@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>TH</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

### **Definitions**

1. The term “Jill” or “you” shall refer to Defendant, Jill Iantoni, individually, as Trustee f/b/o J.I. under the Simon I. Bernstein Trust dated September 13, 2012, and on behalf of her minor child, J.I.
2. The term “Lisa” shall refer to Defendant, Lisa Friedstein, individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust dated September 13, 2013, and on behalf of her minor child, C.F.
3. The term “Jeff” shall refer to Lisa’s husband, Jeff Friedstein.
4. The term “Pam” shall refer to Defendant, Pamela Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated September 13, 2013.
5. The term “Ted” shall refer to Plaintiff, Ted Bernstein.
6. The term “Simon” shall refer to Simon Bernstein, Deceased.
7. The term “Shirley” shall refer to Shirley Bernstein, Deceased.
8. The term “Shirley’s Trust” shall refer to the Shirley Bernstein Trust Agreement dated May 28, 2008, as amended.
9. The term “Simon’s Trust” shall refer to the Simon L. Bernstein Trust dated September 13, 2012.



### **Interrogatories**

1. State the name and address of every person answering these interrogatories, and identify every person who assisted in the preparation of their responses, including persons who furnished information necessary to a particular response.
  
2. Provide a year-by-year itemization of all financial support that Jill received from either Simon or Shirley during the period from Jill's high school graduation through September 30, 2012, including (without limitation) airline tickets, vacations, hotels, cruises, college tuition, housing payments, and/or jobs with business owned in whole or in part by Simon.
  
3. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Jill during the period from Jill's high school graduation through September 30, 2012.
  
4. Describe in detail all checks, business distributions, and/or corporate shares evidencing payments and/or transfers to Jill from any business owned in whole or in part by Simon.

5. Provide a year-by-year itemization of all financial support that any member of Jill's family (including J.I.) received from either Simon or Shirley.
  
  
  
  
  
  
  
  
  
  
6. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to any member of Jill's family (including J.I.).
  
  
  
  
  
  
  
  
  
  
7. Provide a year-by-year itemization of all financial support that Shirley received from Jill during Shirley's lifetime.
  
  
  
  
  
  
  
  
  
  
8. Provide a year-by-year itemization of all financial support that Simon received from Jill during Simon's lifetime.

9. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Pam during the period from Pam's high school graduation through September 30, 2012.
  
10. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Ted during the period from Ted's high school graduation through September 30, 2012.
  
11. Describe in detail Simon's business interests from 1987 through 2012, including the name of the company owned (if any), the business conducted by the company, and the financial position of the company (including assets, liabilities, net worth and liquidity).
  
12. Describe in detail Simon's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.

13. Describe in detail Shirley's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
14. Describe in detail all assets, whether real or personal, tangible or intangible, owned by Simon, either individually or jointly with any other person.
15. Describe in detail all assets, whether real or personal, tangible or intangible, owned by any Trust established by Simon.
16. Describe in detail all assets, whether real or personal, tangible or intangible, owned by Shirley, either individually or jointly with any other person.

17. Describe in detail all assets, whether real or personal, tangible or intangible, owned by any Trust established by Shirley.
  
  
  
  
  
  
  
  
  
  
18. State whether you agree that Shirley's Trust granted to Simon a limited or special power to appoint trust assets to or for the benefit of Shirley's lineal descendants and their spouses; however, if you do not agree, explain why you do not agree.
  
  
  
  
  
  
  
  
  
  
19. State whether you agree that Simon validly exercised his power of appointment in Shirley's Trust; however, if you do not agree, explain why you do not agree.
  
  
  
  
  
  
  
  
  
  
20. State whether you agree that Simon, through the special power of appointment in Shirley's Trust, 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 each such grandchild under Simon's Trust; however, if you do not agree, explain why you do not agree.

21. State whether you agree that Simon's "then living grandchildren" are all among the class of permitted appointees as defined in Shirley's Trust to be among Shirley's "lineal descendants and their spouses;" however, if you do not agree, explain why you do not agree.
  
22. State whether you agree that, as a result of Simon's exercise of his power of appointment in Shirley's Trust, neither Jill, Lisa, Ted nor Pam are to receive any portion of the assets in Shirley's Trust; however, if you do not agree, explain why you do not agree.
  
23. State whether you agree that, as a result of Simon's exercise of his power of appointment in Shirley's Trust, the assets in Shirley's Trust are to be distributed in equal shares to Simon's ten (10) living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust; however, if you do not agree, explain why you do not agree.
  
24. State whether you agree that Molly Simon, Alexandra Bernstein, Eric Bernstein and Michael Bernstein are to be included among Simon's living grandchildren in connection with Simon's exercise of his power of appointment in Shirley's Trust; however, if you do not agree, explain why you do not agree.

25. State whether you agree that Shirley's Trust is a valid, authentic and enforceable testamentary document; however, if you do not agree, explain why you do not agree.

26. State whether you agree that Simon's Trust is a valid, authentic and enforceable testamentary document; however, if you do not agree, explain why you do not agree.

\_\_\_\_\_  
 JILL IANTONI

STATE OF \_\_\_\_\_ )  
 ) ss:  
 COUNTY OF \_\_\_\_\_ )

The foregoing was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by JILL IANTONI, who is personally known to me or who has produced \_\_\_\_\_ as identification and who, after being duly sworn, deposes and says that he/she has read the foregoing answers to interrogatories and states the same to be true and correct to the best of his/her knowledge and belief.

\_\_\_\_\_  
 Notary Public  
 Print Name: \_\_\_\_\_  
 My Commission Expires: \_\_\_\_\_

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

---

**NOTICE OF SERVICE OF FIRST SET OF  
INTERROGATORIES TO DEFENDANT, LISA FRIEDSTEIN**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney, file this notice that they  
have served their First Set of Interrogatories to Defendant, LISA FRIEDSTEIN, on November  
25, 2014, to be answered in writing, under oath, within the time set forth in Fla.R.Civ.P. 1.340.


\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*



I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:

ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>TH</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By:   
\_\_\_\_\_

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO.: 502014CP003698XXXXSB

Plaintiff,

vs.

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

Defendants.

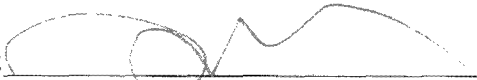
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**FIRST SET OF INTERROGATORIES  
TO DEFENDANT, LISA FRIEDSTEIN**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney and pursuant to  
Fla.R.Civ.P. 1340, propound the following interrogatories to be answered by Defendant, LISA  
FRIEDSTEIN, in writing, under oath, within the time set forth in the aforementioned rule.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to:  
ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401  
([arose@pm-law.com](mailto:arose@pm-law.com)); ELIOT BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33434  
([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)); PAMELA SIMON, 303 East Wacker Drive, Suite 2725, Chicago, Illinois  
60601 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); LISA FRIEDSTEIN ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); and JILL  
IANTONI ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)), this 25<sup>TH</sup> day of November, 2014.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
Telephone: (561) 833-0866  
Facsimile: (561) 833-0867  
E-Mail: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
Florida Bar #: 993727

### **Definitions**

1. The term “Jill” shall refer to Defendant, Jill Iantoni, individually, as Trustee f/b/o J.I. under the Simon I. Bernstein Trust dated September 13, 2012, and on behalf of her minor child, J.I.
2. The term “Lisa” or “you” shall refer to Defendant, Lisa Friedstein, individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust dated September 13, 2013, and on behalf of her minor child, C.F.
3. The term “Jeff” shall refer to Lisa’s husband, Jeff Friedstein.
4. The term “Pam” shall refer to Defendant, Pamela Simon, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust dated September 13, 2013.
5. The term “Ted” shall refer to Plaintiff, Ted Bernstein.
6. The term “Simon” shall refer to Simon Bernstein, Deceased.
7. The term “Shirley” shall refer to Shirley Bernstein, Deceased.
8. The term “Shirley’s Trust” shall refer to the Shirley Bernstein Trust Agreement dated May 28, 2008, as amended.
9. The term “Simon’s Trust” shall refer to the Simon L. Bernstein Trust dated September 13, 2012.

### **Interrogatories**

1. State the name and address of every person answering these interrogatories, and identify every person who assisted in the preparation of their responses, including persons who furnished information necessary to a particular response.
  
2. Provide a year-by-year itemization of all financial support that Lisa received from either Simon or Shirley during the period from Lisa's high school graduation through September 30, 2012, including (without limitation) airline tickets, vacations, hotels, cruises, college tuition, housing payments, and/or jobs with business owned in whole or in part by Simon.
  
3. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Lisa during the period from Lisa's high school graduation through September 30, 2012.
  
4. Describe in detail all checks, business distributions, and/or corporate shares evidencing payments and/or transfers to Lisa from any business owned in whole or in part by Simon.

5. Provide a year-by-year itemization of all financial support that any member of Lisa's family (including Jeff, Max and C.F.) received from either Simon or Shirley.
  
6. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to any member of Lisa's family (including Jeff, Max and C.F.).
  
7. Provide a year-by-year itemization of all financial support that Shirley received from Lisa during Shirley's lifetime.
  
8. Provide a year-by-year itemization of all financial support that Simon received from Lisa during Simon's lifetime.

9. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Pam during the period from Pam's high school graduation through September 30, 2012.
  
10. Describe in detail all gifts or other transfers of assets from either Simon or Shirley to Ted during the period from Ted's high school graduation through September 30, 2012.
  
11. Describe in detail Simon's business interests from 1987 through 2012, including the name of the company owned (if any), the business conducted by the company, and the financial position of the company (including assets, liabilities, net worth and liquidity).
  
12. Describe in detail Simon's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.

13. Describe in detail Shirley's financial position each year from 1987 through 2010, including assets, liabilities, investments, liquid assets and net worth.
  
14. Describe in detail all assets, whether real or personal, tangible or intangible, owned by Simon, either individually or jointly with any other person.
  
15. Describe in detail all assets, whether real or personal, tangible or intangible, owned by any Trust established by Simon.
  
16. Describe in detail all assets, whether real or personal, tangible or intangible, owned by Shirley, either individually or jointly with any other person.



17. Describe in detail all assets, whether real or personal, tangible or intangible, owned by any Trust established by Shirley.
  
  
  
  
  
  
  
  
  
  
18. State whether you agree that Shirley's Trust granted to Simon a limited or special power to appoint trust assets to or for the benefit of Shirley's lineal descendants and their spouses; however, if you do not agree, explain why you do not agree.
  
  
  
  
  
  
  
  
  
  
19. State whether you agree that Simon validly exercised his power of appointment in Shirley's Trust; however, if you do not agree, explain why you do not agree.
  
  
  
  
  
  
  
  
  
  
20. State whether you agree that Simon, through the special power of appointment in Shirley's Trust, 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 each such grandchild under Simon's Trust; however, if you do not agree, explain why you do not agree.

21. State whether you agree that Simon's "then living grandchildren" are all among the class of permitted appointees as defined in Shirley's Trust to be among Shirley's "lineal descendants and their spouses;" however, if you do not agree, explain why you do not agree.
  
22. State whether you agree that, as a result of Simon's exercise of his power of appointment in Shirley's Trust, neither Jill, Lisa, Ted Bernstein nor Pam Simon are to receive any portion of the assets in Shirley's Trust; however, if you do not agree, explain why you do not agree.
  
23. State whether you agree that, as a result of Simon's exercise of his power of appointment in Shirley's Trust, the assets in Shirley's Trust are to be distributed in equal shares to Simon's ten (10) living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust; however, if you do not agree, explain why you do not agree.
  
24. State whether you agree that Molly Simon, Alexandra Bernstein, Eric Bernstein and Michael Bernstein are to be included among Simon's living grandchildren in connection with Simon's exercise of his power of appointment in Shirley's Trust; however, if you do not agree, explain why you do not agree.

25. State whether you agree that Shirley’s Trust is a valid, authentic and enforceable testamentary document; however, if you do not agree, explain why you do not agree.
26. State whether you agree that Simon’s Trust is a valid, authentic and enforceable testamentary document; however, if you do not agree, explain why you do not agree.

\_\_\_\_\_  
LISA FRIEDSTEIN

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing was sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by LISA FRIEDSTEIN, who is personally known to me or who has produced \_\_\_\_\_ as identification and who, after being duly sworn, deposes and says that he/she has read the foregoing answers to interrogatories and states the same to be true and correct to the best of his/her knowledge and belief.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

**PLAINTIFF'S NOTICE OF FILING AFFIDAVIT OF NONMILITARY SERVICE  
IN SUPPORT OF MOTION FOR DEFAULT**

Plaintiff, Ted S. Bernstein (the "Trustee"), gives notice of filing the attached Affidavit of Nonmilitary Service in support of his Motion for Default against Pam Simon; Lisa Friedstein individually and as trustee; Max Friedstein; and Jill Iantoni, individually and as trustee served November 24, 2014.

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 26th day of November, 2014.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
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West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_/

**PLAINTIFF'S AFFIDAVIT OF NONMILITARY SERVICE**

Plaintiff, Ted S. Bernstein, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, is the Plaintiff in this case. To support the application for a default, I swear or affirm that the following information is true:

1. I know of my own personal knowledge that none of the following Defendants against whom a default is sought is on active duty in the armed services of the United States:

(i) Pamela B. Simon, Individually, and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12;

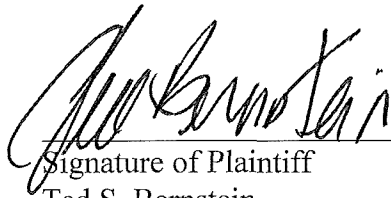
(ii) Lisa Friedstein, Individually, and as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.;

(iii) Max Friedstein, individually; and

(iv) Jill Iatoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: November ~~24~~, 2014

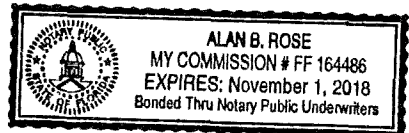


Signature of Plaintiff  
Ted S. Bernstein  
c/o Alan B. Rose, Esq.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 355-6991 Telephone  
(561) 655-5537 Facsimile

STATE OF FLORIDA                    )  
  )  
COUNTY OF PALM BEACH        )

Sworn to or affirmed and signed before me on November ~~24~~<sup>25</sup>, 2014, by Ted S. Bernstein.

\_\_\_\_\_  
NOTARY PUBLIC or DEPUTY CLERK



[Print, type, or stamp commissioned name of notary or clerk.]

- Personally known
- Produced identification
- Type of identification produced \_\_\_\_\_



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

2014 DEC -3 PM 2:57

**ORDER ENTERING DEFAULT AGAINST PAMELA B. SIMON,  
LISA FRIEDSTEIN, MAX FRIEDSTEIN, AND JILL IANTONI**

THIS CAUSE came before the Court upon the Plaintiff's Motion for Entry of Default Against certain defendants. The Court, having reviewed the Motion and the record, having heard argument of counsel, and being otherwise fully advised in the premises, hereby ORDERS and ADJUDGES:

1. Default is entered against **Pamela B. Simon**, Individually, and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; **Lisa Friedstein**, Individually, and as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf

of her minor child, C.F.; **Max Friedstein**; and **Jill Iatoni**, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.

2. The Court enters default because none of the above Defendants have timely answered or responded to the Complain filed in this case.

3. The Court finds that each of the Defendants has either been properly served or has waived service of process. Moreover, the Court finds that each Defendant was given notice of the motion and notice of the hearing.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 3 day of December, 2014.



---

Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@john@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
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Pamela Beth Simon  
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Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, December 5, 2014

Page 1

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK \*\*\*

Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN [REDACTED] TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

*I*

**PETITION TO REMOVE THEODORE STUART BERNSTEIN  
AS ALLEGED SUCCESSOR TRUSTEE**

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Counter Plaintiff"), beneficiary of the Shirley Bernstein Trust Agreement, dated May 20, 2008 ("Exhibit A") and then as **FRAUDULENTLY AMENDED** on an unknown date<sup>1</sup> ("Exhibit B") and then again

<sup>1</sup> "Exhibit B" attached hereto is an alleged First Amendment to the Shirley Trust. The Court should note the lack of a dated on the first page. That the alleged Witness Attorney at Law Robert L. Spallina, Esq. (while representing Ted

**FRAUDULENTLY AMENDED** on November 08, 2008<sup>2</sup> ("Exhibit C") (Exhibits A, B and C together herein the "Shirley Trust" or "Trust") and Eliot Ivan Bernstein as Legal Guardian of his three minor children and pursuant to §736.0706, Fla. Stat. (2013) and any other applicable statutes, files this Petition To Remove Theodore Stuart Bernstein as Successor Trustee, and in support, on information and belief, states as follows:

1. Counter Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a beneficiary of the 2008 Shirley Trust.
2. Counter Plaintiff Eliot Ivan Bernstein is legal guardian of his three minor children, Joshua Bernstein, Jacob Bernstein and Daniel Bernstein, alleged beneficiaries of the Shirley Trust.
3. Counter Defendant, Theodore Stuart Bernstein ("Ted" or "TED") is currently serving as the alleged Successor Trustee of the Shirley Trust and is a resident of Palm Beach County.

**Legal Standard for Removal of Trustee**

4. When removal of a trustee is at issue, §736.0706, Fla. Stat. (2014) governs:

**736.0706. Removal of trustee**

(2)The court may remove a trustee if:

- (a) The trustee has committed a serious breach of trust;
- (b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (c) Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
- (d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

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as alleged Successor Trustee) has admitted to Fraudulently Altering Shirley Trust documents to Palm Beach County Sheriff Investigators. The alleged Notary, Kimberly Moran, has been arrested and admitted to forgery and fraudulent notarizations of estate documents in these matters.

"<sup>2</sup> Exhibit C" attached hereto is an alleged SECOND First Amendment to the Shirley Trust. The Court should note that the alleged Witness Attorney at Law Robert L. Spallina, Esq. (while representing Ted as alleged Successor Trustee) has admitted to Fraudulently Altering this SECOND First Amendment. The fraudulent alteration inserted language to attempt to insert Ted's family into the Shirley Trust for a one third interest, where without this fraudulent language Ted's family receives no interest under the Shirley Trust, as Ted and his lineal descendants were considered predeceased in the alleged dispositive documents for all purposes of dispositions made thereunder.

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED SUCCESSOR TRUSTEE

Friday, December 5, 2014

Page 3

**001038**

5. TED's removal is warranted by Subsections (2) (a), (c) and/or (d) of §736.0706, Fla. Stat. (2014).
6. The previous Trustee of the 2008 Shirley Trust was Simon L. Bernstein.
7. By a letter dated January 14, 2014 addressed to the five children of Shirley Bernstein, as opposed to the beneficiaries of the Shirley Trust, only three of the five children of Shirley (Eliot, Lisa Friedstein and Jill Iantoni), the attorneys at law who were representing TED as counsel at the law firm Tescher & Spallina, P.A., both Donald R. Tescher, Esq. ("TESCHER") and Robert L. Spallina ("SPALLINA"), resigned in the Estates and Trusts of Shirley Bernstein ("Shirley") and Simon L. Bernstein ("Simon").
8. Their resignations and removal came due to their direct involvement in proven fraud on the court and fraud on the beneficiaries that directly benefited their legal client, business associate and friend TED, to the detriment of other beneficiaries.
9. The law firm of Tescher & Spallina, P.A. was representing Ted as alleged Successor Trustee of the Shirley Trust and Personal Representative of Shirley's Estate, while simultaneously the partners SPALLINA and TESCHER were acting as fiduciaries of the Estate and Trust of Simon as alleged Personal Representatives and Successor Trustees and then representing themselves as counsel for their role as fiduciaries.
10. That TESCHER and SPALLINA, after their law firm was implicated and admissions made of fraud, fraud on the Court, illegal alteration of Shirley Trust documents and more resigned and then were removed from the proceedings by Your Honor, in all of the following capacities, including but not limited to,
  - i. Co-Trustees of Simon's 2012 trust,
  - ii. Co-Personal Representatives/Executors to the Simon Estate,
  - iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives of Simon's Estate and trusts,
  - iv. **Counsel to TED** as alleged Trustee of the Shirley Trust,
  - v. **Counsel to TED** as Personal Representative of the Shirley Estate,
  - vi. **Counsel to TED** as Alleged Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995,

- vii. **Alleged Trustee** of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated 1995, and,
- viii. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.

A copy of the resignation letter is attached hereto as Exhibit "D."<sup>3</sup>

- 11. That the frauds and other felony misconduct that has taken place in both the Estates and Trusts of both Simon and Shirley Bemstein committed by the Fiduciaries and their Attorneys at Law, all acting as Officers of this Court, are comingled between various bad faith acts committed across the Estates and Trusts of both Simon and Shirley. Therefore, the acts done by TED et al. in one instance should be sufficient for Ted's removal in any of the ongoing litigations where he is an alleged fiduciary.
- 12. TED's egregious acts of bad faith with unclean hands while acting as an alleged fiduciary in any of the ongoing litigations involving the Estates and Trusts of Simon that TED and his former and present counsel are implicated in are hereby included in these Shirley Trust matters as parole evidence and act as further cause for his removal in this particular Trust Construction lawsuit involving the Shirley Trust.
- 13. That TED should not have filed this pleading for a Trust Construction lawsuit involving the Shirley Trust as he is conflicted with the matters, has adverse interests to beneficiaries and is implicated in ongoing civil and criminal, state and federal, legal actions involving both the estates and trusts of Simon and Shirley Bernstein. Therefore, TED cannot argue the matters impartially as a fiduciary and must be removed.

**TED BERNSTEIN IS NOT ELIGIBLE TO SERVE AS SUCCESSOR TRUSTEE AS THE LANGUAGE OF THE TRUST DISQUALIFIES HIM TO SERVE AS SUCH**

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<sup>3</sup> The Court should note that Tescher and Spallina on their way out the door amidst admitted frauds committed by their firm, partners and employee and ongoing investigations of further fraudulent acts, attempted to secretly pass the Trusteeship of Simon's Trust to TED, their client who they committed the frauds to benefit. This highly unethical and possibly criminal successorship has left TED as an alleged Successor Trustee as discussed further herein.



14. That SPALLINA admitted to Palm Beach County Sheriff Investigators to altering a Shirley Trust document to defraud beneficiaries, which benefited TED'S family. This fraud gave TED an alleged 3/10<sup>th</sup> interest in the Shirley Trust, whereas without the fraud TED'S family would receive zero, as TED and his lineal descendants were considered PREDECEASED in the language of the Shirley Trust.

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... (emphasis added)**

15. That it is alleged that since TED was considered "for purposes of the dispositions... predeceased" that he was fraudulently inserted as a fiduciary into the Shirley Trust by TESCHER and SPALLINA, in order to illegally gain Dominion and Control of the Shirley Estate and Shirley Trust, constituting a further breach of trust through fraud to gain the fiducial role as Trustee for TED.

16. The alleged Shirley Trust was the basis used for TED to be appointed by the Court as Successor Personal Representative when the Court ReOpened the Estate of Shirley. The Court will recall that the estate was illegally closed due to a, fraud on the beneficiaries, document forgeries, fraudulent notarizations and submitted to this Court as part of an elaborate Fraud on the Court, due to the fact that Simon Bernstein closed the Estate while acting as Personal Representative,

WHILE LEGALLY DECEASED for months, leaving the estate technically abandoned after the fraudulent closure.

17. The Court reopened the Shirley Estate due to these proven criminal acts.
18. There was no proper successor chosen for Shirley's Estate after Simon passed away and for over a year there was none, until this Court appointed TED when reopening the Estate due to the illegal closing of the Estate of Shirley by the Fiduciaries and their counsel.
19. Beneficiaries have been denied repeated requests to inspect the original signed and executed Shirley and Simon Trusts and all Amendments, Codicil's, Addendums and Memorandums that were attached.
20. That TESCHER and SPALLINA did not turn over an original Shirley Trust or Simon Trust to Benjamin Brown, Esq. when Ordered to turn over their files upon their removal by this Court.
21. In light of the already proven fraud and forgeries committed with alleged dispositive documents by TED's former counsel, TESCHER and SPALLINA, in the Estate and Trusts of Shirley, the insertion of TED as a Successor Trustee and all other elements of the documents must be verified with forensic inspection of the originals for inspection for fraud, alteration and forgery.
22. That TESCHER has stated in deposition that Simon and Shirley's Estates and Trusts were done on May 20, 2008 together and were mirrored to each other.
23. That a recently turned over copy of the 2008 Simon Trust that had been suppressed for almost two years was turned over to beneficiaries by this Court's Order upon TESCHER and SPALLINA's removal and Order for production of all of their records to the Curator, Benjamin Brown, Esq. upon his succession, revealed that Simon's Successor Trustee in the trust he did with Shirley while both were alive was William Stansbury (the Creditor to the Simon Estate), NOT TED as is alleged in Shirley's trust and this does not "mirror" the alleged Shirley Trust.

24. TED is considered predeceased for purposes of dispositions in both Simon and Shirley's Trusts making this insertion of TED as Successor Trustee either an egregious construction error that contradicts other language and intent of the Trust or further parole evidence of fraud.
25. TED has failed to administer the trust prudently by considering the purposes, terms and distribution requirements of the trust and has violated Florida Statute 736.0804.
26. That whether this Court decides that TED was a suitable successor trustee at any time and was not maliciously and illegally inserted into the Shirley Trust, TED remains at this time not now qualified to be a successor trustee for all of the following additional reasons despite whether he is named or not, all making his removal mandatory at this time.

**TED BERNSTEIN, AS SUCCESSOR TRUSTEE, HAS FAILED TO FOLLOW FLORIDA STATUTE 736.0813 AND 736.08135 BY BREACHING HIS DUTY TO INFORM AND ACCOUNT**

27. The duty of a trustee to account has been codified in Florida Statute 736.0813:

**736.0813 Duty to inform and account.**---The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or **on change of the trustee. (emphasis supplied)**

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

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28. TED has provided NO accountings for the estate of Shirley and the Simon and Shirley Trusts since he has become the alleged Successor Trustee.
29. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute. 736.0105(2) (s).

**A. FAILURE TO ACCOUNT IN THE SIMON ESTATE AND TRUST**

30. Ted, currently acting as successor trustee in the Simon Trust has provided NO accountings despite repeated requests by beneficiaries and despite a change in Successor Trustee, when TED's former counsel and fiduciaries for the 2012 Simon Trust, TESCHER and SPALLINA resigned after admitting their law firm committed Fraud, Fraudulent Notarizations, Forged documents and more that all were in efforts to benefit their friend and client TED and his family.
31. Between TED and his former counsel there has been NO accounting for over two years in the Simon trust in violation of probate and trust, rules and statutes.
32. That TESCHER and SPALLINA were ordered by the Court to produce a final accounting upon their removal and that accounting has been challenged by multiple parties, including the former Curator Benjamin Brown, Esq., the current Successor Personal Representative Brian O'Connell, the Creditor William Stansbury, Eliot and others on virtually every single line. The objections have been stayed with the case and remain unheard.

**B. FAILURE TO ACCOUNT IN THE SHIRLEY ESTATE AND SHIRLEY BERNSTEIN TRUST**

33. Since TED was appointed Personal Representative in the Shirley Bernstein Estate after the Estate of Shirley was reopened by this Court due to Fraud and Fraud on the Court committed by TED's

counsel as PR, TESCHER and SPALLINA, NO statutorily required or required under the Shirley Trust accountings have been filed with the Court and/or provided beneficiaries.

34. Despite repeated requests and despite changes in fiduciaries when the Estate was reopened requiring accounting, none has been provided by Ted, in violation of probate and trust rules and statutes.
35. Since becoming the alleged Successor Trustee of Shirley's 2008 Shirley Bernstein Trust Agreement on September 13, 2012 Ted has failed to provide a full copy of Shirley's Trusts with all Schedules, Memorandums, Codicils, and Addendums as required by statute.
36. TED's failure to account leaves beneficiaries with no way to determine the Shirley Trust value.
37. A trustee cannot fulfill his duty to account by merely turning over to the beneficiaries the check register of the trust bank account, a list of checks, bank statements, copies of bills and receipts. It is the duty of the trustee to provide a proper and sufficient accounting. TED has failed to turn over to beneficiaries a register, list of checks, banks statements, copies of bills and receipts or any other verified accounting and financial information in the Estate and Trusts of Shirley.
38. TED's failure to account in the Shirley Estate, the Shirley trust and the Simon trust is cause alone for this Court to remove TED as a fiduciary of the Shirley Trust.

**TED BERNSTEIN, AS ALLEGED SUCCESSOR TRUSTEE, HAS FAILED TO KEEP ACCURATE RECORDS AND COMMITTED WASTE, FRAUD AND ABUSES OF TRUST AND ESTATE ASSETS**

39. TED as alleged successor trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust.
40. The Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

**736.0810 Record keeping and identification of trust property.**

- (1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.
- (2) A trustee shall keep trust property separate from the trustee's own property.
- (3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.  
(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

41. TESCHER and SPALLINA were ordered to turn over all their records and properties in their possession to the Curator, Benjamin Brown, Esq. No original signed and executed Trust for Simon and Shirley were turned over to him. TED does not possess the original signed and executed 2012 Simon Trust under which he alleges to operate as Successor Trustee.
42. At this time no original signed and legally executed originals exist of the 2012 Simon Trust.
43. The former fiduciaries of the Trust, TESCHER and SPALLINA, upon termination as Co-Trustees, have produced no original dispositive documents to the former Curator, Benjamin Brown, Esq., despite the Court's Order to turn over all records and properties in their possession to the former Curator.
44. The 2012 Simon trust was also used to seize dominion and control of the Shirley Trust assets through an alleged power of appointment exercised, where the Simon trust is challenged in entirety and already has been found to be improperly notarized.
45. Once control was gained by TED and his attorneys, TESCHER and SPALLINA, they began to loot Simon and Shirley's Trusts and Estates through a series of fraudulent acts and they began recklessly billing outrageous and unaccounted for legal and fiduciary fees, while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents. To date, several trusts are suppressed, claimed missing, life insurance policies and life insurance trusts are missing and claimed lost, IRA beneficiaries are claimed missing and more involving the estate plans of Simon and Shirley.
46. The Court should note that Simon Bernstein was one of the nation's leading innovative insurance salesman with over a billion dollars of sold premiums and was integral of estate planning for some of the nation's wealthiest families and would not have left his estate or his beloved wife's

- estates and trusts in this disorder. It is alleged that these acts to suppress and deny documents are all attempts to convert assets to improper parties by TED and his counsel.
47. Legal and fiduciary fees have run rampant, with often 6-7 attorneys attending hearings and all of this cost is a result of TED and his former counsel SPALLINA and TESCHER'S and others involvement in fraud and other civil and criminal misconduct.
48. Real estate was sold at fire sale prices and distributions were made to knowingly improper parties by TED, against the advice of SPALLINA and against the express wishes of beneficiaries and their counsel.
49. Bank and other accounts were discovered being used post mortem at Legacy Bank and others. Bank accounts and investment accounts are alleged unaccounted for. IRA accounts are missing information regarding beneficiaries.
50. A trustee like TED who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets, documents and information of the trust, refuses to account for how the trust is being administered, and who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiaries and should be removed.
51. TED has failed to administer the Shirley Trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries in violation of Florida Statute 736.0801.

**TED BERNSTEIN SHOULD BE REMOVED AS SUCCESSOR TRUSTEE BASED ON  
CONFLICT OF INTEREST**

1) ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

52. At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust) as beneficiary.
53. Heritage claims however that the Primary Beneficiary was LaSalle National Trust, NA and the Contingent Beneficiary was the Simon Bernstein Trust NA.

54. SPALLINA also represented to Heritage that he was the Trustee of LaSalle National Trust NA, which he is not.
55. Shortly after SIMON'S death in 2012, SPALLINA submitted a claim form to Heritage on behalf of a legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995.
56. SPALLINA signed the claim form as the "acting Trustee" of the nonexistent trust in an effort to make the insurance proceeds payable to his law firm trust account to then distribute the proceeds outside the Simon Bernstein Estate and Simon Bernstein Trust to the detriment of the Estate and Trust beneficiaries.
57. SPALLINA did this for the benefit of four of five of the grown children of Simon Bernstein including TED, who as set forth above, was considered predeceased under Simon and Shirley's Estate and Trusts.
58. Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 exists, the insurance proceeds are payable to the Estate of Simon and then per the terms of Simon's Last Will and Testament they would pour over into Trust. In this instance both TED and his sister PAMELA would receive \$0.00.
59. After SPALLINA'S claim was denied by Heritage for failure to provide either a court order to pay the nonexistent trust or provide a legal trust instrument before a claim could be paid, TED then somehow replaced SPALLINA as the alleged "Trustee" of the lost trust and he filed an Illinois circuit court breach of contract lawsuit against Heritage for failure to pay the fraudulent claim submitted by SPALLINA. The suit was transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago under the tutelage of Hon. Judge Amy St. Eve.
60. After TESCHER and SPALLINA resigned and were removed as Personal Representatives for their firm's fraudulent acts, the Estate of Simon Bernstein filed a Motion to Intervene in the



Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds. The Curator, Ben Brown, retained counsel with the approval of this Court to intercede on behalf of the Estate and SPALLINA and TESCHER refused to assert the Estates interest as they were acting as TED's counsel as Trustee of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 simultaneously and in conflict and violation of attorney conduct codes and statutes.

61. The Plaintiffs in the Life Insurance Litigation include TED acting as "Trustee" of the nonexistent 1995 trust and TED, individually. TED and the other Plaintiffs filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").
62. The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually**, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN ... **(emphasis added)**

63. As Plaintiff, TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the legally nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 and not their children.
64. Despite the opposition of TED BERNSTEIN and the other Plaintiffs to the Intervention, the federal court granted the Estate's Motion to Intervene.
65. TED is now an opposing party of record to the Estate's claim in the Illinois life insurance litigation.
66. TED, individually and as the alleged trustee of the legally nonexistent 1995 Simon Bernstein Irrevocable Insurance Trust, has placed his personal interests above the interests of the Simon Trust beneficiaries, allegedly the grandchildren of SIMON, including TED's own children.

67. Through TED's opposition to the Estate's intervention in the Illinois life insurance litigation, an inherent conflict of interest is displayed where TED is blocking the interests of beneficiaries of the Simon Trust, including his own children, while simultaneously acting as Trustee of the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 whereby he personally claims to have an interest in the policy.
68. TED, as alleged Successor Trustee of the Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the Simon trust beneficiaries to administer the trust solely in their interests. His actions in the Illinois Insurance Litigation have violated that duty.
69. TED, acting as a fiduciary to the Trust, must support, or at the least not obstruct, the efforts of the Estate and the Simon Trust to recover the additional \$1.7 million in life insurance benefits. However, TED benefits directly from his obstruction and therefore has an obvious conflict of interest.
70. If the insurance proceeds are recovered for the Estate, this would dramatically increase the Estate assets that Estate and Trust beneficiaries receive and leave TED with nothing.
71. This attempt to redirect the insurance proceeds by TED and his former Counsel SPALLINA and TESCHER, through the lost insurance trust scheme to benefit TED have caused intentional interferences and delays with expectancies to the Simon Trust and Estate beneficiaries.
72. TED blocked the grandchildren, including minor children, from their interests being represented by counsel in the Illinois insurance litigation, leaving the grandchildren's interests wholly unprotected while trying to secure the benefits for himself personally.
73. The Federal court has now allowed intervention by the Estate of Simon Bernstein despite the best efforts to block the Estate's intervention by TED and his former Counsel SPALLINA and TESCHER.

74. The Court should note that SPALLINA and TESCHER had also blocked through Conflicts of Interest the Simon Estate and Simon Trust beneficiaries from asserting their interests in the policy while they were acting as PR and Trustees of Simon's Estate before their removal, acting instead to benefit their other client TED instead.
75. More importantly, TED and his former counsel's efforts in the Life Insurance Litigation are designed to keep the 1.7 million out of the estate and trust and to redirect the money to TED and his siblings (excluding Eliot).
76. As a consequence of the foregoing conflict of interest and adverse interests, TED is in breach of his fiduciary duty to the beneficiaries of the Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability. This warrants his removal under §736.0706(2)(a).
77. TED's continued interference is an attempt to redirect estate assets to himself personally and further damages the trust beneficiaries, as Ted's interference has caused unnecessary and costly legal fees to the Estate and Trust beneficiaries already with his counsel TESCHER, SPALLINA et al. who have committed acts of fraud to benefit TED as an alleged Fiduciary in Simon and Shirley's estates and trusts.

## **B. TED'S CONFLICT OF INTEREST WITH BENEFICIARIES**

### **i. TED'S ADVERSE INTEREST WITH ELIOT**

78. TED and his former and current counsel have adverse interests to Eliot and in fact are hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their wrongdoings and exposed them to potential criminal prosecution.
79. TED and his attorneys have conspired to use a strategy of force and aggression on Eliot, which was discovered in an email TED sent to Eliot describing their tactics and admitted on the record in a hearing before this Court by TED.

i. **TED'S CONFLICT OF INTEREST HAS CAUSED HARM TO MINOR CHILDREN BENEFICIARIES**

80. This Court ordered on August 20, 2014 and again on August 22, 2014, that tuition for Saint Andrews school, including past due balances, be paid for Eliot's three minor children for the 2014-2015 school year.
81. TED intentionally failed to make the Court-ordered payment, resulting in all three children being removed from school on the second day of school and forced them to attend new schools, causing major damages to the minor children both emotionally and scholastically. That these damages are now both short term and long term, affecting their futures dramatically.
82. Because of the conflicts of interests and adverse interests with the beneficiaries, TED has failed to maintain a duty of impartiality owed to the beneficiaries and should therefore be removed.
83. Attorney SPALLINA, representing TED as Personal Representative of the Estate of Shirley Bernstein, has admitted to fraudulently altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff investigators, which had the effect of benefitting TED'S family over others.
84. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as Personal Representative in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley while the Estate was closed and no successor to Simon was ever appointed.
85. Statements made by SPALLINA to Palm Beach Sheriff Investigators reveal that TED made distributions while acting as Trustee against the advice of his counsel that benefited his family to the detriment of beneficiaries in Shirley's Trust, again making him wholly unfit to continue as a fiduciary in these matters.

86. TED claimed to Palm Beach Sheriff Investigators that he had not read all of the trust documents that he was acting as a fiduciary under and only followed orders from his counsel TESCHER and SPALLINA.

87. TED's involvement with his former counsel TESCHER and SPALLINA in illegal and highly unethical activity all to benefit TED directly in the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Shirley and Simon Trusts or any other fiducial capacities involving the estates and trusts of Simon and Shirley.

88. TED has failed to act impartially as a fiduciary in both Simon and Shirley's estates and trusts as among beneficiaries, in violation of Florida Statute 736.0803 and therefore TED cannot be expected to act impartially in the future due to his multiple conflicts of interest, adverse interests with beneficiaries and implication in ongoing criminal investigations and civil litigations, in both state and federal, civil and criminal, actions.

**THIS COURT PREVIOUSLY REJECTED TED AS A FIDUCIARY IN THE ESTATE OF SIMON BERNSTEIN**

89. TED's Petition to be appointed Curator or Personal Representative in Simon's Estate was rejected on February 19th, 2014 by this Court. See, Order attached hereto as Exhibit "E." The same reasons the Court did not appoint TED in this fiducial capacity, including that it would shut down the proper and efficient administration of the Estate of Simon, are applicable in removing TED now in the Shirley Trust.

**WHEREFORE**, COUNTER Plaintiff requests that this Court;

- 1) Request an URGENT HEARING DATE be picked by the Court and prior to any other hearing request for any other reason filed by TED acting as alleged Trustee, to settle if TED should be allowed to participate as a qualified Trustee forward.
- 2) Removal of TED as the alleged successor trustee of the Shirley Trust,

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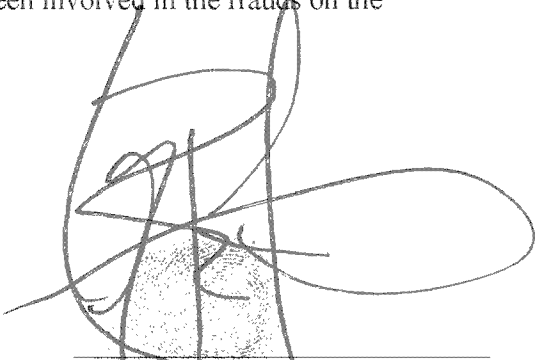
- 3) Appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
- 4) Require the filing of a Shirley Estate and Shirley Trust Accounting as none has been provided to beneficiaries for over FOUR years.
- 5) Award damages for failure to account or for improper accounting, including the removal of the trustee, reducing or denying compensation to the trustee, requiring the trustee to repay money to the trust or by restoring property to the trust by other means, or any other relief the court deems appropriate.
- 6) Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
- 7) Appoint a special fiduciary to take possession of the trust property and administer the trust;
- 8) Deny compensation to the trustee;
- 9) Subject to §736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds;
- 10) Force appropriate bonds be posted by all fiduciaries and attorneys at law who have already been proven and those alleged to have been involved in the frauds on the beneficiaries and the frauds on the Court, and
- 11) Order any other appropriate relief.

Dated: Friday, December 5, 2014

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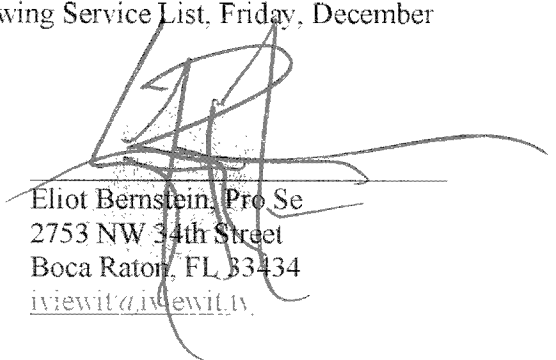
Eliot Bernstein, Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434

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[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Friday, December 5, 2014.



Eliot Bernstein, Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

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PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
 Friday, December 5, 2014



# **EXHIBIT A**

## **Shirley Bernstein Trust Agreement, dated May 20, 2008**

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
Friday, December 5, 2014

001057

**SHIRLEY BERNSTEIN**

**TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431  
(561) 998-7847  
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**TESCHER & SPALLINA, P.A.**

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SHIRLEY BERNSTEIN

TRUST AGREEMENT

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

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

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

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

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

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

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

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

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TESCHER & SPALLINA, P.A.

(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





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.

8. Spouse or 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

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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

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

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

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

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

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

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

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.

SB



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. Regs. §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

SB

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

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

-24-

TESCHER & SPALLINA, P.A.

SB

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.

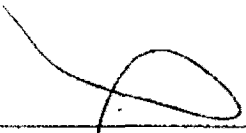
**G. Residence as Homestead.** Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal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

*[remainder of page intentionally left blank]*

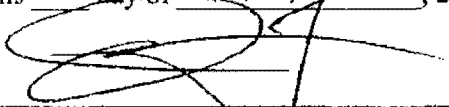
SB


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

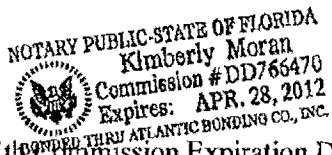
  
\_\_\_\_\_  
Print Name: TRACI KRATISH  
Address: 16068 GLENCREST AVENUE  
DELRON BEACH, FL 33446

STATE OF FLORIDA


SS.

COUNTY OF PALM BEACH

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



[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 \_\_\_\_\_

F:\WPDATA\dr\Bernstein, Shirley & Simon\2008 Bstate Planning\Shirley Bernstein Trust Agreement wpd [05 15 11 12 08]

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

ATTACHMENT

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

One Dollar (\$1.00) Cash

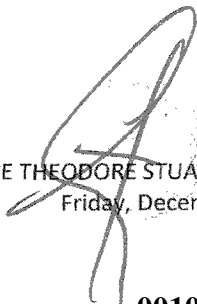
During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee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

  
\_\_\_\_\_  
SHIRLEY BERNSTEIN, Settlor and Trustee

# **EXHIBIT B**

## **First Amendment to Shirley Trust**

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
Friday, December 5, 2014

A handwritten signature in black ink, appearing to be 'T. Bernstein', is written over the text of the petition.

001087

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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]*

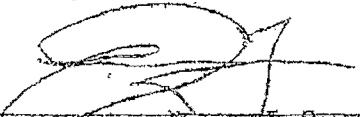



IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

  
SHIRLEY BERNSTEIN

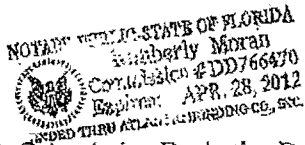
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

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

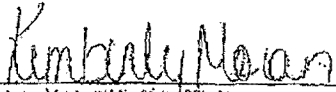
  
Print Name: Rachel Walker  
Address: 100 Plaza Real South  
apt 308  
Boca Raton, FL 33432

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

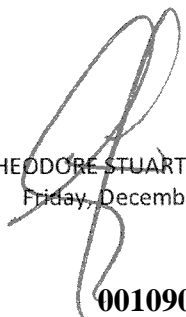
Personally Known  or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

NEWPDATAN\Bernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement.rpd (11/09/26 16:08)

# **EXHIBIT C**

## **Second First Amendment to Shirley Trust**

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
Friday, December 5, 2014

A handwritten signature in black ink, appearing to be 'T. S. Bernstein', is written over the text of the petition.

001090

**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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

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

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

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

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("**TED**") and PAMELA B. SIMON ("**PAM**"), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

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:

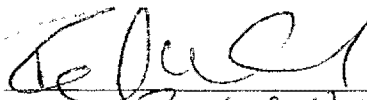


SHIRLEY BERNSTEIN

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



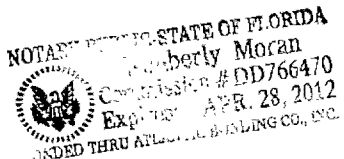
Print Name: Rachel Walker  
Address: 100 Piazza Real South  
Apt 308  
Boca Raton, FL 33432

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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



Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known  or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

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

# **EXHIBIT D**

## **Donald R. Tescher, Esq. and Robert L. Spallina, Esq. Resignation Letter**

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
Friday, December 5, 2014

001093

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

January 14, 2014

**VIA U.S. MAIL AND EMAIL**

Ted S. Bernstein  
880 Berkeley Street  
Boca Raton, FL 33487

Eliot Bernstein  
2753 NW 34<sup>th</sup> 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

Post Mortem change to Trust to alter beneficiaries of Estate now admitted by Spallina to Sheriff.

So whole time that they worked to distribute Shirley Trust Assets to ten grandchildren they knew it could not be done legally

Bernstein Family  
January 14, 2014  
Page 2

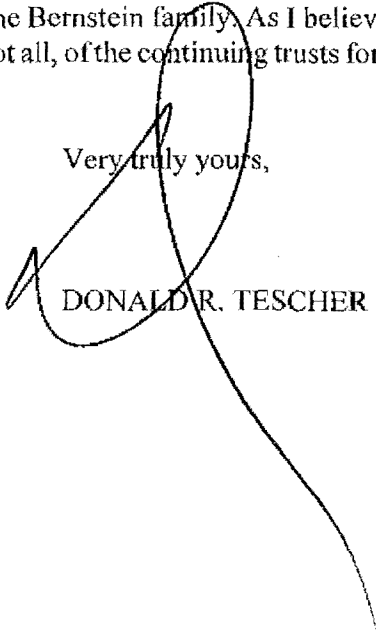
Spallina also admits to being Deed Court by Sheriff that as alleged the document was only after we  
was then in Court with the Deed Court by Sheriff that as alleged the document was only after we  
many other parties to take that document away to propose parties. Spallina and Tescher never  
order and I have to make the in my opinion that is to be for grandchildren and when necessary to  
show that that it was being a children they want and a total trust and a certain document to  
accommodate their fraudulent scheme.

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.

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.  
\_\_\_\_\_ /

**PETITION FOR RESIGNATION AND DISCHARGE**

Petitioners, Donald R. Tescher and Robert L. Spallina, as co-Personal Representatives of the Estate of Simon L. Bernstein, hereby file their Petition for Resignation and Discharge and state:

1. Donald R. Tescher and Robert L. Spallina are the named co-Personal Representatives under the Last Will and Testament of Simon L. Bernstein admitted to probate on October 2, 2012, with Letters of Administration issued on that same day.

2. As a result of irreconcilable differences with the children and grandchildren of Simon L. Bernstein, it is necessary for the Petitioners to resign, and the Petitioners hereby seek leave to resign pursuant to § 733.502 of the Florida Statutes. The family members have indicated that they are amenable to this voluntary resignation of the co-Personal Representatives.

3. The interests of the estate will not be jeopardized by the resignation of the co - Personal Representatives.



4. The Petitioners will co-operate with the duly appointed successor Personal Representative or court-appointed curator pending appointment of a successor Personal Representative pursuant to § 733.5061 of the Florida Statutes and will immediately make available all relevant documents and materials, subject to retaining such access as necessary to permit the Petitioners to fulfill their accounting obligations under § 733.5061 and § 733.508 of the Florida Statutes.

5. Upon rendering a final accounting and fulfilling their obligations and responsibilities outlined in § 733.502, § 733.5035, § 733.5036, § 733.508, and § 733.509 of the Florida statutes, as well as related Probate Rules, the Petitioners request that this Court discharge the Petitioners as co-Personal Representatives.

WHEREFORE, Petitions request this court issue an Order accepting their resignation as co-Personal Representatives and revoking their Letters of Administration pursuant to § 733.502 of the Florida Statutes, reserving any and all issues as to discharge pending the rendering of their final accounting and the fulfillment of such other responsibilities outlined herein pursuant to the Florida Statutes.

DATED this 22 day of January, 2014.

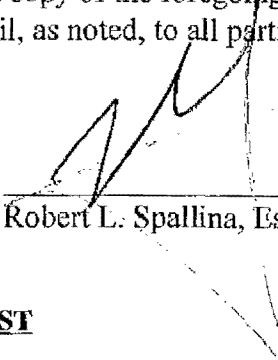
Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

By: \_\_\_\_\_  
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33433  
Telephone: 561-997-7008  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com

\_\_\_\_\_  
ROBERT L. SPALLINA, Petitioner  
\_\_\_\_\_  
DONALD R. TESCHER, Petitioner

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 08 day of January, 2014.



---

Robert L. Spallina, Esq.

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY,  
FL

IN RE: ESTATE OF           PROBATE DIVISION

SHIRLEY BERNSTEIN,   File No.502011CP000653XXXXSB

Deceased.

**MOTION TO WITHDRAW AS COUNSEL**

COME NOW, Robert L. Spallina, Esq., and Tescher & Spallina, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration, hereby file this Motion to Withdraw as Counsel and, in support thereof, state as follows:

1.       TESCHER & SPALLINA, P.A. was retained by Ted S. Bernstein as successor Personal Representative (hereinafter, the "Client") to represent him in these proceedings.
2.       ROBERT L. SPALLINA, ESQ. of TESCHER & SPALLINA, P.A. was the attorney responsible for rendering services to the Client.
3.       Irreconcilable differences have arisen which prevent the continued representation of the Client.
4.       The mailing address, e-mail address and telephone number of the Client are as follows:

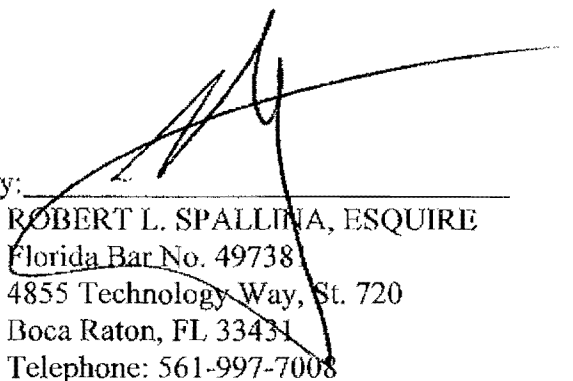
Mailing Address:	950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487
E-Mail Address:	tbernstein@lifeinsuranceconcepts.com
Telephone Number:	(561) 988-8994

WHEREFORE, TESCHER & SPALLINA, P.A. and ROBERT L. SPALLINA, ESQ., hereby respectfully request that this Honorable Court enter an Order consistent with the relief requested herein allowing TESCHER & SPALLINA, P.A. and ROBERT L. SPALLINA, ESQ.

to withdraw and any other relief this Honorable Court deems just, equitable and proper.

Signed on 22 Jan, 2014.

TESCHER & SPALLINA, P.A.

By:   
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 49738  
4855 Technology Way, St. 720  
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Telephone: 561-997-7008  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.



Robert L. Spallina, Esq.

**SERVICE LIST**

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

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

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: IV (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.  
\_\_\_\_\_

**CONSENT AND JOINDER**  
**TO MOTION TO WITHDRAW AS COUNSEL OF RECORD**

I, ROBERT L. SPALLINA, ESQ., as co-personal representative of the above-referenced estate, as counsel for the co-personal representative, Donald R. Tescher, and as a respondent, both personally and professionally, hereby consent to and join in the Motion to Withdraw as Counsel of Record filed by Mark R. Manceri, Esq. and Mark. R. Manceri, P.A., on January 10, 2014, which motion has been set for hearing on January 23, 2014, at 8:45 a.m.

DATED this 10 day of January, 2014.

TESCHER & SPALLINA, P.A.

By: \_\_\_\_\_

ROBERT L. SPALLINA, ESQUIRE

Florida Bar No. 497381

4855 Technology Way, St. 720

Boca Raton, FL 33431

Telephone: 561-997-7008

rspallina@tescherspallina.com

kmoran@tescherspallina.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 21<sup>st</sup> day of January, 2014.



Robert L. Spallina, Esq.

**SERVICE LIST**

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Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
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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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SHIRLEY BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502011CP000653XXXXSB

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.

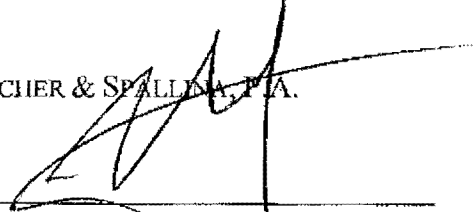
**CONSENT AND JOINDER**  
**TO MOTION TO WITHDRAW AS COUNSEL OF RECORD**

I, ROBERT L. SPALLINA, ESQ., as counsel for the successor personal representative, Ted S. Bernstein, and as a respondent, both personally and professionally, hereby consent to and join in the Motion to Withdraw as Counsel of Record filed by Mark R. Manceri, Esq. and Mark. R. Manceri, P.A., on January 10, 2014, which motion has been set for hearing on January 23, 2014, at 8:45 a.m.

DATED this 22 day of January, 2014.

TESCHER & SPALLINA, P.A.

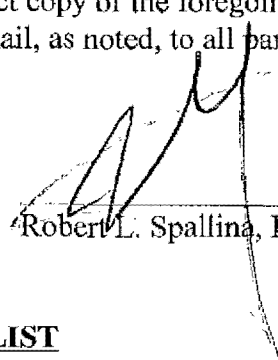
By:

  
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
Telephone: 561-997-7000  
rspallina@tescherspallina.com  
kmoran@tescherspallina.com



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. Mail, as noted, to all parties on the following Service List, this 28 day of January, 2014.

  
\_\_\_\_\_  
Robert L. Spallina, Esq.

**SERVICE LIST**

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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

**IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA**

**WILLIAM E. STANSBURY,**

**CIVIL DIVISION**

**Plaintiff,**

**CASE NO: 502012CA013933 MB AA**

**DIVISION: BLANC**

**vs.**

**TED S. BERNSTEIN; DONALD TESCHER  
and ROBERT SPALLINA, as Co-Personal  
Representatives of the ESTATE OF SIMON  
L. BERNSTEIN and as Co-Trustees of the  
SHIRLEY BERNSTEIN TRUST AGREEMENT  
dated May 20, 2008; LIC HOLDINGS, INC.;  
ARBITRAGE INTERNATIONAL  
MANAGEMENT, LLC, f/k/a ARBITRAGE  
INTERNATIONAL HOLDINGS, LLC;  
BERNSTEIN FAMILY REALTY, LLC,**

**Defendants.**

---

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1. MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein; and Bernstein Family Realty LLC (hereinafter the "Clients") to represent them in these proceedings.
2. MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.
3. Professional consideration(s) has arisen which prevent(s) the continued

representation of the Clients.

4. The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com); telephone number (561) 997-7008.

Bernstein Family Realty, LLC, c/o Janet Craig, CTFA, Senior Vice President & Compliance Office, Oppenheimer Trust Company, 18 Columbia Turnpike, Florham Park, NJ 07932, e-mail: [Janet.Craig@opco.com](mailto:Janet.Craig@opco.com); telephone number (973) 245-4635.

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives and  
Bernstein Family Realty, LLC  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: [mrmlaw@comcast.net](mailto:mrmlaw@comcast.net)  
[mrmlaw1@gmail.com](mailto:mrmlaw1@gmail.com)

By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.

---

Mark R. Manceri, Esq.

**SERVICE LIST**

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3615 West Boynton Beach Blvd.  
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Page, Mrachek, Fitzgerald, et.al.  
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4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Robert L. Spallina, Co-Personal Representative  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Bernstein Family Realty, LLC  
c/o Janet Craig, CTFA  
Senior Vice President & Compliance Office  
Oppenheimer Trust Company  
18 Columbia Turnpike  
Florham Park, NJ 07932

**IN THE CIRCUIT COURT FOR  
PALM BEACH COUNTY, FLORIDA**

**PROBATE DIVISION  
FILE NO.: 502012CP004391XXXXSB IY  
DIVISION: COLIN**

**IN RE:       ESTATE OF  
  
              SIMON BERNSTEIN  
  
              Deceased.**

---

**MOTION TO WITHDRAW AS COUNSEL OF RECORD**

COME NOW, Mark R. Manceri, Esq., and Mark R. Manceri, P.A., pursuant to Rule 2.505 of the Florida Rules of Judicial Administration and hereby file this their Motion to Withdraw as Counsel of Record and in support thereof state, as follows:

1.       MARK R. MANCERI, P.A. was retained by Donald R. Tescher and Robert L. Spallina, as Co-Personal Representatives of the Estate of Simon Bernstein (hereinafter the "Clients") to represent them in these proceedings.

2.       MARK R. MANCERI, ESQ. of MARK R. MANCERI, P.A. was the attorney responsible for rendering the legal services to the Clients.

3.       Professional consideration(s) has arisen which prevent(s) the continued representation of the Clients.

4.       The mailing and e-mail addresses and the telephone numbers of the Clients are as follows:

Donald R. Tescher, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: dtescher@tescherspallina.com; telephone number (561) 997-7008.

Robert L. Spallina, Co-Personal Representative, 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, e-mail: rspallina@tescherspallina.com; telephone number (561) 997-7008.

WHEREFORE, MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ., hereby request that this Honorable Court enter an Order consistent with the relief requested herein allowing MARK R. MANCERI, P.A. and MARK R. MANCERI, ESQ. to withdraw and any other relief this Honorable Court deems just, equitable and proper.

MARK R. MANCERI, P.A.  
Attorney for Donald R. Tescher and Robert L.  
Spallina, as Co-Personal Representatives  
2929 East Commercial Blvd., Suite 702  
Ft. Lauderdale, FL 33308  
Telephone: (954) 491-7099  
E-mail: mrm1aw@comcast.net  
mrm1aw1@gmail.com

By: 

Mark R. Manceri, Esq.  
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) and U.S. mail, as noted, to all parties on the following Service List, this 10<sup>th</sup> day of January, 2014.



\_\_\_\_\_  
Mark R. Manceri, Esq.

SERVICE LIST

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Theodore Stuart Bernstein (e-mail)  
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Lisa Sue Friedstein (U.S. mail)  
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Pamela Beth Simon (U.S. mail)  
950 North Michigan Avenue, Suite 2603  
Chicago, IL 60611

Jill Iantoni (U.S. mail)  
2101 Magnolia Lane  
Highland Park, IL 60035

# **EXHIBIT E**

## **February 19th, 2014 Court Order – Denying Ted Bernstein Petition to become Curator**

PETITION TO REMOVE THEODORE STUART BERNSTEIN AS SUCCESSOR TRUSTEE  
Friday, December 5, 2014



001112



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

IN RE:

Case No.: 50 2012 CP 004391 SB  
**JUDGE MARTIN COLIN**

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: 1Y


**ORDER ON MOTION FOR APPOINTMENT  
OF CURATOR OR ADMINISTRATOR AD LITEM**

THIS MATTER came before this Court on Tuesday, February 18, 2014, upon the Motion for Appointment of Curator or Administrator Ad Litem, filed by Ted S. Bernstein, and the Court, having heard argument of counsel, and considered the evidence, it is

ORDERED AND ADJUDGED that:

*DENIED, for the reasons  
stated on the record.*

DONE and ORDERED in Delray Beach, Palm Beach County, Florida, this 19 day of  
February, 2014.

  
\_\_\_\_\_  
CIRCUIT COURT JUDGE

*Copies to:*

Alan Rose, Esq., PAGE, MRACHEK 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401;

John J. Pankauski, Esq., PANKAUSKI LAW FIRM, 120 South Olive Avenue, Suite 701, West Palm Beach, FL 33401;

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 Boynton Beach Blvd., Boynton Beach, Florida 33435.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S  
PETITION TO REMOVE TED S. BERNSTEIN AS  
SUCCESSOR TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST,  
MOTION TO STRIKE AND MOTION TO STAY PROCEEDINGS**

Trustee, Ted S. Bernstein (the "Trustee"), moves to dismiss Eliot Bernstein's Petition to Remove Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust (the "Petition"), and states:

1. First, the Petition violates the Court's order as to the proper parties and fails to join numerous indispensable parties to any alleged removal action, namely all of the beneficiaries of the

\*\*\* FILED: PALM BEACH COUNTY, FL SHARON R BOCK, CLERK. \*\*\*

Trust. The Petition fails to name, and Petitioner has failed to serve, all of the beneficiaries and potential beneficiaries with the Petition.

2. Second, Eliot misinterprets the legal significance of the language dealing with a related or successor party. Even if such provision applied and was relevant to this inquiry, any limitations imposed in the appointment of a successor trustee when one is not named by the settlor are irrelevant in this case, because the settlor specifically identified, by name, Ted S. Bernstein to serve as the Successor Trustee upon the death of Simon Bernstein. Thus, the Petition fails to state a cause of action for removal of the Trustee because the Trust Agreement, if a valid, binding legal document, expressly names Ted S. Bernstein as the Successor Trustee.

In addition, the language of the Trust provides only that "for purposes of the dispositions made under this Trust, Ted S. Bernstein shall be deemed to have predeceased the settlor." That limitation is solely for the purposes of dispositions made under the Trust, and has no impact on the settlor's choice of Ted S. Bernstein to serve as Successor Trustee. Clearly, the settlor is deemed to be aware of both provisions of the Trust when she executed it, and therefore her express mentioning of and appointment of Ted S. Bernstein as Successor Trustee was made with knowledge of her instructions with regard to the disposition of the Trust.

3. Third, because the issues concerning the validity and enforceability of the Trust documents are paramount, the Court has ruled that those should be decided first in Count II of the Amended Complaint, which has been severed from the remaining issues in this case. Trustee requests that the Court stay this Complaint, at least until such time as the Court has ruled on whether the Trust documents are valid and genuine documents.

4. Fourth, the allegations made as to a conflict of interest fail to state a cause of action because they are legally insufficient. As noted below, there is no prohibition on the service of Ted S. Bernstein merely from the fact that Eliot disagrees with everything that he does. Personality conflicts alone are not sufficient grounds to remove a Trustee appointed by the settlor, and particularly when the alleged hostility is motivated solely by the fact that Eliot was disinherited by his parents.

5. Fifth, Eliot is not a beneficiary of the Trust – "for purposes of this Trust and the dispositions made hereunder . . . Eliot Bernstein . . . shall be deemed to have predeceased me." Eliot also is neither a beneficiary of Simon's Estate (everything is given to Simon's Trust); Shirley's Estate (everything given to Shirley's Trust); nor Shirley's Trust (Simon exercised his Power of Appointment to distribute equal shares to his grandchildren). Thus, for all intents and purposes, Eliot was disinherited entirely and also was not named in any fiduciary role in either estate or trust. Simply, he lacks individual standing. Pursuant to statute, only a "settlor, a cotrustee, or a beneficiary may request the court to remove a trustee." Fla. Stat. § 736.0706(1). Eliot is neither of these, which ends the analysis.

6. Sixth, Eliot is not qualified to act for his children because he admits there is a conflict between his position and theirs, as he may challenge the 2012 Will and Trust of Simon under which monies are left for grandchildren, and try to uphold (1) an earlier revoked will and (2) an earlier form of trust that has been fully amended and restated. Eliot is not a suitable representative for his children's interests based upon his stated conflict, as more fully explained in Oppenheimer's Motion to Appoint Guardian Ad Litem dated September 19, 2014, in Case No. 502014CP002815XXXXSB

(IY)(incorporated herein by reference), which case is separate and unrelated to these estate and trust matters, but involves some of the same players. Oppenheimer stated:

Courts are inclined to appoint a parent as a child's litigation representative *unless "it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent."* 1 Leg. Rts. Child. (Legal Rights of Children) Rev. 2d § 12:3 (2d ed. 2013), citing *Mistretta v. Mistretta*, 566 So. 2d 836, 837 (Fla. 5th DCA 1990)(other internal citations omitted). In this case, Eliot Bernstein has confirmed, by the allegations of his Counter-Complaint that he has interests which conflict (or certainly which may conflict) with those of the Minors. For instance, in the Counter-Complaint:

- Mr. Bernstein alleges that *beneficiary designations were changed from him to his children based upon fraudulent documents and frauds on this Court*. See Counter-Complaint, ¶ 253.
- Mr. Bernstein alleges that "approximately 1/3 of all assets [are] *either going to Eliot or his children or a combination of both depending on how this Court rules regarding the validity of the Wills and Trusts that have been challenged* and already found fraught with fraud, fraudulent notarizations, improper notarizations, forgeries and more." See Counter-Complaint, ¶ 186.
- Even though the Minors are clearly listed as the sole beneficiaries of the Grandchildren Trusts, Eliot Bernstein alleges that he himself is a beneficiary. Specifically, he alleges that "Simon and Shirley [Bernstein] set up [the Grandchildren Trusts and Bernstein Family Realty, LLC] while living, in order to fund all of their living expenses due to the fact that Eliot has had a bomb put in his car, death threats and is in the middle of a very intense RICO and ANTITRUST lawsuit where he and his family have been in grave danger for many years fighting corruption inside the very framework of the legal system." *He alleges that the Grandchildren Trusts were "set up by Simon and Shirley [Bernstein] for the benefit of Eliot, Candice and their children."* See Counter-Complaint, ¶¶ 109-110

7. Seventh, Eliot has not established a sufficient basis in law or fact to remove the Trustee as Successor Trustee of the Simon Trust. Such removal is governed by section 736.0706 Removal of trustee, which provides (the irrelevant/non-applicable parts are lined through):

736.0706 Removal of Trustee

(1) ~~The settlor, a cotrustee, or a beneficiary~~ may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative.

(2) The court may remove a trustee if:

(a) The trustee has committed a serious breach of trust;

~~(b) The lack of cooperation among cotrustees substantially impairs the administration of the trust;~~

(c) Due to the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

~~(d) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries,~~ the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

Removal of a trustee must be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the trust, not a personality issue by a beneficiary nor any potential mismanagement of the trust. *Parr v. Cushing*, 507 So. 2d 1227, 1228 (Fla. 5th DCA 1987)(reversing removal due to abuse of discretion); *In Re Estate of Murphy*, 336 So. 2d 697 (Fla. 4th DCA 1976)(minimal mismanagement by fiduciary insufficient to warrant removal).

Hostility and/or tension between a trustee and potential beneficiaries of the trust does not by itself constitute a ground for such removal. *Parr*, 507 So. 2d at 1228.

In *Parr*, the court held:

Here, there was no showing that appellants had not administered the trust in anything but an efficient manner. To warrant their removal, a showing of *actual* not *potential* mismanagement must be made. A proper balance is thereby achieved between a settlor's right to appoint the person(s) of his choice as trustee(s), with the court's interest of ensuring its proper and efficient administration. Conditioning appellants' continuation as trustees upon the approval of contingent beneficiaries demonstrates that the *only* basis for removal was friction among the contingent beneficiaries. Removal for this reason was an abuse of discretion. Accordingly, the final declaratory judgment is REVERSED.

*Id.*

The Fourth DCA in *In Re Estate of Murphy*, 336 So. 2d 697 (Fla. 4th DCA 1976), addressed similar issues of a beneficiary being unhappy with the fiduciary. The court rejected this, stating:

With regard to appellant's disenchantment with Mr. Pace as a co-executor, at first blush it might seem that if the sole beneficiary wants a change in personal representatives, no one may complain. But that conclusion does not necessarily follow. It must be remembered we are dealing here with an executor appointed by the decedent in his will, not an administrator appointed by the court. As the court pointed out in *In re Estate of Beichner*, 432 Pa. 150, 247 A.2d 779, 781 (1968):

"A testator has, as a property right, the privilege and power to place the management of his estate in a selected person as a condition of his bounty."

***The removal of a personal representative chosen by the deceased is a drastic action and should only be resorted to when the administration of the estate is endangered . . . .*** The mere fact that a certain hostility has arisen between a beneficiary and the executor absent some showing of wrongdoing on the part of the executor or other factors which will prejudice the administration does not warrant such drastic action as removal. . . . Our close examination of the

testimony in this case leads us to the conclusion that the trial court could well find that there was no showing that the administration would be prejudiced or endangered by Mr. Pace's continuing to act pursuant to his nomination by the decedent as a coexecutor. We must also keep in mind that the administration of this estate remains under the continuing jurisdiction of the court, and should reason arise for removal in the future the court may entertain another petition for removal.

*Id.* at 698-99.

"Potential conflict in and of itself is not necessarily improper. A trustee has wide discretion in the exercise of his power and a court will not interfere unless he abuses his discretion." *State of Del. Ex rel. Gebelein v. Belin*, 456 So. 2d 1237, 1241 (Fla. 1st DCA 1984).

Here, the major complaint against Ted S. Bernstein, as Successor PR of Shirley's Estate, and as Successor Trustee of the Shirley Trust and the Simon Trust, is that lawyers from the decedent's law firm engaged in misconduct and were forced to withdraw. These were the lawyers chosen by Simon to administer his Estate and his Trust; the misconduct occurred before Ted S. Bernstein was appointed by this Court to a role as Successor PR of Shirley's Estate; before Ted S. Bernstein was appointed as Successor Trustee of Simon's Trust; and to the extent Ted S. Bernstein was serving as Trustee of Shirley's Trust, he was unaware of and did not participate in such conduct, and has taken immediate steps to remedy the problem upon learning of it.

The Trustee is administering the trusts and estates properly, albeit that is difficult with the constant bombarding by Eliot, who complains about and challenges every action, and opposes the Court hearing the only matter which must be decided before additional distributions can be made, the Trust Construction Action to decide the scope of Simon's power of appointment.



The reasons advanced by Eliot for the removal of the Trustee, which are denied, will be shown to lack factual or legal merit, and, therefore, the Petitions all should be denied with prejudice.

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests this Court deny the Petition with prejudice.

### **MOTION TO STRIKE**

8. The Trustee moves to strike paragraph 89 on the grounds that it is irrelevant and impertinent material. The Court did not reject Ted Bernstein from any position in this case; the Court merely chose to appoint a neutral Personal Representative to serve under the terms of the Will of Simon Bernstein. The Court has never made any finding rejecting Ted or determining that he is not capable of serving in his fiduciary capacity. Therefore, paragraph 89 should be stricken.

9. The Trustee also moves to strike all references in the Complaint to alleged wrongdoing or misconduct by Robert Spallina, Esq., or any other lawyers prior to the time of the Trustee's appointment. These paragraphs (7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 23, 24, 30, 32, 47, 56, 57, 60, 83) are irrelevant and should be stricken.

10. Paragraphs 30-32 address an alleged "failure to account in the Simon Trust." These allegations are irrelevant with respect to whether this Trustee should be removed as Trustee of Shirley's Trust. Eliot also lacks standings to assert such issues or demand accountings in the Simon Trust matters. Thus, these paragraphs should be stricken.

11. The Trustee moves to strike all references in the Complaint to a privileged email which Eliot continues to use in violation of this Court's un-appealed order and Florida law. These paragraphs (78 and 79) contain legally privileged materials, are impertinent and irrelevant, and should be stricken.

12. The reference to John and Jane Doe 1 – 5000 in the case style should be stricken.

13. Finally, the Trustee joins in and adopts any and all other grounds for dismissal raised by Molly Simon, Alexandra Bernstein, Eric Bernstein and Michael Bernstein in their Motion to Dismiss in Case No.: 502014CA014637XXXXSBAD filed on December 29, 2014.

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests this Court dismiss the Complaint; or alternatively, strike certain allegations; award Trustee its costs and attorneys' fees, and further order that such be paid by or from any eventual distribution to any of the Petitioners; and grant such other relief as is just.

#### **MOTION TO STAY**

14. Trustee moves to stay the resolution of this Petition until such time as the Court has ruled on Count II of this action, consistent with this Court's prior rulings. The determination of the validity of the testamentary documents of Simon and Shirley Bernstein should be made first, to determine the settlor's wishes, which will avoid unnecessary or duplicative discovery and litigation over the removal of a trustee before the Court had decided if the Trustee was validly appointed.

WHEREFORE, Ted S. Bernstein moves to stay this Petition consistent with the relief specified above.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 30th day of December, 2014.

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Attorneys for Ted S. Bernstein

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

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children, and as natural guardian for M.F. and  
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Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Tuesday, January 13, 2015

**TIME:** 11:30 a.m.

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray  
Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S  
PETITION TO REMOVE TED S. BERNSTEIN AS SUCCESSOR  
TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO  
STRIKE AND MOTION TO STAY PROCEEDINGS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 8th day of January, 2015.

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Attorneys for Ted S. Bernstein

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

## SERVICE LIST

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (<a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediateamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tandè oubyen pale, rele 711.**



IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

Ted Bernstein, as trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

Alexandra Bernstein; Eric Bernstein;  
Michael Bernstein; Molly Simon;  
Pamela B. Simon, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; Elliot Bernstein, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
Jill Iantoni, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child J.I.; Max Friedstein;  
Lisa Friedstein, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

MOTION TO INTERVENE

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Personal Representative"), moves this Court for the entry of an order allowing him to intervene as a party defendant in the above-styled action, and states as follows:

1. There is currently pending in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, case styled Ted Bernstein, as trustee of the Shirley

Bernstein Trust Agreement dated May 20, 2008, as amended vs. Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, Elliot Bernstein, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child J.I., Max Friedstein, Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F. – Case number 502014CP003698XXXXSB (“Shirley Trust litigation”).

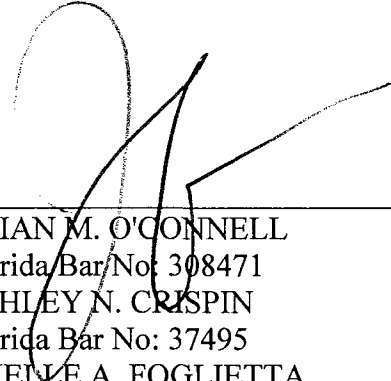
2. “Ted Bernstein, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended” (“Plaintiff” and “Shirley Trust,” respectively) filed an Amended Complaint in the Shirley Trust litigation against [and to] provid[e] notice to those interested in the Shirley Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein” (hereinafter referred to as “Amended Complaint”).

3. On July 24, 2014, Mr. O’Connell was appointed as successor personal representative of the Estate of Simon L. Bernstein, and as such, is interested as described above. A copy of the Successor Letters of Administration is attached hereto as Exhibit “A.”

4. In addition, the Amended Complaint seeks, among other things, “a declaration and other relief or intervention by this Court as to ..... whether and to what extent Simon L. Bernstein’s exercise of his limited or special power of appointment pursuant to his will should be given effect,” and seeks a “declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein.”

5. Due to the relief sought in the Amended Complaint, Mr. O'Connell believes it is necessary and in the best interest of the Estate of Simon L. Bernstein for him to intervene as a party defendant in the Shirley Trust litigation.

WHEREFORE, BRIAN M. O'CONNELL, as Personal Representative of the Estate of SIMON L. BERNSTEIN, moves this Court to intervene in these proceedings as a party defendant and requests attorneys' fees and costs and any other relief deemed just or proper by this Court.



---

BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 37495  
JOIELE A. FOGLIETTA  
Florida Bar No: 94238  
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<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>	<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 and 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>		

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Tuesday, January 27, 2015

**TIME:** 3:00 p.m. - 5:00 p.m.

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray  
Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S  
PETITION TO REMOVE TED S. BERNSTEIN AS SUCCESSOR  
TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, MOTION TO  
STRIKE AND MOTION TO STAY PROCEEDINGS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 15th day of January, 2015.

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Attorneys for Ted S. Bernstein

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

## SERVICE LIST

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (<a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**



IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL  
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE DIVISION

Ted Bernstein, as trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

Alexandra Bernstein; Eric Bernstein;  
Michael Bernstein; Molly Simon;  
Pamela B. Simon, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; Elliot Bernstein, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
Jill Iantoni, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child J.I.; Max Friedstein;  
Lisa Friedstein, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

2015 JAN 29 PM 2:44  
SHARON R. LOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH FILED

ORDER ON MOTION TO INTERVENE

THIS CAUSE coming before the Court on Brian M. O'Connell's, as Successor Personal Representative of the Estate of Simon L. Bernstein, Motion to Intervene, the Court having heard argument of counsel, and being otherwise fully advised, it is thereupon

ORDERED AND ADJUDGED:

1. The Motion to Intervene is GRANTED and Brian M. O'Connell, as Successor Personal Representative of the Estate of Simon L. Bernstein, is hereby authorized to intervene as a party defendant in Case Number 502012CP4391XXXXSB.

DONE and ORDERED in Delray Beach, Florida on the 29 day of

Jan, 2015.



MARTIN H. COLIN, CIRCUIT JUDGE

Copies furnished to all on the Service List attached.

### SERVICE LIST

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<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>	<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>		

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

*I*

**MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA  
STATUTE 736.0813 AND 736.08135**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Plaintiff), individually and as a beneficiary of the “SHIRLEY BERNSTEIN TRUST” dated May 20, 2008, as amended” and ELIOT IVAN BERNSTEIN as Trustee of the “ELIOT BERNSTEIN FAMILY TRUST” dated

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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May 20, 2008", PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" and hereby files this "MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135" and in support thereof states, as follows:

1. It is alleged that Ted Bernstein began acting as the alleged Successor Trustee of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" on or about September 13, 2012 and this despite language in the alleged trust that specifically preclude Theodore from acting as Trustee, as he is considered predeceased for all purposes of disposition and distributions of the trust.
2. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(a), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact Ted has worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole for over two years.

Florida Statute 736.0813 **Duty to inform and account.**—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

736.0813 (1)(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

3. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(b), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the identity of the settlor(s), the right to request a copy of the trust instrument, the right to

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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accountings under this section and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact the fiduciaries have worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole.

Florida Statute 736.0813(1)(b)

Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

4. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(c), by failing to provide beneficiaries with a complete copy of the original 2008 trust instrument with all codicils, amendments, addendums, etc. despite repeated written and oral requests by beneficiaries. Further, inspection of the original 2008 trust document has been denied despite Tescher and Spallina admitting that their law firm ALTERED POST MORTEM a document in the Shirley Bernstein Trust and FORGED and FRAUDULENTLY NOTARIZED six documents for SIMON POST MORTEM to close Shirley's Estate, all as part of a larger fraud to illegally alter and change beneficiaries of the Simon and Shirley Trusts and convert assets to improper parties, including Ted, causing beneficiaries the need to verify the original documents and have them inspected as to their validity.

Florida Statute 736.0813(1)(c)

Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

5. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(d), by failing to provide beneficiaries upon acting as Trustee with a trust accounting as set forth

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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in s. 736.08135 from the date of last accounting, which there has been none since December 08, 2010 when the decedent died and since Ted became alleged Successor Trustee on September 13, 2012. No statutorily required accounting was done annually by the former Trustees or the current alleged Successor Trustee, Ted.

Florida Statute 736.0813(1)(d)

A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

6. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(e), by failing to provide beneficiaries with relevant information about the assets and liabilities of the trust and the particulars relating to administration and have refused repeated written and oral demands to comply with this section.

Florida Statute 736.0813(1)(e)

Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

7. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.08135(1) by failing to provide beneficiaries a reasonably understandable report from the date of last accounting, which there has been none done ever and from the date the trustees became accountable and thus there was no disclosure whatsoever of the assets and liabilities of the trust corpus.

736.08135 Trust accountings.—

(1) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).

8. Ted Bernstein have all violated Florida Statute 736.08135(2)(a)(b)(c)(d)(e)&(f) by failing to provide ANY timely and legally required accountings to the beneficiaries.

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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736.08135

- (2)(a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.
- (b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.
- (c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.
- (d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- (e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.
- (f) The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

9. That on September 13, 2012 Ted Bernstein began acting as the alleged Successor Trustee of the Shirley Trust, despite language in the trust that precludes him from acting as Trustee.

WHEREFORE, Eliot requests that this Court enter an order;

- i. To compel trust accounting under Florida Statute 736.0813 AND 736.08135 and within 10 days of the Court Order as enough time has passed since the death of the decedent (over two years) to demand an expedited accounting,
- ii. to on the Court's own initiative remove Ted Bernstein as alleged Successor Trustee for failing to follow Florida Trust Codes and Statutes,
- iii. for legal fees of Eliot Bernstein Pro Se,

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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iv. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, January 30, 2015

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of

the foregoing has been furnished by email to all parties on the following Service List Friday,

January 30, 2015.

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children

X

**SERVICE LIST**

<p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mehandler@mrachek-law.com">mehandler@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	<p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>
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MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A. 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 <a href="mailto:mrmlaw@comcast.net">mrmlaw@comcast.net</a> <a href="mailto:mrmlaw1@gmail.com">mrmlaw1@gmail.com</a></p>	<p>Irwin J. Block, Esq. The Law Office of Irwin J. Block PL 700 South Federal Highway Suite 200 Boca Raton, Florida 33432 <a href="mailto:ijb@jiblegal.com">ijb@jiblegal.com</a> <a href="mailto:martin@kolawyers.com">martin@kolawyers.com</a></p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a> Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a> <a href="mailto:lisa@friedsteins.com">lisa@friedsteins.com</a> Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>Kimberly Moran Teschler &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:kmoran@teschlerspallina.com">kmoran@teschlerspallina.com</a></p>	<p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 <a href="mailto:crubin@floridatrx.com">crubin@floridatrx.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:jviewit@jviewit.us">jviewit@jviewit.us</a></p>	<p>L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	
<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>			

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;

Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (I-5000),

Counter Defendants.

*I*

**ORDER GRANTING MOTION TO COMPEL TRUST ACCOUNTING UNDER  
FLORIDA STATUTE 736.0813 AND 736.08135**

**UPON CONSIDERATION OF THIS MATTER** for a MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135, it is hereby

**ORDERED AND ADJUDGED** that the MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135 is hereby

\_\_\_\_\_  
That an accounting shall be produced within 10 days of this ORDER,  
\_\_\_\_\_.

**DONE AND ORDERED** in Chambers, at Palm Beach County, Florida, on this  
\_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**HON. MARTIN COLIN**

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL  
CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE DIVISION

Ted Bernstein, as trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

Alexandra Bernstein; Eric Bernstein;  
Michael Bernstein; Molly Simon;  
Pamela B. Simon, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; Elliot Bernstein, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
Jill Iantoni, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child J.I.; Max Friedstein;  
Lisa Friedstein, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**A M E N D E D**  
**ORDER ON MOTION TO INTERVENE**


THIS CAUSE coming before the Court on Brian M. O'Connell's, as Successor Personal Representative of the Estate of Simon L. Bernstein, Motion to Intervene, the Court having heard argument of counsel, and being otherwise fully advised, it is thereupon

ORDERED AND ADJUDGED:

2015 FEB -5 AM 9:51  
SHARON R. DORR, CLERK  
PALM BEACH COUNTY  
SOUTH CITY BRANCH FILED

1. The Motion to Intervene is GRANTED and Brian M. O'Connell, as Successor Personal Representative of the Estate of Simon L. Bernstein, is hereby authorized to intervene as a party defendant in Case Number 502014CP003698XXXXSB.

DONE and ORDERED in Delray Beach, Florida on the 5 day of

, 2015.

  
MARTIN H. COLIN, CIRCUIT JUDGE

Copies furnished to all on the Service List attached



**SERVICE LIST**

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> Attorney for Ted S. Bernstein</p>	<p>John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a> Attorney for Molly Simon et al</p>	<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34<sup>th</sup> St. Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>
<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>	<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>		

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

PROBATE DIVISION

IN RE:

CASE NO. 502014CP003698XXXXSB

ESTATE OF SHIRLEY BERNSTEIN

\_\_\_\_\_ /

NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will call up for hearing the matters designated below before Honorable Judge Martin Colin at the Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray Beach, Florida 33444.

**Date:** April 2, 2015

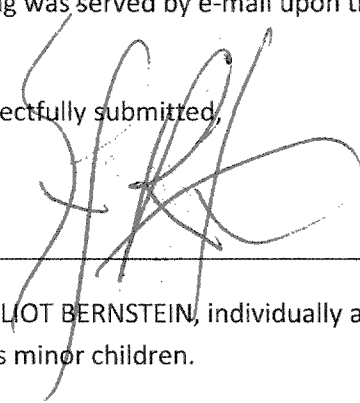
**Time:** 1:30-3:30 pm

**Judge:** The Honorable Martin Colin

**Matters:** Petition to Remove Theodore Stuart Bernstein as Alleged Successor Trustee  
Motion to Dismiss – Filer Theodore Bernstein

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon the attached service list on Friday, February 6, 2015 by court eservice.

Respectfully submitted,

  
\_\_\_\_\_  
By: ELIOT BERNSTEIN, individually and on behalf  
of his minor children.

Petitioner (pro se)  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245.8588 (telephone)  
Email address: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

Friday, February 6, 2015

Notice of Hearing – Petition to Remove Alleged Successor Trustee

Page | 1

## EMAIL SERVICE LIST

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald &amp; Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 <a href="mailto:arose@pm-law.com">arose@pm-law.com</a> and <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a> <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a> <a href="mailto:cklein@mrachek-law.com">cklein@mrachek-law.com</a> <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	<p>John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>	<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>
<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 <a href="mailto:mrmlaw@comecast.net">mrmlaw@comecast.net</a> <a href="mailto:mrmlaw1@gmail.com">mrmlaw1@gmail.com</a></p>	<p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a> <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a> <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a> <a href="mailto:lisa@friedsteins.com">lisa@friedsteins.com</a></p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>
<p>Kimberly Moran <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p>	<p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 <a href="mailto:matt89@aol.com">matt89@aol.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>
<p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Lindsay Baxley aka Lindsay Giles <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>	<p>Carley &amp; Max Friedstein, Minors c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	

Friday, February 6, 2015  
Notice of Hearing – Petition to Remove Alleged Successor Trustee

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

Ted Bernstein, as trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

Alexandra Bernstein; Eric Bernstein;  
Michael Bernstein; Molly Simon;  
Pamela B. Simon, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; Elliot Bernstein, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
Jill Iantoni, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child J.I.; Max Friedstein;  
Lisa Friedstein, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

ANSWER AND AFFIRMATIVE DFEENSE

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Personal Representative"), hereby files his Answer and Affirmative Defense to the Amended Complaint dated October 3, 2014 ("Amended Complaint"), and states as follows:

1. Admit that Ted Bernstein is over the age of 18; without knowledge, therefore, denied as to Ted Bernstein's residency; the Shirley Bernstein Trust Agreement dated May 20,

2008, as amended (“Shirley Trust”) speaks for itself, otherwise, without knowledge, therefore denied.

2. Admit.

3. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

4. Without knowledge, therefore, denied.

5. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

6. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

7. Admit.

8. Without knowledge.

9. Admit.

10. Admit.

11. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

12. Admit.

13. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

14. The document referenced in paragraph 14 of the Amended Complaint speaks for itself, otherwise, without knowledge therefore, denied.

15. The document referenced in paragraph 15 of the Amended Complaint speaks for itself, otherwise, without knowledge therefore, denied.

16. Without knowledge, therefore, denied.
17. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
18. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
19. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
20. Without knowledge, therefore, denied.
21. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
22. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
23. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
24. The Will of Simon L. Bernstein dated July 25, 2012 (“Simon’s Will”) speaks for itself, otherwise, without knowledge.
25. Simon’s Will speaks for itself, otherwise, without knowledge as to the authenticity, therefore, denied.
26. Simon’s Will speaks for itself, otherwise, without knowledge, therefore, denied.
27. Simon’s Will speaks for itself, otherwise, without knowledge, therefore, denied.
28. Simon’s Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

29. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

30. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

31. Simon's Will and the Shirley Trust speak for themselves, otherwise, without knowledge, therefore, denied.

32. The Shirley Trust speaks for itself, without knowledge as to Ted serving as the Successor Personal Representative of Shirley's Estate; otherwise, without knowledge, therefore, denied.

33. Without knowledge, therefore, denied.

34. Without knowledge, therefore, denied.

35. Without knowledge, therefore, denied.

36. Without knowledge, therefore, denied.

37. Without knowledge, therefore, denied.

38. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

39. Admit.

40. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

41. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.

42. Without knowledge, therefore, denied.

43. Without knowledge, therefore, denied.

44. Without knowledge, therefore, denied.
45. Without knowledge, therefore, denied.
46. Without knowledge, therefore, denied.
47. The action speaks for itself, otherwise, without knowledge, therefore, denied.
48. Without knowledge, therefore, denied.
49. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
50. Without knowledge, therefore, denied.
51. Without knowledge, therefore, denied.
52. Without knowledge, therefore, denied.
53. The Shirley Trust speaks for itself, otherwise, without knowledge, therefore, denied.
54. Without knowledge, therefore, denied.
55. Without knowledge, therefore, denied.
56. Without knowledge, therefore, denied.
57. Without knowledge, therefore, denied.
58. Without knowledge, therefore, denied.
59. Without knowledge, therefore, denied.
60. Without knowledge, therefore, denied.
61. Without knowledge, therefore, denied.
62. Without knowledge, therefore, denied.
63. Without knowledge, therefore, denied.
64. Without knowledge, therefore, denied.



65. Without knowledge, therefore, denied.
66. Reallege and restate answers as stated above.
67. The action speaks for itself, otherwise, without knowledge, therefore, denied.
68. The action speaks for itself, otherwise, without knowledge, therefore, denied.
69. Without knowledge, therefore, denied.
70. The action speaks for itself, otherwise, without knowledge, therefore, denied.
71. Without knowledge, therefore, denied.
72. Without knowledge, therefore, denied.
73. Without knowledge, therefore, denied.
74. Without knowledge, therefore, denied.
75. Without knowledge, therefore, denied.
76. Without knowledge, therefore, denied.
77. Without knowledge, therefore, denied.
78. Without knowledge, therefore, denied.
79. Reallege and restate answers as stated above.
80. The action speaks for itself, otherwise, without knowledge, therefore, denied.
81. Admit.
82. The assertion and request in paragraph 82 of the Amended Complaint speaks for itself, otherwise, without knowledge, therefore, denied.
83. The documents referenced in paragraph 83 of the Amended Complaint speak for themselves, otherwise, without knowledge, therefore, denied.
84. Admit.

85. The document referenced in paragraph 85 of the Amended Complaint speaks for itself, otherwise, without knowledge, therefore, denied.

86. The documents referenced in paragraph 86 of the Amended Complaint speak for themselves, otherwise, without knowledge, therefore, denied.

87. Admit.

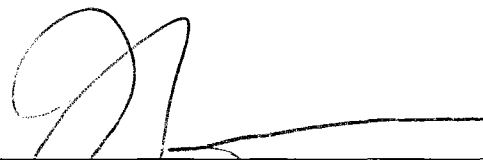
88. Without knowledge, therefore, denied.

**AFFIRMATIVE DEFENSE**

1. First Affirmative Defense- Lack of Standing- Ted Bernstein lacks the requisite standing as he is not validly serving as Trustee of the Simon Trust, is not a beneficiary of the Simon Trust, and is not representing any minor child that is a beneficiary of the Simon Trust.

WHEREFORE, BRIAN M. O'CONNELL, as Personal Representative of the Estate of SIMON L. BERNSTEIN, hereby files his Answer and Affirmative Defense to the Amended Complaint, and requests attorneys' fees and costs and any other relief deemed just or proper by this Court.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 17 day of February, 2015 to the parties on the attached Service List.

  
\_\_\_\_\_  
BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 37495  
JOIELLE A. FOGLIETTA  
Florida Bar No: 94238

Ciklin Lubitz Martens & O'Connell  
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Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34 <sup>th</sup> St. Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>	Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a>	Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary
Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

Ted Bernstein, as trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

PROBATE DIVISION

FILE NO: 502014CP003698XXXXSB

Plaintiff,

vs.

Alexandra Bernstein; Eric Bernstein;  
Michael Bernstein; Molly Simon;  
Pamela B. Simon, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; Elliot Bernstein, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
Jill Iantoni, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her minor child J.I.; Max Friedstein;  
Lisa Friedstein, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE  
WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND  
TIME**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of Simon L. Bernstein ("O'Connell"), hereby files this Motion for Instructions and/or Motion to Compel Compliance with Court's Order dated September 18, 2014; Motion to Extend Time, regarding the "Motion to Compel Trust Accounting Under Florida Statute 736.0813 and 736.08135" filed by Eliot Bernstein on January 30, 2015, and states as follows:

1. On September 18, 2014, this Court entered “Case Management Order and Requirements for Filing New Claims” (“Order”) in Case No. 502012CP004391XXXXSB. A copy of the Order is attached hereto as Exhibit “A”.

2. On January 30, 2015, Eliot Bernstein filed his “Motion to Compel Trust Accounting Under Florida Statute 736.0813 and 736.08135” (“Motion to Compel”), attached hereto as Exhibit “B.”

3. The Order states that it “shall apply to and govern all estate or trust cases involving Simon or Shirley Bernstein” and requires that before “any adversary proceeding, which is anything other than the ordinary administration of the estate or trust,” is to be filed the filing party has to set a hearing before the Court, must bring the prepared pleading, unfiled with the clerk, before the Court, and the Court will determine whether it is going to be allowed to be filed with the clerk.

4. O’Connell requests this Court’s instructions on whether the filing of the Motion to Compel constitutes something “other than the ordinary administration of the estate or trust” and is an “adversary proceeding” governed by the Order such that the above procedures should have been employed prior to the filing of same.

5. If the Court finds the Motion to Compel is governed by the Order, O’Connell requests this Court to compel compliance with the Order, to strike the Motion to Compel, and to enter an order that O’Connell shall not respond to the Motion to Compel as filed on January 30, 2015.

6. If the Court finds that the Motion to Compel is not governed by the Order, then O’Connell requests an extension of time to respond to the Motion to Compel of twenty (20) days after this Court enters an order on this Motion.

WHEREFORE, BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of Simon L. Bernstein, respectfully files this Motion for Instructions and/or Motion to Compel Compliance with Court's Order dated September 19, 2014; Motion to Extend Time seeking the relief sought in either paragraph 5 or 6, above, and requests attorneys' fees and costs and any other relief deemed just or proper.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 24<sup>th</sup> day of February, 2015 to the parties on the attached Service List.



---

BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 37495  
JOELLE A. FOGLIETTA  
Florida Bar No: 94238  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
Telephone: 561-832-5900  
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primary e-mail: service@ciklinlubitz.com  
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**SERVICE LIST**

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Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>	Max Friedstein 2142 Churchill Lane Highland Park, IL 60035	



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,

---

**CASE MANAGEMENT ORDER AND REQUIREMENTS**  
**FOR FILING OF NEW CLAIMS**

THIS CAUSE came before the Court on its own initiative on September 15, 2014, at a hearing set on other matters involving these parties. The Court, having reviewed the record and having noted the voluminous number of filings and the size of various filings made in this case, hereby enters the following Order under Rule 5.025 of the Florida Rules of Probate Procedure which shall apply to and govern all estate or trust cases involving Simon or Shirley Bernstein.

1. From this point forward, if any party desires to file an adversary proceeding, which is anything other than the ordinary administration of the estate or the trust, they must do the following. First, the filing party has to set a hearing before the Court. The filing party can prepare the purported pleading but must bring the pleading, unfiled with the clerk, before the Court, and the Court will determine whether it is going to be allowed to be filed with the clerk, and start the process under the rule as an adversary proceeding. That is under Rule 5.025, but the court is modifying the rule because the proposed pleading may not be served in clerk's office because the clerk is getting bombarded here unnecessarily. The Court will look at the lawsuit and see how it is styled, and then



the Court will determine whether it meets the rules for an adversary proceeding by the petitioner versus the respondent in the particular case.

2. Second, the Court directs the parties to comply with Probate Rule 5.020, which provides: "When you plead something, the pleading, called the petition, shall contain a short and plain statement of the relief sought, short statement of the grounds, and short statement of the jurisdiction of the court." The Court also directs the parties avoid filing voluminous exhibits attached to petitions or motions.

3. The Court orders that all filings now pending shall be brought before the Court. The parties are directed not to file anything new in the way of lawsuits, petitions, counterpetitions, adversary proceedings without first bringing them in to the Court unfiled for the Court to review. To the extent anyone involved in this proceeding intends to file a new petition or claim for relief, such party shall first follow the dictates of this Order.

4. If the Court determines that the filing is appropriate, the Court will grant permission and the document thereafter may be filed with the Clerk of Court. Any document filed without compliance with this Order shall be stricken from the record.

**SIGNED & DATED**  
**SEP 18 2014**  
MARTIN H. COLIN  
CIRCUIT JUDGE

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, \_\_\_\_\_ day of August, 2014.

\_\_\_\_\_  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

*I*

**MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA  
STATUTE 736.0813 AND 736.08135**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Plaintiff”), individually and as a beneficiary of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and ELIOT IVAN BERNSTEIN as Trustee of the “ELIOT BERNSTEIN FAMILY TRUST dated

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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May 20, 2008", PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" and hereby files this "MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135" and in support thereof states, as follows:

1. It is alleged that Ted Bernstein began acting as the alleged Successor Trustee of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" on or about September 13, 2012 and this despite language in the alleged trust that specifically preclude Theodore from acting as Trustee, as he is considered predeceased for all purposes of disposition and distributions of the trust.
2. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(a), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact Ted has worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole for over two years.

Florida Statute 736.0813 **Duty to inform and account.**—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

736.0813 (1)(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust, the full name and address of the trustee, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

3. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(b), by failing to within 60 days of acting as Trustees provide beneficiaries notice of the trust, the identity of the settlor(s), the right to request a copy of the trust instrument, the right to

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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accountings under this section and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee. In fact the fiduciaries have worked in opposite of this code to intentionally and with scienter, suppress, deny, alter and or destroy dispositive documents and accounting records leaving the administration and accounting in a virtual black hole.

Florida Statute 736.0813(1)(b)

Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings under this section, and that the fiduciary lawyer-client privilege in s. 90.5021 applies with respect to the trustee and any attorney employed by the trustee.

4. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(c), by failing to provide beneficiaries with a complete copy of the original 2008 trust instrument with all codicils, amendments, addendums, etc. despite repeated written and oral requests by beneficiaries. Further, inspection of the original 2008 trust document has been denied despite Tescher and Spallina admitting that their law firm ALTERED POST MORTEM a document in the Shirley Bernstein Trust and FORGED and FRAUDULENTLY NOTARIZED six documents for SIMON POST MORTEM to close Shirley's Estate, all as part of a larger fraud to illegally alter and change beneficiaries of the Simon and Shirley Trusts and convert assets to improper parties, including Ted, causing beneficiaries the need to verify the original documents and have them inspected as to their validity.

Florida Statute 736.0813(1)(c)

Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

5. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(d), by failing to provide beneficiaries upon acting as Trustee with a trust accounting as set forth

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

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in s. 736.08135 from the date of last accounting, which there has been none since December 08, 2010 when the decedent died and since Ted became alleged Successor Trustee on September 13, 2012. No statutorily required accounting was done annually by the former Trustees or the current alleged Successor Trustee, Ted.

Florida Statute 736.0813(1)(d)

A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, from the date of the last accounting or, if none, from the date on which the trustee became accountable, to each qualified beneficiary at least annually and on termination of the trust or on change of the trustee.

6. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.0813 1(e), by failing to provide beneficiaries with relevant information about the assets and liabilities of the trust and the particulars relating to administration and have refused repeated written and oral demands to comply with this section.

Florida Statute 736.0813(1)(e)

Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

7. That the current alleged Successor Trustee, Ted Bernstein has violated Florida Statute 736.08135(1) by failing to provide beneficiaries a reasonably understandable report from the date of last accounting, which there has been none done ever and from the date the trustees became accountable and thus there was no disclosure whatsoever of the assets and liabilities of the trust corpus.

736.08135 Trust accountings.—

(1) A trust accounting must be a reasonably understandable report from the date of the last accounting or, if none, from the date on which the trustee became accountable, that adequately discloses the information required in subsection (2).

8. Ted Bernstein have all violated Florida Statute 736.08135(2)(a)(b)(c)(d)(e)&(f) by failing to provide ANY timely and legally required accountings to the beneficiaries.

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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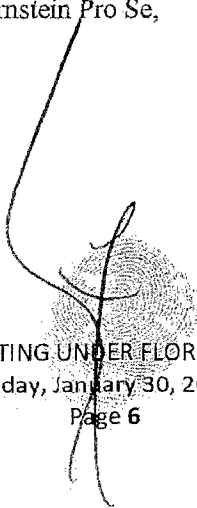
736.08135

- (2)(a) The accounting must begin with a statement identifying the trust, the trustee furnishing the accounting, and the time period covered by the accounting.
- (b) The accounting must show all cash and property transactions and all significant transactions affecting administration during the accounting period, including compensation paid to the trustee and the trustee's agents. Gains and losses realized during the accounting period and all receipts and disbursements must be shown.
- (c) To the extent feasible, the accounting must identify and value trust assets on hand at the close of the accounting period. For each asset or class of assets reasonably capable of valuation, the accounting shall contain two values, the asset acquisition value or carrying value and the estimated current value. The accounting must identify each known noncontingent liability with an estimated current amount of the liability if known.
- (d) To the extent feasible, the accounting must show significant transactions that do not affect the amount for which the trustee is accountable, including name changes in investment holdings, adjustments to carrying value, a change of custodial institutions, and stock splits.
- (e) The accounting must reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust.
- (f) The trustee shall include in the final accounting a plan of distribution for any undistributed assets shown on the final accounting.

9. That on September 13, 2012 Ted Bernstein began acting as the alleged Successor Trustee of the Shirley Trust, despite language in the trust that precludes him from acting as Trustee.

WHEREFORE, Eliot requests that this Court enter an order;

- i. To compel trust accounting under Florida Statute 736.0813 AND 736.08135 and within 10 days of the Court Order as enough time has passed since the death of the decedent (over two years) to demand an expedited accounting,
- ii. to on the Court's own initiative remove Ted Bernstein as alleged Successor Trustee for failing to follow Florida Trust Codes and Statutes,
- iii. for legal fees of Eliot Bernstein Pro Se,



MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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iv. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, January 30, 2015

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of

the foregoing has been furnished by email to all parties on the following Service List, Friday,

January 30, 2015.

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children

X

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MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

Page 7

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<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 <a href="mailto:crubin@floridatx.com">crubin@floridatx.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	
<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>			

MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135

Friday, January 30, 2015

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;

Alan B. Rose, Esq. – Professionally;  
Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

*I*

**ORDER GRANTING MOTION TO COMPEL TRUST ACCOUNTING UNDER  
FLORIDA STATUTE 736.0813 AND 736.08135**

**UPON CONSIDERATION OF THIS MATTER** for a MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135, it is hereby

**ORDERED AND ADJUDGED** that the MOTION TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135 is hereby

\_\_\_\_\_  
That an accounting shall be produced within 10 days of this ORDER,  
\_\_\_\_\_

**DONE AND ORDERED** in Chambers, at Palm Beach County, Florida, on this

\_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
**HON. MARTIN COLIN**

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

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

Deceased.

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Teschler & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;

Friday, February 27, 2015

Page 1 of 5

MOTION TO STRIKE...

Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN 2000 INSURANCE TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

*I*

**MOTION TO STRIKE “MOTION FOR INSTRUCTIONS AND/OR MOTION  
TO COMPEL COMPLIANCE WITH COURT’S ORDER DATED  
SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST  
ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135”**

COMES NOW, Eliot Ivan Bernstein (“Eliot” or “Counter Plaintiff), individually and as  
a beneficiary of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and

Friday, February 27, 2015

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MOTION TO STRIKE...

001184



ELIOT IVAN BERNSTEIN as Trustee of the "ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008", PRO SE, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" and hereby files this "MOTION TO STRIKE "MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135" filed by the Personal Representative of Simon Bernstein's Estate, Brian O'Connell, Esq. and in support thereof states, as follows:

1. That Brian O'Connell, Esq. **is not** the PR or Trustee of Shirley Bernstein's Estate or Trusts and therefore has no standing to object to the Motion to Compel Trust Accounting filed by Eliot in the Shirley Bernstein Trust case, as Personal Representative of the Simon Bernstein Estate.
2. That no request for accounting was made by Eliot to compel the Simon Bernstein Estate to produce an accounting, the request is for accounting in the Shirley Bernstein Trust and thus believes the PR of Simon's Estate may have filed this request in error.
3. That a request for accounting under Florida Probate Codes is not an adversarial proceeding and is part of the normal administration of the trust.
4. That if O'Connell believes an accounting request was made for the Estate of Simon Bernstein in the filing in Shirley's Trust case, it was not, the request was made only on the alleged Trustee of the Shirley Trust, Ted Bernstein. There appears no request for the Simon Bernstein Estate to produce an accounting in the Trust filing and therefore O'Connell has no standing to attempt to interfere or object in the proceeding in Shirley's Trust where he has no fiduciary role.
5. That Eliot believes this filing by O'Connell may be in error as such and should therefore be stricken.

4  
Friday, February 27, 2015  
Page 3 of 5  
MOTION TO STRIKE...

WHEREFORE, Eliot requests that this Court enter an order;

- i. to strike the, "MOTION TO STRIKE "MOTION FOR INSTRUCTIONS AND/OR MOTION TO COMPEL COMPLIANCE WITH COURT'S ORDER DATED SEPTEMBER 18, 2014; MOTION TO EXTEND TIME TO COMPEL TRUST ACCOUNTING UNDER FLORIDA STATUTE 736.0813 AND 736.08135",
- ii. for legal fees of Eliot Bernstein Pro Se,
- iii. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, February 27, 2015

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children.

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of  
the foregoing has been furnished by email to all parties on the following Service List, Friday,  
February 27, 2015.

Eliot Bernstein, Pro Se, Individually, as  
Trustee and as legal guardian on behalf of his  
three minor children

X

**SERVICE LIST**

Friday, February 27, 2015  
Page 4 of 5  
MOTION TO STRIKE...

<p>Donald Tescher, Esq., Tescher &amp; Spallina, P.A.  Boca Village Corporate Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a>  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a>  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a>  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>Alan B. Rose, Esq.  Page, Mrachek, Fitzgerald &amp; Rose, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  (561) 355-6991  <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>  and  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a>  <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	<p>John J. Pankauski, Esq.  Pankauski Law Firm PLLC  120 South Olive Avenue  7th Floor  West Palm Beach, FL 33401  (561) 514-0900  <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a>  <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>	<p>Robert L. Spallina, Esq.,  Tescher &amp; Spallina, P.A.  Boca Village Corporate  Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a>  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a>  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>
<p>Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Theodore Stuart Bernstein  Life Insurance Concepts  950 Peninsula Corporate Circle, Suite  3010  Boca Raton, Florida 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial Boulevard  Suite 702  Fort Lauderdale, FL 33308  <a href="mailto:mmrlaw@comcast.net">mmrlaw@comcast.net</a>  <a href="mailto:mmrlaw1@gmail.com">mmrlaw1@gmail.com</a></p>	<p>Irwin J. Block, Esq.  The Law Office of Irwin J.  Block PL  700 South Federal Highway  Suite 200  Boca Raton, Florida 33432  <a href="mailto:ijb@jblegal.com">ijb@jblegal.com</a>  <a href="mailto:martin@kolawyers.com">martin@kolawyers.com</a></p>
<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a>  Julia Iantoni, a Minor  c/o Guy and Jill Iantoni,  Her Parents and Natural Guardians  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Lisa Friedstein  2142 Churchill Lane  Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a>  <a href="mailto:lisa@friedsteins.com">lisa@friedsteins.com</a>  Carley &amp; Max Friedstein, Minors  c/o Jeffrey and Lisa Friedstein  Parents and Natural Guardians  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p>	<p>Kimberly Moran  Tescher &amp; Spallina, P.A.  Boca Village Corporate Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p>John P Morrissey, Esq.  John P. Morrissey, P.A.  330 Clematis Street  Suite 213  West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p>
<p>Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin  Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite  107  Boca Raton, FL 33431-7343  <a href="mailto:crubin@floridatx.com">crubin@floridatx.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein,  Minors  c/o Eliot and Candice Bernstein,  Parents and Natural Guardians  2753 NW 34th Street  Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>L. Louis Mrachek, Esq.  PAGE, MRACHEK,  FITZGERALD, ROSE,  KONOPKA, THOMAS &amp; WEISS,  P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	
<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle,  Suite 3010  Boca Raton, Florida 33487  <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>			

Friday, February 27, 2015  
Page 5 of 5  
MOTION TO STRIKE...

001187

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

Case No. 502014CP003698XXXXSB  
Hon. Martin Colin

In Re:  
SHIRLEY BERNSTEIN TRUST  
AGREEMENT, dated, May 20, 2008,

Deceased.

---

ELIOT IVAN BERNSTEIN, Individually;  
ELIOT IVAN BERNSTEIN in his capacity as  
Natural Guardian of his minor children,  
JOSHUA, JACOB and DANIEL;  
and as beneficiary of the SHIRLEY  
BERNSTEIN TRUST dated May 20, 2008, as  
amended and ELIOT IVAN BERNSTEIN  
as Trustee of the ELIOT BERNSTEIN FAMILY  
TRUST dated May 20, 2008,

Counter Plaintiffs,

v.

Tescher & Spallina, P.A., and all Partners Associates and of Counsel;  
Robert L. Spallina, Esq., Personally;  
Robert L. Spallina, Esq., Professionally;  
Donald R. Tescher, Esq., Personally;  
Donald R. Tescher, Esq., Professionally;  
Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.;  
Theodore Stuart Bernstein, Individually;  
Theodore Stuart Bernstein, as alleged Trustee of the Shirley Trust;  
Theodore Bernstein as Personal Representative of the Shirley Estate;  
Lisa Sue Friedstein, Individually;  
Jill Marla Iantoni, Individually;  
Pamela Beth Simon, Individually;  
Mark Manceri, Esq., Personally;  
Mark Manceri, Esq., Professionally;  
Mark R. Manceri, P.A., and all Partners, Associates and of Counsel;  
Page, Mrachek, Fitzgerald & Rose, P.A., and all Partners Associates and of Counsel;  
Alan B. Rose, Esq. – Personally;  
Alan B. Rose, Esq. – Professionally;

NOTICE OF HEARING / PETITION TO REMOVE THEODORE STUART BERNSTEIN...

Page 1 of 4

Friday, March 13, 2015

Pankauski Law Firm PLLC, and all Partners, Associates and of Counsel;  
John J. Pankauski, Esq. – Personally;  
John J. Pankauski, Esq. – Professionally;  
Kimberly Francis Moran – Personally;  
Kimberly Francis Moran – Professionally;  
Lindsay Baxley aka Lindsay Giles – Personally;  
Lindsay Baxley aka Lindsay Giles – Professionally;  
“Simon L. Bernstein Amended and Restated Trust Agreement” Dated July 25, 2012;  
Simon Bernstein Trust Agreement Dated May 20th 2008;  
Shirley Bernstein Trust Agreement Dated May 20th 2008;  
The Estate of Simon Bernstein;  
The Estate of Shirley Bernstein;  
SIMON L. BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST U/A 9/7/06;  
SHIRLEY BERNSTEIN IRREVOCABLE TRUST AGREEMENT (2008);  
SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DATED 6/21/1995;  
SIMON BERNSTEIN [REDACTED] TRUST (dated August 15, 2000);  
SHIRLEY BERNSTEIN 2000 INSURANCE TRUST (DATED AUGUST 15, 2000);  
Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012;  
ELIOT BERNSTEIN FAMILY TRUST DATED MAY 20, 2008;  
DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006;  
DANIEL BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 049738;  
JAKE BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
JOSHUA Z BERNSTEIN IRREVOCABLE TRUST 07-JUL-10 0497381;  
John and Jane Doe’s (1-5000),

Counter Defendants.

**AMENDED NOTICE OF HEARING**

**CHANGE OF HEARING DATE – From April, 02, 2015 to April 23, 2015**

**(SPECIAL SET - 120 Minutes Reserved)**

PLEASE TAKE NOTICE this hearing has been CHANGED from April 2, 2015 at 1:30pm to the new date and time below to be heard before Honorable Judge Martin Colin at the Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray Beach, Florida 33444. The hearing time on April 02, 2015 will now be used instead to hear a different matter that was agreed to be heard in Case # 502015CP001162XXXXSB on April 23, 2015.

NOTICE OF HEARING - PETITION TO REMOVE THEODORE STUART BERNSTEIN...

Page 2 of 4

Friday, March 13, 2015

**001189**

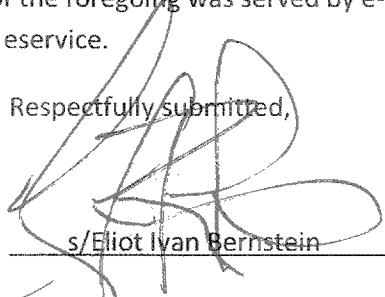
**Date:** April 23, 2015  
**Time:** 10:00am – 12:00pm  
**Judge:** The Honorable Martin Colin

**Matter(s):**

Docket #41     PET - PETITION  
Filing Date:     05-DEC-2014  
Filing Party:     BERNSTEIN, ELIOT IVAN  
Docket Text:     **PETITION TO REMOVE THEODORE STUART BERNSTEIN AS ALLEGED  
SUCCESSOR TRUSTEE BY ELIOT IVAN BERNSTEIN**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon the attached service list on Friday, March 13, 2015 by court eservice.

Respectfully submitted,



s/Eliot Ivan Bernstein

By: ELIOT IVAN BERNSTEIN, individually; in his capacity as Natural Guardian of his minor children, Joshua, Jacob and Daniel alleged beneficiaries of the SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended; as beneficiary of the SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended; and as Trustee of the ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008 created under the SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended.

Counter Plaintiff (pro se)  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245.8588 (telephone)  
Email address: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**EMAIL SERVICE LIST**

NOTICE OF HEARING - PETITION TO REMOVE THEODORE STUART BERNSTEIN...

Page 3 of 4

Friday, March 13, 2015

**001190**

<p>Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 arose@pm-law.com and arose@mrachek-law.com</p>	<p>John P Morrissey, Esq. John P. Morrissey, P.A. 330 Clematis Street Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com</p>	<p>Lisa Friedstein, Individually, and as Trustee for Carley &amp; Max Friedstein, Minors 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>
<p>Jill Iantoni, Individually and as Trustee for Julia Iantoni, a Minor 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Pamela Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12.  950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Krista Garber, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”

“Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Krista Garber, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacidad del oído o de la voz, llame al 711.”

“Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Krista Garber, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711.”



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

ELIOT BERNSTEIN, individually; )  
AND as natural guardian, et al. )  
Plaintiff(s), , ) No. 50214CP003698XXXXSB  
-vs- )  
TED BERNSTEIN; et al. )  
Defendant(s), )

**NOTICE OF LIS PENDENS**

TO DEFENDANT(S) TED BERNSTEIN; et al., AND ALL OTHERS WHOM IT MAY CONCERN:

YOU ARE NOTIFIED of the following:

(A) The Plaintiffs have instituted this action against you seeking  
 to foreclose a mortgage  to partition  to quiet title  (other type of action)  
with respect to the property described below.

(B) The Plaintiffs in this action are:

ELIOT BERNSTEIN, Individually; and as natural guardian of his minor children, JO, JA and DA;  
and as Trustee of the Eliot Bernstein Family Trust dated May 20, 2008

(C) The date of the institution of this action is

August 12, 2014

(D) The property that is the subject matter of this action is in Palm Beach County, Florida and  
is described as follows: [legal description of property]

7020 Lions Head Lane, Boca Raton, FL 33496 , ST ANDREWS CC 14 L781

DATED on October 30, 2014

  
\_\_\_\_\_  
Attorney for  
ELIOT BERNSTEIN, PRO SE

Address  
2753 NW 34th Street  
Boca Raton, FL 33434

Florida Bar No.





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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

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**MOTION TO APPROVE TRUST PROPERTY AND FOR  
ORDER PROHIBITING INTERFERENCE WITH CLOSING,  
INCLUDING DISCHARGING LIS PENDENS**

Plaintiff, Ted S. Bernstein, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"),  
moves for an Order approving a sale of trust property and prohibiting interference with the closing,  
and states:

1. The most significant asset now held by the Shirley Bernstein Trust is a single-family  
home located at 7020 Lions Head Lane, Boca Raton, 33496, located within the St. Andrews Country  
Club (the "House").

2. The House was placed on the market by Simon Bernstein, as Successor Trustee, before his death, and has been professionally marketed by a extremely well known and successful real estate firm, Nestler Poletto Sotheby's International Realty ever since. *See* attached Affidavit of John Poletto. Simon Bernstein chose Nestler-Poletto, which is one of the most respected real estate companies in Boca Raton, and the Ted S. Bernstein, as Successor to Simon, continued to list the House with the same company.

3. After years of active and professional marketing efforts, the Trust has received a bona fide offer, all cash with no financing contingency, for which the buyer is accepting the property in as is condition.

4. The House is an unusual, "Spanish-style" design, out of character with the St. Andrews community, and has been very difficult to sell. Any realistic buyer would be expected to immediately incur hundreds of thousands in repairs and expenses of a major renovation.

5. The current offer is, in the opinion of the professional realtor, indicative of fair-market value and is within a reasonable range of a recent appraisal.

6. Eliot Bernstein has served a Notice of Lis Pendens, without the Court's prior permission. The purported Notice of Lis Pendens is improper in several regards, including the fact that there is no legal right to serve a lis pendens; there is no claim which and Eliot has for specific performance or to enforce a lien under Chapter 713; and there is no claim that Eliot is entitled to a direct ownership interest in the House. In short, there is no lawsuit pending that could affect the title to property; thus, there is not a "fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit." The attempt to serve a lis pendens is improper under Florida law.

7. The pending sale must close by March 31, 2015, because it is a condition of the contract between the Buyer and the Trust, and this exigency is caused by the fact that the St. Andrews Country Club is increasing its equity membership requirement by \$30,000 and it is a condition of this contract that it close by that date. If the closing does not occur, there will be an immediate loss of value to the Trust, as well as all of the corresponding carry costs of the House, including the Club membership.

8. The Trustee will take appropriate action to protect and preserve the personalty in the House, all or almost all of which is owned by the Estate of Simon Bernstein, and which is not included within this sale.

9. The Trustee request that the Court enter an Order approving the sale of trust property; prohibiting anyone from interfering with the sale or the closing; and to the extent necessary, dissolving the lis pendens.

10. Due to the time exigency, the Trustee requests an immediate hearing on this Motion.

WHEREFORE, the Successor Trustee respectfully requests an Order approving the sale and prohibiting anyone from interfering with the sale or the closing, and such other relief as the Court deems necessary including, without limitation, entering an Order dissolving and discharging the lis pendens.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 23rd day of March, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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Attorneys for Ted S. Bernstein

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Boca Raton, FL 33434  
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Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
TED BERNSTEIN, as Trustee Probate Division  
of the Shirley Bernstein Trust Agreement Case No.: 502014CP003698XXXXSB  
dated May 20, 2008, as amended,  
Plaintiff,

v.

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

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**AFFIDAVIT OF JOHN POLETTO**  
(STATE OF FLORIDA)  
(COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared John Poletto, who was duly Sworn, deposes and says:

1. My name is John Poletto. I am over 18 years of age, *sui juris*, and have personal Knowledge of the facts and matters contained herein.
2. I am a Florida licensed real estate broker, and I am a founder and Co-Owner of Nestler Poletto Sotheby's International Realty ("Nestler Poletto"). For more than 25 years, Nestler Poletto has represented South Florida's luxury home buyer. As the sole Sotheby's International Realty firm representing the greater Boca Raton and Delray Beach Areas, we have the expertise in this market. We specialize in sales and marketing of properties in luxury communities ranging from intimate gated communities to waterfront or oceanfront properties in Boca Raton and Delray Beach, Florida. I have handled over six billion dollars in personal residential real estate brokered and corporate managed sales.
3. Simon Bernstein was not only a real estate client, but our Insurance consultant both personally and corporately for years, as well as a friend. While he was alive, Simon Bernstein retained Nestler Poletto to sell the residence owned by the Shirley Bernstein Trust at 7020 Lions Head

Lane, Boca Raton, Florida 33496, located in the St. Andrews Country Club community. My firm and I have extensive experience in the country club market in Boca Raton in general, and in St. Andrews Country Club specifically. After Simon died, the Successor Trustee of the Shirley Bernstein Trust continued to list the property through our firm. We have been actively and professionally marketing the home for several years with all past interest being substantially below the listed MLS offering price.

4. The house has been owned by Shirley Bernstein since 1993. Although it is a large Home, given its age, it is need of substantial, immediate renovation, upgrades and improvements for any typical buyer in this market. Also, being located within a country club is a challenge for Marketing given the expense of purchasing an equity membership and the annual membership dues and related expenses. The major obstacle has been the extensive "Spanish elements of the house that make it simply too Spanish for buyers seriously consider. The Spanish tile begins in on the driveway, all floors of the main house and even the patio. It's too much. The interior walls have heavy plastering which again is too much. The current buyer is proposing major renovation and would not consider the house unless it could be achieved for a price that substantiates this new renovation work. Since the original listing, the house has been shown over 75 times.

5. We have been marketing this property under the direction of Ted S. Bernstein, Trustee. Ted has solicited our professional advice and recommendations on a regular basis and has followed our suggestions. The asking price was set in consultation with my firm as experienced real estate brokers; we have obtained a confidential appraisal; the asking price was reconsidered periodically and lowered as appropriate in consultation with the Trustee.

6. We have just recently received a very good offer which we recommended the Trustee accept, and which the Trustee has independently determined to accept. This offer resulted from arm's-length negotiations with bona fide purchasers, who were working with their own Knowledgeable and experienced realtor. The buyers are serious, qualified buyers, and the transaction has no financing contingency. Before accepting the offer, there were verbal negotiations under \$1,000,000 by the buyer then a written offer at \$1.1m; the Trustee's counteroffer of \$1,150,000 was rejected, with the buyer countering with a best and final offer. In my opinion, the offer accepted by the Trustee as Seller appeared to be and likely was the best and final from this buyer.

7. The pending offer is all cash (or no financing contingency); is the highest and best offer received to date along with the terms, and I believe is the best offer for the property. The inspection has been performed and the buyers are now prepared to move forward and purchase in "As Is" condition and close by March 31<sup>st</sup>, 2015.

8. CLOSING BY MARCH 31<sup>ST</sup> IS ESSENTIAL FOR THE BUYER IN THAT THE COST OF THE ST ANDREWS CC MEMBERSHIP INCREASES BY \$30,000; FROM \$95K TO \$125K. The buyers must join the country club at closing requiring a large, upfront equity contribution and substantial membership dues, which limits the buyer pool and impacts what a willing buyer will pay for the same type house. There is a required equity club membership, which costs

\$125,000 in addition to the house price. Significantly, the closing must occur before March 31st, as a condition to the contract agreement.

9. Based upon my experience with marketing this property, the pending offer (if the inspections are fine and the deal closes) is representative (i.e. is within reasonable range of) the current fair market value, including as reflected in the appraisal.

10. My firm recommended that Seller accept the pending offer without further qualification, and the Trustee as Seller did so.

11. My firm also handled the professional marketing and sale of the Trustee's other property, which was the Aragon, an oceanfront condominium. That sale was arm's-length, to a bona fide purchaser, and was at fair market value in my opinion and supported by MLS comparable sale.

12. It is my professional opinion that the pending sale is in the best interests of the Trust and should be approved by the Court.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
JOHN POLETTO

Subscribed and sworn to before me this 23 day of March, 2015, by JOHN POLETTO,  who is personally known to me or  who has produced \_\_\_\_\_ as Identification, and who did take an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:





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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

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

Defendants.

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**NOTICE OF HEARING**

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Wednesday, March 25, 2015

**TIME:** 8:45 a.m.

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue, Delray  
Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**MOTION TO APPROVE TRUST PROPERTY AND FOR  
ORDER PROHIBITING INTERFERENCE WITH CLOSING,  
INCLUDING DISCHARGING LIS PENDENS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 23rd day of March 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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Secondary: [mhandler@mrachek-law.com](mailto:mhandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (<a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O’Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O’Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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minor child, C.F.,

Defendants.

\_\_\_\_\_ /

**NOTICE OF SPECIAL SET HEARING**

(Pursuant to Instructions from Court on 03/25/15)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, March 26, 2015

**TIME:** 1:00 p.m. (30 minutes)

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue,  
Courtroom 8, Delray Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**EVIDENTIARY HEARING ON MOTION TO APPROVE SALE OF TRUST PROPERTY AND FOR ORDER PROHIBITING INTERFERENCE WITH CLOSING, INCLUDING DISCHARGING LIS PENDENS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 25th day of March 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
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Attorneys for Ted S. Bernstein

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

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**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediateamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

2015 MAR 31 PM 3:33  
SHARON R. BOGGS, CLERK  
PALM BEACH COUNTY  
SOUTH CITY BRANCH FILED

**ORDER GRANTING IN PART AND DEFERRING IN PART RULING ON  
SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY  
AND PROHIBITING INTERFERENCE WITH CLOSING**

THIS CAUSE came before the Court for hearing on March 25, 2015, and for an evidentiary hearing on March 26, 2015, upon Ted S. Bernstein's, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"), *Motion to Approve Sale of Trust Property and For Order Prohibiting Interference With Closing etc.* ("the Motion"). The Court, having reviewed the Motion and the record, having received evidence and heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

Order Granting in Part and Deferring in Part Ruling on  
Successor Trustee's Motion to Approve Sale of Trust  
Property and Prohibiting Interference with Closing  
Case No. 502014CP003698XXXXSB

1. For the reasons set forth on the record, the Court DENIES the Motion to the extent it seeks permission for a closing on or before March 31, 2015; and the Court DEFERS RULING and takes under advisement for further hearing or consideration the request to approve a sale to close on or before April 20, 2015, the original closing date specified in the contract admitted into evidence.

2. The Court has heard evidence from John Poletto, a real estate broker who has been listing and marketing the property for more than 1,000 days, who testified as to his opinion that the pending sale, all cash with no financing contingency, is indicative of the fair market value of the property and is in the best interest of the Trust. Eliot Bernstein has contested such testimony, and requested additional time to provide counter-evidence of value, due to the circumstances which did not allow earlier notice of this sale. Now that Eliot Bernstein has notice of sale, Eliot may raise bona fide objections to the sale and, if he chooses to contest this sale, shall submit independent evidence as to the current fair market value of the House. Thereafter, the Court will determine whether to approve the sale based upon that evidence before the scheduled closing date.

3. With the sole exception of the Trustee, his counsel and any professionals retained by the Trustee to assist in the marketing and sale of the property, all beneficiaries and other persons interested in this matter, specifically including Eliot Bernstein, are prohibited from doing anything to directly or indirectly contact the buyer about any aspect of this transaction or file anything with the clerk of the court without first sending it to the undersigned Judge Martin Colin.

4. The Court has ordered that the personal property in the physical possession of the Trustee but owned by the Estate of Simon Bernstein shall remain in the House pending further order

Order Granting in Part and Deferring in Part Ruling on  
Successor Trustee's Motion to Approve Sale of Trust  
Property and Prohibiting Interference with Closing  
Case No. 502014CP003698XXXXSB

of this Court. In the event that the Court approves a sale of the House, the Trustee and the Personal Representative of the Estate of Simon Bernstein shall work together in good faith to remove all personal property before such closing.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 3/ day of March, 2015.



\_\_\_\_\_  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

Order Granting in Part and Deferring in Part Ruling on  
Successor Trustee's Motion to Approve Sale of Trust  
Property and Prohibiting Interference with Closing  
Case No. 502014CP003698XXXXSB

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

---

**MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF  
THE SHIRLEY BERNSTEIN TRUST, MOTION TO HOLD  
ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS**

Movant, Ted S. Bernstein, Successor Trustee of the Simon Bernstein Trust, moves for an order finding Eliot Bernstein in contempt of court for intentionally violating the Courts' oral ruling made on March 26, 2015 and the written Order dated March 31, 2015 (Exhibit 1)<sup>1</sup> and for appropriate sanctions, and states:

1. At a hearing on the Trustee's Motion for Approval to sell the Trust's House at 7020 Lions Head Lane, the Court denied the motion as to a closing before March 31, 2015, and deferred ruling on approval of the sale with a closing date of April 20th, indicating that the sale would be approved unless there was bona fide evidence presented by Eliot Bernstein:

THE COURT: We have a closing now set for April 20th so, Eliot, you need to do your due diligence. If you're going to want something to be done, set it so I can hear it before the 20th. So if you want to file something, get me what you want to file, don't file it, I'll look at it, I'll give you a hearing date before the 20th, if it's bona fide. Otherwise, they are going to look forward to selling this on the 20th.

(Transcript, Exhibit 2, T. 25-26)

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<sup>1</sup> The exhibits are being served upon the parties but not filed with the Clerk.

2. At the same hearing, the Court enjoined Eliot Bernstein:

THE COURT: So we're going to take this one small step at a time, but I'm ordering an injunction against you not to contact the buyers directly or indirectly with respect to any information concerning this transaction. Understood?

MR. ELIOT BERNSTEIN: Yes. I've never contacted any buyers. (T. 5)

3. Eliot also complained that his lis pendens was not filed or sent to the buyer:

MR. ELIOT BERNSTEIN: So are the buyers aware there's a lis pendens? I'm not allowed to ask that?

THE COURT: No, you're not allowed to ask that. I don't know who you gave notice to. If you sent notice to the contract -- if you sent notice of this lis pendens to a contract buyer, you're going to be right back in court here so quickly your head is going to ring.

MR. ELIOT BERNSTEIN: I'm not going to talk to the contract buyer.

THE COURT: No, but I don't want you to send something to them.

MR. ELIOT BERNSTEIN: I'm not going to send anything to the buyer. I would never do that. I'm not doing that.

THE COURT: Because, obviously, if there's a sale --

MR. ELIOT BERNSTEIN: I'm assuring you, I am assuring you on that.

THE COURT: -- because if we have a sale, the lis pendens is going to go away. They can't clear title. It can't be sold over that. (T. 5-6)

4. Later, the issue of publishing on the internet was raised:

THE COURT: No, but I don't want you to send something to them . . . . Eliot can't file anything without sending it to me first.

MR. ROSE: But he puts it on the Internet, and we don't want the appraisal to be on the Internet.

THE COURT: I've already ordered him not to do anything directly or indirectly -- contact any aspect of this transaction -- with the buyer. That's direct or indirect. (T. 12)

5. On March 31, 2015, the Court entered a written order stating that "all beneficiaries and other persons interested in this matter, specifically including Eliot Bernstein, are prohibited from doing anything to directly or indirectly contact the buyer about any aspect of this transaction or file anything with the clerk of the court without first sending it to the undersigned Judge Martin Colin." (Exhibit 1, ¶3)

6. Despite the Court's direct statements in orally ordering an injunction, within 24 hours of the hearing the following appeared online:

Boca Raton Broker John Poletto seems to be in on aiding and abetting Ted Bernstein to SELL a property that he has no legal right to Sell. The Property is 7020 Lions Head Lane Boca Raton Florida, the Simon Bernstein Estate Case

7020 Lions Head Lane Boca Raton Florida is clearly in a major legal litigation. Yet the GREED or aiding and abetting of John Poletto moves forward to sell a property for way to little of a price in a seeming conspiracy with Ted Bernstein.

\* \* \* \*

Are RESPA Laws being Broken? Are real estate consumers rights out the window? How is John Poletto getting away with his opinion being taken as law by Judge Martin Colin who seems to be letting everyone run amok with total disregard of the law, childrens rights and the rights of deceased.

Below are Links to the Property that is involved in multi-million dollar litigation and John Poletto, Boca Raton Real Estate Agent does not want buyers to know.

(Exhibit 3)<sup>2</sup>

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<sup>2</sup> These materials were posted by Eliot directly or indirectly through Crystal Cox. Ms. Cox was not present in the courtroom and did not order the transcript. In 2012, Mr. Bernstein was found to have participated in a "sinister and tenacious scheme to extort money" through the use of administrative domain name transfers." See WIPO Arbitration and Mediation Center, Administrative Panel Decision, *Marc J. Randazza v. Reverend Crystal Cox, Eliot Bernstein*, Case

7. On Monday March 30th, the following appeared online in chronological order:

I wonder if Alan Rose is getting a bit nervous yet? I mean come on missing assets, murder allegations, insurance fraud, possible poisoning, attorneys dying of mysterious deaths, and clear and blatant obstruction of Justice and Fraud on the Courts.

(Exhibit 4) This post re-published the prior post as to Poletto. Similar inappropriate, offensive and unwarranted posts have frequently been made about fiduciaries, counsel and others, most often after a significant hearing or event in this case.

8. Later that same day, the following appears:

Why is there no Filed Lis Pendens? Buyers Watch Out on 7020 Lion Head Lane Boca Raton.

(Exhibit 5) This post includes a link to the hearing transcript. Clearly, this violates at least two parts of the Court's oral ruling – addressing a lis pendens that has never been recorded and warning potential buyers.

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No. D2012-1525; see also *Randazza v. Cox, et. al.*, Case No. 2:12-cv-02040-GMN-PAL, Order (granting Plaintiff's Motion for Preliminary Injunction) (D. Nev. Jan. 11, 2013). (Exhibit 12)

In the WIPO Order, the Panel stated:

Once the Complainant informed Respondent Cox of this UDRP dispute, she transferred the registration of the disputed domain names listed in the original Complaint to Respondent Bernstein, who shortly thereafter transferred the domain name <marcrandazza.com> back to Respondent Cox. The remaining domain names are still registered to Respondent Bernstein, and the additional domain names are all registered to Respondent Cox. ***Respondent Bernstein acts on instructions provided by Respondent Cox and thus functions simply as a proxy for her. As such, for simplicity, all references hereinafter to Respondent Cox will simply be the "Respondent", unless specific reference is made to Respondent Bernstein.***



9. Finally, after the undersigned sent Eliot a copy of the hearing transcript, which Eliot requested,<sup>3</sup> the hearing transcript from March 26 and a full story appeared:

7020 Lions Head Lane Boca Raton. Why Does Alan Rose Want to HIDE the TRUTH from the Buyers of this Property? It is NOT ok for a Real Estate Broker, a Seller and a JUDGE to HIDE Known Facts about a Real Estate Transaction from a Real Estate Consumer. PERIOD.

(Exhibit 6)

Among the statements in this posting are:

- 7020 Lions Head Lane Boca Raton. Real Estate Buyers have a Legal Right to have FULL DISCLOSURE. Buyer Be AWARE.
- The courts simply do nothing to protect this asset and now a buyer is to get in the middle of this mess? . . . I would not go anywhere near this property until this estate is REALLY Legally Settled.
- Judge Martin Colin has no LEGAL Reason, as a matter of LAW to withhold to a real estate buyer that the property is in litigation, this is a violation of the BUYERS Rights, and against the LAW PERIOD.
- John Poletto, a real estate broker in Florida seems to have no issue with hiding know facts from buyers. The law is that latent defects, lawsuits, and anything that can harm a buyer MUST be disclosed so why is the Florida Courts allowing this cover up that will cause BUYERS massive headache, stress and legal liability.
- Check out the Transcript below as you see a JUDGE, and several attorneys seem to conspire to aid and abet a real estate sale and NOT disclose to BUYERS that they may spend years in litigation down the road after they have fixed up a place that Ted Bernstein let run down as a BAD PR.

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<sup>3</sup> A draft of the written Order was sent to Eliot on Friday March 27th. He asked for a copy of the transcript, stating: "Please forward a copy to save expense, you will have my answer sometime after receipt." Exhibit 7. After the transcript was received, the undersigned edited the Order and circulated by email to all parties, including Eliot, a revised Order and a courtesy copy of the hearing transcript Eliot had requested. That email was sent at 3:04 pm. Exhibit 8. Contrary to his representation, Eliot never responded after receipt. But, at 4:47 pm the transcript except (which only the undersigned had ordered [see Exhibit 9]) appeared online.

- It is NOT ok for a JUDGE to want to hide this litigation from BUYERS. It is not lawful nor morally ethically for Judge Martin Colin to NOT want BUYERS to know when this affects their VERY life, the life of their children and their quality of life in EVERY WAY.

SHAME SHAME on this JUDGE.

- Really, Look Below, this document clearly shows this JUDGE ranting about YOU, the Real Estate Consumer NOT having a right to know what the Real Estate Seller and the Real Estate Broker KNOW and by law have to disclose.

8. These postings speak for themselves and could not more clearly violate the contempt order. Eliot has been using similar "cyber-terrorist attacks" since the beginning of this case. Indeed, these posts appear in the Ted Bernstein Report on <http://tedbernsteinreport.blogspot.com/>. This is Eliot acting like a vigilante police against the fiduciaries. It is the Court's job alone to supervise the fiduciaries appearing before the Court, and it certainly is not Eliot's job to police this Court.

9. It is bad enough for things to appear badgering Ted or his counsel, but these posts attack the realtor hired by the Trust to help it sell this property. It is despicable and inexcusable behavior by Eliot, but more importantly, it absolutely and clearly constitutes indirect communication with potential buyers in direct violation of the Court's ruling. Indeed, these vicious attacks were not merely posted in cyberspace, they were emailed directly to parties and potentially untold numbers of people within the community. Eventually, this buyer or other buyers will see this for what Eliot wants it to be. To use this Court's words, Eliot should be hauled "back in court here so quickly [his] head is going to ring."

10. These types of cyber-attacks are common in this case. Indeed, the title of the blog at issue is the Ted Bernstein Report, and is designed to harass and intimidate the people involved in this case – counsel, third parties, and even this Court. Eliot Bernstein is using this proceeding as part

of a crusade against everyone concerned with the case. Indeed, he recently has proposed to this Court in the Oppenheimer case that the Court appoint Jo Anne Denison as replacement trustee, and did so even after the Court was advised of issues with Ms. Denison.<sup>4</sup> Dissatisfied with the Court's ruling and in an attempt to halt the sale of his parents' home, Eliot has intentionally launched a new crusade against all who are trying to administer the trust sale "[t]hrough websites, . . . emails, and blogs" accusing "these persons of theft, bribery, and other misconduct."

11. The Florida Supreme Court has addressed the issue of imposition of sanctions in *Mercer v. Raine*, 443 So.2d 944, 946 (Fla.1983), stating:

We agree that the striking of pleadings or entering a default for noncompliance with an order compelling discovery is the most severe of all sanctions which should be employed only in extreme circumstances. *Hart v. Weaver*, 364 So.2d 524 (Fla. 2d DCA 1978). A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, *Swindle v. Reid*, 242 So.2d 751 (Fla. 4th DCA 1970), as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness, *Herold v. Computer Components International, Inc.*, 252 So.2d 576 (Fla. 4th DCA 1971).

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<sup>4</sup> The Seventh Circuit Court of Appeals has written:

In addition to misrepresenting the identity of his client, Ditkowsky and a colleague, attorney JoAnne Denison, launched a crusade against everyone concerned with the guardianship . . . . Through websites, petitions, emails, and blogs, they accused these persons of theft, bribery, and other misconduct. They did not, however, identify any evidence of crime; they treated their dissatisfaction with Carolyn Toerpe's appointment as sufficient justification for making sweeping and unsupported accusations. This campaign of vilification is a second reason the Supreme Court of Illinois has suspended Ditkowsky from practice. (Exhibit 11)

12. In *Cem-A-Care of Florida, Inc. v. Automated Planning Systems, Inc.*, 442 So.2d 1048, 1049 (Fla. 4th DCA 1983), the Fourth DCA held:

[w]hen a trial judge expressly finds that a party willfully and flagrantly abused the system and violated court orders, then the severity of the sanction is within the very broad discretionary area noted in *Canakaris*. Although subject to review and reversal for abuse, that discretion is expansive and subject to being influenced by the parties' past actions and inactions in the litigation.

13. In *St. Mary's Hospital, Inc. v. Brinson*, 685 So.2d 33, 35 (Fla. 4th DCA 1996), *reh'g and reh'g en banc denied*, (Jan. 22, 1997), the court stated:

When a party fails to comply with an order, the trial court has a broad spectrum of sanctions to impose, although the sanction chosen must be commensurate with the offense. *Kelley v. Schmidt*, 613 So.2d 918 (Fla. 5th DCA 1993); *Insua v. World Wide Air, Inc.*, 582 So.2d 102 (Fla. 2d DCA 1991). Although striking a party's pleadings is the most severe sanction, it is appropriate where the offending conduct is flagrant, willful, or persistent. *Kelley*, 613 So.2d at 919.

14. The Fourth DCA in *Paranzino v. Barnett Bank of South Fla.*, 690 So. 2d 725 (Fla. 4th DCA 1997) affirmed a trial court order striking appellant's pleadings and dismissing the case with prejudice when the trial court found that the actions of appellant and her attorney "willfully and deliberately disregarded" a court order. Here, Eliot was clearly warned on the record; knowingly and intentionally violated the Court's order; and did so in a manner to undermine the Court's authority.

15. Movant seeks an order finding Eliot Bernstein in contempt and awarding appropriate sanctions, which should include the following:

a. striking all of his *pro se* court filings and precluding him from further participation in this case, and appointing a guardian ad litem to represent the interests of his minor children;

b. ordering Eliot immediately to remove all posting on the Ted Bernstein report and <http://tedbernsteinreport.blogspot.com> relating to the sale of House, using the coercive powers of this Court including incarceration if needed to compel compliance;

c. as a further sanction, ordering Eliot immediately to remove every single posting on the Ted Bernstein report and <http://tedbernsteinblogspot.com>, every posting anywhere concerning these trusts, estate, fiduciaries and/or beneficiaries, and forbidding any and all future posting relating to this case;

d. and an award of costs and attorneys' fees against Eliot Bernstein.

WHEREFORE, Successor Trustee, Ted S. Bernstein, respectfully requests that this Court find Eliot in contempt of Court, take such remedial steps as warranted, enter appropriate sanctions in favor of the Trust, and grant such other relief is just.

#### **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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 1 day of April, 2015.

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children, and as natural guardian for M.F. and  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF SPECIAL SET HEARING**

(Pursuant to Instructions from Court on 04/02/15)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, April 23, 2015

**TIME:** 10:00 a.m. (two hours)

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue,  
Courtroom 8, Delray Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE  
TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON L.  
BERNSTEIN AMENDED AND RESTATED TRUST**

**MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF  
COURT AND FOR SANCTIONS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 2nd day of April, 2015.

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Alan B. Rose (Fla. Bar No. 961825)



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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; téléfonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

2015 APR -8 AM 11:07  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY  
SOUTH CITY BRANCH FILED

**ORDER PERMITTING TRUSTEE TO FILE MOTION TO HOLD ELIOT BERNSTEIN  
IN CONTEMPT OF COURT AND FOR SANCTIONS**

THIS CAUSE came before the Court on April 2, 2015, on Trustee's request for permission to file Motion to Hold Eliot Bernstein in Contempt of Court and for Sanctions (the "Motion"). The Court, having reviewed the Motion and the record, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Trustee's request for permission to file the Motion is Granted.

Order Permitting Trustee to File Motion to Hold Eliot  
Bernstein in Contempt of Court and For Sanctions  
Case No. 502014CP003698XXXXSB

2. Trustee will file and serve a notice of hearing scheduling the Motion for hearing on  
April 23, 2015, from 10:00 a.m. to 12:00 noon.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 7 day of  
APRIL, 2015.



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Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

Order Permitting Trustee to File Motion to Hold Eliot  
Bernstein in Contempt of Court and For Sanctions  
Case No. 502014CP003698XXXXSB

**SERVICE LIST**

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

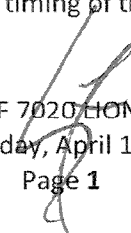
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**MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY**

COMES NOW, Eliot Ivan Bernstein ("Eliot"), individually and as a beneficiary of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" and ELIOT IVAN BERNSTEIN as Trustee of the "ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008", and Eliot as Guardians for his three minor children, as alleged beneficiaries of the "SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended" and hereby files Pro Se this "Motion to Stop Sale of 7020 Lions Head Lane Property" and in support thereof states, as follows:

1. That Plaintiff Theodore Bernstein ("Ted") is currently serving as a Successor Trustee to Shirley's Trust since the passing of Simon Bernstein the Trustee. During this time Ted has breached fiduciary duties and breached the terms of the trust, including his duties to inform, account, maintain impartiality, refrain from self-dealing and more.
2. Currently there is a hearing to remove Ted as Trustee to address these issues, scheduled for April 23, 2015 in the Shirley Trust. Eliot believes the timing of the removal hearing and this hurry and rush to

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
Page 1



sell a real estate asset in a secret and undisclosed sale (only discovered by accident), his parents' home in Saint Andrews Country Club, is not just a coincidence.

3. Everything Ted has done as trustee is unknown and a mystery to all interested persons, including failing to provide accountings for two years in Shirley's trust, in violation of Probate Statutes and Rules and the only thing known are his repeated wrongful acts and failure to protect the true beneficiaries of the Shirley Trust causing continued waste, fraud and abuse of trust assets. The trustee is responsible to protect and maintain the assets of the trust. Due to the continuous breaches and lack of information provided to the beneficiaries it is unknown what the current state or value of the trust assets are in both the Simon and Shirley Trusts and whether the home needs to be sold at this time or just properly maintained for the right buyer at a realistic price. One thing is clear, Ted should not be part of any business transactions, financial decisions or binding contracts for any trusts or selling of assets at this time until it is determined if he is currently a legal valid Trustee.
4. Ted is currently relying on the realtor's advice and an appraisal that appears to be far below estimated market value to accept the price offered, which is way below market value as shown herein. Ted's realtor's only concern is the quick commission he is expecting. This same realtor advised Ted to sell another property, a condo at the beach in the most prestigious building in Boca Raton at a ridiculously reduced price that was less than the original purchase price, ten years prior, in an up market, causing a major financial loss to the beneficiaries as further explained below. This same realtor claims to be an expert at home sales in Saint Andrews Country Club, however at this time Jon Poletto's firm has the least amount of listings compared to two other preferred realtors in Saint Andrews at this time. It is alarming to wonder if this same realtor also advised Ted to let all the grass and landscaping die, let mold take over the outside tiles, dismantle a fountain in the front of

the house and to show the house with an unmaintained pool in efforts to move the house quicker at a discounted price or if this is another straw man buyer as alleged with the Condo sale.

5. That Eliot and other beneficiaries cannot determine if they can purchase the family home of their parents because as of this date accountings of their inheritances remain incomplete or missing entirely as the Trustee and his attorneys have failed to properly account according to Probate Rules and Statutes.
6. That until such time that beneficiaries, who at this time are unknown due to prior Fraud on the Court and Fraud on the Beneficiaries by the Trustee's former counsel, Robert Spallina, Esq. and Donald Tescher, Esq., are determined and are made aware of the true and total value of their inheritances through statutorily required accountings, they are unable to determine if they need to sell the property or if they can buy the property and thus the sale should be halted until all accountings are complete, all accounting objections resolved and the true and proper beneficiaries determined along with the resolution of ongoing criminal complaints against Ted, including for the sale of the Condo. Therefore, an Injunction to stop the sale is in order.
7. That to do the sale backwards, without determining if Ted is a legal and qualified Trustee, without certainty of the beneficiaries determined and accountings completed first, could result later in lengthy litigation by aggrieved beneficiaries to claw back the property from any buyer and for other relief.
8. There was a prior sale of a Condominium owned by Shirley's Trust by the alleged Trustee in 2013 and the alleged Trustee has still failed to file with beneficiaries any of the transaction details of that sale, despite numerous requests, this self-dealing sale was devoid of any notice to beneficiaries prior to sale, so again no objections could be made. It appears a major loss to beneficiaries has resulted from the alleged illegal sale of this property as defined herein.



9. That the proceeds from the sale of the Condo were then distributed to improper parties by the alleged Trustee Ted, including to his own family, which had been considered predeceased for all purposes of dispositions and distributions of the Shirley Trust and further Ted made the distributions against the advice of his counsel according to statements made by his counsel Robert Spallina to Palm Beach County Sheriff Investigators. (Exhibit 1 – PB Sheriff Report)
10. That the Condominium was sold for \$1,600,000.00 on April 18, 2013 and netted approximately \$1,400,000.00 to beneficiaries according to statements made by Ted and his prior counsel SPALLINA to PB Sheriff Investigators due to \$200,000.00 of unaccounted for closing costs.
11. Eliot has provided a current MLS Seller Report (Exhibit 2 - Condo Sellers Report) with a current estimated value of the Condo for \$2,254,000.00 with an estimated range (AVM) up to \$2,727,340.00. In two years, the sale of the condominium has proven a loss to beneficiaries of approximately \$900,000 to \$1,300,000.00 from this firesale sale done by Ted. Further compounding the loss to beneficiaries is the fact that the proceeds were then distributed to improper beneficiaries, including Ted's family, which again, Ted and his lineal descendants were wholly disinherited in the Shirley Trust and would have received none of the proceeds of the sale.
12. That now the litigation costs alone for this clawback and litigation regarding that sale will add several hundred thousand of costs to beneficiaries and massive cost to the court and the Sheriff department whose costs are also high already attempting to investigate and resolve the alleged civil and criminal aspects of this transaction, including an alleged fraudulently signed Tax document.
13. That the beneficiaries were not properly notified by the Trustee of the Condo sale transaction details before the sale and were given no chance to purchase the Condo or dispute the transaction.
14. Fast forward two years to this recent undisclosed attempted sale of the Primary Residence and again the alleged Trustee failed to give any notice to beneficiaries or the PR of the Estate or this

Court of the pending sale on March 31, 2015 of the 7020 Lions Head Lane, Boca Raton, FL 33496.

Eliot only found out days before the sale was to be complete by a Zillow Alert.

15. That upon learning of the pending sale Eliot filed a Lis Penden with this Court that he had given the Court in October of 2014 and the Court was in the process of considering to allow him to file and which he sent to the beneficiaries, realtor, this Court and the Trustee, and the short notice was disclosed at the March 26, 2015 hearing the following week and is what in part led to this Court postponing the potential sale until at least April 20<sup>th</sup> 2015 after time for the beneficiaries and Court to review the terms. Both Ted and his Counsel Alan B. Rose, Esq. were fully aware that the Court was deciding on the filing of the Lis Penden given to the Court in October 2014 and they tried to sneak a sale around the Court's back, while failing to notify the buyer of the pending Lis Penden or seek Court approval for the transaction.
16. That the Court should take note that the sale contract was already signed on March 16, 2015 by the Trustee and absolutely no notice had been given to the beneficiaries, the Court or the PR of the Estate who was in custody of the Personal Property in the home that there was a pending sale and it appears without Eliot's notice, no notice would have been given until after the fact and closing and that Personal Properties under custody of the PR of the Estate of Simon would have been part of the transaction.
17. The fact that no notice was given to the PR of this sale is especially nefarious because the Personal Property of Shirley's Condo that belonged to Simon and was in the custody of the PR O'Connell of the Estate that was Ordered by this Court to be re-inventoried at the home due to the fact that the Trustee was not sure what happened to the Personal Properties when the Condo was sold as disclosed in a hearing. In a hearing before this Court it was alleged by the alleged Trustee Ted and his counsel Alan Rose that the Personal Properties were stored at the Primary Residence that was

being sold "AS IS." Had the sale been completed it appears the Personal Properties of Simon's from Shirley's Condo would have been moved or sold making it impossible to complete the Court Ordered inventorying that was ordered to take place at the residence address. That nothing from the Condo could be seen in the garages as told to the Court when Eliot and the PR went to the home to re-inventory.

18. That the Court in the March 26, 2015 hearing agreed that Eliot and his children should have been given ample notice and a right to determine if they wanted to purchase the property prior to any sale being entered into and been given time to review any transaction details, which were not provided until the March 26, 2015 hearing by the Trustee and his counsel, five days prior to the undisclosed sale.
19. That in order for Eliot and his children to now determine if they can afford to purchase or finance the family home they will need to have a complete accounting of both the Estates and Trusts of Shirley and Simon Bernstein to determine the value of their inheritances, which remains largely unknown at this time.
20. That the Trustee recently filed with the Court, a long overdue accounting of the Trust of Simon Bernstein on March 15, 2015 but the Court will note that there are unlisted and un-named assets with asset values simply stated as illiquid and no amount of the worth or even description given of the asset, leaving no way to account for the values at all for beneficiaries to determine their inheritances.
21. That the Trustee has claimed that accounting of Shirley's Trust will not be completed until sometime after the intended sale date of the home and thus without this accounting information and knowledge of the value of their inheritance they cannot determine if they can purchase the home or even need to sell the home at this time and therefore, the sale of the home should be forbidden

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY

Wednesday, April 15, 2015

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001235

until a full and complete of accounting by the Trustee is proffered to beneficiaries on these grounds as well.

22. That the firesale price of the home appears in part to be due to the run down and dilapidated condition of the home that has occurred due to the failure of the Trustee to perform even basic maintenance on the home. (Exhibit 3 – Listing Pictures 2012 to 2015 Before and After)
23. That according to the PR of the Estate of Simon's assistant, Joielle "Joy" A. Foglietta Esquire ("Joy"), who went to the home to complete the Court ordered re-inventorying of the home PRIOR to any sale and transfer of the Personal Property, she stated the inside of the home looked as if it had been left untouched since Simon died on September 13, 2012, again perhaps part of the "AS IS" condition the home was being sold in.
24. That according to Joy the Personal Properties from the Condo sale that the Trustee Ted and his counsel Alan Rose told the court and the PR of the estate who has custody over them, were safely stored in the Lions Head Lane home, now appear to be missing, or more aptly stolen, and virtually nothing was there from the 4,000 sq ft condominium. (See Exhibit 4 – 4 Car Garage Pictures)
25. The Court will recall that it issued an Order for re-inventorying of the items missing from the Condo and now it appears that the these items have been stolen and can never be reinventories and yet another Fraud on the Court, Fraud on the Beneficiaries and Fraud on the Creditor has occurred by the Fiduciary Ted and his Counsel Rose and a colossal waste of everyone's time chasing down the lies told to this Court and everyone else.
26. That had the sale that was taking place without notice to the Court, the beneficiaries or interested parties taken place, the missing items would have disappeared with the sale and made it virtually impossible to comply with the Court Order to inventory the items at the 7020 Lions Head Lane home

where they had been stated to be and where the Court Order was evaded by Ted and Rose for months.

27. The Trustee Ted claimed to the PR O'Connell and others that the boxes containing the Condo Personal Property were so numerous in the garages that it would cost a fortune to unpack and re-inventory, costing far more than the \$500.00 apportioned by the Court. The PR was in the process of submitting a new Proposed Order for Re-Inventorying to increase the amount allocated by the Court to inventory due to the statements of the fiduciary and his counsel that they had boxed the items and now they would have to all be unpacked and at great expense.
28. That as the pictures in Exhibit 4 show, there were 3 empty garages and 1 with only 4-5 small boxes.
29. That the Trustee and his counsel were not planning notifying the beneficiaries or the Court or the PR of the sale and fully intended to notify parties after the sale was complete and the monies distributed, again any distributions would have been to improper parties, as beneficiaries remain unknown and this would have caused untold damages to beneficiaries in seeking redress and further litigation costs and claw back costs that could increase the cost of this underhanded firesale to everyone.
30. That the fiduciary Ted and his Counsel Alan Rose failed to seek Court approval to enter into the contract first despite the pending Lis Penden in the Court's possession that they were fully aware of. What if the Court would have not approved the sale due to the Lis Penden or other reasons and this was determined after the sale? This sneaky attempt to sell the home was willful, reckless and wanton disregard for this Court and the beneficiaries by the fiduciary Ted and his Counsel, Alan B. Rose, Esq., both Officers of this Court under Your Honor's tutelage and provides further clear and convincing evidence of the continued breaches of fiduciary duties and yet another reason to remove Ted and his counsel.

31. That it appears that the depilated condition the house was shown in has led in part to a steady and massive decline in listing prices since Simon died. Where Simon listed the home weeks before his death on September 13, 2012 at \$3.2M with the same broker, John Poletto, who is now selling it in an up real estate market for the price of \$1.1 M to his friend and insurance broker/client Ted.
32. That since 2012 the country has realized an up market in real estate prices and the only explanation for such dramatic valuation decrease is the "AS IS" condition the home has been left in to stage it for a firesale purchase to a straw buyer.

i. PRICE CHANGES SINCE SIMON BERNSTEIN DEATH IN 2012

Current Selling Price According to Poletto Sales Contract

3/26 Pending Sale \$1,100.00 (note the \$300,000.00 loss according to Zillow in the Pending Sale Price versus the sales contract price of 1.1M in just weeks)

Note that the original sale price of the home was \$894.00 in 1993 and a mass of improvements was done over time to the home and the sale contract price today is only \$1.1M, about the value of the land alone.

Zillow Price History

Date	Event	Price	\$/sqft	Source
03/19/15	Pending sale	\$1,395,000	\$185	Nestler Polett...
10/23/14	Price change	\$1,395,000-12.5%	\$185	Nestler Polett...
07/12/14	Price change	\$1,595,000-5.9%	\$211	Nestler Polett...
12/18/13	Price change	\$1,695,000-5.6%	\$225	Nestler Polett...
08/11/13	Price change	\$1,795,000-10.0%	\$238	Nestler Polett...
01/31/13	Price change	\$1,995,000-16.8%	\$265	Nestler Polett...
01/29/13	Price change	\$2,399,000-4.0%	\$318	Nestler Polett...
12/21/12	Price change	\$2,499,000-3.8%	\$332	Nestler Polett...
10/05/12	Price change	\$2,599,000-18.8%	\$345	Nestler Polett...
08/12/12	Price change	\$3,200,000-7.2%	\$425	Nestler Polett...
02/01/12	Listed for sale	\$3,450,000+286%	\$458	Nestler Polett...
06/09/93	Sold	\$894,000	\$118	Public Record

33. That it is hard to believe that the Realtor has shown the house in this condition and that the Trustee has allowed the condition of the property under his care to become so run down as to cause a massive price devaluation of the property. This devaluing appears to be with intent to set up a

straw man buyer to come in and purchase the property for a low ball number, apply some quick fix remedies and then resell the property at a much higher value, thereby causing a massive loss and further damages to the beneficiaries. This is the same straw man scenario the Condo was sold for and now in two years the buyer of that property has made over a million dollars of profit on that purchase and the **beneficiaries have lost over a million dollars as stated earlier.**

34. That the Court has hearings to remove the Trustee Ted, who also has breach of fiduciary claims filed against him already in a stayed counter complaint in Shirley's Trust case and if the sale is transacted and it is later determined that Ted was not a qualified or legal Trustee the sale of the home will additionally become a contentious litigation with buyer, seller, attorneys, title company and the beneficiaries. Demands for a claw back of the property may also be made under the circumstances.
35. That due to this highly probable litigation that would result if this were determined to have been a firesale and an illegal sale by an inappropriate fiduciary, despite whether the sale of the property were reasonably priced due to its current condition, the costs of the litigations and liabilities that would follow would make the price skyrocket to all parties involved. This is especially true if the buyer was not informed of any potential liabilities that existed at the time of sale!
36. In the Court's own words at the March 26, 2015 hearing regarding Ted's removal coming FIRST and prior to completing more transactions that may all be then reversed if he is removed with cause,

Your Honor stated,

THE COURT: I'm not -- look, nothing is easy  
16 here. It's not going to get easier until we can  
17 get hearings where I can start to knock off some  
18 of the issues, which is what I have been saying  
19 now like a broken record.  
20 At some point, either Eliot is going to be  
21 sustained on his positions or he's going to be  
22 overruled, but one way or the other, we can put  
23 some of this stuff to rest. The problem is we're

24 doing all of this business with some of the metes [matters?]

25 of the case still up in the air where I haven't

been able to adjudicate; the claims that Ted

2 should be removed; the claims that there's

3 wrongdoing beyond Spallina and Tescher, the trust

4 is not valid. I mean, give me a chance to rule on

5 that, because once I rule on that, then the matter

6 is over with on those and you'll know one way or

7 the other what to do.

8 Do you understand what I'm saying? I think

9 we have hearing time coming up. Let's use that,

10 you know, prioritize hearings on this case. So as

11 soon as we can, I'll give it to you.

37. That the Court should take note that while the property is held in the Shirley Trust, the Trust has not been released from the Gross Estate as the Estate was reopened due to the prior Fraud on the Beneficiaries and Fraud on this Court caused by the Trustee Ted's former counsel Donald Tescher, Esq. and Robert Spallina, Esq. who closed the Estate of Shirley using Simon POST MORTEM and Fraudulently Notarized and Forged Documents for six parties, to achieve the fraudulent closing.
38. That Tescher and Spallina then later resigned as Ted's counsel and as Co-Personal Representatives and Co-Trustees after admitting to Palm Beach County Sheriff Officers and the beneficiaries that their law firm had intentionally and with scienter fraudulently altered a Shirley Trust document that was to benefit Ted's family by reinserting them into an irrevocable trust with a defined beneficiary class where Ted and his lineal descendants were considered predeceased.
39. That the Appraisal submitted by Poletto to this Court is dated July 09, 2014, approximately 9 months ago, and the Sale is "AS IS" and that is because the Trustee has let the property deteriorate with no care, no street value and in effect abandoned both the real property and his Fiduciary duties and responsibilities to maintain the asset.



MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY

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40. That Simon had listed the home for \$3.2 Million dollars weeks before his death with John Poletto. That Eliot has obtained a recent MLS Sellers Report (Exhibit 5 - 7020 Lions Head Sellers Report) that shows the property value estimated between a low of \$1,594,780.00 to a high \$1,770,205.00. Again, the proposed sale price of \$1,100,000.00 represents a major loss to beneficiaries and if like the Condo another \$200,000.00 is lost in unidentified closing costs and commissions it becomes a greater loss. That none of the closing costs have been disclosed at this time either to beneficiaries, such as agent commissions, any lines of credits/mortgages, taxes, etc.
41. That it should be noted that Ted's wife, Deborah Bernstein, who works for John Poletto's firm, may be the real estate agent that is getting commissions on these properties, although since the transaction details have never been provided by the Trustee to the beneficiaries of the Condo or the Primary Home this remains unknown.
42. That while the home on the supplied appraisal is estimated at approx. \$1,600,000.00 the explanation for the \$500,000.00 loss on the proposed sale price below the LOWEST ESTIMATED PRICE is blamed on the fact that Spanish Tile was used throughout the entire house and the floor plan has a second story master suite which was alleged poor by John Poletto, who failed to mention the elevator to the suite.
43. That this seems like a massive loss of value due to simple flooring tastes and floor plan claims and Eliot feels after speaking with the Realtor who went to appraise the home with Poletto to evaluate the sale price he would market it for, it was determined that with a floor cleaning, a paint job, a new realtor and a few thousand dollars of improvements the house would regain this alleged cost reduction and again be far more profitable to market for a little improvement.
44. That from the appraisal submitted by Poletto, the condition of the tile from the time Simon listed it in 2012 where it is photographed in pristine condition and looks like a luxury hotel (which it was

designed after), has been allowed apparently for two years to weather, fade and contain green and black mold all over it, which makes it appear to be in need of replacement and with a little cost to buff it back to luster, a buyer that likes Specially Imported High End Spanish Tile would purchase the home at a much higher value.

45. That Eliot had a second opinion by Realtor Paul Saperstein Re/Max 561.251.5296 whom he has never met, who visited the home and who met with Poletto to value the home for marketing. That the conclusion was clear, with a little fixing up the house could be listed between the est low of \$1.6M from his appraised value and what Simon had it listed for at \$3.2M and that arriving in the middle, the Zillow Estimate currently of \$2.4M seemed feasible for him to list and sell the home. The sale price of \$1.1M makes no sense when compared to the price Poletto had listed it with Simon or in comparison with the estimated low of the property today and represents a huge loss of approximately ONE to TWO MILLION DOLLARS to beneficiaries.
46. That there is an alleged Mortgage / Line of Credit on the home of which Eliot has been denied any access to the records to show when the Line was accessed and if it was Post Mortem, as the prior Co-Trustees initially stated to the beneficiaries that both the home and condo were both 100% debt free and then suddenly claimed they found a Line of Credit or Mortgage for approximately \$500,000. When they later claimed there was a line of credit / mortgage on the home Eliot and his counsel were denied any accountings requested.
47. That the Line of Credit / Mortgage issues must also be resolved prior to any sale to confirm the legality of this line and if the sale were done first and later it is found this mortgage was improper this could again be to the detriment of beneficiaries and again cause another level of legal entanglements regarding the legality of the transaction.
48. That Eliot requests that the E&O insurance of the appraiser be made available to the beneficiaries.

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY

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49. That the most disturbing problems with the sale of the home as presented is that in the March 26, 2015 hearing, Mr. John Poletto testified that he had not disclosed the massive amount of litigation surrounding the house in the Probate Courts, nor the Lis Pendens that he was sent a copy of months earlier when Eliot presented it to the Court in October 2014 in order to get approval to file it and that he would do nothing to scare buyers away from the sale by disclosing these facts. This failure to disclose a major liability to the buyer could only lead to further litigation for all parties, especially to a buyer that the facts were intentionally and with scienter concealed from in violation of real estate disclosure rules.

WHEREFORE, Eliot requests that this Court enter an order;

- i. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until full statutorily required accountings are provided to beneficiaries to determine if they would like to purchase or finance the home,
- ii. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until such time that a new real estate agent could properly clean the home and fix the surroundings for listing at the market value of the home,
- iii. to halt the sale until it is determined if Ted is now a qualified Trustee of the Trust of Shirley,
- iv. to halt the sale until all transaction details regarding the sale are fully disclosed to the beneficiaries,
- v. to schedule an immediate hearing at the Court's soonest available time to hear this matter in a timely matter to prevent the sale of the home,
- vi. to institute a bond for the difference of the sale price and the price Simon listed the house for of approximately \$2.4 M to cover any losses if the home was found to be

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY

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improperly sold by a not legally valid alleged Trustee Ted, who is considered predeceased for all purposes of disposition of the Shirley Trust and to cover the litigation costs that would result. If Ted and Alan Rose are confident in the legality of the sale then this is a small insurance protection to everyone they may be endangering if it turns out sour.

vii. for legal fees of Eliot Bernstein Pro Se, and

viii. any other remedies, relief, damages and sanctions this Court finds appropriate.

Filed on Wednesday, April 15, 2015

Eliot Bernstein, Pro Se, Individually, as Beneficiary of the Shirley Trust, Trustee of the Eliot Bernstein Family Trust and as legal guardian on behalf of his three minor children as alleged beneficiaries.

X

**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Wednesday, April 15, 2015.

Eliot Bernstein, Pro Se, Individually, as Beneficiary of the Shirley Trust, Trustee of the Eliot Bernstein Family Trust and as legal guardian on behalf of his three minor children as alleged beneficiaries.

X

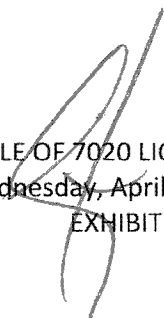
**SERVICE LIST**

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
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<p>Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin  Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite  107  Boca Raton, FL 33431-7343  <a href="mailto:crubin@floridatav.com">crubin@floridatav.com</a></p>	<p>Joshua, Jacob and Daniel Bernstein,  Minors  c/o Eliot and Candice Bernstein,  Parents and Natural Guardians  2753 NW 34th Street  Boca Raton, FL 33434  <a href="mailto:jjewit@iviewit.ty">jjewit@iviewit.ty</a></p>	<p>L. Louis Mrachek, Esq.  PAGE, MRACHEK,  FITZGERALD, ROSE,  KONOPKA, THOMAS &amp; WEISS,  P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  <a href="mailto:lmrachek@mrachek-law.com">lmrachek@mrachek-law.com</a></p>	
<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle,  Suite 3010  Boca Raton, Florida 33487  <a href="mailto:lindsay@lifeinsuranceconcepts.com">lindsay@lifeinsuranceconcepts.com</a></p>			

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015

EXHIBIT 1 – PALM BEACH COUNTY SHERIFF REPORT



MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
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EXHIBIT

001246

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 14029489 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:  
ECONOMIC CRIMES \* \* \*  
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OT CODE: 9546 01/23/14 THURSDAY  
ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER RYAN ASSIST: TIME D 1020 A 1020 C 1021  
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700  
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: OTHER  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

NAME LIST:

ROLE:  
OTHER SIMON BERNSTEIN DOB: 12/02/1995  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER SHIRLEY BERNSTEIN DOB: 06/29/1939  
SEX: F RACE: W HT: 502 WT: 102 HR: BLOND EYE: BLUE  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD RD BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
COMPLAINANT ROBERT L SPALLINA DOB: 06/09/1965  
SEX: M RACE: W HT: 511 WT: 175 HR: BLACK EYE: BROWN  
RESIDENTIAL ADDRESS: 7387 WISTERIA AV PARKLAND FL 33076 HOME PHONE: 561 997-7008  
BUSINESS PHONE: 561 000-0000  
OTHER ALAN B ROSE DOB: 10/23/1965  
SEX: M RACE: W HT: 509 WT: 170 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 21145 ORMOND CT BOCA RATON FL 33433 HOME PHONE: 561 000-0000  
BUSINESS ADDRESS: 505 S. FLAGLER DR., STE. 600, WEB, FL 33401 BUSINESS PHONE: 561 355-6991  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 800 BERKELEY ST BOCA RATON FL 33484 HOME PHONE: 561 213-2322  
BUSINESS PHONE: 561 988-8984

ON 01/21/13 AT 1:45 PM I MET WITH ROBERT SPALLINA AND HIS ATTORNEY DAVID ROTH. SGT. DAVID GROOVER WAS ALSO PRESENT DURING THE INTERVIEW. WE MET AT

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THE PALM BEACH COUNTY SHERIFF'S OFFICE, DISTRICT 1 CONFERENCE ROOM, WHICH IS LOCATED AT 3228 GUN CLUB ROAD, WEST PALM BEACH, FL. ROBERT SPALLINA STATED THAT HE AND HIS PARTNER, DONALD TESCHNER, MET SIMON AND SHIRLEY BERNSTEIN IN 2007. HE SAID THAT IN 2008 THE BERNSTEIN'S CAME TO THE TESCHNER AND SPALLINA FIRM. HE SAID THAT THEY (THE ATTORNEY'S OFFICE) CREATED WILLS AND TRUSTS FOR BOTH SIMON AND SHIRLEY IN 2008, AMONG OTHER PLANNING. SPALLINA TOLD US THAT SIMON HAD BEEN IN THE INSURANCE BUSINESS FOR 40 YEARS.

HE SAID THAT THE SUBJECT OF THE FIRST MEETINGS WAS THE SALE OF THE INSURANCE BUSINESS DOWN THE ROAD, AS WELL AS MOVING AROUND SOME STOCKS. SPALLINA STATED THE CONVERSATIONS WITH SIMON AND THE THOUGHT PROCESS WAS THAT ONCE SIMON SOLD THE INSURANCE BUSINESS HE OWNED, ALL THE FAMILY WOULD BENEFIT FROM IT (FINANCIALLY). HE SAID THE BUSINESS WAS NEVER SOLD, BUT A LOT OF PLANNING AND PREPARATION WAS DONE FOR IT, TO INCLUDE SETTING UP A FLORIDA LIMITED PARTNERSHIP AND A DELAWARE ASSET PROTECTION TRUST. SPALLINA STATED THAT SIMON WAS ALWAYS CONCERNED WITH CREDITOR PROTECTION. HE SAID THAT IS QUITE COMMON IN THE INSURANCE BUSINESS WORLD.

SPALLINA REITERATED THAT IN 2008, THE LAW FIRM DID THE DOCUMENTS FOR THE WILLS AND TRUSTS. HE STATED THEY (SIMON & SHIRLEY) HAVE FIVE CHILDREN AND 10 GRANDCHILDREN, AS WELL AS A STEP-GRANDCHILD.

SPALLINA SAID THAT THE ESTATE PLAN WAS SIMILAR TO MOST OTHERS, IT SAID SHOULD ONE SPOUSE DIE FIRST, THE OTHER WILL RECEIVE EVERYTHING (ALL ASSETS). HE SAID THAT UNDER BOTH TRUSTS, THE INITIAL DOCUMENTS READ THAT UPON THE SECOND DEATH, TWO CHILDREN (TED AND PAM) WERE EXCLUDED. HE TOLD US THIS TOOK PLACE SINCE BOTH TED AND PAM WERE SET UP WITH LIFE INSURANCE BUSINESSES AND THEY WANTED TO MAKE THE REMAINING CHILDREN (ELIOT, LISA, AND JILL) AS WHOLE AS THEY COULD. NOTE: TED WAS WORKING WITH SIMON IN THE INSURANCE BUSINESS DOWN HERE IN FLORIDA AND PAM RECEIVED A COMPANY IN ILLINOIS.

SPALLINA REITERATED THAT UPON THE DEATH OF THE SECOND SURVIVOR, EVERYTHING FROM BOTH TRUSTS GOES TO JILL, LISA, AND ELIOT ADDING THAT SHIRLEY HAD ONE OTHER STIPULATION IN HER TRUST, WHICH STATED THAT TED'S STEPSON, (MATTHEW LOGAN) RECEIVED \$200,000. HE TOLD ME THAT SHIRLEY HAD A LIKING TO MATTHEW SO SHE ADDED THAT TO HER TRUST, BUT THAT SIMON DID NOT BELIEVE IN THAT, THAT HE FELT EVERYTHING SHOULD GO TO BLOOD (A BIOLOGICAL CHILD). SPALLINA SAID THAT LATER ON IN 2008, SHIRLEY STATED SHE WANTED TO CHANGE HER TRUST DOCUMENTS IN REFERENCE TO THE MONEY LEFT TO MATTHEW LOGAN. HE STATED THAT AN AMENDMENT WAS CREATED, WHICH WAS SIGNED BY SHIRLEY ON NOV. 18, 2008 TAKING LOGAN OUT OF THE TRUST.

SPALLINA STATED THAT HE FELT THAT SIMON'S WISHES OVERRODE SHIRLEY'S IN THIS SITUATION. SPALLINA SAID THAT HE AND KIMBERLY MORAN (HIS EMPLOYEE & A NOTARY) WENT TO SHIRLEY'S HOME FOR THE DOCUMENT TO BE SIGNED. HE SAID THAT RACHEL WALKER, SHIRLEY'S ASSISTANT, WAS PRESENT WHEN THE DOCUMENT WAS SIGNED.

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SHE AND SPALLINA ARE ON THE DOCUMENT AS WITNESSES, MORAN IS THE NOTARY FOR SHIRLEY'S SIGNATURE. HE TOLD ME THAT WAS THE LAST CHANGE SHIRLEY EVER MADE TO HER DOCUMENTS AND THAT SHE PASSED ON DECEMBER 2010. SIMON WAS STILL ALIVE AND THE TRUST READ THAT EVERYTHING WENT TO HIS BENEFIT. SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.

SPALLINA STATED THAT IN 2012, SIMON CONTACTED HIM STATING THAT HE WAS HAVING CONCERNS ABOUT HOW HE HAD ELIMINATED TED AND PAM FROM HIS TRUST. HE STATED THAT IT IS POSSIBLE THAT THESE THOUGHTS CAME ON BECAUSE PAM STARTED SENDING HIM LETTERS. HE SAID THAT SHE (PAM) HAD A LAWYER CONTACT HIS OFFICE AND ASK FOR COPIES OF SHIRLEY'S TRUST DOCUMENTS. SPALLINA SAID THAT HE MET WITH SIMON, WHO SAID THAT HE WAS CONSIDERING CHANGING HIS DOCUMENTS. HE SAID THAT ONE OF THE CHANGES DISCUSSED WAS HOW TO INCLUDE TED AND PAM'S CHILDREN.

SPALLINA STATED THAT SIMON HAD A LIFE INSURANCE POLICY WITH THE BENEFIT OF \$1,600,000. HE SAID THAT THE POLICY READ THAT IF SIMON PASSED BEFORE SHIRLEY SHE RECEIVED THE BENEFIT, BUT IF SHIRLEY PASSED BEFORE HIM, THE FIVE CHILDREN RECEIVED THE BENEFITS ONCE HE PASSED. THIS POLICY ORIGINATED OUT OF ILLINOIS. SPALLINA ADDED THAT THIS POLICY AND ITS DISTRIBUTION OF FUNDS ARE CURRENTLY IN A FEDERAL COURT BATTLE.

SPALLINA STATED THAT A DISCUSSION TOOK PLACE WITH HIM AND SIMON IN 2012; REFERENCE THE FACT THAT SIMON HAD ISSUES ON HOW AND WITH WHOM FUNDS WERE GOING TO BE DISTRIBUTED TO UPON HIS DEATH. HE TOLD ME SIMON WAS HAVING RESERVATIONS ABOUT TED AND PAM NOT BEING IN HIS TRUST, AS WELL AS THAT FACT THAT HE THEN HAD A GIRLFRIEND BY THE NAME OF MARITZ PUCCIO THAT HE WANTED TO PROVIDE FOR. HE ADDED THAT NO ONE IN THE FAMILY WAS HAPPY THAT PUCCIO WAS IN SIMON'S LIFE. HE ALSO TOLD ME THAT SIMON WANTED HIS GRANDCHILDREN TO RECEIVE BENEFITS FROM THE TRUST.

SPALLINA SAID THAT SIMON FIRST SUGGESTED MAKING BENEFICIARY CHANGES ON THE AFOREMENTIONED LIFE INSURANCE POLICY. SPALLINA SAID THAT HE TOLD SIMON THAT WAS A VERY BAD IDEA. HE TOLD ME THAT THERE WAS SOMETHING CALLED AN EXERCISE OF POWER OF APPOINTMENT, PUT IN BOTH SIMON AND SHIRLEY'S TRUST DOCUMENTS. HE SAID THIS GAVE THE LIVING SPOUSE THE ABILITY TO MAKE CHANGES ON THE DECEASED SPOUSE'S DOCUMENTS. HE SAID THAT HE TOLD SIMON, THAT MAYBE THEY SHOULD EXPLORE OPTIONS WITH THAT. HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (ST AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST.

SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN. HE SAID THAT SIMON WAS NOT HAPPY ABOUT THIS. HE SAID THAT SIMON

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Changes could not be to her beneficiaries however, which is what they tried.

Eliot and his family were happy for him and Maritza. The other children were estranged.

How could Spallina write an estate plan, know about the policy and know Sr's alleged intent and then not have a copy of the policy and further how did he file a claim as Trustee of Lost Trust when he claims here the beneficiaries were the children, not the now lost 1995 Simon Bernstein Irrev Ins Trust?

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WAS VERY ADAMANT ABOUT LEAVING EVERYTHING IN THE ESTATES TO THE GRANDCHILDREN. HE ALSO SAID THAT HE ADVISED SIMON TO NOT MAKE CHANGES TO THE LIFE INSURANCE POLICY OR THE ESTATES, MAKING PUCCTO A BENEFICIARY. HE STATED THAT THIS WILL ONLY CAUSE PROBLEMS AND CREATE LITIGATION. SPALLINA SAID THE AFOREMENTIONED DISCUSSION AND MEETING TOOK PLACE IN FEBRUARY 2012. HE SAID THE MEETING CONCLUDED WITH SIMON SAYING HE NEEDED TO THINK ABOUT THINGS.

HE TOLD ME THAT THREE MONTHS LATER, SIMON CONTACTED HIM STATING HE KNEW WHAT HE WANTED TO DO. HE SAID THAT SIMON TOLD HIM HE WANTED TO LEAVE HIS INSURANCE POLICY ALONE, BUT THAT HE WANTS BOTH TRUSTS TO GO TO HIS 10 GRANDCHILDREN. SPALLINA SAID THAT HE EXPLAINED TO HIM AGAIN, THAT ONLY HIS TRUST, NOT SHIRLEY'S CAN GO TO BOTH GRANDCHILDREN, UNLESS HE TAKES ALL OF THE ASSETS OUT OF THE SHIRLEY TRUST AND PUTS THEM INTO HIS NAME. HE SAID THE COST OF TAKING THE ASSETS OUT OF SHIRLEY'S TRUST WOULD HAVE BEEN SIGNIFICANT, BECAUSE SHIRLEY'S DEATH OCCURRED BEFORE FEDERAL ESTATE TAX CHANGES TOOK PLACE, SO AS LONG AS IT STAYED IN HER ESTATE IT WOULD BE FREE OF TAX, BUT SHOULD IT GO TO SIMON'S TRUST IT WILL BE TAXED.

THERE WAS ALSO AN ISSUE OF SUBJECTING THE ASSETS FROM SHIRLEY'S ESTATE TO CREDITORS IF IT WENT TO SIMON'S ESTATE. SPALLINA TOLD ME THAT AT THIS TIME, SIMON SAID "GET MY CHILDREN ON THE PHONE". HE SAID THAT SIMON TOLD HIM THAT HE WANTED HIS CHILDREN TO AGREE THAT ALL ASSETS FROM BOTH TRUSTS GO TO THE 10 GRANDCHILDREN. HE SAID THAT SIMON TOLD HIM HE (SIMON) COULD GET THEM TO AGREE. SPALLINA CONFIRMED THAT THIS CONVERSATION OCCURRED ON THE SAME DATE, DURING THE SAME PHONE CALL (CONFERENCE CALL), REGARDING THE WAIVER OF ACCOUNTING FORM FOR SHIRLEY'S ESTATE IN PBSO CASE #13-097087.

FROM A PREVIOUS INVESTIGATION DONE BY ME, I FOUND THAT SIMON SIGNED THE WAIVER OF ACCOUNTING ON 04/09/12, SO IT IS POSSIBLE THAT THE PHONE CALL OCCURRED ON THAT DATE. I HAD ALSO NOTED IN MY REPORT THAT THERE WAS SOME DISCUSSION OF INHERITANCE AND WHO WAS TO GET WHAT. SPALLINA SAID THAT DURING THE PHONE CALL, ALL FIVE KIDS AGREED THAT CHANGING THE INHERITANCE OF BOTH ESTATES TO THE GRANDCHILDREN WAS A GREAT IDEA. HE SAID THAT ELIOT SPOKE THE MOST, STATING THINGS SUCH AS, GREAT IDEA DAD, WHATEVER YOU WANT TO DO, WHATEVER MAKES YOU FEEL BEST, WHATEVER IS BEST FOR YOUR HEALTH DAD.

SO, AFTER THE AFOREMENTIONED PHONE CALL, NEW DOCUMENTS WERE DRAWN UP FOR SIMON'S ESTATE. THESE NEW DOCUMENTS GAVE EVERYTHING TO ALL 10 GRANDKIDS. HE ALSO EXERCISED HIS POWER OF SHIRLEY'S ESTATE, LEAVING EVERYTHING TO ALL 10 GRANDKIDS, EVEN THOUGH LEGALLY HE COULD NOT INCLUDE TED AND PAM'S KIDS BECAUSE OF THE PREDECEASED LIMITATION. HE SAID THESE DOCUMENTS WERE EXECUTED AT THE END OF JULY 2012. HE SAID SEVEN WEEKS LATER SIMON DIES, UNEXPECTEDLY. I FOUND THAT SIMON PASSED ON SEPTEMBER 13, 2012 OF A HEART ATTACK.

SPALLINA SAID APPROXIMATELY TWO MONTHS AFTER THAT, HIS OFFICE RECEIVED A REQUEST FROM ELIOT'S ATTORNEY, CHRISTINE YATES, FOR ALL DOCUMENTS RELATING TO

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Si was being terrorized by four of five children and seven of 10 grandchildren and Eliot did agree that whatever would get them to seize their elder abuse he would do for his father but not until he saw all docs.

This is wholly fabricated as Si called Eliot to set up the call days before the call with Spallina and Si made the call from his home and not Spallina's office.

Why would Si sign a Waiver on April 09, 2012 if the meeting with his three beneficial children to agree was not until May 10, 2012, something does not add up in Spallina web of lies.

This is a false statement by Detective Miller as Simon has never signed a Waiver that was not forged or improper and so Simon never did sign a Waiver.

What is Spallina doing advising him to not leave Maritza anything, like it is his money. What problems would it cause and to whom?

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 5  
CASE NO. 14029489 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

SIMON AND SHIRLEY BERNSTEIN, TO INCLUDE DOCUMENTS RELATING TO BERNSTEIN FAMILY REALITY, WHICH OWNS A HOME THAT ELIOT AND HIS FAMILY LIVE IN. HE SAID THAT HIS HOME IS ACTUALLY OWNED AND IS FUNDED BY THREE TRUSTS THAT SIMON CREATED. THE THREE TRUSTS ARE IN THE NAME OF ELIOT'S THREE CHILDREN, (JACK, JAKE, AND DAN).

SPALLINA TOLD ME THAT HE AND HIS PARTNER HAD DISCUSSIONS REFERENCE TO FULFILLING SIMON'S WISHES OF ALL 10 GRANDCHILDREN RECEIVING THE BENEFITS FROM BOTH SIMON AND SHIRLEY'S TRUSTS. HE SAID THAT HE AND HIS PARTNER, DONALD TESCHNER, DISCUSSED DOING A SCRIVENER'S AFFIDAVIT REFERENCE REINSTATING TED AND PAM'S CHILDREN INTO SHIRLEY'S TRUST, SINCE THEIR NOTES WERE UNCLEAR TO AS IF THE GRANDCHILDREN WERE OR WERE NOT DEEMED PREDECEASED, AS TED AND PAM WERE. HE TOLD ME THAT THE DECISION WAS MADE TO NOT DO THE SCRIVENER'S AFFIDAVIT, DUE TO THE CHANCE THAT IT MAY NOT WORK. HE SAID THOUGH, THAT AGAINST HIS BETTER JUDGMENT HE ALTERED THE FIRST PAGE OF THE FIRST AMENDMENT TO THE SHIRLEY BERNSTEIN TRUST AGREEMENT, BEFORE HE TURNED IT OVER TO YATES. THE ORIGINAL WAS MENTIONED EARLIER ON IN THIS REPORT AND STATES THAT SHIRLEY SIGNED IT ON NOVEMBER 18, 2008. IT TOOK MATTHEW LOGAN OUT OF THE TRUST.

SPALLINA SAID THAT THEY NOTICED THAT THE FIRST PAGE OF THE DOCUMENT SKIPPED FROM ONE TO THREE, SO HE TOOK IT UPON HIMSELF TO ADD IN NUMBER TWO, BEFORE SENDING IT TO YATES. THE CHANGE THAT NUMBER TWO MADE TO THE TRUST, AMENDED PARAGRAPH E OF ARTICLE III, MAKING IT READ THAT ONLY TED AND PAM WERE CONSIDERED PREDECEASED, NOT THEIR CHILDREN. HE SAID THE ORIGINAL TRUST STATES THAT TED, PAM, AND THEIR CHILDREN ARE DEEMED PREDECEASED. SPALLINA SAID HE DID THIS AT THIS OFFICE IN BOCA RATON, FLORIDA. HE SAID THAT NO ONE ELSE TOOK PART IN ALTERING THE DOCUMENT. HE SAID THAT HE DID IT TO MAKE SIMON'S WISHES AND THE VERBAL AGREEMENT FROM THE APRIL 2012 PHONE CONVERSATION COME TRUE. SPALLINA STATED THAT ALTHOUGH HE CREATED THE ALTERED FORM AND ATTACHED IT TO THE ORIGINALLY SIGNED/NOTARIZED FORM, HE RECEIVED NO INCOME OR GAIN FROM IT. HE STATED HE SOLELY DID IT TO FULFILL SIMON'S WISHES. HE CONFIRMED THAT THIS ALTERED DOCUMENT DID NOT GET FILED WITH THE COURTS.

SPALLINA STATED THAT AGAINST HIS ADVICE, A DISTRIBUTION WAS MADE FROM ONE OF THE TRUSTS AFTER SIMON'S DEATH. HE STATED THAT HE ADVISED AGAINST THIS AND WHEN SIMON PASSED, A FORMER PARTNER FILED A CLAIM AGAINST THE ESTATE FOR \$2,500,000.

SPALLINA ALSO TOLD ME THAT IN 2006, ALL OF THE GRANDCHILDREN RECEIVED TRUSTS FROM SHIRLEY AND SIMON. HE STATED THAT YATES WAS ACTUALLY THE ATTORNEY FOR ELIOT'S CHILDREN'S TRUSTS. SPALLINA STATED THAT SIMON WANTED ELIOT'S KIDS TO HAVE A HOME, BUT DID NOT WANT THE HOME IN ELIOT'S NAME.

SPALLINA ALSO TOLD ME THAT IN 2009 SIMON CAME TO HIM AND SAID HE IS BUYING A HOUSE FOR ELIOT AND HIS FAMILY TO LIVE IN, BUT HE DOES NOT WANT ELIOT TO OWN THE HOME. HE SAID THAT SIMON TOLD HIM THAT HE WANTED ELIOT'S

[REDACTED SECTION]

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Not all grandchildren, only 6 of 10

Did Spallina report this to the proper authorities or court? No and instead lies to them.

It was a May 10, 2012 phone call although Simon allegedly signed his documents in April 2012, story again is wholly false. See Simon April 09, 2012 docs.

SPALLINA ALTERS TRUST DOCUMENTS IN SHIRLEY TRUST TO CHANGE BENEFICIARIES AND COMMMITS FRAUD BUT WHY? FURTHER LIES TO JUDGE COLIN IN HEARING AND TELLS HIM IT IS THE TEN GRANDCHILDREN TOO and perpetrates another fraud on the court.

Now allegedly we have Moran committing forgery and post mortem crimes and saying she acted alone and now Spallina altering others and alone and who buys this?

Teschner and Spallina then conspire post mortem to make changes to Shirley and Simon's estate documents.

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 6  
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DISPOSITION: ZULU

CHILDREN'S THREE TRUSTS TO OWN THE HOME. HE THEN SET UP A LIMITED LIABILITY COMPANY, WHICH IS BERNSTEIN FAMILY REALTY. HE SAID THAT SIMON SET UP AN ACCOUNT AT LEGACY BANK. HE SAID THAT SIMON FUNDED THE ACCOUNT, TO PAY FOR THE EXPENSES AT THE HOUSE. RACHEL WALKER WAS IN CHARGE OF PAYING THOSE EXPENSES. HE SAID THAT AT SIMON'S DEATH THE ACCOUNT HAD VERY LITTLE MONEY IN IT. HE SAID THIS WAS THE TYPE OF ACCOUNT THAT ONLY ENOUGH MONEY WENT INTO IT EACH MONTH TO COVER THE NECESSARY EXPENSES FOR THE HOME, SUCH AS POWER, WATER, AND MORTGAGE.

SPALLINA STATED THAT PRIOR TO SIMON'S DEATH, HE WAS THE MANAGER OF BER, BUT AFTER HIS DEATH IT WAS TRANSFERRED TO OPPENHEIMER TRUST COMPANY, BECAUSE NO ONE IN THE FAMILY WANTED TO MANAGE IT. HE STATED THIS WAS BECAUSE NO ONE WANTED TO DEAL WITH ELIOT. HE SAID OTC BECAME THE TRUSTEE AND THE LEGACY BANK ACCOUNT GOT CLOSED OUT SINCE THE ACCOUNT HAD MINIMAL FUNDS IN IT AND SIMON WAS NO LONGER ALIVE TO FUND IT. HE STATED THAT OTC OPENED UP THEIR OWN BER TRUST ACCOUNT. HE SAID THAT WHEN THIS OCCURRED, THERE WAS APPROXIMATELY \$80,000 IN EACH OF ELIOT'S CHILDREN'S TRUSTS. HE SAID THAT ELIOT STARTED CALLING UP OTC ASKING FOR THEM TO PAY BILLS.

SPALLINA SAID THE PROBLEM IS THAT SINCE NEITHER ELIOT NOR HIS WIFE WERE WORKING, THEY WERE ALSO ASKING FOR THEIR CREDIT CARD BILLS TO BE PAID, ALONG WITH THE NORMAL LIVING EXPENSES. HE STATED THAT THE CREDIT CARD BILLS SHOWED CHARGES TO HIGH END RESTAURANTS, SUCH AS CAPITAL GRILL. SPALLINA SAID THAT DUE TO THE EXPENSES BEING PAID BY THE THREE CHILDREN'S TRUST, TO INCLUDE PRIVATE SCHOOL, THE TRUSTS WERE DRAINED BY AUGUST 2013.

SPALLINA STATED THAT TED BERNSTEIN IS THE TRUSTEE FOR SHIRLEY'S TRUST. HE SAID THAT SHIRLEY HAD A CONDO THAT WAS SOLD FOR \$1,400,000 AND THAT MONEY WENT INTO THE TRUST. HE SAID THAT TED DISCUSSED WITH HIS SIBLINGS, POSSIBLY EXCLUDING ELIOT, THAT THERE WAS CONCERN ABOUT A CREDITOR GETTING SOME OF THE MONEY. HE SAID THAT TED MADE A DISTRIBUTION TO SEVEN OF THE 10 GRANDCHILDREN'S TRUSTS. FOUR OF WHICH INCLUDE TED'S THREE CHILDREN AND PAM'S CHILD. SPALLINA SAID THAT TED ONLY FUNDED SEVEN OF THE GRANDCHILDREN, BECAUSE ELIOT REFUSED TO OPEN ACCOUNTS FOR HIS THREE KIDS SO THAT TED COULD FUND THEM. HE SAID THAT IN SEPTEMBER OF 2013, \$80,000 WAS DISTRIBUTED TO EACH OF THE SEVEN TRUSTS, WHICH IS A TOTAL OF \$560,000. SPALLINA REITERATED THAT TED WAS TOLD TO NOT MAKE DISTRIBUTIONS.

SPALLINA WAS ASKED AND CONFIRMED THAT THE ALTERED DOCUMENT REFERENCE SHIRLEY'S TRUST, IS THE ONLY MISTAKE THAT HE MADE. HE IS NOT AWARE OF ANY OTHER MISTAKES.

I WAS SUPPLIED A COPY OF THE ALTERED DOCUMENT BY SPALLINA ON 01/22/14. THIS NARRATIVE IS NOT A VERBATIM ACCOUNT OF THE INTERVIEW WITH SPALLINA. FURTHER INVESTIGATION WILL CONSIST OF MEETING WITH SIMON AND SHYRLEY'S CHILDREN, IN ATTEMPT TO GAIN STATEMENTS FROM THEM.

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This is not the only mistake he made, in fact his law firm notary who he is responsible for committed six acts of FORGERY and FRAUD and signed documents post mortem for Simon.

Is Spallina Ted's counsel?

This whole convoluted story about BFR is BS. For months after Si died this account in his name only was used illegally. When Legacy bank found out they seized account. Then Spallina himself transferred the manager role, with no authority to Janet Craig at Oppenheimer, against the operating agreement of the LLC which called for a vote of the Members (Eliot as Guardian of his children the Members), which Spallina illegally evaded doing. This led to hijacking of BFR and raiding the funds of BFR and the trusts.

Spallina is the one who told Eliot to call Janet to pay the bills as he made her the new Manager and she would be handling. Eliot never heard of her before.

This has nothing to do with how the Manager role transfers in the LLC and Spallina is in no way a part of that. Nobody asked Eliot who is the legal guardian and under the documents would decide the next manager after Simon and this further evidences Spallina's criminal intent against Eliot and family.

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DETECTIVE RYAN W. MILLER #7704  
01/24/14 @ 1153 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 01/29/2014/MDR/#6405

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printed by Employee Id #: 5254 on February 11, 2014 02:26:57PM  
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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489

DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:  
ECONOMIC CRIMES \* \* \*  
SIGNAL CODE: 14 CRIME CODE: NON CRIME CODE: OT CODE: 9545 01/29/14 THURSDAY  
ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1020 A 1020 C 1021  
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700  
CITY: BOCA RATON STATE: FL ZIP: 33431  
NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: OTHER  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

ON JAN. 28, 2014 I MET WITH TED BERNSTEIN WHO WAS ACCOMPANIED BY ATTORNEY ALAN ROSE. ROSE IS A CIVIL ATTORNEY, SPECIALIZING IN PROBATE AND BUSINESS LITIGATION. THIS INTERVIEW TOOK PLACE AT THE PALM BEACH COUNTY SHERIFF'S OFFICE, SPECIAL INVESTIGATIONS DIVISION'S CONFERENCE ROOM, LOCATED AT 3228 GUN CLUB ROAD, WEST PALM BEACH, FLORIDA 33406 AT 11:46 A.M. THE FOLLOWING IS A NON-VERBATIM ACCOUNT OF THE INTERVIEW:

TED STATED THAT HE AND HIS FATHER SIMON HAD AN OFFICE TOGETHER. HE TOLD ME THAT IN 2007 HE HAD NOTICED THAT TESCHER AND SPALLINA STARTED FREQUENTING THE OFFICE AND THEY CONTINUED TO VISIT THE OFFICE QUITE OFTEN INTO 2008. HE SAID THAT HE THEN REALIZED THAT HIS PARENTS WERE CONDUCTING THEIR ESTATE PLANNING. HE SAID THAT HE WAS NOT ASKED TO BE PART OF THE PLANNING, NOR DID HE INQUIRE ABOUT IT. TED TOLD ME THAT HE IS THE ELDEST CHILD OF FIVE, TO INCLUDE JILL, LISA, RAM, AND ELIOT. THE OFFICE FOR THE INSURANCE AGENCY THAT TED AND SIMON WORKED TOGETHER AT IS LOCATED AT 950 PENINSULA CORPORATE CIRCLE, BOCA RATON, FL 33487.

TED STATED THAT HE FOUND OUT UPON HIS FATHER'S DEATH, THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S TRUST. HE TOLD ME THAT THE ATTORNEY'S (TESCHER AND SPALLINA) MADE HIM AWARE OF THIS. HE SAID HE WAS ALSO INFORMED HE WAS A CO-TRUSTEE FOR SOME OTHER ACCOUNT. HE TOLD ME THAT HE IS NOT GOING TO INHERIT AN INSURANCE AGENCY, BUT THAT HE AND HIS FATHER WERE PARTNERS. HE STATED THAT HE OWNS STOCK IN THE AGENCY WITH NO OPTION FOR HIM TO INHERIT OR PURCHASE HIS FATHER'S INTEREST IN THE COMPANY. HE COMMENTED ON THE FACT THAT THE BUSINESS MAKES LITTLE INCOME THESE DAYS.

TED STATED THAT IN THE FIRST PART OF 2012, HIS FATHER (SIMON) HAD A

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There was a buy sell done, what happened to it?

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

DISCUSSION WITH HIM, REFERENCE AN ISSUE THAT PAM RAISED WITH SIMON ABOUT HOW THE DOCUMENTS FOR THE TRUSTS WERE DRAWN UP. HE TOLD ME THAT HE BELIEVED PAM HAD SENT SIMON SOME INFORMATION OR A BOOK RELEVANT TO HER VIEW ON HOW YOU DO ESTATE PLANNING WHEN CHILDREN AND GRANDCHILDREN ARE INVOLVED. HE SAID THAT HIS FATHER DID ASK HIM HIS OPINION ON THINGS AND TED TOLD HIM THAT HE DID FEEL THAT THE GRANDCHILDREN MAY NOT UNDERSTAND IT IF THEY DID NOT RECEIVE AN INHERITANCE. HE STATED THAT HIS FATHER TOLD HIM THAT HE MADE A REALLY GOOD POINT AND SOMETHING TO CONSIDER. TED SAID THAT SOON AFTER THAT CONVERSATION HIS FATHER ANNOUNCED THAT HE WANTED TO TALK WITH HIS CHILDREN ABOUT THE DISTRIBUTION OF HIS AND SHIRLEY'S ASSETS UPON HIS DEATH. HE TOLD ME THAT A CONFERENCE CALL MEETING TOOK PLACE INCLUDING HIS (SIMON'S) FIVE CHILDREN, SIMON, AND SPALLINA. HE SAID THAT THE CONVERSATION WENT REALLY WELL AND SIMON GOT TO PROVIDE HIS WISHES VERY CLEARLY.

HE STATED THAT SPALLINA EXPLAINED THE PROCESS LEGALLY, BUT HIS FATHER MADE A STATEMENT AND ASKED EACH CHILD DIRECTLY, HOW THEY FELT ABOUT IT. TED SAID THAT IT WAS TOLD TO HIM AND HIS SIBLINGS THAT SIMON WAS LEAVING ALL OF HIS WEALTH TO HIS 10 GRANDCHILDREN EQUALLY. HE SAID THAT SIMON TOLD THEM THAT THEY (THE CHILDREN) WERE EACH GETTING 1/5 OF A LIFE INSURANCE POLICY. TED SAID THAT IT WAS OBVIOUS THAT HIS FATHER WAS NOT ASKING FOR PERMISSION, BUT STATING CLEARLY WHAT HE THOUGHT WAS RIGHT. TED SAID THAT EACH CHILD STATED THEY FELT OK ABOUT THE DECISION AND THAT IT WAS HIS WEALTH TO MAKE DECISIONS WITH. TED STATED THAT HE BELIEVES THIS WAS THE SAME PHONE CALL WHERE HE WAS TOLD BY SPALLINA HE, AS WELL AS SIBLINGS, WOULD BE RECEIVING FORMS THEY NEEDED TO SIGN AND RETURN. HE STATED THAT SOON AFTER THIS CALL HE RECEIVED THE WAIVER OF ACCOUNTING FORM FOR HIS MOTHER'S ESTATE. THIS IS THE DOCUMENT DISCUSSED IN PBSO CASE # 13-097087.

TED STATED THAT HE WAS NOT INVOLVED IN ANY OTHER DISCUSSIONS REFERENCE ESTATES UNTIL HIS FATHER'S PASSING ON SEPTEMBER 13, 2012. HE SAID THAT TESCHER AND SPALLINA TOLD HIM AFTER HIS FATHER'S DEATH THAT HE WAS THE TRUSTEE FOR HIS MOTHER'S ESTATE. HE SAID OVER MANY IN PERSON MEETINGS AND PHONE CALLS HE WAS GIVEN GUIDANCE BY THE ATTORNEYS ON HOW TO PERFORM HIS DUTIES AS A TRUSTEE, BECAUSE THIS WAS ALL NEW TO HIM. HE HAD NEVER BEEN IN THIS ROLE BEFORE. HE STATED HE WAS NOT PROVIDED A CHECKLIST OR BOOK ON HOW TO PERFORM THESE DUTIES. TED SAID THAT HE MADE IT CLEAR TO HIS SIBLINGS THAT HE IS THE TRUSTEE ON SHIRLEY'S TRUST. TED STATED THAT HE WAS TOLD THAT SHIRLEY'S TRUST WAS TO BE DISTRIBUTED AMONGST HER 10 GRANDCHILDREN. TED STATED THAT HE DID NOT READ ALL OF SHIRLEY'S TRUST DOCUMENTS AND THAT SPALLINA AND TESCHER HAD BOTH TOLD HIM SEVERAL TIMES HOW SHIRLEY'S TRUST WAS TO BE DISTRIBUTED.

TED SAID THAT HE DID READ IN THE DOCUMENTS WHERE THE 10 GRANDCHILDREN WERE TO RECEIVE THE ASSETS FROM THE TRUST. HE SAID THAT HE DID ISSUE A PARTIAL DISTRIBUTION TO THE SEVEN OF THE 10 GRANDCHILDREN. HE DID NOT ISSUE

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TED DID NOT READ THE TRUST but acted as alleged TRUSTEE???

We were told we were getting "forms" note plural and the documents regarding our inheritances, those with inheritances, before anything would be done. We, Elliot, Lisa and Jill got one document only. The waiver of accounting that was never docketed with the court per Judge Collin.

Nowhere in Shirley's trust does it state the ten grandchildren will get anything. Only mentions three children, is Ted a delusional Trustee?

But now Ted claims a lost trust is the beneficiary in Federal court.

Pam is telling Simon how to estate plan, now that is funny as Si taught Pam as he was the 40 year expert. Spallina however tipped off Pam attorney that Ted and Pam and their children were cut out of the estates.

The grandchildren, what about Ted himself being cut out that he was outraged over.

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

DISTRIBUTIONS TO ELIOT'S CHILDREN BECAUSE ELIOT REFUSED TO SET UP ACCOUNTS FOR THE FUNDS TO BE SENT TOO. HE ALSO TOLD ME THAT ELIOT TOLD JUDGE COLIN IN COURT THAT HE DID NOT WANT TO SET UP THE ACCOUNTS FOR HIS CHILDREN TO RECEIVE THE FUNDS, BECAUSE THE FUNDS BELONG TO HIM, NOT HIS CHILDREN. HE STATED THAT ELIOT HAD MENTIONED OTHER REASONS IN E-MAILS FOR NOT TAKING THE MONEY. HE ALSO STATED THAT ELIOT REFERENCED THE MONEY AS CRIME OR BLOOD MONEY.

HE STATED THAT SPALLINA TOLD HIM IT WAS OK TO DISTRIBUTE THE FUNDS. HE STATED THAT TESCHER AND SPALLINA RESPONDED VIA E-MAIL ON HOW TO RECEIVE THE FUNDS, SUCH AS SETTING UP TRUST ACCOUNTS FOR THE FUNDS TO GO INTO. TED TOLD ME THAT THERE WERE CONVERSATIONS, WHERE HE WAS TOLD THAT SIMON'S ASSETS COULD NOT BE DISTRIBUTED DUE TO CREDITORS FILING AGAINST THE ESTATE, BUT HE WAS LEAD TO BELIEVE IT WAS OK TO MAKE A PARTIAL DISTRIBUTION OF FUNDS FROM SHIRLEY'S ESTATE, BUT THAT THEY WOULD NEED TO BE CAREFUL IN REGARDS TO DISTRIBUTING FUNDS THAT WERE OBTAINED THROUGH LIQUIDATING HER JEWELRY AND PERSONAL PROPERTY. TED ALSO COMMENTED THAT ONE OF THE GOALS OF MAKING THE DISTRIBUTIONS WAS TO ASSIST ELIOT AND HIS FAMILY, BECAUSE THEY WERE RUNNING LOW ON FUNDS. HE STATED THIS DERIVED FROM ELIOT'S POTENTIAL MISUSE OF FUNDS THAT WERE IN HIS CHILDREN'S TRUSTS IN RELATION TO BERNSTEIN FAMILY REALITY (ELIOT'S HOME) AND ELIOT'S SPENDING AND EXPENSES.

TED CONFIRMED THAT HE DID NOT MAKE ANY DECISIONS IN RELATION TO SIMON'S INSURANCE POLICY GENERATED OUT OF CHICAGO, ILLINOIS. HE STATED THAT HE UNDERSTOOD THE POLICY TO BE OWNED BY SIMON PERSONALLY. HE STATED HE UNDERSTOOD THE POLICY TO READ AS, SHOULD SHIRLEY PASS BEFORE HIM, THE BENEFITS WOULD GO TO THE FIVE CHILDREN.

TED CONFIRMED THAT HE WAS NOT THE TRUSTEE FOR SIMON'S ESTATE, BUT THAT IT WAS EXPLAINED TO HIM, VERBALLY, THAT ALL 10 GRANDCHILDREN WILL RECEIVE THE ASSETS FROM THAT ESTATE IN AN EQUAL DISTRIBUTION AT SOME POINT IN TIME. WE DID DISCUSS THE POWER OF APPOINTMENT PUT IN THE TRUST DOCUMENTS. IT APPEARED AS IF TED WAS NOT AWARE OF ANYTHING CALLED A POWER OF APPOINTMENT, UNTIL THE LAST FEW WEEKS. THAT WAS WHEN SPALLINA NOTIFIED THE COURTS OF HIS WITHDRAW FROM BEING THE ATTORNEY FOR SIMON AND SHIRLEY'S ESTATES. IT APPEARS IT WAS EXPLAINED TO HIM AT THAT TIME.

TED TOLD ME THAT HE AND HIS FATHER HAD A GOOD BUSINESS AND PERSONAL RELATIONSHIP. HE SAID THAT HE HAS A GOOD RELATIONSHIP WITH ALL OF HIS SIBLINGS, EXCEPT FOR ELIOT. HE SAID THAT HE GOT ALONG WITH HIS MOTHER, PRIOR TO HER PASSING. HE TOLD ME THAT RACHEL WALKER WAS EMPLOYED BY HIS MOTHER AND FATHER. HE SAID THAT HE GOT ALONG WITH WALKER AND THAT SHE HELPED HIS MOTHER, SHIRLEY, PRIOR TO SHIRLEY'S PASSING. TED TOLD ME THAT MARITZA PUCCIO WAS SOMEONE THAT WORKED FOR HIM AND AS WELL AS HIS PARENTS. HE STATED THAT SHE HELPED AROUND THE HOMES, CLEANING AND/OR CARING FOR CHILDREN. HE STATED THAT HE MET HER AROUND 2003 OR 2005. HE SAID THAT HE NO LONGER HAS A RELATIONSHIP

Ted and Si's personal and business relations were a mess and Ted was outraged he was disinherited with his children. Ted's problems with his parent's go back many years and he was cut out years earlier.

Ted stated in his Federal pleadings that a lost Trust was a beneficiary, not the five children. After Spallina filed a claim stating he was Trustee of the lost Trust.

Denial denial and denial and lies, he knew about the power of appointment in hearings he testified at months earlier when it was fully discussed.

Whole paragraph appears delusional blabber.

Who is lying, Spallina, Ted or both and where oh where is Don still hiding. Note Tescher not at Sheriff with Spallina.

Eliot would not take them as they are fraudulent and that is what Eliot stated in court record at hearing.

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PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 4  
CASE NO. 14029489 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 14029489  
DISPOSITION: ZULU

WITH HER. HE SAID THAT SIMON DID HAVE AN INTIMATE RELATIONSHIP WITH PUCCIO AFTER SHIRLEY PASSED. HE STATED THAT PUCCIO DID RECEIVE SOME TYPE OF FINANCIAL BENEFIT FROM SIMON, PRIOR TO HIM PASSING. HE SAID THAT PUCCIO WAS LIVING WITH SIMON AND HER BILLS WERE BEING PAID FOR. THIS MAY OR MAY NOT BE THE FINANCIAL BENEFIT; TED DID NOT SEEM TO BE SURE. HE DID STATE THAT IT APPEARED THAT SIMON WAS GENUINELY INVESTED INTO THE RELATIONSHIP HE HAD WITH PUCCIO.

TED SAID THAT HE HAS NOT SPOKEN TO SPALLINA ABOUT HIM WITHDRAWING FROM BEING THE ATTORNEY FOR THE TRUSTS, BUT THAT HE DID SPEAK WITH TESCHER. HE SAID THAT TESCHER TOLD HIM HE HAD BEEN MADE AWARE OF A FABRICATED DOCUMENT THAT WAS POTENTIALLY PROBLEMATIC FOR THE ESTATES. HE SAID THAT TESCHER TOLD HIM THAT SPALLINA CREATED THE FABRICATED DOCUMENT AND IT ESSENTIALLY IMPACTED THE ABILITY FOR SIMON TO DISTRIBUTE FUNDS TO ALL 10 GRANDKIDS. TED SAID THAT TESCHER TOLD HIM THAT HE HAD ONLY RECENTLY BECOME AWARE OF THIS DOCUMENT, APPROXIMATELY THREE WEEKS AGO FROM TODAY (01/28/14).

ATTORNEY ALAN ROSE PROVIDED A STATEMENT, STATING HE WISHED TO CLARIFY SOME THINGS IN REGARDS TO HOW THE ESTATE DOCUMENTS READ IN HIS OPINION. HE STATED THAT SHIRLEY'S ASSETS WENT TO LISA, JILL, AND ELIOT OR THEIR LINEAL DECEDENTS. HE STATED THAT ONCE SHIRLEY PASSED HER ASSETS WENT INTO HER TRUST. HE STATED THAT SIMON WAS THE SOLE BENEFICIARY FOR HIS LIFE. HE STATED THAT SIMON DID HAVE A POWER OF APPOINTMENT THAT HE COULD EXERCISE; REFERENCE SHIRLEY'S TRUST, CHANGING THE BENEFITS TO LISA, JILL, AND ELIOT'S CHILDREN. SIMON COULD CHANGE HIS DOCUMENTS AT ANY TIME UP TO HIS DEATH. ALAN STATED THERE IS QUESTION AS TO WHETHER OR NOT SIMON HAD THE POWER TO DISTRIBUTE THE FUNDS FROM THE TRUST TO SIX GRANDCHILDREN OR 10. THE 10 WOULD INCLUDE THE CHILDREN OF ALL FIVE OF SIMON'S KIDS.

HE STATED THAT SHIRLEY'S ORIGINAL DOCUMENTS STATE THAT TED AND PAM AND THEIR LINEAL DECEDENTS ARE CONSIDERED PREDECEASED. HE STATED THAT WERE OTHER WAYS TO MAKE SIMON'S WISHES COME TRUE FOR THE ESTATES. HE SAID THAT CHANGES COULD HAVE BEEN MADE TO SIMON'S DOCUMENTS TO REFLECT SHIRLEY'S SO THAT EQUAL DISTRIBUTIONS WERE MADE AMONGST THE 10 GRANDCHILDREN. THIS EXPLANATION OF THE DOCUMENTS GENERATED A SIMILAR IF NOT THE SAME CONCLUSION AS THAT OF SPALLINA'S FROM LAST WEEK.

I ALSO COMMUNICATED WITH ELIOT BERNSTEIN SEVERAL TIMES THIS WEEK AND LAST WEEK IN ATTEMPT TO ARRANGE AN INTERVIEW WITH HIM IN PERSON. HE CANCELED THE LAST TWO MEETINGS WE HAD SET. AT THIS TIME HE HAS REFUSED TO SET A NEW MEETING DATE.

THIS CONCLUDES MY SUPPLEMENTAL REPORT.

DETECTIVE RYAN W. MILLER #7704

01/29/14 @ 1425 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 01/29/2014/MDR/#6405

Eliot never refused any meeting.

printed by Employee Id #: 5264 on February 11, 2014 02:26:57PM

Ted is hiding the document that left Maritza money and check that was with it, that he stole with Rachel Walker from Simon's home minutes after Simon died (with a host of other "estate" documents) and destroyed or hid them from the estate and beneficiaries.

He fails to say he hated Maritza and accused her of murder to the Sheriff and filed a complaint and began an autopsy claiming she poisoned him. Then the night of Si's death, he threw her out of the hospital and threatened that she be out of Si's house by the time he got there or else and she fled without even her possessions.

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 14029489 SUPPLEMENT 2 OFFENSE REPORT CASE NO. 14029489

DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:

ECONOMIC CRIMES

SIGNAL CODE: 14 CRIME CODE: \* NON CRIME CODE: OF CODE: 9546 01/31/14 THURSDAY  
ZONE: BR GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1020 A 1020 C 1021  
OCCURRED BETWEEN DATE: 12/01/12 , 0000 HOURS AND DATE: 01/31/13 , 0000 HOURS

EXCEPTION TYPE:

INCIDENT LOCATION: 4855 TECHNOLOGY WY APT. NO.: 700  
CITY: BOCA RATON STATE: FL ZIP: 33431

NO. OFFENSES: 00 NO. OFFENDERS: UK NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: OTHER  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

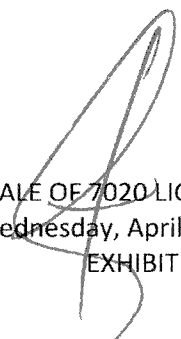
ON 01/29/14 I ATTEMPTED TO MAKE CONTACT WITH LISA FRIEDSTEIN, JILL LANTONI, AND PAMELA SIMON VIA E-MAIL. THEY ARE THE THREE DAUGHTERS OF SIMON AND SHIRLEY BERNSTEIN. I USED THE INFORMATION THAT WAS PROVIDED TO ME BY ELIOT ON 09/10/13. I ATTACHED READ RECEIPTS TO THE E-MAIL. I RECEIVED A READ RECEIPT FROM PAMELA 01/30/14 AT 4:59 AM. ON 01/30/14 I PLACED PHONE CALLS TO JILL AND LISA, USING THE PHONE NUMBERS ELIOT HAD PROVIDED ME. I LEFT MESSAGES ASKING THEM TO CALL ME BACK. ON 01/31/14 I BRIEFLY SPOKE WITH LISA, BUT ASKED THAT SHE CALL BACK SO WE CAN FURTHER DISCUSS THIS CASE. TO DATE, I HAVE NOT RECEIVED A CALL OR E-MAIL FROM PAM OR JILL.

THIS CONCLUDES MY SUPPLEMENTAL REPORT.  
DETECTIVE RYAN W. MILLER #7704  
01/31/14 @ 1430 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 02/04/2014/MDR/#6405

printed by Employee Id #: 5264 on February 11, 2014 02:26:57PM

Did he contact  
Maritza or  
Teschner???

EXHIBIT 2 – CONDO SELLERS REPORT



MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
EXHIBIT

001259

Movoto Real Estate » Florida » Boca Raton » 2494 S Ocean BLVD #C5

[Back to Search](#)

**2494 S Ocean BLVD #C5**

+1 LIKE

**Boca Raton, FL 33432**

**Sold** **\$2,168,000** **19** **0** **0**  
 Estimated Value Beds Baths Sq. Ft.

**Register or Login to see all pictures & details.**

**Request More Information on Active Listings in 33432**

Name

Phone  Email

Comments

Have a question?  
 Want to see it in person?

Fill out this form to  
 have a Movoto specialist  
 contact you today!

Please have a Movoto specialist contact me  
 with more information about listings in 33432.

Or Call Toll-Free 888-766-8686  
 Privacy Policy Terms of Use

Go



**Awesome Similar Homes**

Real Estate listings near 2494 S Ocean BLVD #C5

1400 S Ocean BLVD #N 802, Boca Raton, FL



**\$1,025,000**

Beds: 3  
 Baths: 3.5  
 Sqft: 3,000  
 DOM: 810  
 16

2800 S Ocean BLVD #A-4, Boca Raton, FL



**\$995,000**

Beds: 3  
 Baths: 2.5  
 Sqft: 2,500  
 DOM: 789  
 25

1500 S Ocean BLVD #S-1504, Boca Raton, FL



**\$795,000**

Beds: 2  
 Baths: 2.5  
 Sqft: 2,300  
 DOM: 1051  
 16

3000 S Ocean BLVD #604, Boca Raton, FL



**\$540,000**

Beds: 2  
 Baths: 2  
 Sqft: 1,650  
 DOM: 1055  
 21

701 E Camino Real #7h, Boca Raton, FL



**\$459,000**

Beds: 2  
 Baths: 2  
 Sqft: 1,400  
 DOM: 502  
 17

**Price History for 2494 S Ocean BLVD #C5**

Date	Status	Price	Price Change	Source
11/01/2014	Sold	\$2,237,000	---	County Records

**Register or Login to view the price history.**

[Why is this required?](#)

**Public Records for 2494 S Ocean BLVD #C5**

Source: County Records

**Basic Info**

**19** Beds  
**0** Baths  
**0** Sq. Ft.

Partial Baths: **3**  
 Rooms: **0**  
 Land Use Code: **-80**

Last Sale Price: **\$2,237,000**  
 Last Sale Date: **11/01/2014**

**Thinking About Selling Your House?**

Our expert Movoto Agents are here to answer any of your questions.

Name:

001260



SELLER'S REPORT

2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432



Presented by

**Paul Saperstein**

Florida Real Estate License: BK676961




Mobile: (561) 251-5296 | Fax: (561) 455-9884

sapsdeals@gmail.com

RE/MAX Advantage Plus  
3013 Yamato Rd  
Boca Raton, FL 33434

# 2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432



Legend:  Subject Property

**OFF MARKET**

• Sold Date: 4/18/2013  
 • MLS listing RX-3310842, 9/18/2012

## Current Estimated Value

# \$2,254,000

Last AVM Update: 3/16/2015  
 Days in RPR: 932

AVM Est. Range: \$1,780,660 – \$2,727,340

AVM Confidence: ★★

↓ AVM Change - Last 1 Month: -\$7,000

↑ AVM Change - Last 12 Months: 25.43%

*This report contains data and information that is publicly available and/or licensed from third parties and is provided to you on an "as is" and "as available" basis. The information is not verified or guaranteed. Neither this report nor the estimated value of a property is an appraisal of the property. Any valuation shown in this report has been generated by use of proprietary computer software that assembles publicly available property records and certain proprietary data to arrive at an approximate estimate of a property's value. RPR and its information providers shall not be liable for any claim or loss resulting from the content of, or errors or omissions in, information contained in this report.*

## Home Facts

### Public Remarks

ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an extensive patio space area that extends around the unit. The ba... (see supplement for full remarks)

Home Facts	Public Facts	Listing Facts	Realtor Refinements
Property Type	<b>Condo/Townhouse</b>	<b>Condo/Townhouse</b>	
Property Subtype	<b>Condominium</b>	<b>Condo/Coop</b>	
Bedrooms	<b>3</b>	<b>3</b>	
Total Baths	<b>3</b>	<b>4</b>	
Full Baths	<b>3</b>	<b>3</b>	
Partial Baths	<b>-</b>	<b>1</b>	
Living Area (sq ft)	<b>3,764</b>	<b>3,764</b>	
Lot Size	<b>1 acres</b>	<b>-</b>	
Lot Dimensions	<b>1.00 AC</b>	<b>-</b>	
Garage (spaces)	<b>-</b>	<b>2</b>	
Year Built	<b>1995</b>	<b>1996</b>	
Style	<b>-</b>	<b>4+ Floors</b>	
Heating	<b>-</b>	<b>Central</b>	
Cooling	<b>-</b>	<b>Central</b>	
Construction	<b>Masonry</b>	<b>Other</b>	
Number of Buildings	<b>0</b>	<b>-</b>	
Number of Stories	<b>5</b>	<b>1</b>	

### Homeowner Facts

Owner Name **Voorheis G Wesley**  
 Mailing Address **333 Bay St #910 Toronto On M5h 2R2 Canada XX**

## Extended Home Facts



Legend: Subject Property

### Interior Features

<b>Appliance</b>	Auto Garage Door Opener, Water Heater - Electric, Washer, Smoke Detector(S), Refrigerator, Range-Electric, Microwave, Icemaker, Fire Alarm, Dryer, Dishwasher
<b>Cooling</b>	Central
<b>Floor</b>	Carpet, Marble
<b>Heating</b>	Central
<b>Pet</b>	Restricted
<b>General</b>	Built-In Shelves, Walk-In Closet, Split Bedrooms, Elevator, Cooking Island
<b>Room Details</b>	None

### Exterior Features

<b>Construction Style</b>	Other
<b>Water Front</b>	4+ Floors
<b>Parking Levels</b>	Oceanfront
<b>Utilities</b>	2+ Spaces, Garage In Building
<b>View</b>	10.00,
<b>General</b>	3-Phase Electric, Public Water, Public Sewer
	Ocean
	Covered Balcony

### Exterior Details

<b>Condo Project / Bldg Name</b>	ARAGON CONDO
<b>Lot Size - Acres</b>	1000.00 sq ac
<b>Neighborhood Code</b>	06A450CO

### Room Sizes

<b>Master Bedroom</b>	20x14	<b>Kitchen</b>	13x11
<b>Bedroom</b>	14x12	<b>Living Room</b>	24x18
<b>Bedroom</b>	13x11	<b>Dining Area</b>	8x8
<b>Dining Room</b>	12x12		

### Location Details

<b>Directions to Property</b>	SOUTH OF CAMINO REAL ON OCEAN SIDE
<b>Subdivision</b>	Aragon
<b>Walkability Score</b> (out of 5)	Overall: 1.2   Amenity: 2.1   Leisure: 2.1

### Homeowners Association Info

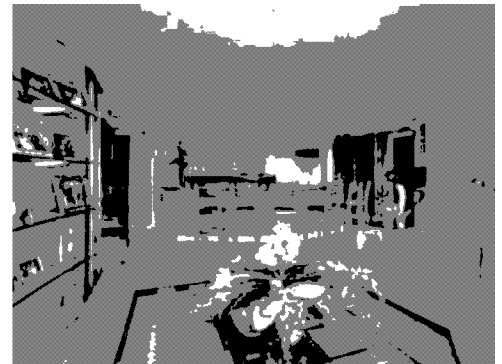
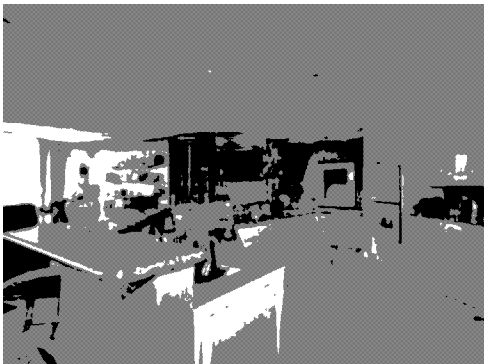
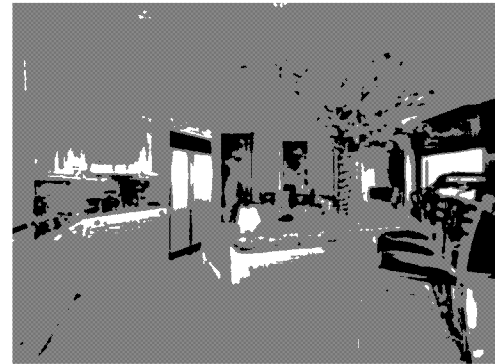
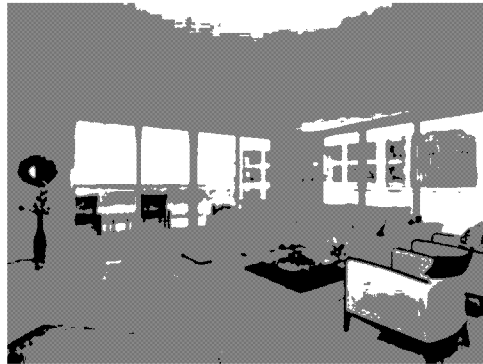
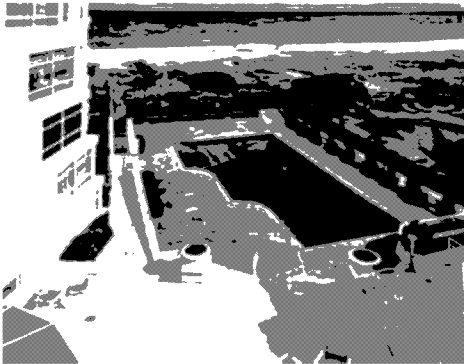
<b>Association Features</b>	Mandatory Hoa
<b>Association Y/N</b>	Yes

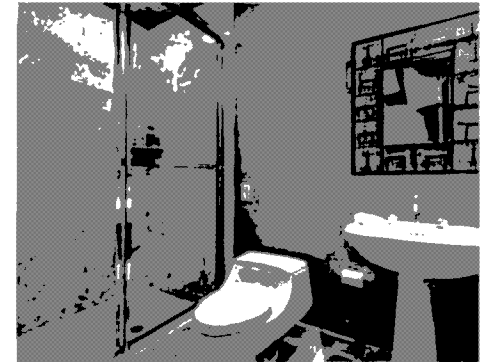
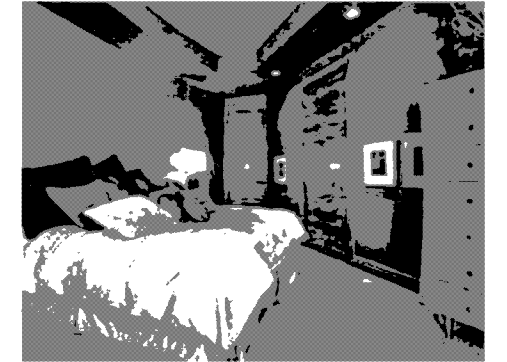
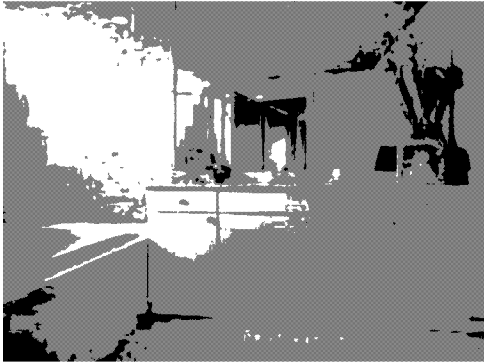
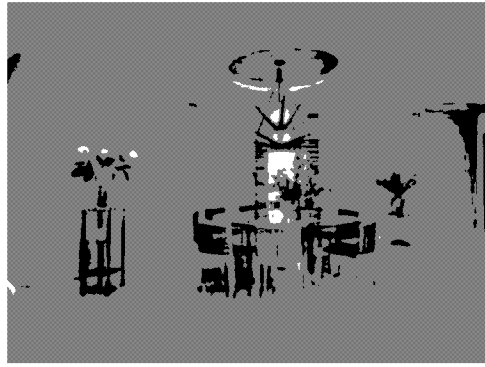


Association Dues 1

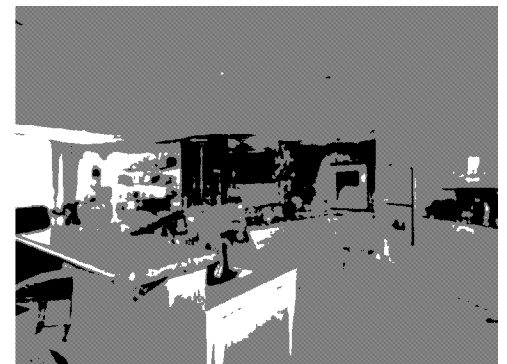
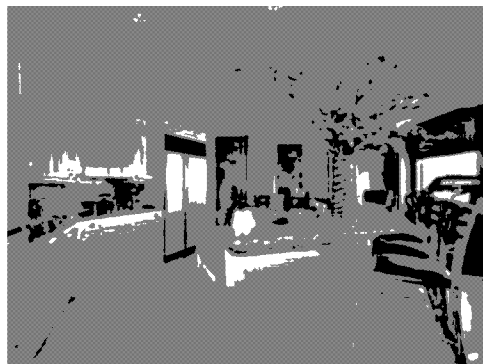
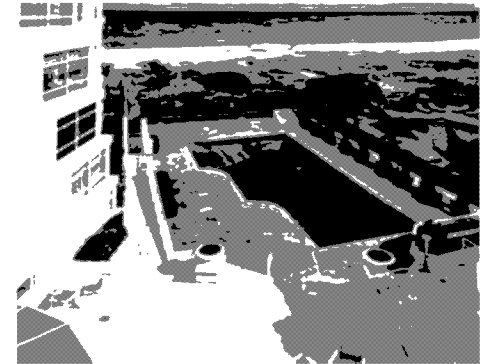
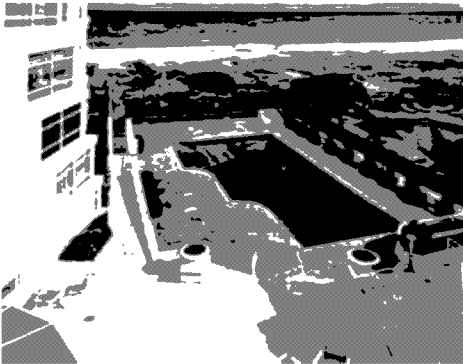
\$4,241

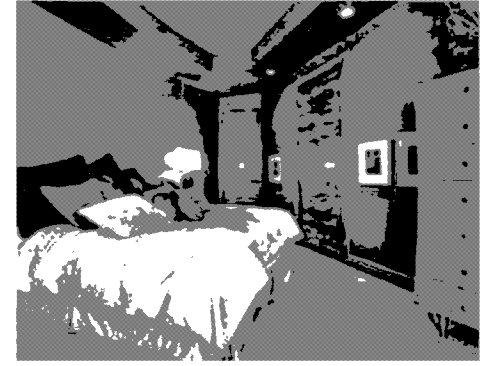
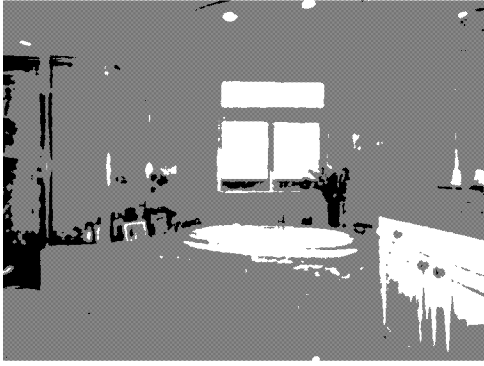
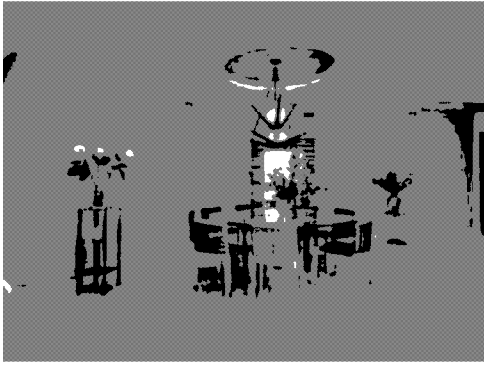
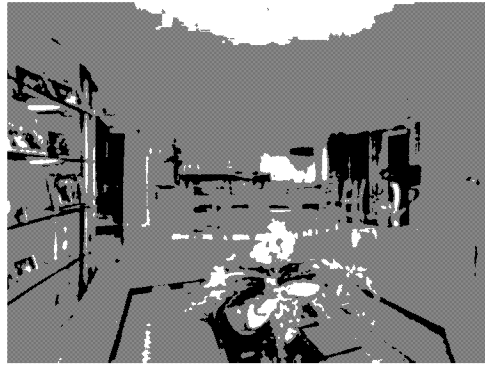
# Property Photos





# Historical Photos





## Property History

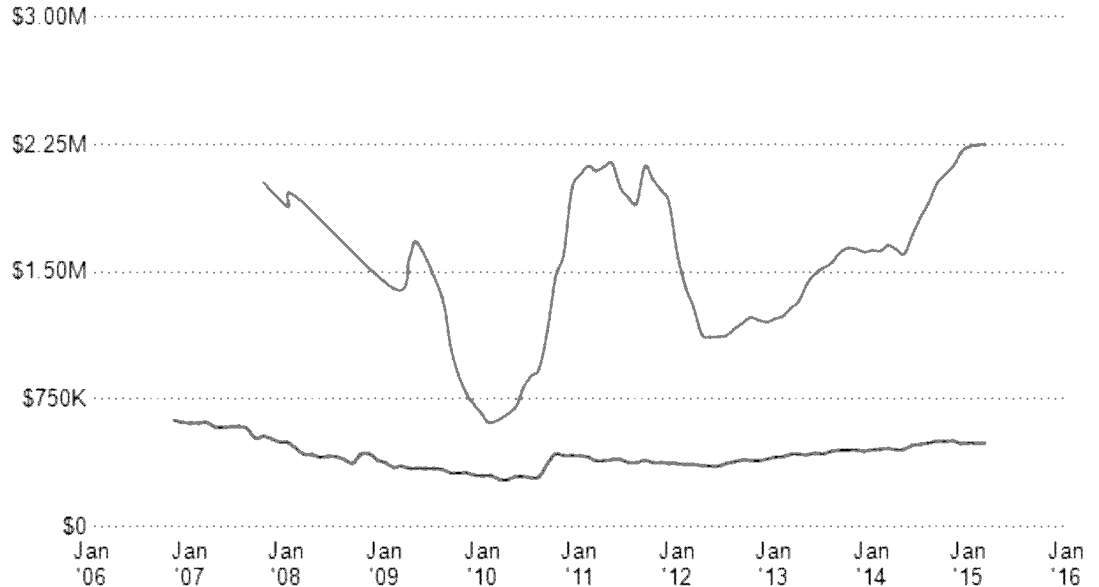
### Median Estimated Home Value

This chart displays property estimates for an area and a subject property, where one has been selected. Estimated home values are generated by a valuation model and are not formal appraisals.

Data Source: Valuation calculations based on public records and MLS sources where licensed

Update Frequency: Monthly

- This House
- 33432
- Palm Beach County
- Florida



### Sales History

Sales Date	Sales Amount	Price per sq. ft.
5/6/2013	\$1,600,000	\$425
4/18/2013	\$1,600,000	\$425
7/13/2004	\$1,600,000	\$425

### Assessed Values

Date	Improvements	Land	Total	Tax
2014	-	-	\$1,450,000	\$28,344
2013	-	-	\$1,240,250	\$27,086
2012	-	-	\$1,127,500	-
2010	-	-	\$1,025,000	\$20,756
2009	-	-	\$1,175,000	-
2007	-	-	\$1,600,000	-
2006	-	-	\$1,600,000	-
2005	-	-	\$1,350,000	-

### Legal Description

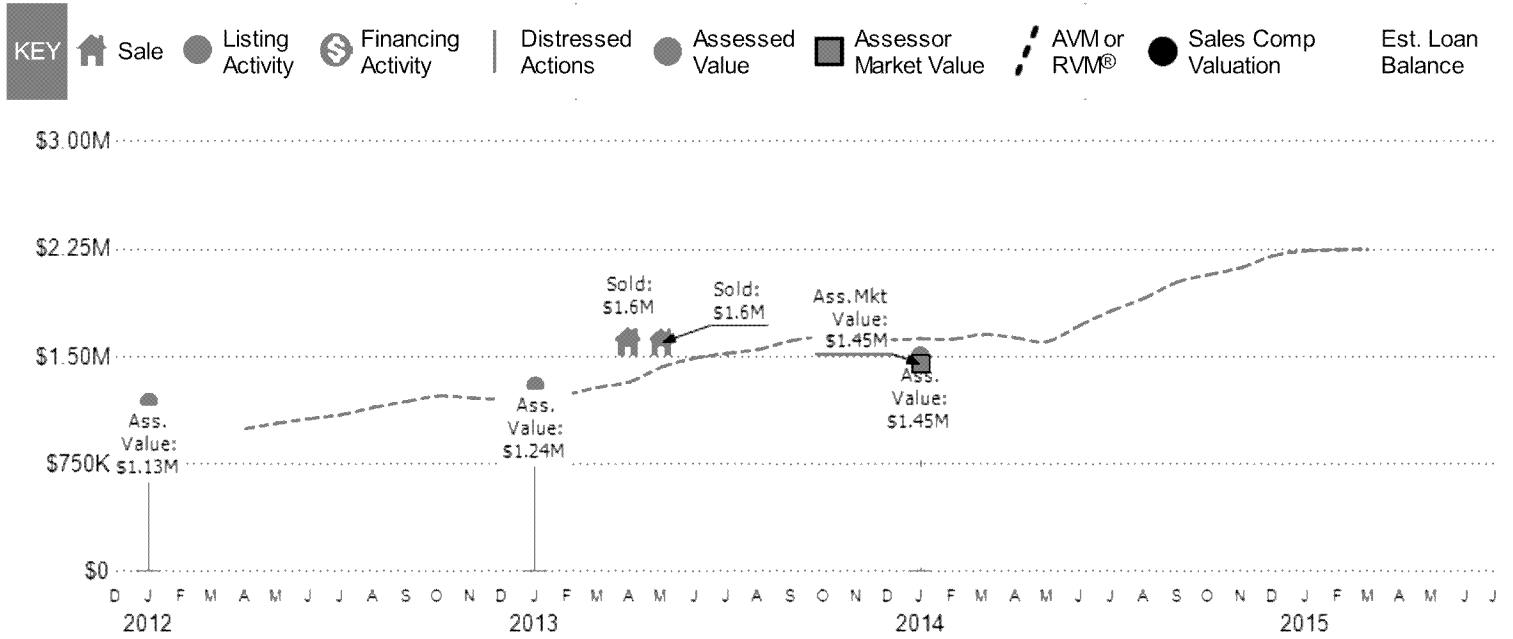
<b>Parcel Number:</b> 06-43-47-32-38-002-0035	<b>Zoning:</b> -	<b>Census Tract:</b> 120990074.202003	<b>Abbreviated Description:</b> UNIT:C-5 S CITY/MUNI/TWP:BOCA RATON SEC/TWN/RNG/MER:SEC 32 TWN 47S RNG 43E ARAGON COND UNIT C-5 BLDG SOUTH	<b>City/Municipality/Township:</b> Boca Raton, FL 33432
--	---------------------	--	---	--

### Mortgage Records

<b>Recording Date</b>	11/4/2004
<b>Borrower Name</b>	SIMON BERNSTEIN, SHIRLEY L BERNSTEIN
<b>Lender Name</b>	WELLS FARGO BANK NA
<b>Lender Type</b>	Bank
<b>Loan Amount</b>	\$800,000
<b>Document Number</b>	20040630547
<b>Loan Type</b>	Unknown
<b>Contract Date</b>	10/29/2004
<b>TD Due Date</b>	11/1/2034
<b>Finance Type</b>	Adjustable Rate
<b>Interest Rate</b>	4.75%

## Sales and Financing Activity

This chart shows a property's sales and financing history. It can be used to compare the value of the property as seen by public records, such as deeds and tax records, with the estimated home value. Actions taken against the owner, such as the issuance of a Notice of Default, are noted. Sales activity, such as listing date and price reductions, are highlighted.

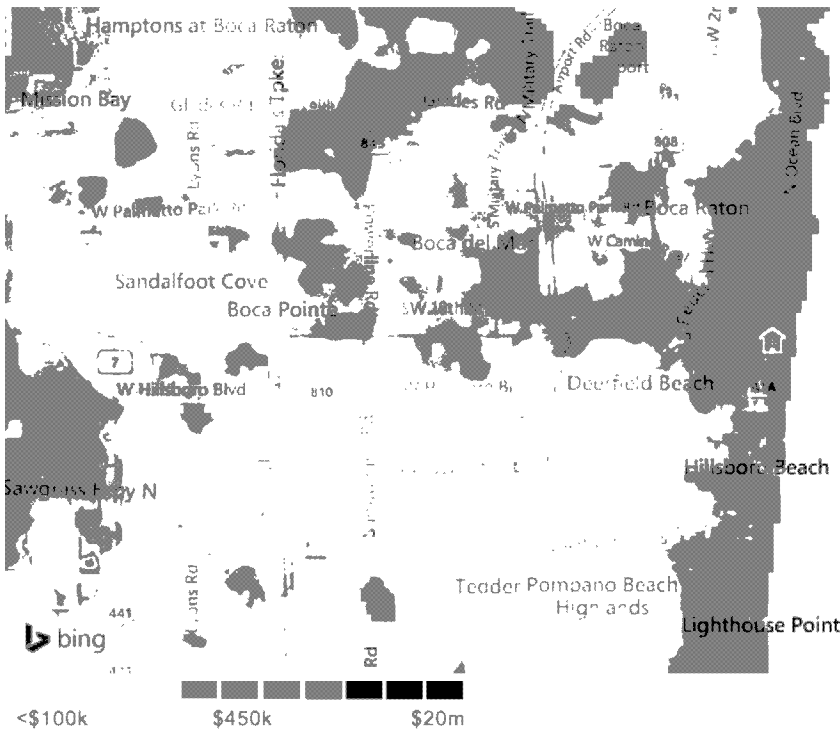


Data Source: Public records and proprietary data; listing data from on- and off-market listings sources

Update Frequency: Valuations are updated twice monthly; actions on the home, such as listing activity or distressed property notices, are updated daily as made available from public records sources

# Market Activity for 33432

## Estimated Home Values



This map layer shows the average estimated home values, based on the AVMs and RVMS® for properties in an area. Source(s): Public records and MLS data where licensed; updated Quarterly.

### Market Snapshot

Compared with Last Year: April 08, 2014 vs. April 08, 2015

Median Est. Home Value

**\$493K**

Up 6.8%

Median Est. Listing Price

**\$695K**

Up 1.5%

Median Days in RPR

**106**

Up 5%

Sales Volume

**49**

Down -25.8%



## Market Activity

This chart summarizes market activity by listing status for various time periods.

Data Source: Public records and proprietary data; listing data from on- and off-market listings sources

Update Frequency: Monthly

### 12 Months Ago



### Last 30 Days



### Month Prior



## Listing Price vs. Sales Price

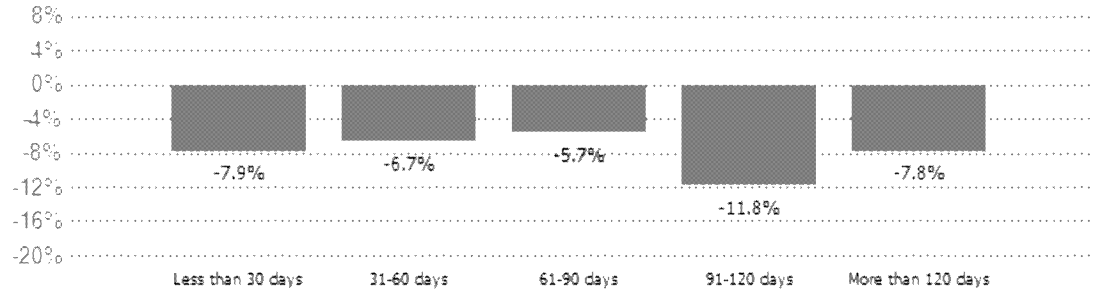
This chart displays the average percentage difference between the listing and selling price, compared by length of time properties were for sale in this market.

Data Source: On- and off-market listings sources

Update Frequency: Monthly

- Below Listing Price
- Number of Sales

### Percentage Difference in Price



### Number of Sales



## Average Price Adjustments

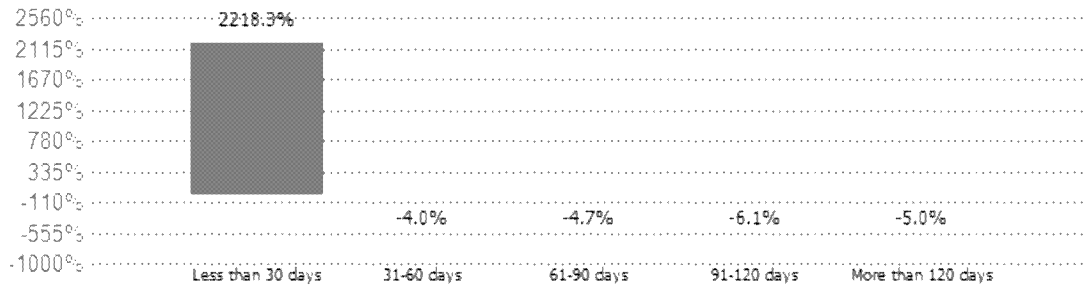
This chart displays the average percentage adjustment from the original list price, compared by length of time properties have been for sale in this market.

Data Source: On- and off-market listings sources

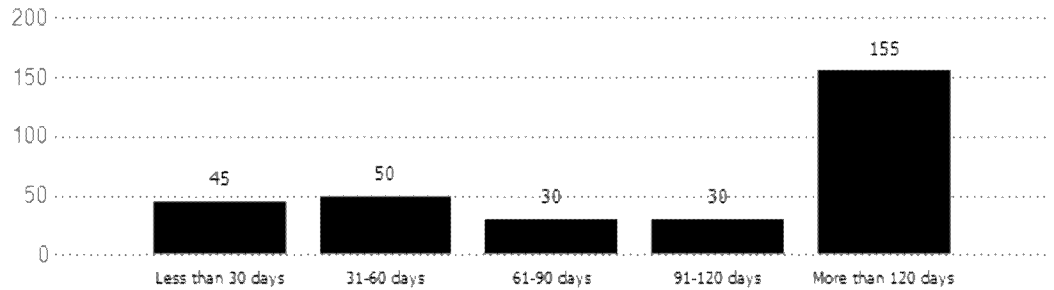
Update Frequency: Monthly

- Price Adjustments (+)
- Price Adjustments (-)
- Number of Price Adjustments - All Listings

## Percentage Change in Listing Price



## Number of Price Adjustments - All Listings



## Market Health Charts and Comparisons

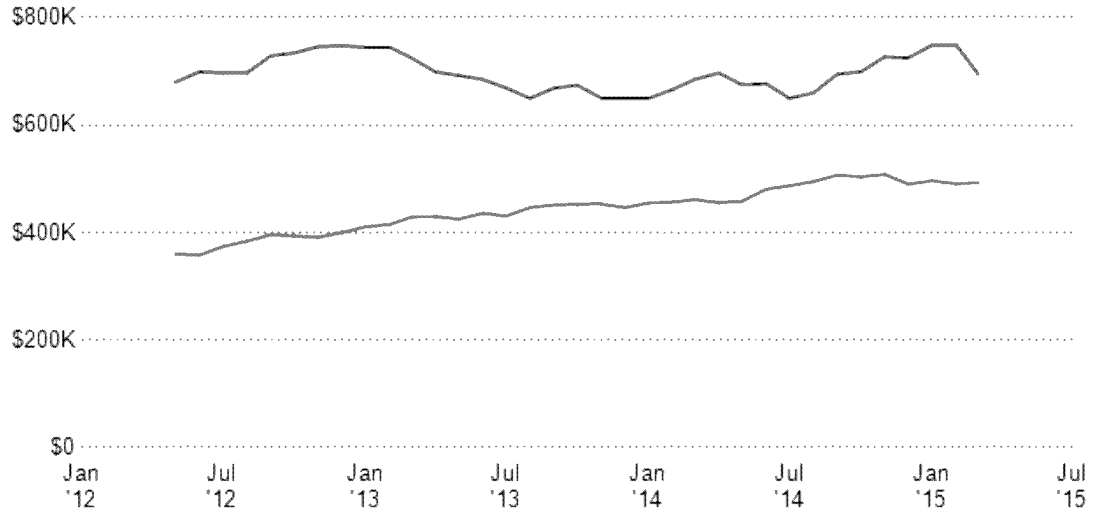
### Median Estimated Home Value vs. Median Listing Price

This chart compares a ZIP code's median estimated home value with its median listing price. Estimated home values are generated by a valuation model and are not formal appraisals.

Data Source: Public records data; listing price data from on- and off-market listings sources

Update Frequency: Monthly

- Median Estimated Value
- Median List Price



### Median Sales Price vs. Sales Volume

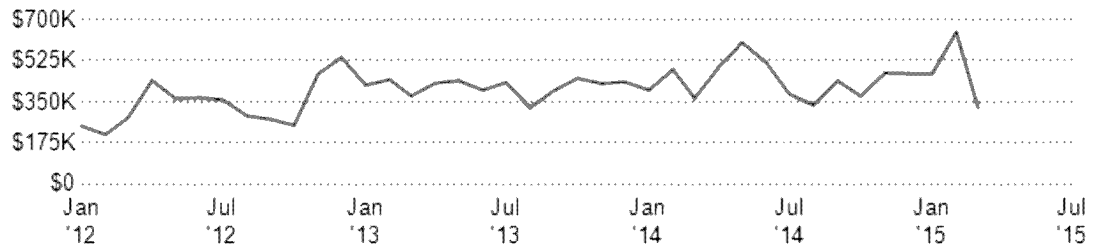
This chart compares the price trend and sales volume for homes in an area. Home prices typically follow sales volume, with a time lag, since sales activity is the driver behind price movements.

Data Source: Public records data

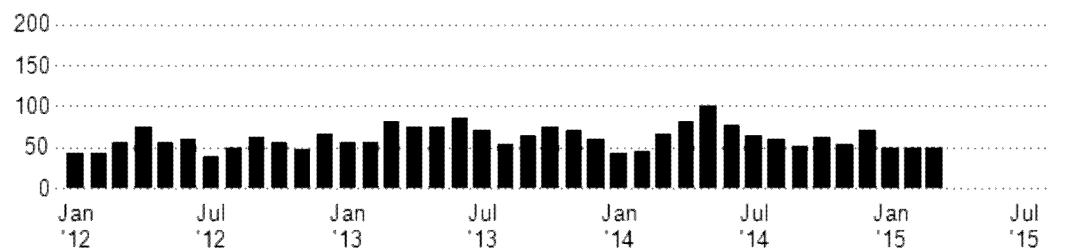
Update Frequency: Monthly

- Median Sales Price
- Sales Volume

#### Median Sales Price



#### Sales Volume



## Median Listing Price vs. Listing Volume

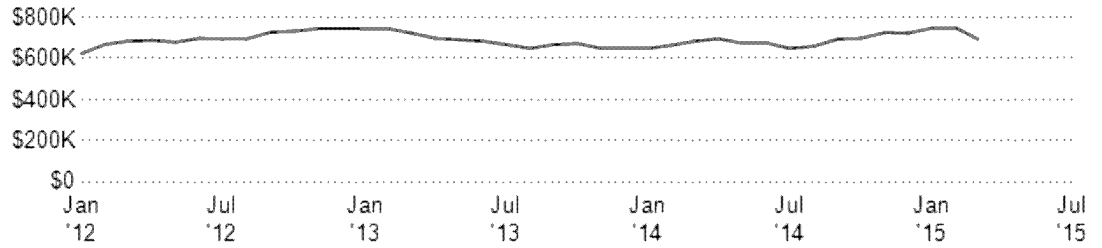
This chart compares the listing price and listing volume for homes in an area. Listing prices often follow listing volume, with a time lag, because supply can drive price movements.

Data Source: On- and off-market listings sources

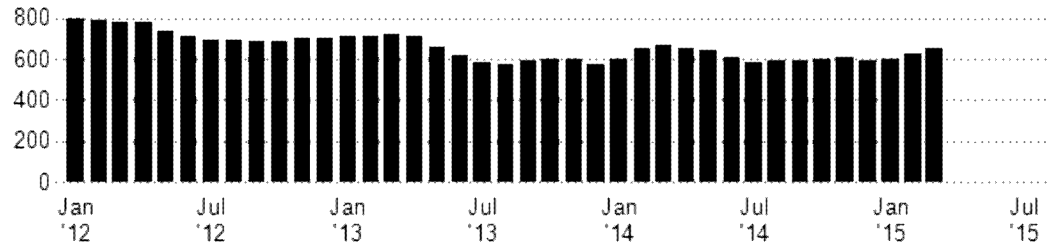
Update Frequency: Monthly

- Median List Price
- Listing Volume

Median List Price



Listing Volume



## Listing Inventory

This chart shows the number of active listings in a ZIP code.

Data Source: On- and off-market listings sources

Update Frequency: Daily

- ZIP Count Listings by PropertyType



## Price per Bedroom of Homes Sold

This chart shows the distribution of homes reported sold in the past six months at different prices per bedroom in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records and MLS data where licensed

Update Frequency: Monthly

- This House
- Comps
- 33432

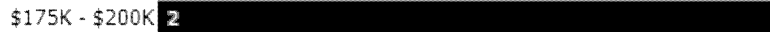
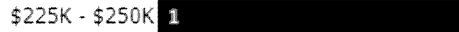
This House



Comps



33432



## Median Sales Price by Square Footage

This chart shows the median price of homes reported sold in the past six months, according to the size of the living space, in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records and MLS data where licensed

Update Frequency: Monthly

- This House
- Comps
- 33432



## Price Range of Homes Sold

This chart shows the distribution of homes reported sold in the past six months within different price ranges in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records data

Update Frequency: Monthly

- This House
- Comps
- 33432



## Price per Square Foot of Homes Sold

This chart shows the distribution of homes reported sold in the past six months at different prices per square foot in the area of your search.

Data Source: Public records data

Update Frequency: Monthly

- This House
- Comps
- 33432



## Age Range of Homes Sold

This chart shows the distribution of homes reported sold in the past six months of different age ranges in the area of your search.

Data Source: Public records data  
Update Frequency: Monthly

- This House
- Comps
- 33432



## Number of Bedrooms in Homes Sold

This chart shows the distribution of homes reported sold in the past six months, according to the number of bedrooms, in the area of your search.

Data Source: Public records data  
Update Frequency: Monthly

- Sales Count by Bedroom



## Inventory of Distressed Properties

This chart shows the count of distressed properties in a ZIP code.

Data Source: Public records and MLS data where licensed

Update Frequency: Daily

- Inventory of Distressed Properties



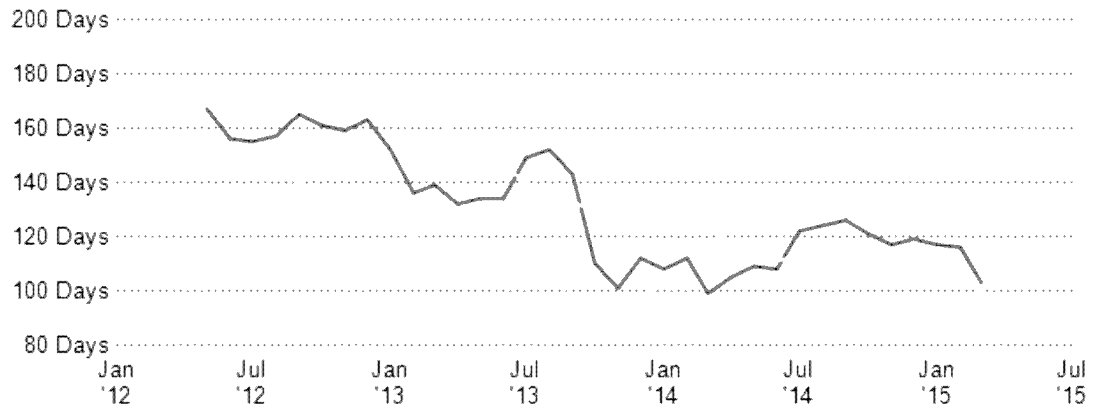
## Median Days in RPR

This chart shows how long homes are listed on RPR before their status is converted to sold. The median is calculated for all homes sold in a given month.

Data Source: On- and off-market listings sources

Update Frequency: Monthly

- 33432
- Palm Beach County
- Florida



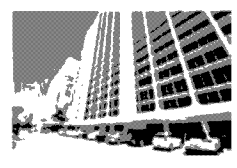
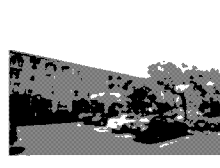
## Selected Market Activity



	Active Listings	Pending Sales	Sold	Distressed	Expired Listings
Total Number of Properties	8	6	8	8	7
Lowest Listing Price/Est. Value	\$329,900	\$380,000	\$450,000	\$120,000	\$185,000
Median Listing Price/Est. Value	\$707,000	\$882,450	\$2,097,250	\$362,500	\$874,973
Highest Listing Price/Est. Value	\$5,250,000	\$1,050,000	\$5,100,000	\$2,395,000	\$5,495,000
Median Living Area	1,620	2,074	3,458	1,414	1,968
Median Price per sq.ft.	\$454	\$403	\$539	\$246	\$382
Median Days in RPR	8	91	187	7	387
Median Age	34	40	16	42	26

FOR SALE

## Active



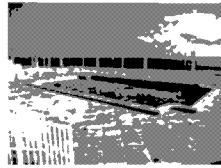
Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	400 S Ocean Blvd, Apt 28 Boca Raton, FL 33432	1111 S Ocean Blvd, #4170 Boca Raton, FL 33432	2494 S Ocean Blvd, Apt H9 Boca Raton, FL 33432	2800 S Ocean Blvd, Apt 16E Boca Raton, FL 33432
Status	Subject Property	For Sale	For Sale	For Sale	For Sale
Amount	—	\$2,395,000 List Amount	\$450,000 List Amount	\$5,250,000 List Amount	\$689,000 List Amount
Listing Date	9/18/2012	4/1/2015	3/27/2015	3/25/2015	3/30/2015
Days in RPR	932	7	12	14	9
Price Per Sq. Ft.	\$425	\$535	\$293	\$896	\$484
Bedrooms	3	3	3	4	2
Total Baths	4	3	3	7	2
Partial Baths	1	1	1	1	—
Total Rooms	—	—	—	—	—
Living Area	3,764	4,476	1,534	5,857	1,425
Lot Size	1 acres	1 acres	—	1 acres	—
Year Built	1996	2002	1973	1995	1973
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX-3310842	RX-10124597	RX-10122727	RX-10122435	RX-10123547
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Mega Real Estate Services	Listing Courtesy of Lang Realty/Delray Beach	Listing Courtesy of Premier Estate Properties Inc/BR	Listing Courtesy of Lang Realty/BR
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Bank owned property, private villa in an oceanfront building with open pool overlooking intracoastal. Spacious floor plan with lots of room, gourmet kitchen, marble and granite. Upscale building in one of boca's best locations. Community pool and spa directly on the atlantic, valet and concierge 24 hours a day. Call for a private showing and let your imagination take over!</p>	<p>The owner of this condo put every bell and whistle possible into it. Featung 3 large bedrooms, 2.5 baths.. Beautiful marble floors throughout in a modular versailles pattern. Top of the line gaggenau appliances. Amazing kohler hardware including the lighted "body-spa" shower by kohler! under counter pot cooker,built in expresso/coffee machine, undercounter lighting, 9 inch floor moldings.. Beautiful fireplace with roman columns throughout the unit. There are closet and bedroom built-ins galore. Beautiful mural overlooking east boca raton in dining area. French doors leading out to balcony overlooking pool and tennis courts. Bosch dishwasher, and bosch stackable washer and dryer and laun...</p>	<p>Spectacular triplex penthouse at the aragon. North east direct ocean front wrap around corner finished in the finest materials and details. Custom built in 2006-7 with spacious rooms with sweeping ocean and coastline views. Magnificent great room with wrap around terrace, 9+ ceilings, impact glass, private elevator and private roof top pool. Ocean front master suite with his/her baths, stunning gourmet kitchen with butlers pantry and luxurious bedroom suites with private baths. Roof top family room with glass doors to 30x22 ocean front deck and private heated pool and spa. Endless views in every direction. Private interior elevator to each level. Full service valet, concierge boutique built...</p>	<p>Imagine waking up and enjoying your morning coffee overlooking a direct and unobstructed ocean view. Paradise at its finest. High floor, 2 bedroom, 2 bath, fully tiled unit with kitchen and both bathrooms redone. Impact hurricane sliders, plus hurricane shutters on the patio, overlooking the beach and ocean. Whitehall south (now known as ocean towers) has been completely redone with all assessments paid in full. Building features magnificent new lobby, 24/7 security, beautiful new fitness facility, and onsite management, direct beach access, underground assigned parking, private elevator foyer shared by only 2 apartments, which are just a few of the building features.</p>

Highlighted fields were changed by agent to reflect knowledge of this property.



FOR SALE

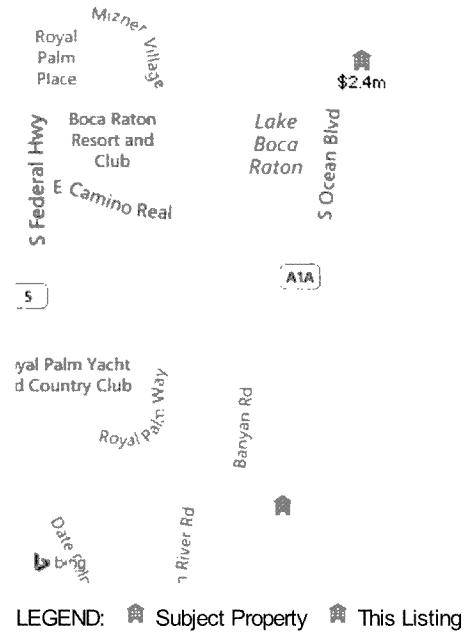
## Active



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	1200 S Ocean Blvd, Apt 14G Boca Raton, FL 33432	2929 S Ocean Blvd, #2020 Boca Raton, FL 33432	200 E Palmetto Park Rd, Apt 408 Boca Raton, FL 33432	100 SE 5th Ave, Apt 308 Boca Raton, FL 33432
Status	Subject Property	For Sale	For Sale	For Sale	For Sale
Amount	—	\$475,000 List Amount	\$329,900 List Amount	\$1,249,000 List Amount	\$725,000 List Amount
Listing Date	9/18/2012	4/6/2015	4/6/2015	4/2/2015	3/25/2015
Days in RPR	932	2	2	6	14
Price Per Sq. Ft.	\$425	\$386	\$330	\$555	\$425
Bedrooms	3	2	2	2	2
Total Baths	4	2	2	3	2
Partial Baths	1	—	—	1	—
Total Rooms	—	—	—	—	—
Living Area	3,764	1,230	999	2,251	1,706
Lot Size	1 acres	—	—	1 acres	—
Year Built	1996	1966	1974	2009	1988
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo	Condo/Coop	Condo/Coop
MLS ID	RX-3310842	RX-10125434	F1335765	RX-10124670	RX-10122949
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Realty Associates/Boca Raton	Listing Courtesy of CAMPBELL & ROSEMURGY REAL EST	Listing Courtesy of Lang Realty/BR	Listing Courtesy of Nestler Poletto Sotheby's International Realty
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Oceanfront boca raton ! short walk to shops, boca raton resort and club. 24 hour securityocean and city views ...great building and location!this condo is ready for personal touch. 24 hour security..</p>	<p>Greatest town around beautiful boca raton across the street from beach. Ocean view</p>	<p>Rarely available gorgeous 2 bedroom 2.5 bath plus den facing east. Madrid model with partial ocean-view and 575 sq. Extra large terrace. Sleek and contemporary with quartz marble floors throughout. Luxury kitchen with thermidor oven and cooktop, subzero fridge. Miele espresso and granite. Large master has his and her closets and large marble bath. Separate den and second bedroom is split from master. Luxury building with concierge. Walk to 48 restaurants and mizner park. Downtown living at its finest.</p>	<p>Move right into this elegant, totally renovated "cloister" garden 2br/2bath condo (1706 s/f under air and 1902 total s/f), on the grounds of the boca raton resort &amp; club (membership is available separately). Enjoy serenity and privacy, in an unmatched tropical setting, surrounded by palm trees. An artistic retreat featuring a masterfully enlarged and updated kitchen, with high-end european stainless appliances and spectacular cabinetry with elegant, russet granite. The bathrooms have been meticulously renovated with tumbled marble &amp; sea-glass detail in the master shower, with a huge oval tub. Upgrades include: new a/c &amp; hot water heater, carpeting, re-tiled balconies and window treatments...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

# 400 S Ocean Blvd, Apt 28, Boca Raton, FL 33432



**FOR SALE**

\* Foreclosure  
 \* Reo  
 \* New, Active: 4/1/2015

List Price  
**\$2,395,000**

Last Price Update: -  
 Days in RPR: 7

Current Estimated Value  
**\$2,557,110**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$2,429,255 – \$2,684,965**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$38,250**

↓ RVM® Change  
 Last 12 Months: **-20.73%**

BANK OWNED PROPERTY,  
 PRIVATE VILLA IN AN  
 OCEANFRONT BUILDING WITH  
 OPEN POOL OVERLOOKING  
 INTRACOASTAL. SPACIOUS  
 FLOOR PLAN WITH LOTS OF  
 ROOM, GOURMET KITCHEN,  
 MARBLE AND GRANITE.  
 UPSCALE BUILDING IN ONE OF  
 BOCA'S BEST LOCATIONS.  
 COMMUNITY POOL AND SPA  
 DIRECTLY ON THE ATLANTIC,  
 VALET AND CONCIERGE 24...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

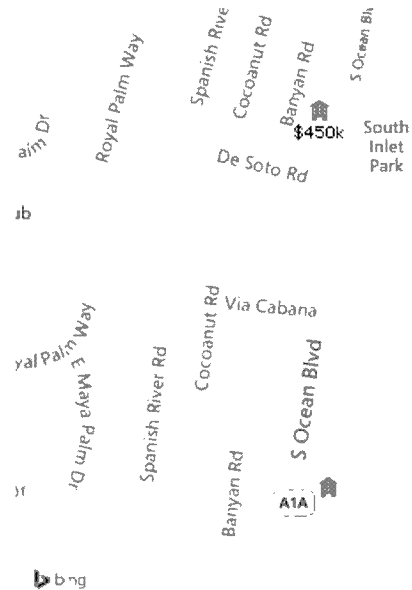
**Condo/Townhouse**  
**Condominium**  
 3  
 2  
 2  
 -  
**4,476**  
**1 acres**  
**1.00 AC**  
 -  
 -  
**2002**  
 -  
 -  
**Masonry**  
 0  
 -

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 2  
 1  
**4,476**  
 -  
 -  
**Yes**  
**2002**  
**Villa**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
 -  
 1

*Listing Courtesy of Mega Real Estate Services*

# 1111 S Ocean Blvd, #4170, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**

\* Preforeclosure  
 \* Notice of Lis Pendens  
 \* New, Active: 3/27/2015

List Price  
**\$450,000**

Last Price Update: -  
 Days in RPR: 12

Current Estimated Value  
**\$403,590**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$383,411 – \$423,769**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$2,120**

↑ RVM® Change  
 Last 12 Months: **37.74%**

The owner of this condo put every bell and whistle possible into it. Featuring 3 large bedrooms, 2.5 baths.. Beautiful marble floors throughout in a modular versailles pattern. Top of the line Gaggenau appliances. Amazing Kohler hardware including the lighted "body-spa" shower by Kohler! Under cou...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Garage (spaces)  
 Year Built  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

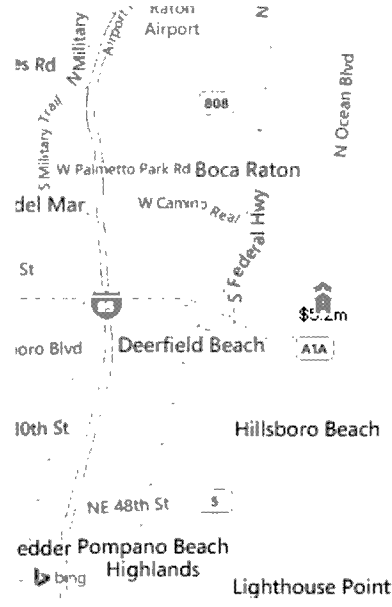
**Condo/Townhouse**  
**Condominium**  
 3  
 2  
 2  
 -  
 1,534  
 -  
 1973  
 -  
 -  
**Masonry**  
 0  
 4

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 2  
 1  
 1,534  
 1  
 1973  
**Central**  
**Ceiling Fan(S), Humidistat, Central**  
**Cbs Construction**  
 -  
 5

Listing Courtesy of Lang Realty/Delray Beach

# 2494 S Ocean Blvd, Apt H9, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**

\* Active: 3/25/2015

List Price  
**\$5,250,000**

Last Price Update: –  
 Days in RPR: 14

SPECTACULAR TRIPLEX PENTHOUSE AT THE ARAGON. NORTH EAST DIRECT OCEAN FRONT WRAP AROUND CORNER FINISHED IN THE FINEST MATERIALS AND DETAILS. CUSTOM BUILT IN 2006-7 WITH SPACIOUS ROOMS WITH SWEEPING OCEAN AND COASTLINE VIEWS. MAGNIFICENT GREAT ROOM WITH WRAP AROUND TERRACE, 9+ CEILINGS, IMPACT GLASS...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

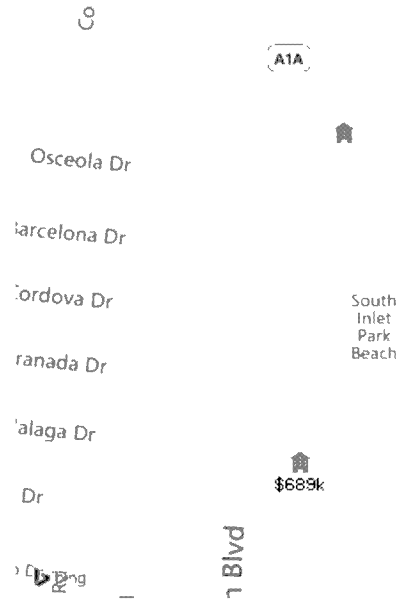
Condo/Townhouse  
**Condominium**  
 4  
 4  
 4  
 –  
 5,857  
**1 acres**  
**1.00 AC**  
 –  
 –  
 1995  
 –  
 –  
 –  
**Masonry**  
 0  
 9

## Listing Facts

Condo/Townhouse  
**Condo/Coop**  
 4  
 7  
 6  
 1  
 5,857  
 –  
 –  
 2  
**Yes**  
 1995  
**4+ Floors, Multi-Level**  
**Central, Zoned**  
**Central, Zoned**  
**Concrete**  
 –  
 1

Listing Courtesy of Premier Estate Properties Inc/BR

# 2800 S Ocean Blvd, Apt 16E, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**  
 \* New, Active: 3/30/2015

List Price  
**\$689,000**

Last Price Update: -  
 Days in RPR: 9

Current Estimated Value  
**\$548,120**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$471,384 – \$624,856**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$4,530**

↑ RVM® Change  
 Last 12 Months: **8.11%**

Imagine waking up and enjoying your morning coffee overlooking a direct and unobstructed ocean view. Paradise at its finest. High floor, 2 bedroom, 2 bath, fully tiled unit with kitchen and both bathrooms redone. Impact hurricane sliders, plus hurricane shutters on the patio, overlooking the beach...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Garage (spaces)  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

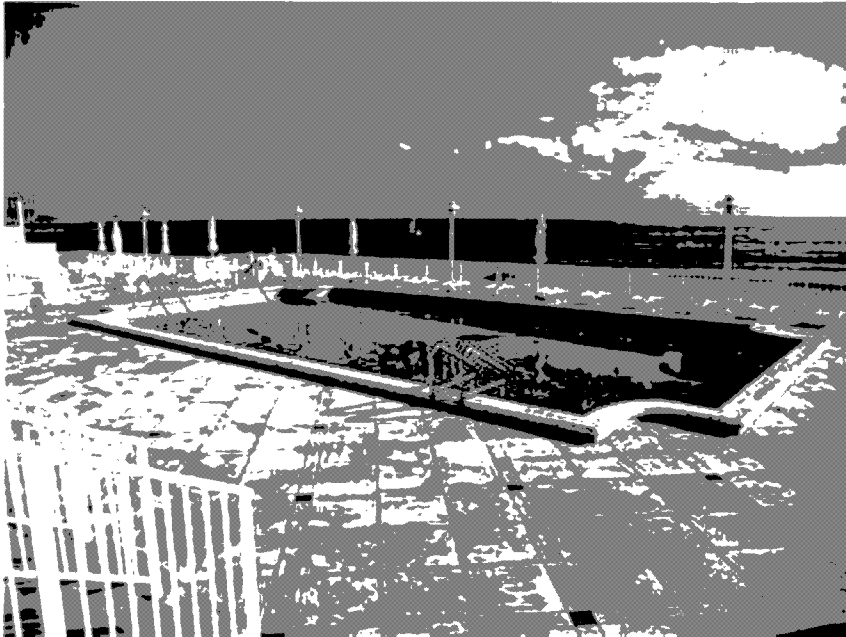
**Condo/Townhouse**  
**Condominium**  
 2  
 2  
 2  
 1,425  
 -  
 1973  
 -  
 -  
 -  
 -  
**Masonry**  
 0  
 16

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 2  
 2  
 2  
 1,425  
 1  
 1973  
**4+ Floors**  
**Composite Rolled**  
**Central**  
**Central, Electric**  
**Cbs Construction, Piling, Concrete**  
 -  
 2

Listing Courtesy of Lang Realty/BR

# 1200 S Ocean Blvd, Apt 14G, Boca Raton, FL 33432



**FOR SALE**  
 \* New, Active: 4/6/2015

List Price  
**\$475,000**

Last Price Update: -  
 Days in RPR: 2

Current Estimated Value  
**\$367,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$282,590 - \$451,410**

AVM Confidence:  
 ★★

↑ AVM Change  
 Last 1 Month: **\$28,000**

→ AVM Change  
 Last 12 Months: -

Oceanfront Boca Raton ! Short walk to Shops, Boca Raton Resort and Club. 24 hour Security Ocean and City views ...great building and location! This condo is ready for personal touch. 24 Hour Security..

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Garage (spaces)  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

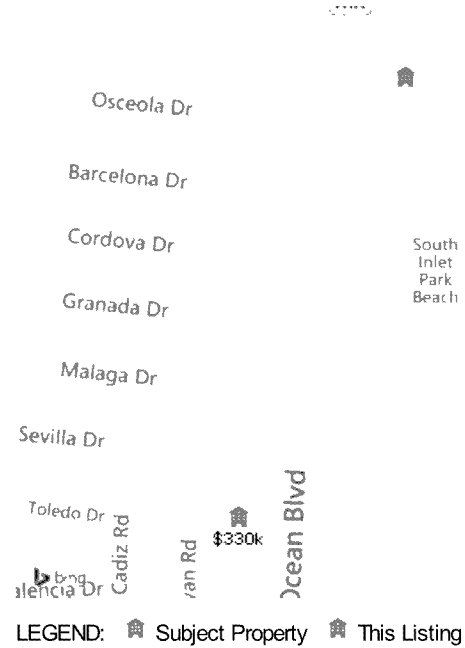
**Condo/Townhouse**  
**Condominium**  
 2  
 2  
 2  
**1,230**  
 -  
**1966**  
 -  
 -  
 -  
**Masonry**  
 0  
 -

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 2  
 2  
 2  
**1,230**  
 1  
**1966**  
**4+ Floors**  
**Other**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction, Concrete**  
 -  
 1

*Listing Courtesy of Realty Associates/Boca Raton*

# 2929 S Ocean Blvd, #2020, Boca Raton, FL 33432



**FOR SALE**

\* New, Active-Available: 4/6/2015

List Price  
**\$329,900**

Last Price Update: –  
Days in RPR: 2

Current Estimated Value  
**\$204,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$165,240 – \$242,760**

AVM Confidence:



↓ AVM Change  
Last 1 Month: **-\$3,000**

↑ AVM Change  
Last 12 Months: **5.69%**

Greatest town around Beautiful Boca Raton Across the street from beach. Ocean view

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Living Area (sq ft)  
Year Built  
Style  
Construction  
Number of Buildings  
Number of Stories

## Public Facts

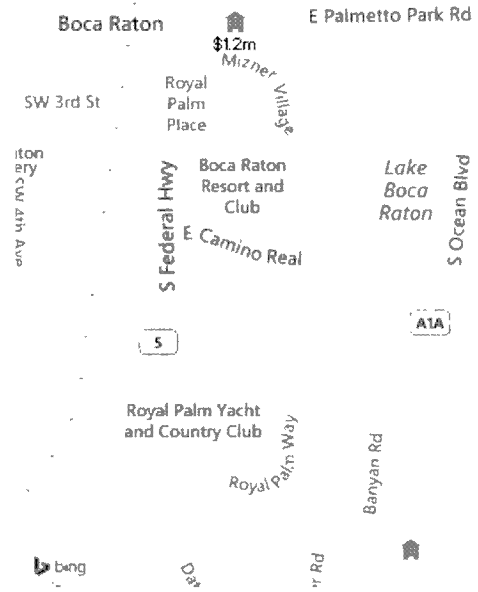
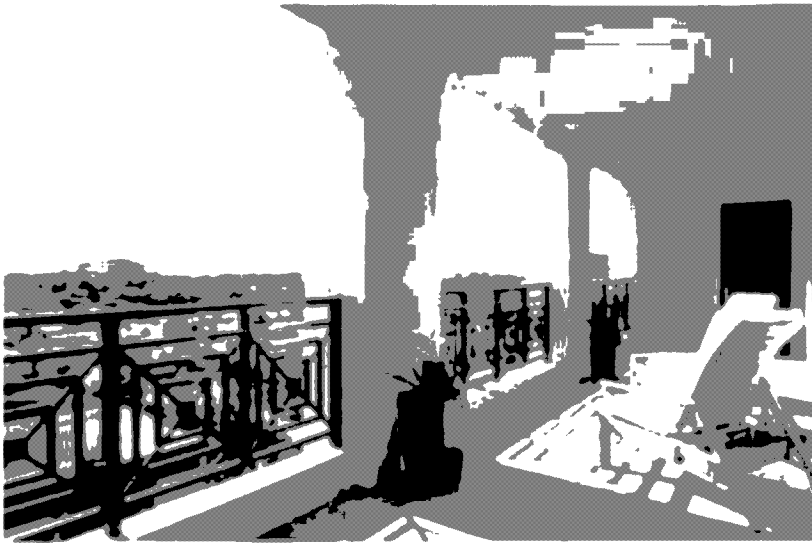
**Condo/Townhouse**  
**Condominium**  
**2**  
**2**  
**2**  
**999**  
**1974**  
**–**  
**Masonry**  
**0**  
**2**

## Listing Facts

**Condo/Townhouse**  
**Condo**  
**2**  
**2**  
**2**  
**999**  
**1974**  
**Condo 1-4 Stories**  
**–**  
**–**  
**4**

*Listing Courtesy of CAMPBELL & ROSEMURGY REAL EST*

# 200 E Palmetto Park Rd, Apt 408, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**  
 \* New, Active: 4/2/2015

List Price  
**\$1,249,000**

Last Price Update: –  
 Days in RPR: 6

Current Estimated Value  
**\$1,066,750**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$949,408 – \$1,184,092**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **–\$5,470**

↑ RVM® Change  
 Last 12 Months: **15.57%**

Rarely available gorgeous 2 bedroom 2.5 bath plus den facing east. Madrid model with partial Ocean-view and 575 sq. extra large terrace. Sleek and contemporary with quartz marble floors throughout. Luxury kitchen with Thermidor oven and cooktop, subzero fridge. Miele espresso and granite. Large mas...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Year Built  
 Style  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

**Condo/Townhouse**  
**Condominium**  
 2  
 2  
 2  
 –  
 2,251  
 1 acres  
 1.00 AC  
 –  
 2009  
 –  
 –  
 –  
**Masonry**  
 0  
 –

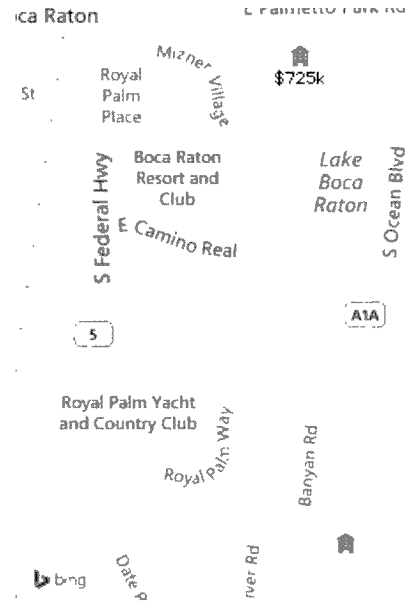
## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 2  
 3  
 2  
 1  
 2,251  
 –  
 –  
 2  
 2009  
**Contemporary**  
**Central, Electric**  
**Ceiling Fan(S)**  
**Concrete**  
 –  
 9

Listing Courtesy of Lang Realty/BR



# 100 SE 5th Ave, Apt 308, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**

\* Active: 3/25/2015

List Price  
**\$725,000**

Last Price Update: -  
Days in RPR: 14

**Current Estimated Value**

**\$510,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$418,200 – \$601,800**

AVM Confidence:



↓ AVM Change  
Last 1 Month: **-\$7,000**

↑ AVM Change  
Last 12 Months: **6.25%**

Move right into this elegant, totally renovated "Cloister" Garden 2br/2bath Condo (1706 s/f under air and 1902 total s/f), on the grounds of The Boca Raton Resort & Club (membership is available separately). Enjoy serenity and privacy, in an unmatched tropical setting, surrounded by palm trees. An...

**Home Facts**

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

**Public Facts**

**Condo/Townhouse**  
**Condominium**  
**2**  
**2**  
**2**  
**1,706**  
**-**  
**1988**  
**-**  
**-**  
**-**  
**-**  
**Masonry**  
**0**  
**3**

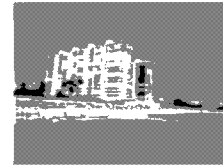
**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
**2**  
**2**  
**2**  
**1,706**  
**1**  
**1988**  
**4+ Floors, Courtyard, Mediterranean, Arches**  
**Barrel**  
**Central Individual A/C**  
**Ceiling Fan(S), Electric, Paddle Fan**  
**Concrete**  
**-**  
**4**

*Listing Courtesy of Nestler Poletto Sotheby's International Realty*

**SALE PENDING**

## Pending



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	2600 S Ocean Blvd, Apt 6E Boca Raton, FL 33432	2800 S Ocean Blvd, Apt 21G Boca Raton, FL 33432	1200 S Ocean Blvd, Apt 7A Boca Raton, FL 33432	1180 S Ocean Blvd, Apt 17A Boca Raton, FL 33432
Status	Subject Property	Pending	Pending	Pending	Pending
Amount	—	\$798,000 List Amount	\$835,000 List Amount	\$999,999 List Amount	\$929,900 List Amount
Offer Amount	—	—	—	—	—
Listing Date	9/18/2012	1/12/2015	12/19/2014	1/1/2015	3/5/2015
List/Offer Ratio	—	—	—	—	—
Days in RPR	932	86	110	97	34
Price Per Sq. Ft.	\$425	\$319	\$390	\$499	\$485
Bedrooms	3	3	3	3	3
Total Baths	4	3	3	3	3
Partial Baths	1	1	1	1	1
Total Rooms	—	—	—	—	—
Living Area	3,764	2,500	2,143	2,006	1,916
Lot Size	1 acres	—	—	—	—
Year Built	1996	1978	1976	1966	1969
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX 3310842	RX 10101687	RX 10096925	RX 10098818	RX 10117234
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Florida Beach Realty	Listing Courtesy of United Realty Group, Inc	Listing Courtesy of Jordyn Taylor Properties, LLC	Listing Courtesy of Shawn Elliott Luxury Homes & Estates
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Direct, direct, unobstructed oceanfront apartment with forever ocean views * this is the lowest priced apartment at stratford arms * fantastic value for over 2,100 sq. Ft. On the ocean * seller has paid in full special assessment for lobby level remodeling * new impact windows * see supplement remarks for numerous building upgrades and improvements *</p>	<p>Fabulous ocean views, corner view of ocean and intracoastal, professionally decorated, built in large bar in living room ,upgraded kitchen and bathroom, eat-in breakfast room, shutters, water purifier, wrap around balcony, light and bright, furniture available, open floor plan.</p>	<p>Magnificently remodeled 3 bed/2.5 bath south east corner home. Direct ocean &amp; city view. boca inlet to lighthouse point. Gourmet kitchen, granite counters &amp; stainless steel appliances, wood moldings,custom built-ins, saturnia flooring, california closets, new floor to ceiling impact glass windows &amp; doors, new accordion shutters. Breathtaking unobstructed ocean views from every room &amp; balcony.resort style pool &amp; deck on the sand! great central location - a short walk to the boca raton resort &amp; club.</p>	<p>Just reduced!! views, views, views! fantastic direct oceanfront. Completely remodeled 3 bedroom, 2.5 bath condo immediately south of the boca inlet. Enjoy direct ocean views to the north, east, and south from this rarely available 'a' stack lower penthouse. Picture perfect views of boca raton, deerfield beach, the intracoastal, and the ocean. Everything is brand new. Brazilian cherry hardwood flooring in bedrooms. Oversized porcelain tile in main living area. Brand new stainless steel appliances, lighting, hurricane impact windows, and sliding doors. Crown molding throughout. Semi-private elevator, only 2 residences per floor. Close to the boca resort &amp; beach club, mizner park and royal pal...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

**SALE PENDING**

## Pending



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	300 SE 5th Ave, Apt 2020 Boca Raton, FL 33432	950 Ponce De Leon Rd, #3060 Boca Raton, FL 33432
Status	Subject Property	Pending	Pending
Amount	—	\$1,050,000 List Amount	\$380,000 List Amount
Offer Amount	—	—	—
Listing Date	9/18/2012	11/9/2014	1/31/2015
List/Offer Ratio	—	—	—
Days in RPR	932	150	67
Price Per Sq. Ft.	\$425	\$417	\$248
Bedrooms	3	3	3
Total Baths	4	5	3
Partial Baths	1	1	1
Total Rooms	—	—	—
Living Area	3,764	2,516	1,534
Lot Size	1 acres	—	—
Year Built	1996	1989	1973
Living Area Range (low)	—	—	—
Living Area Range (high)	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX 3310842	RX 10087481	RX 10107506
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Premier Estate Properties Inc/BR	Listing Courtesy of Champagne & Parisi Real Estate
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Direct intracoastal front 3 bedroom at mizner tower on the gated grounds of the boca resort and club. Great water views from this second floor spacious residence with wonderful water views. Split bedroom plan, great room with open kitchen, sumptuous master suite with double walk in closets, his/her baths and doors to intracoastal front balcony. Most unique views from the balconies as this second floor residence has view through railings affording really special water views. High ceilings, custom built-ins &amp; abundant storage. Ideal resort style living. Doorman, valet, pool, spa, fitness center and tennis courts. The info herein is believed to be accurate, is not guaranteed &amp; may be subject...</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

# 2600 S Ocean Blvd, Apt 6E, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Pending: 4/2/2015

List Price

**\$798,000**

Last Price Update: -  
Days in RPR: 86

DIRECT, DIRECT, Unobstructed OCEANFRONT Apartment with Forever OCEAN Views \* This is the LOWEST PRICED Apartment at Stratford Arms \* FANTASTIC value for over 2,100 Sq. Ft. on the OCEAN \* SELLER has PAID IN FULL Special Assessment for Lobby Level Remodeling \* NEW IMPACT WINDOWS \* See Supplement Rem...

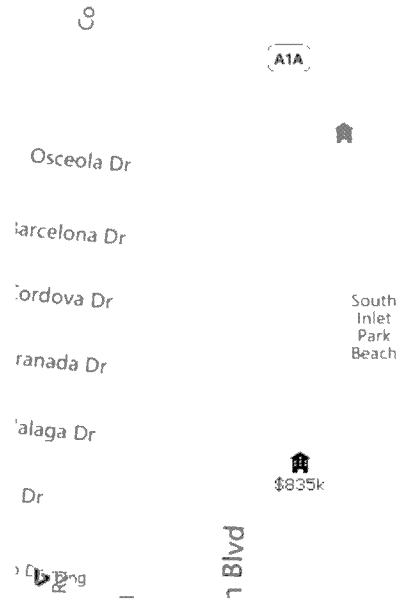
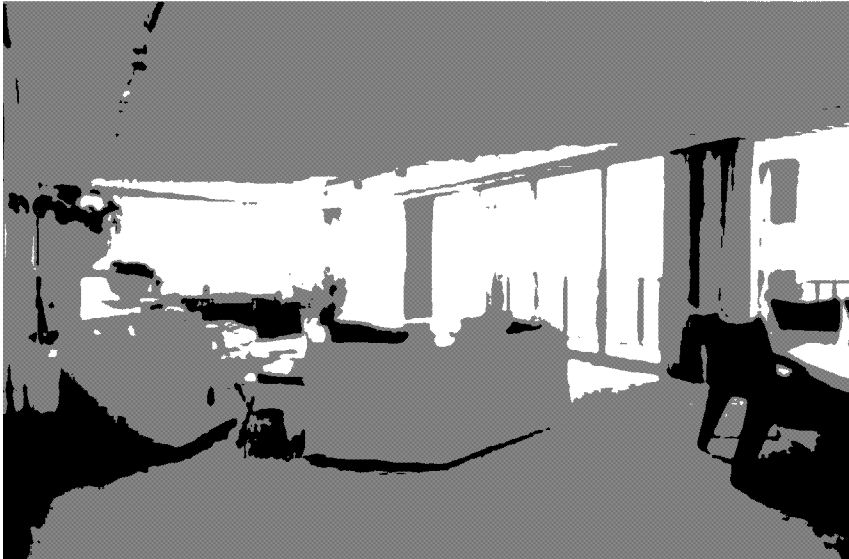
Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Style  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

	Public Facts	Listing Facts
Property Type	<b>Condo/Townhouse</b>	<b>Condo/Townhouse</b>
Property Subtype	<b>Condominium</b>	<b>Condo/Coop</b>
Bedrooms	3	3
Total Baths	2	3
Full Baths	2	2
Partial Baths	-	1
Living Area (sq ft)	2,101	2,500
Garage (spaces)	-	1
Year Built	1975	1978
Style	-	4+ Floors
Heating	-	Central, Electric
Cooling	-	Central, Electric
Construction	<b>Masonry</b>	<b>Concrete, Piling</b>
Number of Buildings	0	-
Number of Stories	6	2

Listing Courtesy of Florida Beach Realty

# 2800 S Ocean Blvd, Apt 21G, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Pending: 2/10/2015

List Price  
**\$835,000**

Last Price Update: 1/28/2015  
Days in RPR: 110

FABULOUS OCEAN VIEWS, CORNER VIEW OF OCEAN AND INTRACOASTAL, PROFESSIONALLY DECORATED, BUILT IN LARGE BAR IN LIVING ROOM, UPGRADED KITCHEN AND BATHROOM, EAT-IN BREAKFAST ROOM, SHUTTERS, WATER PURIFIER, WRAP AROUND BALCONY, LIGHT AND BRIGHT, FURNITURE AVAILABLE, OPEN FLOOR PLAN.

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

## Public Facts

**Condo/Townhouse**  
**Condominium**  
3  
2  
2  
-  
2,145  
-  
1973  
-  
-  
**Masonry**  
0  
21

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
3  
3  
2  
1  
2,143  
1  
1976  
**Central, Electric**  
**Central, Electric**  
**Concrete**  
-  
2

*Listing Courtesy of United Realty Group, Inc*

# 1200 S Ocean Blvd, Apt 7A, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Active Contingent: 3/27/2015

List Price

**\$999,999**

Last Price Update: 2/17/2015  
Days in RPR: 97

MAGNIFICENTLY REMODELED 3 BED/2.5 BATH SOUTH EAST CORNER HOME. DIRECT OCEAN & CITY VIEW: BOCA INLET TO LIGHTHOUSE POINT. GOURMET KITCHEN, GRANITE COUNTERS & STAINLESS STEEL APPLIANCES, WOOD MOLDINGS, CUSTOM BUILT-INS, SATURNIA FLOORING, CALIFORNIA CLOSETS, NEW FLOOR TO CEILING IMPACT GLASS WINDOWS...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Style  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

## Public Facts

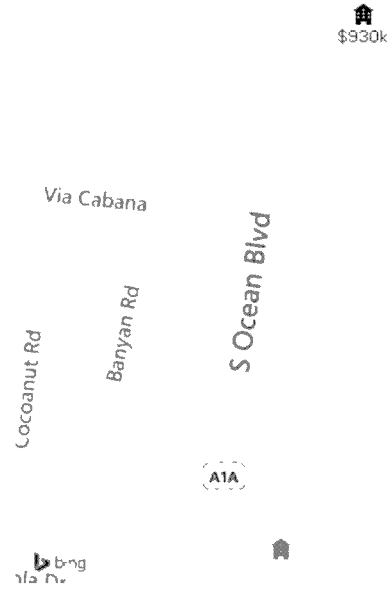
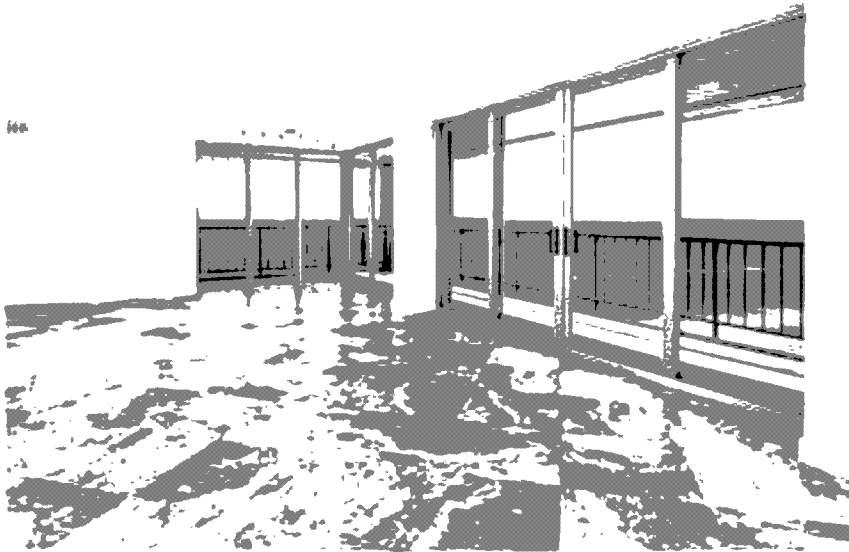
**Condo/Townhouse**  
**Condominium**  
3  
2  
2  
-  
**2,006**  
-  
**1966**  
-  
-  
-  
**Masonry**  
0  
-

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
3  
3  
2  
1  
**2,006**  
1  
**1966**  
**4+ Floors**  
**Central**  
**Central, Electric**  
**Cbs Construction, Concrete**  
-  
1

Listing Courtesy of Jordyn Taylor Properties, LLC

# 1180 S Ocean Blvd, Apt 17A, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Pending: 4/5/2015

List Price

**\$929,900**

Last Price Update: 3/20/2015  
Days in RPR: 34

Current Estimated Value

**\$922,820**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$876,679 – \$968,961**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$71,870**

↑ RVM® Change  
Last 12 Months: **59.38%**

Just Reduced!! Views, views, views!  
Fantastic direct oceanfront.  
Completely remodeled 3 bedroom,  
2.5 bath condo immediately south of  
the Boca inlet. Enjoy direct ocean  
views to the north, east, and south  
from this rarely available 'A' stack  
lower penthouse. Picture perfect  
views of Boca Raton, Deer...

Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

Public Facts

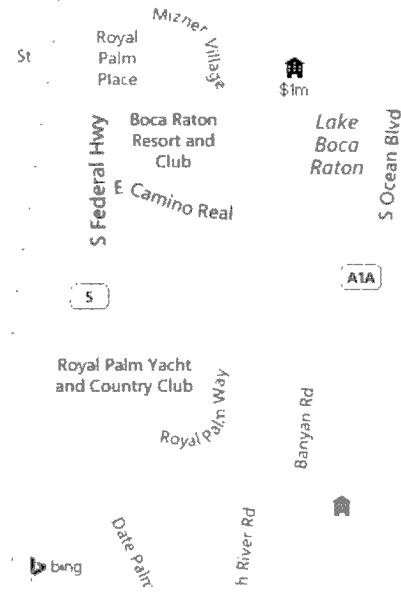
**Condo/Townhouse**  
**Condominium**  
**3**  
**2**  
**2**  
**–**  
**1,916**  
**–**  
**1969**  
**–**  
**–**  
**Masonry**  
**0**  
**17**

Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
**3**  
**3**  
**2**  
**1**  
**1,916**  
**1**  
**1969**  
**Central, Other**  
**Central**  
**Concrete**  
**–**  
**1**

*Listing Courtesy of Shawn Elliott Luxury Homes & Estates*

# 300 SE 5th Ave, Apt 2020, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Pending: 3/23/2015

List Price

**\$1,050,000**

Last Price Update: 2/17/2015  
Days in RPR: 150

Current Estimated Value

**\$1,032,840**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$981,198 – \$1,084,482**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$20,440**

↓ RVM® Change  
Last 12 Months: **-4.8%**

DIRECT INTRACOASTAL FRONT 3 BEDROOM AT MIZNER TOWER ON THE GATED GROUNDS OF THE BOCA RESORT AND CLUB. GREAT WATER VIEWS FROM THIS SECOND FLOOR SPACIOUS RESIDENCE WITH WONDERFUL WATER VIEWS. SPLIT BEDROOM PLAN, GREAT ROOM WITH OPEN KITCHEN, SUMPTUOUS MASTER SUITE WITH DOUBLE WALK IN CLOSETS, HIS/HER...

Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Garage (spaces)  
Year Built  
Style  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

Public Facts

Condo/Townhouse  
Condominium  
3  
4  
4  
—  
2,516  
—  
1989  
—  
—  
—  
Masonry  
0  
2

Listing Facts

Condo/Townhouse  
Condo/Coop  
3  
5  
4  
1  
2,516  
1  
1989  
4+ Floors  
Central, Zoned, Electric  
Central, Zoned, Electric  
Concrete  
—  
8

Listing Courtesy of Premier Estate Properties Inc/BR



# 950 Ponce De Leon Rd, #3060, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**SALE PENDING**

\* Pending: 2/6/2015

List Price

**\$380,000**

Last Price Update: –  
Days in RPR: 67

Current Estimated Value

**\$360,780**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$342,741 – \$378,819**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$2,680**

↑ RVM® Change  
Last 12 Months: **26.58%**

Home Facts

Public Facts

Listing Facts

Property Type	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condominium	Condo/Coop
Bedrooms	3	3
Total Baths	2	3
Full Baths	2	2
Partial Baths	–	1
Living Area (sq ft)	1,534	1,534
Year Built	1973	1973
Heating	–	Central Building A/C, Electric, Central Individual A/C
Cooling	–	Ceiling Fan(S), Humidistat, Central Individual A/C
Construction	Masonry	Cbs Construction
Number of Buildings	0	–
Number of Stories	3	5

*Listing Courtesy of Champagne & Parisi Real Estate*

RECENTLY SOLD

## Recently Sold

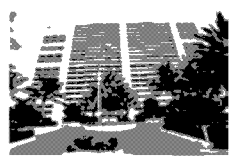
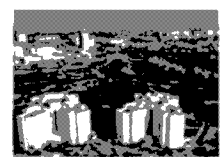


Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	2494 S Ocean Blvd, Apt H4 Boca Raton, FL 33432	2494 S Ocean Blvd, Apt D4 Boca Raton, FL 33432	1000 S Ocean Blvd, Ste 403 Boca Raton, FL 33432	1299 S Ocean Blvd, Apt L3 Boca Raton, FL 33432
Status	Subject Property	Recently Sold	Recently Sold	Recently Sold	Recently Sold
Amount	—	\$2,750,000 Sold Amount	\$2,499,500 Sold Amount	\$5,100,000 Sold Amount	\$429,000 Sold Amount
List Price	\$1,999,000	\$3,450,000	\$2,499,500	\$5,100,000	\$450,000
Recording Date	4/18/2013	3/2/2015	4/1/2015	3/31/2015	3/13/2015
List/Sold Ratio	80%	80%	100%	100%	95%
Days in RPR	932	449	157	36	62
Price Per Sq. Ft.	\$425	\$687	\$592	\$1,493	\$200
Bedrooms	3	3	3	3	3
Total Baths	4	5	5	4	3
Partial Baths	1	1	1	1	—
Total Rooms	—	—	—	—	—
Living Area	3,764	4,003	4,220	3,416	2,143
Lot Size	1 acres	1 acres	1 acres	1 acres	—
Year Built	1996	1995	1995	2010	1963
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX 3310842	RX 10007811	RX 10085452	RX 10116075	RX 10109575
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Boca Executive Realty	Courtesy of Premier Estate Properties Inc/BR	Courtesy of Boca Executive Realty	Courtesy of Lang Realty/BR
Description	ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...	Enjoy spectacular unobstructed ocean views from this magnificent, renovated residence. Over 4,000 sq.ft. & impeccably maintained, this spacious 3-bedroom + den home features a fabulous open, split-bedroom floor plan & beautiful high-end finishes. Exceptionally light & bright, it has impact glass throughout, marble floors, crown moldings, expansive oceanfront balcony, and more. Privacy abounds as no other building extends close to this residence. The large gourmet eat-in kitchen features granite countertops, top-of-the-line european appliances, and refrigerated wine cooler. Floor-to-ceiling windows which offers his + her baths & large walk-in closets. The elevator ope...	Spectacular direct ocean front wrap around south east corner at the aragon. Designer finished with light and bright details throughout. High ceilings, spacious rooms and a great floor plan right on the beach! split bedrooms with magnificent corner master suite with excellent closets and his/her baths. Marble floors in living areas. Wonderful kitchen adjoins expansive family room. Ocean to city views with large outdoor balcony areas. Impact glass, two garage parking spaces, pool, spa, club room and expansive fitness center. Five star ocean front living at the aragon on the beach!	Charming 3 bed/3 bath townhouse with ocean/garden views from both floors and patios, deeded beach access, 18ft ceiling!!! newer kitchen, stainless steel appliances, a/c, high impact sliders, hurricane shutters. This beautiful townhome has 3 large bedrooms with 3 full bathrooms, two upstairs and one downstairs. (master is up) this is the lowest price 3/3 townhouse over 2000 sqft 2 car carport on a1a in boca/highland beach!!!	

Highlighted fields were changed by agent to reflect knowledge of this property.

RECENTLY SOLD

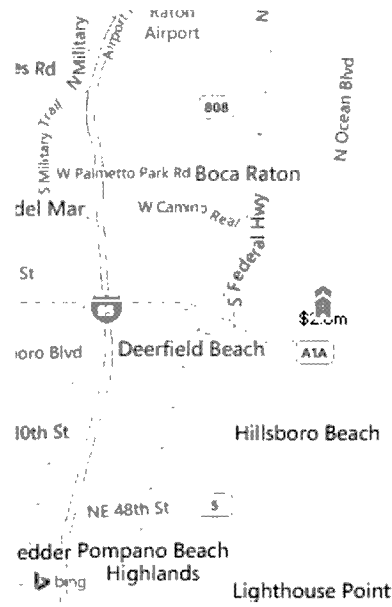
## Recently Sold



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	200 E Palmetto Park Rd, #PH5 Boca Raton, FL 33432	1 N Ocean Blvd, Apt 207 Boca Raton, FL 33432	550 SE Mizner Blvd, Apt B403 Boca Raton, FL 33432	2600 S Ocean Blvd, Apt 18D Boca Raton, FL 33432
Status	Subject Property	Recently Sold	Recently Sold	Recently Sold	Recently Sold
Amount	—	\$2,100,000 Sold Amount	\$1,535,500 Sold Amount	\$1,050,000 Sold Amount	\$850,000 Sold Amount
List Price	\$1,999,000	\$2,595,000	\$1,695,000	\$1,198,973	\$875,000
Recording Date	4/18/2013	1/23/2015	2/27/2015	2/10/2015	3/18/2015
List/Sold Ratio	80%	81%	91%	88%	97%
Days in RPR	932	442	218	236	145
Price Per Sq. Ft.	\$425	\$597	\$439	\$425	\$340
Bedrooms	3	3	3	3	3
Total Baths	4	4	3	3	3
Partial Baths	1	1	—	—	1
Total Rooms	—	—	—	—	—
Living Area	3,764	3,520	3,500	2,473	2,500
Lot Size	1 acres	1 acres	1 acres	1 acres	—
Year Built	1996	2009	2007	2003	1975
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX 3310842	RX 10009740	RX 10069539	RX 10064886	RX 10088982
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Douglas Elliman	Courtesy of Keller Williams Realty Services	Courtesy of RE/MAX Services
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>This a finished developer unit...not a resale. Absolutely spectacular 9th floor penthouse! this stunning unit is the last "developer" ph remaining at 200 east, the newest and most sought after luxury condominium in downtown boca raton. From the moment you walk in, the views are amazing... Glistening turquoise ocean and expansive city views to the north and east from the kitchen, dining and living rooms and...</p>	<p>This gorgeous residence mimics a sensational new york westside apartment and it will take your breath away. Designed and decorated with a new york sleek flair only steps away from the beautiful atlantic ocean sands. Start off by entering the extraordinary meridian which melds beauty and architectural perfection with an exclusive lifestyle second to none. Travel your private elevator to your stunning residence opening into your home in the sky which has been totally redone with the finest high end finishing's. The grand salon is adorned with 16ft. Floor to ceiling windows leading to a 937 sq.ft., terrace, designer rich dark hardwood flooring underfoot, crown molding, and plantation shutters...</p>	<p>Stunning 3 bedroom 2.5 bath direct oceanfront with unobstructed views condo in south boca. This 3 bedroom was renovated soup to nuts 3 years ago. From the gorgeous 24 inch rectified porcelain tile to the custom gourmet kitchen which has designer granite with mosaic glass backsplash and top of the line appliances to the hardwood floors in all the bedrooms to the exquisite renovated bathrooms this condo has it all. This condo has one of the most expansive patios with direct ocean views. The patio is over 38 foot long and is almost 250 square feet of balcony. This condo also has a top of the line full sized washer and dryer. Amazing condo amazing building. Sit outside on your balcony an...</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

# 2494 S Ocean Blvd, Apt H4, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

- Sold Date: 3/2/2015
- MLS listing RX-10007811, 1/14/2014

**Sold Price**

**\$2,750,000**

Sold Date: 3/2/2015  
Days in RPR: 449

**Current Estimated Value**

**\$2,664,640**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$2,531,408 – \$2,797,872**

RVM® Confidence:



➔ RVM® Change  
Last 1 Month: –

⬇ RVM® Change  
Last 12 Months: **-19.59%**

Enjoy spectacular unobstructed ocean views from this magnificent, renovated residence. Over 4,000 sq.ft. & impeccably maintained, this spacious 3-bedroom + den home features a fabulous open, split-bedroom floor plan & beautiful high-end finishes. Exceptionally light & bright, it has impact glass t...

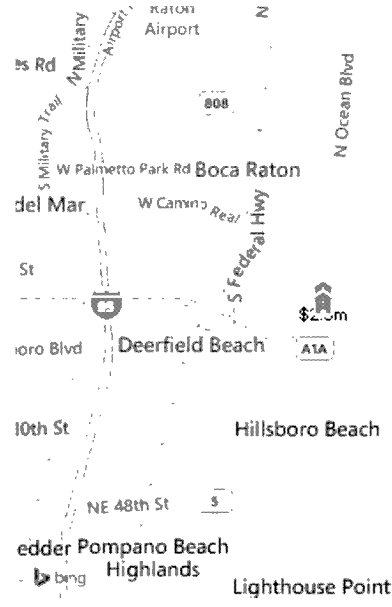
**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage (spaces)
- Year Built
- Heating
- Cooling
- Construction
- Number of Buildings
- Number of Stories

	Public Facts	Listing Facts
	<b>Condo/Townhouse</b>	<b>Condo/Townhouse</b>
	<b>Condominium</b>	<b>Condo/Coop</b>
Bedrooms	3	3
Total Baths	3	5
Full Baths	3	4
Partial Baths	–	1
Living Area (sq ft)	4,003	4,003
Lot Size	1 acres	1 acres
Lot Dimensions	1.00 AC	–
Garage (spaces)	–	2
Year Built	1995	1995
Heating	–	Central
Cooling	–	Central
Construction	Masonry	Concrete
Number of Buildings	0	–
Number of Stories	4	1

Courtesy of Boca Executive Realty

# 2494 S Ocean Blvd, Apt D4, Boca Raton, FL 33432



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 4/1/2015
- MLS listing RX-10085452, 11/2/2014

**Sold Price**

**\$2,499,500**

Sold Date: 4/1/2015  
Days in RPR: 157

SPECTACULAR DIRECT OCEAN FRONT WRAP AROUND SOUTH EAST CORNER AT THE ARAGON. DESIGNER FINISHED WITH LIGHT AND BRIGHT DETAILS THROUGHOUT. HIGH CEILINGS, SPACIOUS ROOMS AND A GREAT FLOOR PLAN RIGHT ON THE BEACH! SPLIT BEDROOMS WITH MAGNIFICENT CORNER MASTER SUITE WITH EXCELLENT CLOSETS AND HIS/HER BAT...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage (spaces)
- Year Built
- Style
- Heating
- Cooling
- Construction
- Number of Buildings
- Number of Stories

**Public Facts**

- Condo/Townhouse
- Condominium
- 3
- 3
- 3
- 
- 4,220
- 1 acres
- 1.00 AC
- 
- 1995
- 
- 
- 
- Masonry
- 0
- 4

**Listing Facts**

- Condo/Townhouse
- Condo/Coop
- 3
- 5
- 4
- 1
- 4,220
- 
- 
- 2
- 1995
- 4+ Floors
- Central, Zoned
- Central, Zoned
- Concrete
- 
- 1

Courtesy of Premier Estate Properties Inc/BR

# 1000 S Ocean Blvd, Ste 403, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

• Sold Date: 3/31/2015  
 • MLS listing RX-10116075, 3/3/2015

**Sold Price**  
**\$5,100,000**

Sold Date: 3/31/2015  
 Days in RPR: 36

**Current Estimated Value**  
**\$3,830,410**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$3,332,457 – \$4,328,363**

RVM® Confidence:

➔ RVM® Change  
 Last 1 Month: –

⬆ RVM® Change  
 Last 12 Months: **1.84%**

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Year Built  
 Style  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

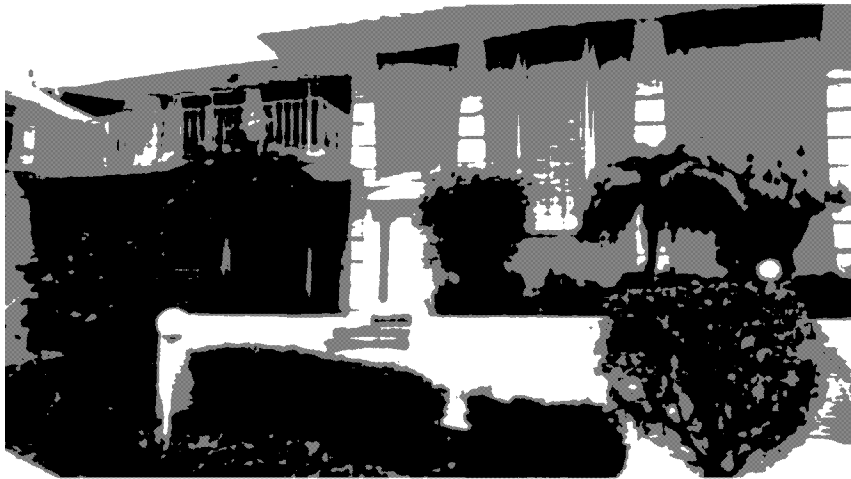
**Condo/Townhouse**  
**Condominium**  
**3**  
**3**  
**3**  
 –  
**3,416**  
**1 acres**  
**1.00 AC**  
 –  
**2010**  
 –  
 –  
**Masonry**  
**0**  
 –

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
**3**  
**4**  
**3**  
**1**  
**3,416**  
 –  
 –  
**2**  
**2010**  
**Contemporary**  
**Central, Zoned**  
**Central, Zoned**  
**Cbs Construction**  
 –  
**7**

Courtesy of Boca Executive Realty

# 1299 S Ocean Blvd, Apt L3, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

• Sold Date: 3/13/2015  
 • MLS listing RX-10109575, 2/5/2015

**Sold Price**

**\$429,000**

Sold Date: 3/13/2015  
 Days in RPR: 62

**Current Estimated Value**

**\$427,400**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$406,030 – \$448,770**

RVM® Confidence:



↑ RVM® Change  
 Last 1 Month: **\$5,520**

↑ RVM® Change  
 Last 12 Months: **16.14%**

Charming 3 bed/3 bath Townhouse with Ocean/Garden views from both floors and patios, deeded beach access, 18ft ceiling!!! Newer Kitchen, Stainless steel appliances, A/C, High Impact Sliders, Hurricane shutters. This beautiful townhome has 3 large bedrooms with 3 full bathrooms, two upstairs and one...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

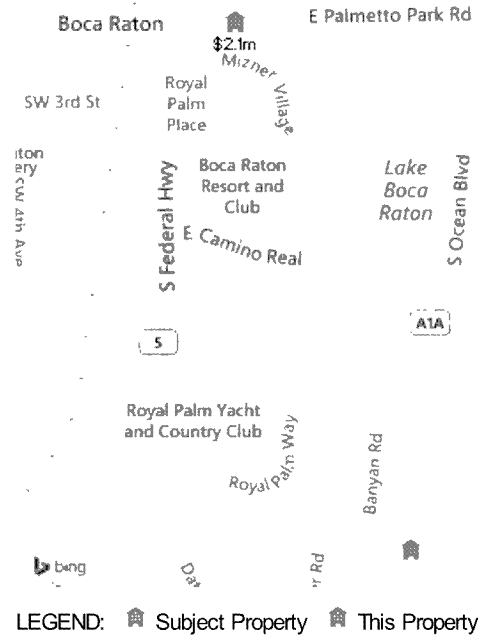
**Condo/Townhouse**  
**Condominium**  
 3  
 3  
 3  
**2,143**  
**1963**  
 –  
 –  
 –  
 –  
**Masonry**  
 0  
 1

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 3  
**2,143**  
**1963**  
**Townhome**  
**Concrete Tile**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction, Other**  
 6  
 2

Courtesy of Lang Realty/BR

# 200 E Palmetto Park Rd, #PH5, Boca Raton, FL 33432



**RECENTLY SOLD**

\* Sold Date: 1/23/2015  
 \* MLS listing RX-10009740, 1/21/2014

**Sold Price**  
**\$2,100,000**

Sold Date: 1/23/2015  
 Days in RPR: 442

**Current Estimated Value**  
**\$2,095,330**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,990,564 – \$2,200,096**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$33,060**

↓ RVM® Change  
 Last 12 Months: **-15.44%**

THIS A FINISHED DEVELOPER UNIT...NOT A RESALE. Absolutely spectacular 9th floor Penthouse! This STUNNING unit is the last "Developer" PH remaining at 200 East, the newest and most sought after luxury condominium in downtown Boca Raton. From the moment you walk in, the views are amazing... Gl...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Year Built  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

**Condo/Townhouse**  
**Condominium**  
 3  
 3  
 3  
 –  
 3,520  
 1 acres  
 1.00 AC  
 –  
 2009  
 –  
 –  
**Masonry**  
 0  
 –

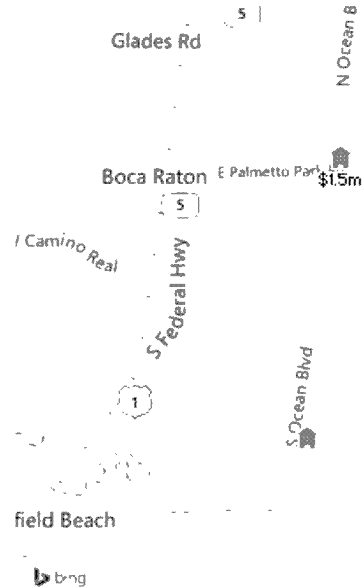
**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 4  
 3  
 1  
 3,520  
 1 acres  
 –  
 2  
 2009  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction, Concrete**  
 –  
 9

Courtesy of Nestler Poletto Sothebys Int'l



# 1 N Ocean Blvd, Apt 207, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

- Sold Date: 2/27/2015
- MLS listing RX-10069539, 9/2/2014

**Sold Price**

**\$1,535,500**

Sold Date: 2/27/2015  
Days in RPR: 218

This gorgeous residence mimics a sensational New York Westside apartment and it will take your breath away. Designed and decorated with a New York sleek flair only steps away from the beautiful Atlantic Ocean Sands. Start off by entering the Extraordinary Meridian which melds beauty and architectur...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Year Built
- Construction
- Number of Buildings
- Number of Stories

**Public Facts**

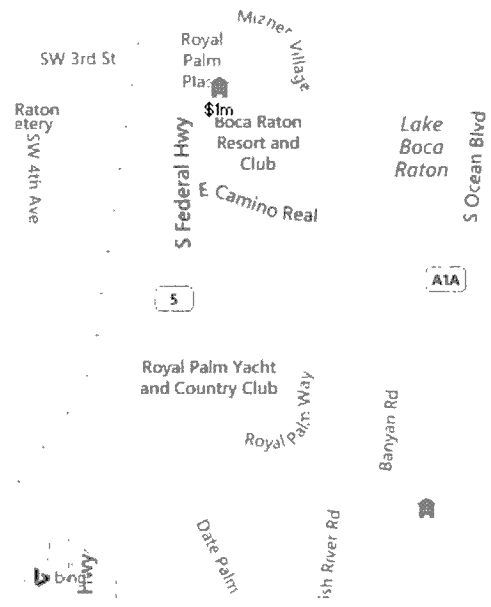
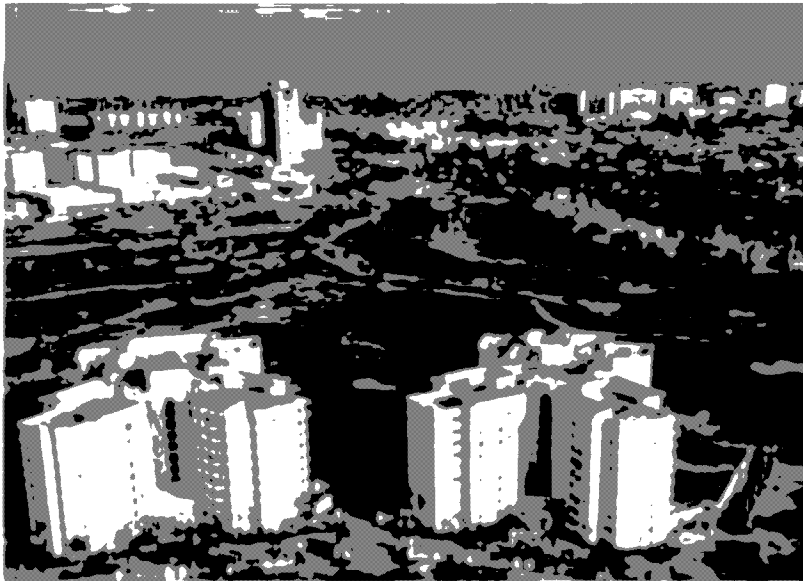
- Condo/Townhouse
- Condominium
- 3
- 3
- 3
- 3,500
- 1 acres
- 1.00 AC
- 2007
- Masonry
- 0
- 

**Listing Facts**

- Condo/Townhouse
- Condo/Coop
- 
- 
- 
- 
- 1 acres
- 
- 
- 
- 
- 5.00,

*Courtesy of Douglas Elliman*

# 550 SE Mizner Blvd, Apt B403, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

\* Sold Date: 2/10/2015  
 \* MLS listing RX-10064886, 8/15/2014

**Sold Price**

**\$1,050,000**

Sold Date: 2/10/2015  
 Days in RPR: 236

**Current Estimated Value**

**\$1,039,220**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$987,259 – \$1,091,181**

RVM® Confidence:



↓ RVM® Change  
 Last 1 Month: **-\$37,220**

↓ RVM® Change  
 Last 12 Months: **-7.95%**

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Year Built  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

**Condo/Townhouse**  
**Condominium**  
 3  
 3  
 3  
**2,473**  
**1 acres**  
**1.00 AC**  
 –  
**2003**  
 –  
 –  
**Masonry**  
 0  
 –

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 3  
**2,473**  
 –  
 –  
 1  
**2003**  
**Central Individual A/C, Electric**  
**Central Individual A/C, Electric**  
**Cbs Construction**  
 –  
 9

Courtesy of Keller Williams Realty Services

# 2600 S Ocean Blvd, Apt 18D, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY SOLD**

- Sold Date: 3/18/2015
- MLS listing RX-10088982, 11/14/2014

Sold Price

**\$850,000**

Sold Date: 3/18/2015  
Days in RPR: 145

STUNNING 3 BEDROOM 2.5 BATH DIRECT OCEANFRONT WITH UNOBSTRUCTED VIEWS CONDO IN SOUTH BOCA. THIS 3 BEDROOM WAS RENOVATED SOUP TO NUTS 3 YEARS AGO. FROM THE GORGEOUS 24 INCH RECTIFIED PORCELAIN TILE TO THE CUSTOM GOURMET KITCHEN WHICH HAS DESIGNER GRANITE WITH MOSAIC GLASS BACKSPLASH AND TOP OF THE...

### Home Facts

Property Type	Condo/Townhouse
Property Subtype	Condominium
Bedrooms	3
Total Baths	2
Full Baths	2
Partial Baths	-
Living Area (sq ft)	2,101
Garage (spaces)	-
Year Built	1975
Heating	-
Cooling	-
Construction	Masonry
Number of Buildings	0
Number of Stories	18

Public Facts

<b>Condo/Townhouse</b>
<b>Condominium</b>
<b>3</b>
<b>2</b>
<b>2</b>
<b>-</b>
<b>2,101</b>
<b>-</b>
<b>1975</b>
<b>-</b>
<b>-</b>
<b>Masonry</b>
<b>0</b>
<b>18</b>

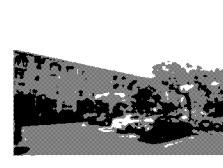
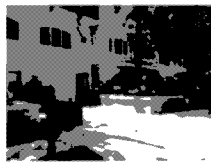
Listing Facts

<b>Condo/Townhouse</b>
<b>Condo/Coop</b>
<b>3</b>
<b>3</b>
<b>2</b>
<b>1</b>
<b>2,500</b>
<b>1</b>
<b>1975</b>
<b>Central, Electric</b>
<b>Central, Electric</b>
<b>Cbs Construction</b>
<b>-</b>
<b>2</b>

Courtesy of RE/MAX Services

DISTRESSED

## Distressed



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	468 E Boca Raton Rd Boca Raton, FL 33432	400 S Ocean Blvd, Apt 28 Boca Raton, FL 33432	1111 S Ocean Blvd, #4170 Boca Raton, FL 33432	2000 S Ocean Blvd, Apt 16F Boca Raton, FL 33432
Status	Subject Property	Distressed	Distressed	Distressed	Distressed
Estimated Value	\$2,254,000	\$1,013,430	\$2,557,110	\$403,590	\$500,000
Amount	—	\$1,013,430 Est. Value	\$2,395,000 List Amount	\$450,000 List Amount	\$500,000 Est. Value
Past Due Amt.	—	—	—	—	—
Recording Date	4/18/2013	10/23/2001	—	—	3/5/2012
Days in RPR	932	—	7	12	—
Price Per Sq. Ft.	\$425	\$300	\$535	\$293	\$384
Bedrooms	3	3	3	3	2
Total Baths	4	3	3	3	2
Partial Baths	1	—	1	1	—
Total Rooms	—	—	—	—	—
Living Area	3,764	3,376	4,476	1,534	1,303
Lot Size	1 acres	1,991 sq ft	1 acres	—	—
Year Built	1996	2001	2002	1973	1971
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Townhouse	Condo/Coop	Condo/Coop	Condominium
MLS ID	RX 3310842	—	RX 10124597	RX 10122727	—
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	—	Listing Courtesy of Megu Real Estate Services	Listing Courtesy of Lang Realty/Delray Beach	—
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	—	<p>Bank owned property, private villa in an oceanfront building with open pool overlooking intracoastal. Spacious floor plan with lots of room, gourmet kitchen, marble and granite. Upscale building in one of boca's best locations. Community pool and spa directly on the atlantic, valet and concierge 24 hours a day. Call for a private showing and let your imagination take over!</p>	<p>The owner of this condo put every bell and whistle possible into it. Featuring 3 large bedrooms, 2.5 baths.. Beautiful marble floors throughout in a modular versailles pattern. Top of the line gaggenau appliances. Amazing kohler hardware including the lighted "body-spa" shower by kohler! under counter pot cooker, built in expresso/coffee machine, undercounter lighting, 9 inch floor moldings.. Beautiful fireplace with roman columns throughout the unit. There are closet and bedroom built-ins galore. Beautiful mural overlooking east boca raton in dining area. French doors leading out to balcony overlooking pool and tennis courts. Bosch dishwasher, and bosch stackable washer and dryer and laun...</p>	—

Highlighted fields were changed by agent to reflect knowledge of this property.

DISTRESSED

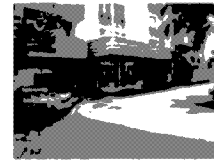
## Distressed



Photo not available



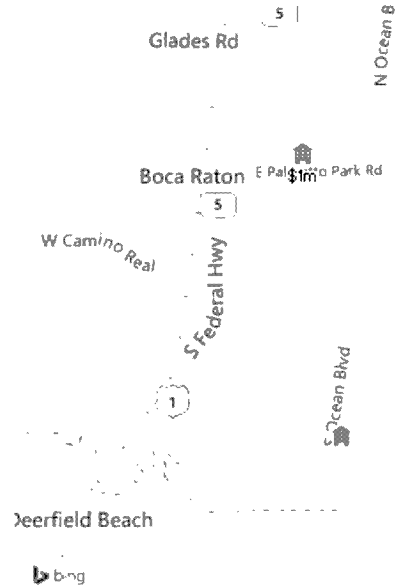
Photo not available



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	255 SW 7th St, Apt 2 Boca Raton, FL 33432	1000 Spanish River Rd, Apt 20 Boca Raton, FL 33432	1000 Spanish River Rd, Apt 2M Boca Raton, FL 33432	1000 Spanish River Rd, Apt 4L Boca Raton, FL 33432
Status	Subject Property	Distressed	Distressed	Distressed	Distressed
Estimated Value	\$2,254,000	\$120,000	\$257,870	\$236,680	\$216,410
Amount	—	\$120,000 Est. Value	\$275,000 List Amount	\$200,000 List Amount	\$216,410 Est. Value
Past Due Amt.	—	—	—	—	—
Recording Date	4/18/2013	2/26/1998	—	—	3/14/2005
Days in RPR	932	—	384	456	—
Price Per Sq. Ft.	\$425	\$105	\$199	\$138	\$157
Bedrooms	3	3	2	2	2
Total Baths	4	2	2	2	2
Partial Baths	1	—	—	—	—
Total Rooms	—	—	—	—	—
Living Area	3,764	1,140	1,379	1,450	1,375
Lot Size	1 acres	—	1 acres	1 acres	1 acres
Year Built	1996	1974	1972	1972	1972
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condominium	Condo/Coop	Condo/Coop	Condominium
MLS ID	RX 3310842	—	RX 10026256	RX 10005569	—
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	—	—	—	—
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>				

Highlighted fields were changed by agent to reflect knowledge of this property.

# 468 E Boca Raton Rd, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**OFF MARKET**

- \* Preforeclosure
- \* Foreclosure Judgment Entered

**Current Estimated Value**

**\$1,013,430**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
\$891,819 – \$1,135,041

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$9,640**

↑ RVM® Change  
Last 12 Months: **7.46%**

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Year Built
- Construction
- Number of Buildings

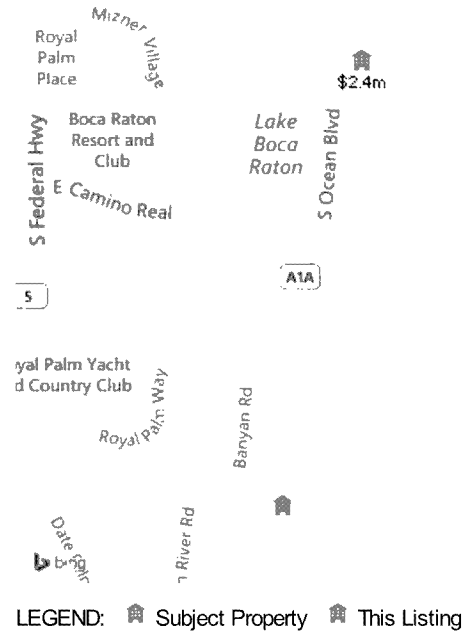
**Public Facts**

- Condo/Townhouse**
- Townhouse**
- 3**
- 3**
- 3**
- 3,376**
- 1,991 sq ft**
- 1991 SF**
- Yes**
- 1**
- 2001**
- Masonry**
- 0**

**Listing Facts**

- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 
-

# 400 S Ocean Blvd, Apt 28, Boca Raton, FL 33432



**FOR SALE**

\* Foreclosure  
 \* Reo  
 \* New, Active: 4/1/2015

List Price  
**\$2,395,000**

Last Price Update: –  
 Days in RPR: 7

Current Estimated Value  
**\$2,557,110**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$2,429,255 – \$2,684,965**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$38,250**

↓ RVM® Change  
 Last 12 Months: **-20.73%**

BANK OWNED PROPERTY,  
 PRIVATE VILLA IN AN  
 OCEANFRONT BUILDING WITH  
 OPEN POOL OVERLOOKING  
 INTRACOASTAL. SPACIOUS  
 FLOOR PLAN WITH LOTS OF  
 ROOM, GOURMET KITCHEN,  
 MARBLE AND GRANITE.  
 UPSCALE BUILDING IN ONE OF  
 BOCA'S BEST LOCATIONS.  
 COMMUNITY POOL AND SPA  
 DIRECTLY ON THE ATLANTIC,  
 VALET AND CONCIERGE 24...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

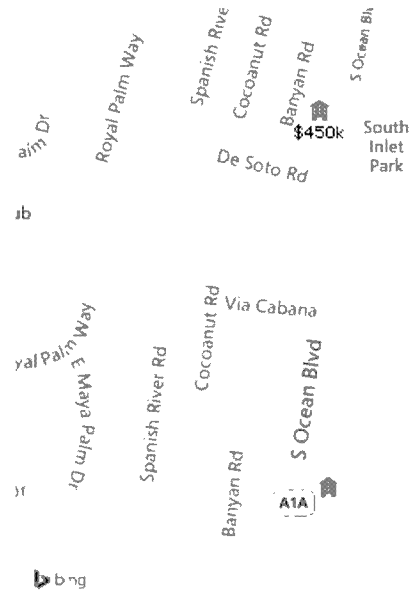
**Condo/Townhouse**  
**Condominium**  
 3  
 2  
 2  
 –  
**4,476**  
**1 acres**  
**1.00 AC**  
 –  
 –  
**2002**  
 –  
 –  
**Masonry**  
 0  
 –

## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 2  
 1  
**4,476**  
 –  
 –  
**Yes**  
**2002**  
**Villa**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
 –  
 1

*Listing Courtesy of Mega Real Estate Services*

# 1111 S Ocean Blvd, #4170, Boca Raton, FL 33432



LEGEND: Subject Property This Listing

**FOR SALE**

\* Preforeclosure  
 \* Notice of Lis Pendens  
 \* New, Active: 3/27/2015

List Price  
**\$450,000**

Last Price Update: -  
 Days in RPR: 12

Current Estimated Value  
**\$403,590**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$383,411 – \$423,769**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$2,120**

↑ RVM® Change  
 Last 12 Months: **37.74%**

The owner of this condo put every bell and whistle possible into it. Featuring 3 large bedrooms, 2.5 baths.. Beautiful marble floors throughout in a modular versailles pattern. Top of the line Gaggenau appliances. Amazing Kohler hardware including the lighted "body-spa" shower by Kohler! Under cou...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Garage (spaces)  
 Year Built  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

## Public Facts

**Condo/Townhouse**  
**Condominium**  
 3  
 2  
 2  
 -  
**1,534**  
 -  
**1973**  
 -  
 -  
**Masonry**  
 0  
 4

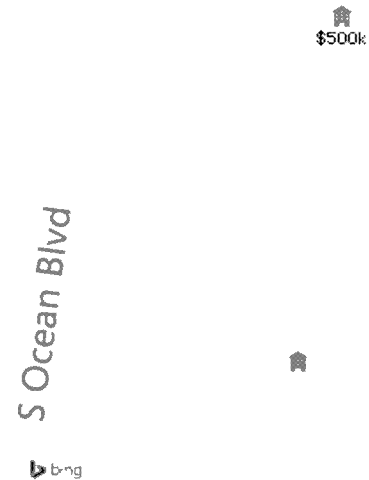
## Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
 3  
 3  
 2  
 1  
**1,534**  
 1  
**1973**  
**Central**  
**Ceiling Fan(S), Humidistat, Central**  
**Cbs Construction**  
 -  
 5

Listing Courtesy of Lang Realty/Delray Beach



# 2000 S Ocean Blvd, Apt 16F, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**OFF MARKET**

- \* Preforeclosure
- \* Notice of Lis Pendens

**Current Estimated Value**

**\$500,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$340,000 – \$660,000**

AVM Confidence:



↑ AVM Change  
Last 1 Month: **\$30,000**

↑ AVM Change  
Last 12 Months: **14.15%**

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Living Area (sq ft)  
Year Built  
Construction  
Number of Buildings  
Number of Stories

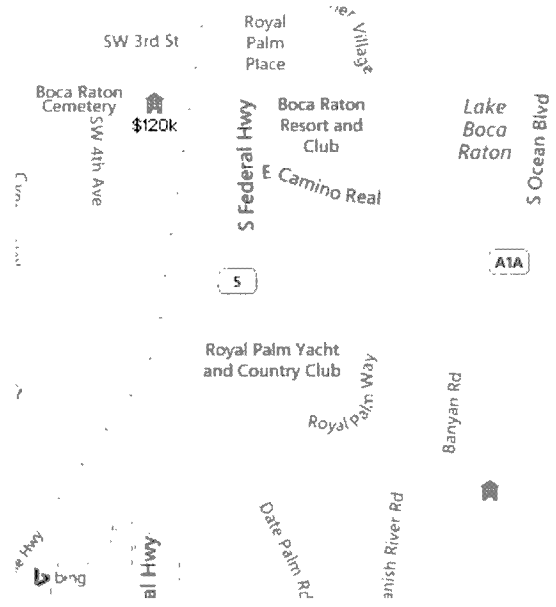
Public Facts

**Condo/Townhouse**  
**Condominium**  
2  
2  
2  
**1,303**  
**1971**  
**Masonry**  
0  
16

Listing Facts

–  
–  
–  
–  
–  
–  
–  
–  
–  
–

# 255 SW 7th St, Apt 2, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**OFF MARKET**

- \* Preforeclosure
- \* Notice of Lis Pendens

**Current Estimated Value**

**\$120,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$81,600 – \$158,400**

AVM Confidence:



↓ AVM Change  
Last 1 Month: **-\$1,000**

↑ AVM Change  
Last 12 Months: **7.14%**

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Year Built
- Construction
- Number of Buildings
- Number of Stories

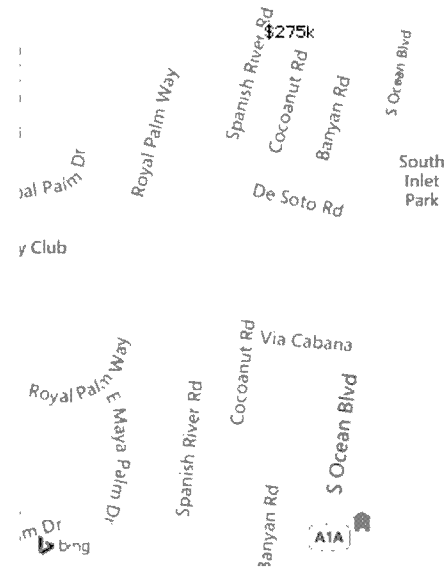
**Public Facts**

- Condo/Townhouse**
- Condominium**
- 3**
- 2**
- 2**
- 1,140**
- 1974**
- Masonry**
- 0**
- 1**

**Listing Facts**

- 
- 
- 
- 
- 
- 
- 
- 
- 
-

# 1000 Spanish River Rd, Apt 2O, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY EXPIRED**

- \* Expired
- \* MLS listing RX-10026256, 3/20/2014

**Current Estimated Value**

**\$257,870**

Last RVM® Update: 3/16/2015  
Days in RPR: 384

RVM® Est. Range:  
**\$229,505 – \$286,235**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$1,810**

↑ RVM® Change  
Last 12 Months: **36.43%**

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage (spaces)
- Year Built
- Heating
- Cooling
- Construction
- Number of Buildings
- Number of Stories

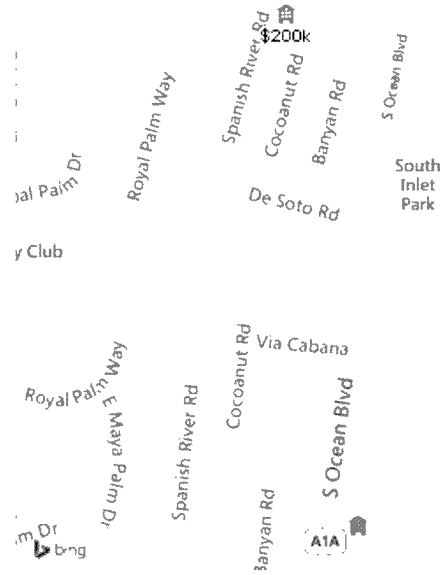
**Public Facts**

- Condo/Townhouse**
- Condominium**
- 2**
- 2**
- 2**
- 1,379**
- 1 acres**
- 1.00 AC**
- 
- 1972**
- 
- 
- Masonry**
- 0**
- 

**Listing Facts**

- Condo/Townhouse**
- Condo/Coop**
- 2**
- 2**
- 2**
- 1,379**
- 1 acres**
- 
- 1**
- 1972**
- Central**
- Central**
- Other**
- 
- 4**

# 1000 Spanish River Rd, Apt 2M, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**CANCELLED**

\* Cancelled  
 \* MLS listing RX-10005569, 1/7/2014

**Current Estimated Value**

**\$236,680**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$205,912 – \$267,448**

RVM® Confidence:  
 ★★★★★

↑ RVM® Change  
 Last 1 Month: **\$710**

↑ RVM® Change  
 Last 12 Months: **17.75%**

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Year Built  
 Heating  
 Cooling  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

**Condo/Townhouse**  
**Condominium**  
 2  
 2  
 2  
 1,375  
 1 acres  
 1.00 AC  
 1972  
 –  
 –  
**Masonry**  
 0  
 –

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 2  
 2  
 2  
 1,450  
 –  
 –  
 1972  
**Central**  
**Central**  
**Other**  
 –  
 4

# 1000 Spanish River Rd, Apt 4L, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**OFF MARKET**

- \* Preforeclosure
- \* Foreclosure Judgment Entered

**Current Estimated Value**

**\$216,410**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$190,441 – \$242,379**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$1,830**

↑ RVM® Change  
Last 12 Months: **15.11%**

**Home Facts**

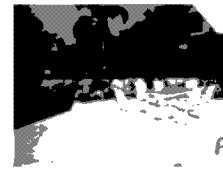
- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Year Built
- Construction
- Number of Buildings

**Public Facts**

**Listing Facts**

Public Facts	Listing Facts
<b>Condo/Townhouse</b>	—
<b>Condominium</b>	—
<b>2</b>	—
<b>2</b>	—
<b>2</b>	—
<b>1,375</b>	—
<b>1 acres</b>	—
<b>1.00 AC</b>	—
<b>1972</b>	—
<b>Masonry</b>	—
<b>0</b>	—

## Expired



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	2500 S Ocean Blvd, Apt 801 Boca Raton, FL 33432	300 SE 5th Ave, Apt 5180 Boca Raton, FL 33432	550 SE Mizner Blvd, Apt B110 Boca Raton, FL 33432	1 N Ocean Blvd, Apt 402 Boca Raton, FL 33432
Status	Subject Property	31 Recently Expired	32 Recently Expired	33 Recently Expired	34 Recently Expired
Amount	—	\$5,495,000 List Amount	\$950,000 List Amount	\$874,973 List Amount	\$1,250,000 List Amount
Listing Date	9/18/2012	1/23/2014	11/10/2014	4/7/2014	8/31/2012
Days in RPR	932	440	149	366	950
Price Per Sq. Ft.	\$425	\$1,294	\$406	\$445	\$382
Bedrooms	3	4	2	2	2
Total Baths	4	6	4	3	3
Partial Baths	1	1	1	—	1
Total Rooms	—	—	—	—	—
Living Area	3,764	4,248	2,340	1,968	3,275
Lot Size	1 acres	1 acres	—	1 acres	1 acres
Year Built	1996	2009	1989	2003	2007
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX-3310842	RX-10010341	RX-10087908	RX-10030827	RX-3306835
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Mizner Grande Realty LLC	Courtesy of Douglas Elliman	Courtesy of Keller Williams Realty Services	Courtesy of Nestler Poletto Sothebys Int'l
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Incredible north east corner luxuria top of the line turnkey designer furnished dream home with incredible ocean views everywhere! 4 brs plus media rm. If you're looking for the dream, turnkey, ocean views, high ceilings, come &amp; see this dream!</p>	<p>This magnificent fully furnished condo in mizner tower won't last! it has a fabulous view of lake boca raton and the ocean! beautiful pools and boat slips can be seen from the large covered balcony. Two garage parking spaces. Wonderful value in full service, pet friendly building.</p>	<p>2 bedroom + den (with a bed which can be used as a bedroom), 3 bath condo in townsend place, 10 ft ceilings, located on the pool level.</p>	<p>Beautifully finished with marble floors, extra large grand salon, gourmet eat-in kitchen with a suite of top-of-the-line appliances, imported wood cabinetry and granite countertops. Spacious dining room and family room that opens to one of the private terraces. One terrace faces north, one faces south. Elegantly appointed master baths with imported wood cabinetry and is topped with marble vanity. Imported marble flooring lies underfoot throughout the bathroom. Impact-resistant, laminated glass precludes the need for hurricane shutters.</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

## Expired



Address	2494 S Ocean Blvd, Apt C5 Boca Raton, FL 33432	875 E Camino Real, Apt 3B Boca Raton, FL 33432	1000 Spanish River Rd, Apt 2B Boca Raton, FL 33432	1000 Spanish River Rd, Apt 20 Boca Raton, FL 33432
Status	Subject Property	<sup>35</sup> Recently Expired	<sup>36</sup> Recently Expired	<sup>37</sup> Recently Expired
Amount	—	\$549,000 List Amount	\$185,000 List Amount	\$275,000 List Amount
Listing Date	9/18/2012	3/17/2014	2/15/2014	3/20/2014
Days in RPR	932	387	417	384
Price Per Sq. Ft.	\$425	\$328	\$135	\$199
Bedrooms	3	2	2	2
Total Baths	4	2	2	2
Partial Baths	1	—	—	—
Total Rooms	—	—	—	—
Living Area	3,764	1,675	1,375	1,379
Lot Size	1 acres	—	1 acres	1 acres
Year Built	1996	1970	1972	1972
Living Area Range (low)	—	—	—	—
Living Area Range (high)	—	—	—	—
Property Type	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse	Condo/Townhouse
Property Subtype	Condo/Coop	Condo/Coop	Condo/Coop	Condo/Coop
MLS ID	RX-3310842	RX-10025138	RX-10016944	RX-10026256
Listing Broker	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Realty Associates Florida Prop	Courtesy of RE/MAX Services	Courtesy of RE/MAX Advantage Plus/BR
Description	<p>ESTATE SALE. Renovated and updated residence, located in the SE corner of the south tower, has one of the most desirable locations in the building. Private elevator comes directly into a private entry and secured foyer. Transitionally contemporary interiors are accented with neutral marble flooring throughout all the walkway areas, with carpeted bedrooms. Direct east, south, and west views of the ocean. Full living room area has a big dining room area. Updated kitchen cabinetry and granite countertops, Thermador appliances, double ovens, microwave, stove top, sub-zero refrigerator, and pantry area. The kitchen area has afternoon sunset views. The views are east, south and west. There is an...</p>	<p>Highly desirable 'b' unit in lake house south; situated directly on lake boca with boat docks available, beautiful views of garden and lake, crown mouldings in liv rm, dining room with extra storage area, kitchen with add'l cabinets and counterspace added, new marble flooring in baths, reduced and ready for occupancy in 2015. Easy walk to resort, shopping, dining, beach</p>	<p>Awesome location! walk to beach and ocean. Spacious layout with 2 large bedrooms. Click here to submit offers <a href="http://ebrokerhouse.com/property_search.php?id=220720">http://ebrokerhouse.com/property_search.php?id=220720</a></p>	<p>Best kept secret of boca raton...2/2 condo with underground parking space/storage unit. boutique building just over intracoastal and walk to beach/boca raton resort. This unit has been redone and shows beautifully, open kitchen with granite and wood cabinets, tile thru-out living area. Great size rooms..no laundry in unit but 3 washers/dryers on each floor.serious buyers only!</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

# 2500 S Ocean Blvd, Apt 801, Boca Raton, FL 33432



bing

\$5.5m

LEGEND: Subject Property This Property

**RECENTLY EXPIRED**

\* Expired  
\* MLS listing RX-10010341, 1/23/2014

**Current Estimated Value**

**\$1,138,000**

Last AVM Update: 3/16/2015  
Days in RPR: 440

AVM Est. Range:  
**\$842,120 – \$1,433,880**

AVM Confidence:



↓ AVM Change  
Last 1 Month: **-\$20,000**

↓ AVM Change  
Last 12 Months: **-68.97%**

Incredible North East Corner Luxuria  
Top of the Line Turnkey Designer  
Furnished Dream Home with  
Incredible Ocean Views  
Everywhere! 4 BRs Plus Media Rm.  
If you're looking for the Dream,  
Turnkey, Ocean Views, High  
Ceilings, Come & See this Dream!

**Home Facts**

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage (spaces)  
Year Built  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

Public Facts

**Condo/Townhouse**  
**Condominium**  
4  
5  
5  
-  
4,248  
1 acres  
1.00 AC  
-  
2009  
-  
-  
**Masonry**  
0  
-

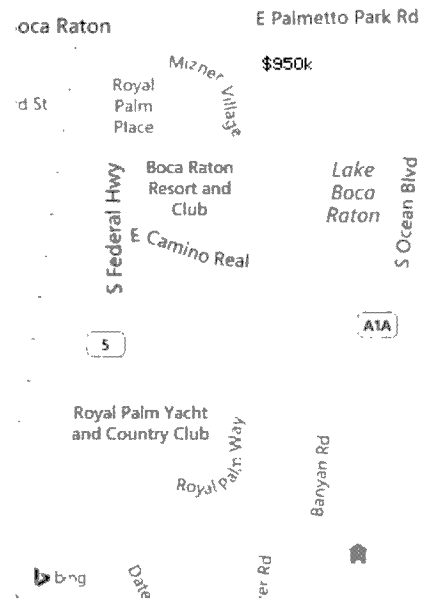
Listing Facts

**Condo/Townhouse**  
**Condo/Coop**  
4  
6  
5  
1  
4,248  
1 acres  
-  
2009  
**Zoned**  
**Zoned**  
**Concrete**  
-  
1

Courtesy of Mizner Grande Realty LLC



## 300 SE 5th Ave, Apt 5180, Boca Raton, FL 33432



LEGEND: Subject Property This Property

### RECENTLY EXPIRED

- \* Expired
- \* MLS listing RX-10087908, 11/10/2014

### Current Estimated Value

**\$932,470**

Last RVM® Update: 3/16/2015  
Days in RPR: 149

RVM® Est. Range:  
**\$885,847 – \$979,093**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$39,060**

↑ RVM® Change  
Last 12 Months: **19.24%**

This magnificent FULLY FURNISHED condo in Mizner Tower WONT LAST! It has a fabulous VIEW OF LAKE BOCA RATON AND THE OCEAN! Beautiful pools and boat slips can be seen from the large covered balcony. Two garage parking spaces. Wonderful value in full service, pet friendly building.

### Home Facts

Property Type	Condo/Townhouse
Property Subtype	Condominium
Bedrooms	2
Total Baths	3
Full Baths	3
Partial Baths	–
Living Area (sq ft)	2,340
Garage (spaces)	–
Year Built	1989
Style	–
Heating	–
Cooling	–
Construction	Masonry
Number of Buildings	0
Number of Stories	5

### Public Facts

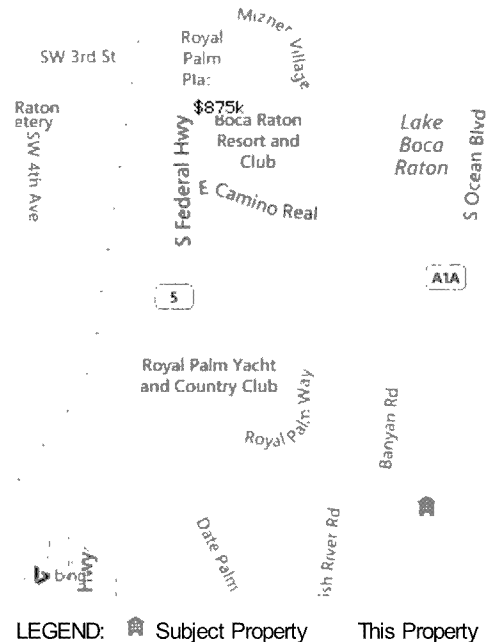
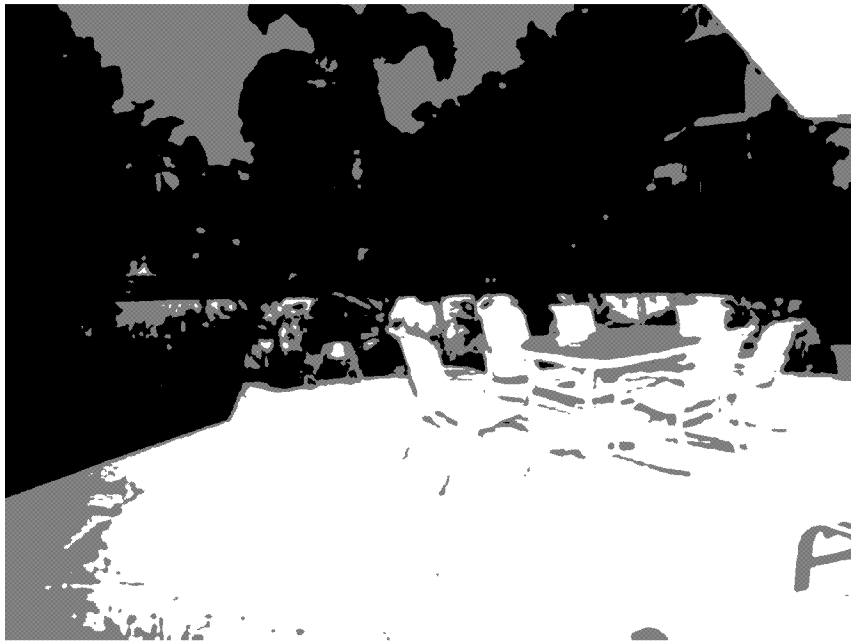
<b>Condo/Townhouse</b>
<b>Condominium</b>
<b>2</b>
<b>3</b>
<b>3</b>
<b>–</b>
<b>2,340</b>
<b>–</b>
<b>1989</b>
<b>–</b>
<b>–</b>
<b>–</b>
<b>Masonry</b>
<b>0</b>
<b>5</b>

### Listing Facts

<b>Condo/Townhouse</b>
<b>Condo/Coop</b>
<b>2</b>
<b>4</b>
<b>3</b>
<b>1</b>
<b>2,340</b>
<b>2</b>
<b>1989</b>
<b>Less Than 4 Floors</b>
<b>Central</b>
<b>Central</b>
<b>Cbs Construction</b>
<b>–</b>
<b>8</b>

Courtesy of Douglas Elliman

# 550 SE Mizner Blvd, Apt B110, Boca Raton, FL 33432



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-10030827, 4/7/2014

**Current Estimated Value**

**\$866,170**

Last RVM® Update: 3/16/2015  
Days in RPR: 366

RVM® Est. Range:  
**\$779,553 – \$952,787**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$7,930**

↑ RVM® Change  
Last 12 Months: **4.6%**

2 bedroom + den (with a bed which can be used as a bedroom), 3 bath condo in Townsend Place, 10 ft ceilings, located on the pool level.

**Home Facts**

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage (spaces)  
Year Built  
Style  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

**Public Facts**

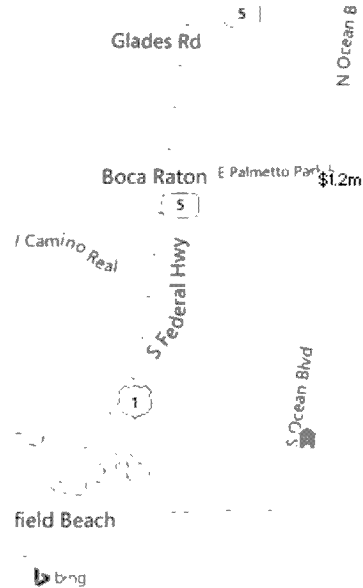
**Condo/Townhouse**  
**Condominium**  
**2**  
**3**  
**3**  
**1,968**  
**1 acres**  
**1.00 AC**  
—  
**2003**  
—  
—  
—  
**Masonry**  
**0**  
—

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
**2**  
**3**  
**3**  
**1,968**  
—  
—  
**1**  
**2003**  
**4+ Floors**  
**Central, Electric**  
**Central, Central Individual A/C**  
**Cbs Construction**  
—  
**9**

Courtesy of Keller Williams Realty Services

# 1 N Ocean Blvd, Apt 402, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY EXPIRED**

- \* Expired
- \* MLS listing RX-3306835, 8/31/2012

**Current Estimated Value**

**\$1,157,860**

Last RVM® Update: 3/16/2015  
Days in RPR: 950

RVM® Est. Range:  
**\$1,018,917 – \$1,296,803**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$21,950**

↑ RVM® Change  
Last 12 Months: **8%**

BEAUTIFULLY FINISHED WITH MARBLE FLOORS, EXTRA LARGE GRAND SALON, GOURMET EAT-IN KITCHEN WITH A SUITE OF TOP-OF-THE-LINE APPLIANCES, IMPORTED WOOD CABINETRY AND GRANITE COUNTERTOPS. SPACIOUS DINING ROOM AND FAMILY ROOM THAT OPENS TO ONE OF THE PRIVATE TERRACES. ONE TERRACE FACES NORTH, ONE FACES SO...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Year Built
- Heating
- Cooling
- Construction
- Number of Buildings
- Number of Stories

**Public Facts**

- Condo/Townhouse
- Condominium
- 2
- 2
- 2
- 
- 3,084
- 1 acres
- 1.00 AC
- 2007
- 
- 
- Masonry
- 0
- 

**Listing Facts**

- Condo/Townhouse
- Condo/Coop
- 2
- 3
- 2
- 1
- 3,275
- 
- 
- 2007
- Central
- Central
- Cbs Construction
- 
- 5

Courtesy of Nestler Poletto Sothebys Int'l

# 875 E Camino Real, Apt 3B, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY EXPIRED**

\* Expired  
 \* MLS listing RX-10025138, 3/17/2014

HIGHLY DESIRABLE 'B' UNIT IN LAKE HOUSE SOUTH; SITUATED DIRECTLY ON LAKE BOCA WITH BOAT DOCKS AVAILABLE, BEAUTIFUL VIEWS OF GARDEN AND LAKE, CROWN MOULDINGS IN LIV RM, DINING ROOM WITH EXTRA STORAGE AREA, KITCHEN WITH ADD'L CABINETS AND COUNTERSPACE ADDED, NEW MARBLE FLOORING IN BATHS, REDUCED AND R...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Garage (spaces)  
 Year Built  
 Style  
 Heating  
 Construction  
 Number of Buildings  
 Number of Stories

**Public Facts**

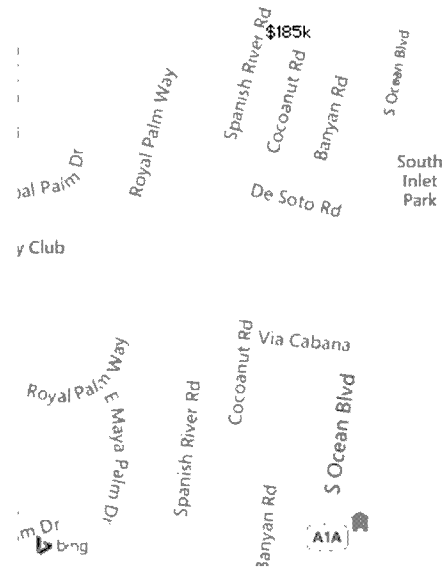
**Condo/Townhouse**  
**Condominium**  
 2  
 2  
 2  
 1,675  
 -  
 1970  
 -  
 -  
**Masonry**  
 0  
 3

**Listing Facts**

**Condo/Townhouse**  
**Condo/Coop**  
 2  
 2  
 2  
 1,675  
 1  
 1970  
**Georgian**  
**AME=[LIST\_112] CLASS=[A],**  
**Cbs Construction**  
 -  
 1

Courtesy of Realty Associates Florida Prop

# 1000 Spanish River Rd, Apt 2B, Boca Raton, FL 33432



LEGEND: Subject Property This Property

**RECENTLY EXPIRED**

- \* Expired
- \* MLS listing RX-10016944, 2/15/2014

**Current Estimated Value**

**\$195,340**

Last RVM® Update: 3/16/2015  
Days in RPR: 417

RVM® Est. Range:  
**\$171,900 – \$218,780**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$520**

↑ RVM® Change  
Last 12 Months: **5.58%**

Awesome location! Walk to beach and ocean. Spacious layout with 2 large bedrooms. Click here to submit offers [http://ebrokerhouse.com/property\\_search.php?id=220720](http://ebrokerhouse.com/property_search.php?id=220720)

**Home Facts**

Property Type	Condo/Townhouse
Property Subtype	Condominium
Bedrooms	2
Total Baths	2
Full Baths	2
Living Area (sq ft)	1,375
Lot Size	1 acres
Lot Dimensions	1.00 AC
Year Built	1972
Heating	–
Cooling	–
Construction	Masonry
Number of Buildings	0
Number of Stories	–

**Public Facts**

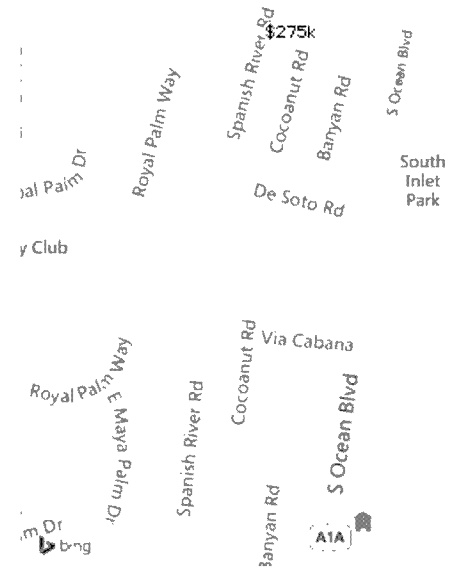
Property Type	Condo/Townhouse
Property Subtype	Condominium
Bedrooms	2
Total Baths	2
Full Baths	2
Living Area (sq ft)	1,375
Lot Size	1 acres
Lot Dimensions	1.00 AC
Year Built	1972
Heating	–
Cooling	–
Construction	Masonry
Number of Buildings	0
Number of Stories	–

**Listing Facts**

Property Type	Condo/Townhouse
Property Subtype	Condo/Coop
Bedrooms	2
Total Baths	2
Full Baths	2
Living Area (sq ft)	1,375
Lot Size	1 acres
Lot Dimensions	–
Year Built	1972
Heating	Central
Cooling	Central
Construction	Cbs Construction
Number of Buildings	–
Number of Stories	1

Courtesy of RE/MAX Services

# 1000 Spanish River Rd, Apt 2O, Boca Raton, FL 33432



**RECENTLY EXPIRED**

- \* Expired
- \* MLS listing RX-10026256, 3/20/2014

**Current Estimated Value**

**\$257,870**

Last RVM® Update: 3/16/2015  
Days in RPR: 384

RVM® Est. Range:  
**\$229,505 – \$286,235**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$1,810**

↑ RVM® Change  
Last 12 Months: **36.43%**

Best Kept secret of Boca Raton...2/2 condo with underground parking space/storage unit..Boutique building just over intracoastal and walk to beach/Boca Raton Resort. This unit has been redone and shows beautifully, open kitchen with granite and wood cabinets, tile thru-out living area. Great size...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage (spaces)
- Year Built
- Heating
- Cooling
- Construction
- Number of Buildings
- Number of Stories

**Public Facts**

- Condo/Townhouse**
- Condominium**
- 2**
- 2**
- 2**
- 1,379**
- 1 acres**
- 1.00 AC**
- 
- 1972**
- 
- 
- Masonry**
- 0**
- 

**Listing Facts**

- Condo/Townhouse**
- Condo/Coop**
- 2**
- 2**
- 2**
- 1,379**
- 1 acres**
- 
- 1**
- 1972**
- Central**
- Central**
- Other**
- 
- 4**

Courtesy of RE/MAX Advantage Plus/BR

## Recommended Pricing Strategy

	Active Listings	Distressed	Expired Listings	Pending Sales	Sold
<b>Lowest Price</b>	\$329,900	\$120,000	\$185,000	\$380,000	\$450,000
<b>Median Price</b>	\$707,000	\$362,500	\$874,973	\$882,450	\$2,097,250
<b>Highest Price</b>	\$5,250,000	\$2,395,000	\$5,495,000	\$1,050,000	\$5,100,000
<b>Median Price Per Sq. Ft.</b>	\$454	\$246	\$382	\$403	\$539
<b>Days in RPR</b>	8	7	387	91	187

## Comparable Sold Property Price Analysis

	Sold Price	Price Per Sq. Ft.
<b>Lowest Price</b>	\$55,120	\$69
<b>Median Price</b>	\$499,000	\$333
<b>High Price</b>	\$5,995,000	\$1,206

### Sellers

_____	_____
Signature	Date
_____	_____
Signature	Date

### Broker / Agent

_____	_____
Signature	Date

# Seller's Proceeds

Low

High

Price

Encumbrances

First Loan

Second Loan

Est. Closing Costs

Commissions

Escrow Items

Escrow Fees

Home Warranty

Other Work

Pest Inspection

Tax Stamp

Termite Work

Title Insurance

Total Encumbrances

Estimated Closing Costs

Net Cash to Seller

*I understand that the above is an estimate only and not the actual costs which would be incurred if an actual sale is consummated. The estimated amounts above are not guaranteed in any way.*

*Seller*

*date*



EXHIBIT 3 - LISTING PICTURES BEFORE AND AFTER

MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
EXHIBIT

001329

**7020 LIONS HEAD LANE – 2012 to 2015 BEFORE & AFTER PICTURES**

**1. HOME FRONT**

2012 BEFORE

Front of House Zillow Listing Picture 2012 – Looks like the Ritz Carlton



2014-2015 AFTER

Poletto Appraisal 2014 – Moldy Driveway – Faded Paint

March 2015 Street View – Totally Dead Landscape

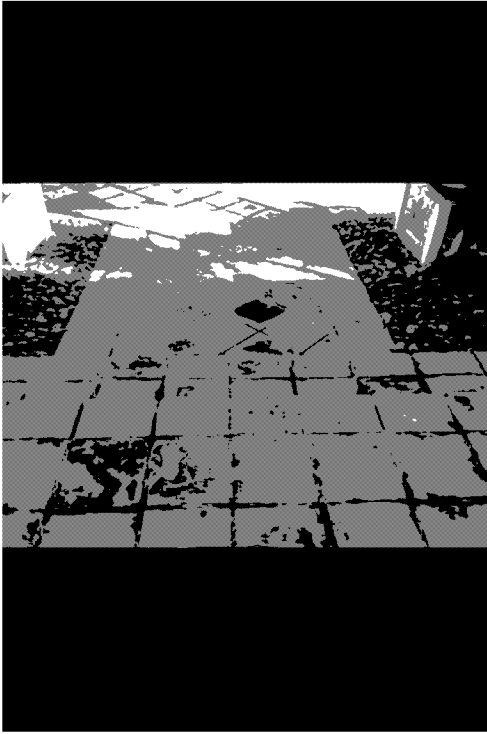




March 2015 Pictures Street View – Broken Moldy Fountain Missing Statue - Dead Landscape



March 2015 Home Front – Black and Green Mold on Walkway to Front Door



2. BACKYARD VIEW

BACKYARD VIEWS BEFORE AND AFTER

2012 BEFORE

2012 Zillow Listing Pictures – Looks like the Ritz



2014-2014 AFTER

2014 Poletto Appraisal – Pool according to Poletto statements to Real Estate Broker the Pool is Dark Green because it is broken and being fixed. Mold over deck, tile faded and Jacuzzi filthy.



BACK BARBEQUE BEFORE 2012



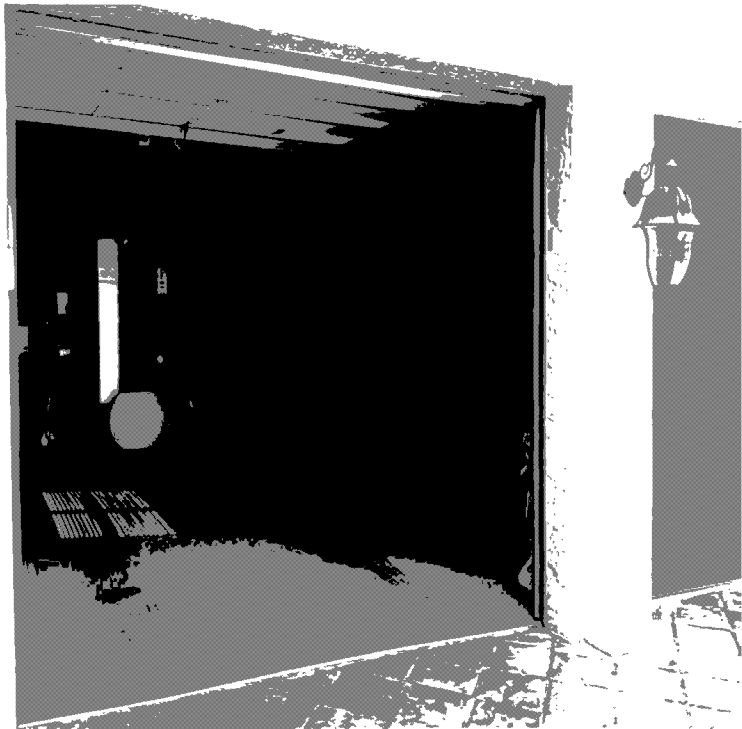
AFTER POLETTO APPRAISAL – PAINT FADED TILE FADED



3. GARAGE VIEWS 2015

GARAGE PICTURES WHERE 5000 SQUARE FT OF CONDO FURNISHINGS AND PERSONAL PROPERTIES WERE ALLEGED TO BE STORED, INCLUDING COUCHES, BEDS, DINING TABLES, ETC.

GARAGES 1 & 2 – COMPLETELY EMPTY



GARAGE 3 VIRTUALLY EMPTY – GARAGE 4 MISSING 1 ROLLS ROYCE GOLF CART

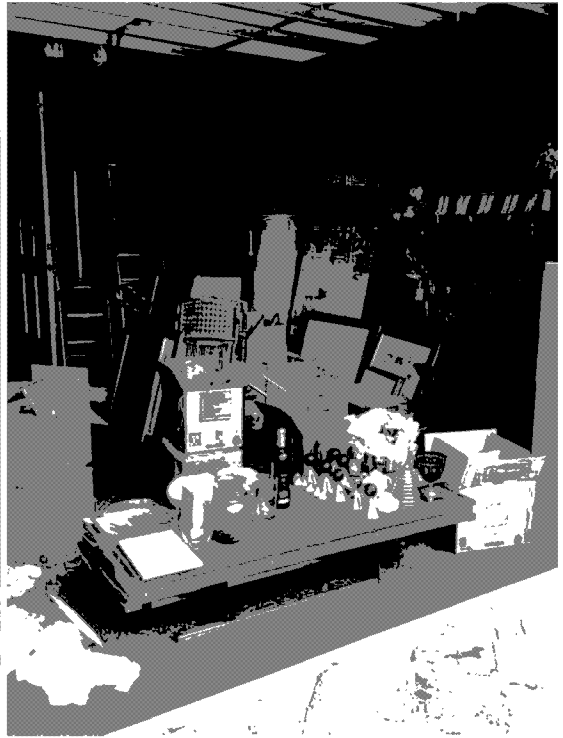
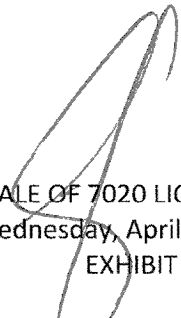


EXHIBIT 4 – GARAGE PICTURES OF THE FOUR GARAGES



MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
EXHIBIT



3. GARAGE VIEWS 2015

GARAGE PICTURES WHERE 5000 SQUARE FT OF CONDO FURNISHINGS AND PERSONAL PROPERTIES WERE ALLEGED TO BE STORED, INCLUDING COUCHES, BEDS, DINING TABLES, ETC.

GARAGES 1 & 2 – COMPLETELY EMPTY



GARAGE 3 VIRTUALLY EMPTY – GARAGE 4 MISSING 1 ROLLS ROYCE GOLF CART

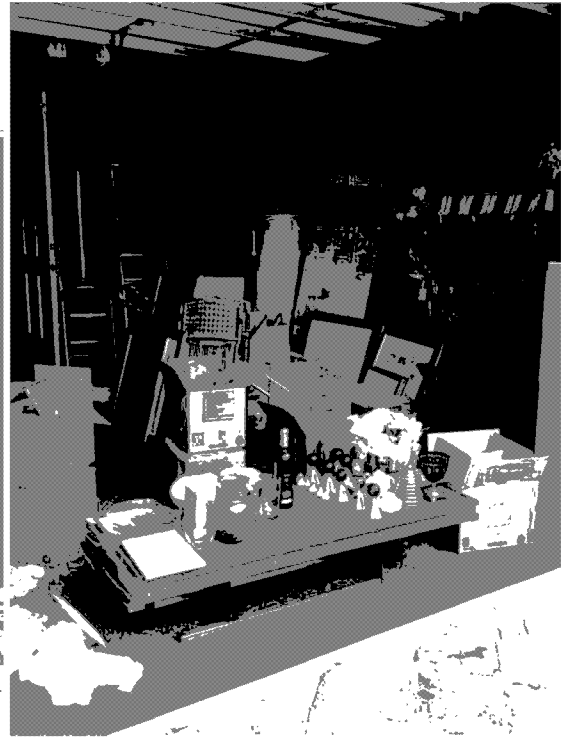
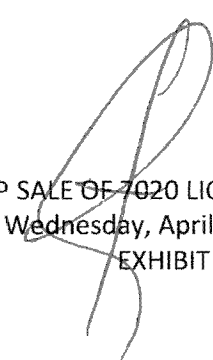


EXHIBIT 5 – 7020 LIONS HEAD LANE SELLERS REPORT



MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY  
Wednesday, April 15, 2015  
EXHIBIT

001338



SELLER'S REPORT

# 7020 Lions Head Ln, Boca Raton, FL 33496



*Please keep in mind I haven't seen  
the inside of the property yet.*

Presented by

**Paul Saperstein**

Florida Real Estate License: BK676961



Mobile: (561) 251-5296 | Fax: (561) 455-9884

sapsdeals@gmail.com

RE/MAX Advantage Plus  
3013 Yamato Rd  
Boca Raton, FL 33434

# 7020 Lions Head Ln, Boca Raton, FL 33496



Legend: 📍 Subject Property

**SALE PENDING**

• Active Contingent: 3/19/2015

## List Price

**\$1,395,000**

Last Price Update: 10/21/2014

Days in RPR: 1,170

## Current Estimated Value

**\$1,594,780**

Last RVM® Update: 3/16/2015

RVM® Est. Range: \$1,419,355 – \$1,770,205

RVM® Confidence: ★★★★★

↑ RVM® Change - Last 1 Month: \$32,850

↓ RVM® Change - Last 12 Months: -5.69%

*This report contains data and information that is publicly available and/or licensed from third parties and is provided to you on an "as is" and "as available" basis. The information is not verified or guaranteed. Neither this report nor the estimated value of a property is an appraisal of the property. Any valuation shown in this report has been generated by use of proprietary computer software that assembles publicly available property records and certain proprietary data to arrive at an approximate estimate of a property's value. RPR and its information providers shall not be liable for any claim or loss resulting from the content of, or errors or omissions in, information contained in this report.*

## Home Facts

### Public Remarks

ESTATE SALE. Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors & cast stone columns. Off the entry & living room, there is a powder bathroom, with separate men's & woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room & dining room area. Walls have stucco application throughout the house.

Home Facts	Public Facts	Listing Facts	Realtor Refinements
Property Type	<b>Single Family Residence</b>	<b>Single Family Residence</b>	
Property Subtype	<b>Single Family</b>	<b>Single Family Detached</b>	
Bedrooms	–	<b>5</b>	
Total Baths	<b>8</b>	<b>10</b>	
Full Baths	<b>8</b>	<b>7</b>	
Partial Baths	–	<b>3</b>	
Living Area (sq ft)	<b>6,293</b>	<b>6,293</b>	
Lot Size	<b>0.33 acres</b>	–	
Lot Dimensions	<b>14562 SF</b>	<b>0.33</b>	
Garage	<b>Yes</b>	–	
Garage (spaces)	<b>3</b>	<b>4</b>	
Pool	<b>Enclosed</b>	<b>Yes</b>	
Year Built	<b>1993</b>	<b>1993</b>	
Style	–	<b>Mediterranean</b>	
Roofing	<b>Tile</b>	–	
Heating	<b>Forced air unit</b>	<b>Central</b>	
Cooling	<b>Yes</b>	<b>Central</b>	
Fireplaces	<b>1</b>	–	
Construction	<b>Masonry</b>	<b>Cbs Construction</b>	
Exterior Walls	<b>Stucco</b>	–	
Number of Buildings	<b>0</b>	–	
Number of Stories	<b>2</b>	<b>2</b>	

### Homeowner Facts

Owner Name	<b>Withheld</b>
Mailing Address	<b>880 Berkeley St Boca Raton FL 33487-2450</b>
Vesting	<b>Trustee/Conservator</b>
Current Lender	<b>CHL HOME MORTGAGE LLC</b>
Original Loan Amt.	<b>\$998,000</b>

# Extended Home Facts



Legend: 📍 Subject Property

## Interior Features

<b>Appliance</b>	Dishwasher, Wall Oven, Refrigerator, Range-Electric, Microwave
<b>Cooling</b>	Central
<b>Floor</b>	Ceramic
<b>Heating</b>	Central
<b>Pet</b>	Yes
<b>General</b>	Volume Ceiling, Walk-In Closet
<b>Window</b>	Hurricane Shutters
<b>Room Details</b>	Cabana, Media, Laundry/Utility Rm, Family, Den

## Interior Details

<b>Heating Fuel Type</b>	Electric
<b>Interior Walls</b>	Gypsum Board
<b>Floor Cover</b>	Marble, Carpet
<b>Base Area</b>	3916 sq ft
<b>Effective Area</b>	7010 sq ft
<b>Total Area</b>	7525 sq ft
<b>Garage</b>	529 sq ft
<b>Porch - Open</b>	361 sq ft
<b>Garage</b>	342 sq ft

## Exterior Features

<b>Construction</b>	Cbs Construction
<b>Style</b>	Mediterranean
<b>Water Front</b>	None
<b>Parking</b>	Circular Driveway, Golf Cart, Garage-Attached, Decor Drive
<b>Levels</b>	2.00,
<b>Utilities</b>	Public Sewer, Public Water
<b>Lot Size Dimensions</b>	0.33
<b>Lot Size Features</b>	1/4 To 1/2 Acre

## Exterior Details

<b>Lot Size - Frontage Feet</b>	0000001020 sq ft
<b>Lot Size - Acres</b>	334.00 sq ac
<b>Neighborhood Code</b>	126700RS
<b>Roof Type</b>	GABLE OR HIP

## Room Sizes

<b>Master Bedroom</b>	20x18	<b>Bedroom</b>	14x14
<b>Bedroom</b>	16x14	<b>Kitchen</b>	16x14
<b>Bedroom</b>	16x14	<b>Living Room</b>	18x16

## Location Details

<b>Directions to Property</b>	Clint Moore Rd west of Jog to St Andrews Country Club entrance
<b>Subdivision</b>	St Andrews Country Club

## Other Details

<b>Effective Year Built</b>	1998
<b>Building Condition</b>	Average
<b>Pool Size</b>	000000135

---

<b>Zoning</b>	RT	<b>Patio</b>	000001346
<b>Walkability Score</b> (out of 5)	Overall: 0.3   Amenity: 0.2   Leisure: 0.2		

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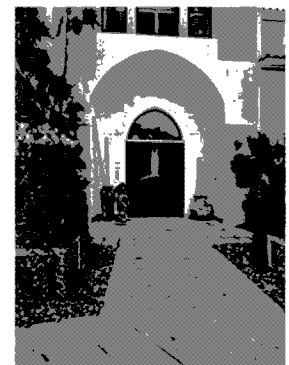
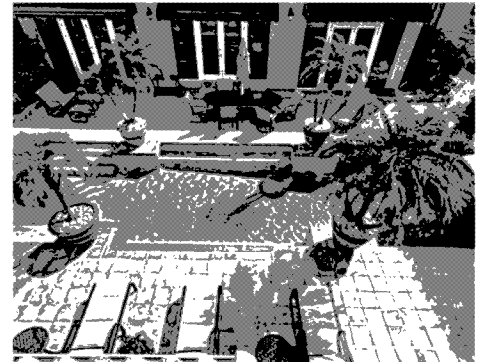
### Homeowners Association Info

<b>Association Features</b>	Mandatory Hoa
<b>Association Y/N</b>	Yes
<b>Association Dues 1</b>	\$533

# Property Photos







## Property History

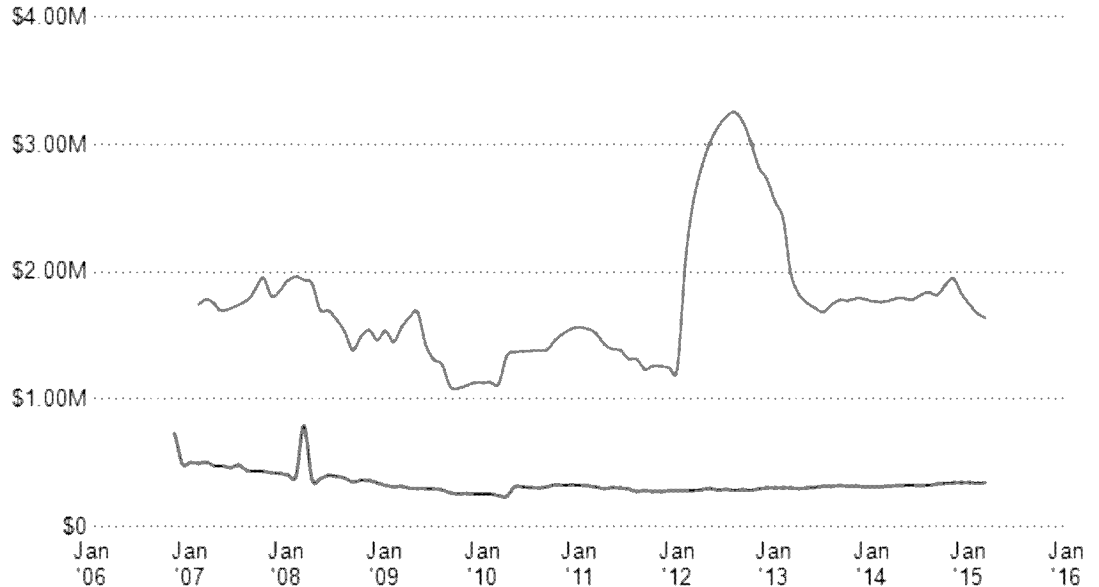
### Median Estimated Home Value

This chart displays property estimates for an area and a subject property, where one has been selected. Estimated home values are generated by a valuation model and are not formal appraisals.

Data Source: Valuation calculations based on public records and MLS sources where licensed

Update Frequency: Monthly

- This House
- 33496
- Palm Beach County
- Florida



### Sales History

Sales Date	Sales Amount	Price per sq. ft.
6/9/1993	\$894,000	\$142

### Assessed Values

Date	Improvements	Land	Total	Tax
2014	-	-	\$899,512	\$17,276
2013	-	-	\$904,526	\$17,422
2012	-	-	\$883,019	-
2010	-	-	\$965,110	\$18,605
2009	-	-	\$1,069,591	-
2007	-	-	\$1,202,558	-
2006	-	-	\$1,248,277	-
2005	-	-	\$1,166,734	-

### Legal Description

<b>Parcel Number:</b> 00-42-46-33-11-000-7810	<b>Zoning:</b> RT	<b>Census Tract:</b> 120990070.052000	<b>Abbreviated Description:</b> LOT:781 SEC/TWN/RNG/MER:SEC 33 TWN 46S RNG 42E ST ANDREWS COUNTRY CLUB PL 14 LT 781	<b>City/Municipality/Township:</b> Boca Raton, FL 33496
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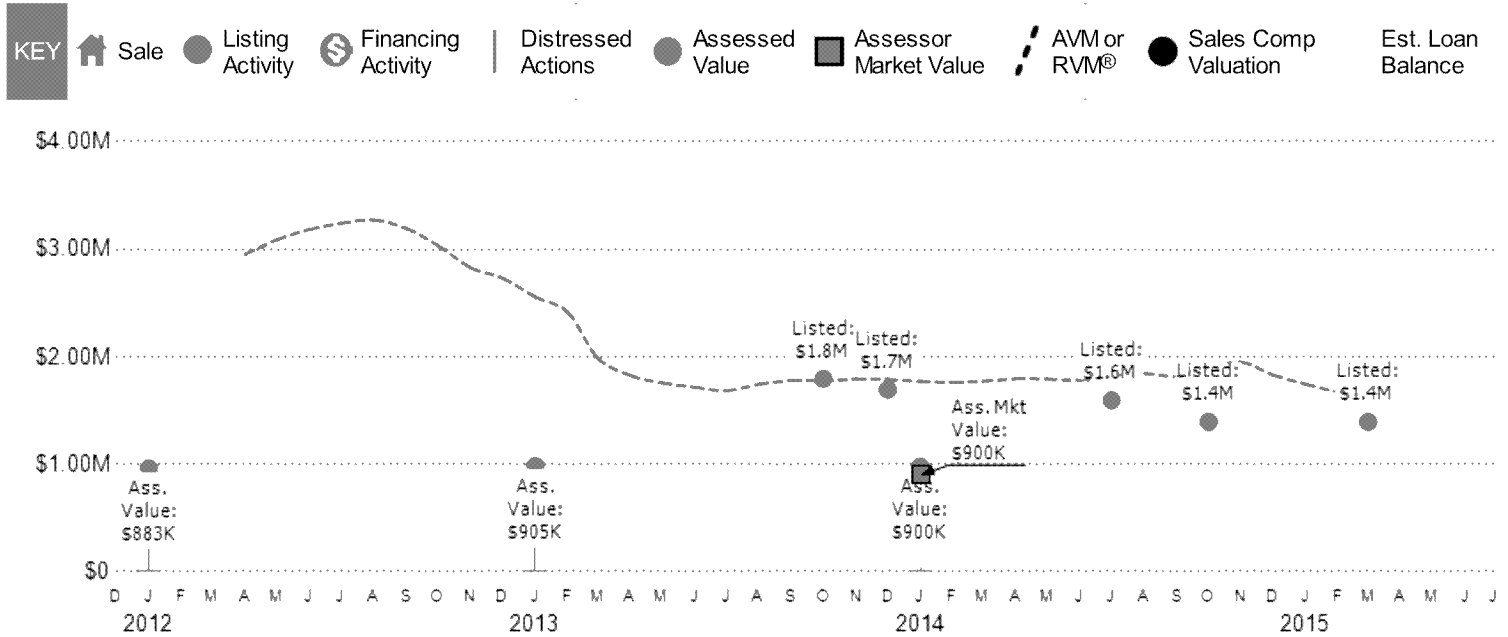
### Mortgage Records

Recording Date	10/25/2006	6/16/2004	6/19/2001
<b>Borrower Name</b>	SIMON BERNSTEIN, SHIRLEY BERNSTEIN	SIMON L BERNSTEIN, SHIRLEY BERNSTEIN	SHIRLEY BERSTEIN, SIMON L BERNSTIEN
<b>Lender Name</b>	CHL HOME MORTGAGE LLC	WELLS FARGO BANK NA	WELLS FARGO BANK WEST NA
<b>Lender Type</b>	Not Known	Bank	Bank
<b>Loan Amount</b>	\$998,000	\$521,000	\$979,000
<b>Document Number</b>	20060602555	20040348625	-
<b>Loan Type</b>	Unknown	E	E
<b>Contract Date</b>	10/17/2006	6/8/2004	-
<b>TD Due Date</b>	11/1/2036	7/4/2014	-
<b>Finance Type</b>	Adjustable Rate	-	Fixed Rate
<b>Interest Rate</b>	6.75%	-	-



## Sales and Financing Activity

This chart shows a property's sales and financing history. It can be used to compare the value of the property as seen by public records, such as deeds and tax records, with the estimated home value. Actions taken against the owner, such as the issuance of a Notice of Default, are noted. Sales activity, such as listing date and price reductions, are highlighted.



Data Source: Public records and proprietary data; listing data from on- and off-market listings sources

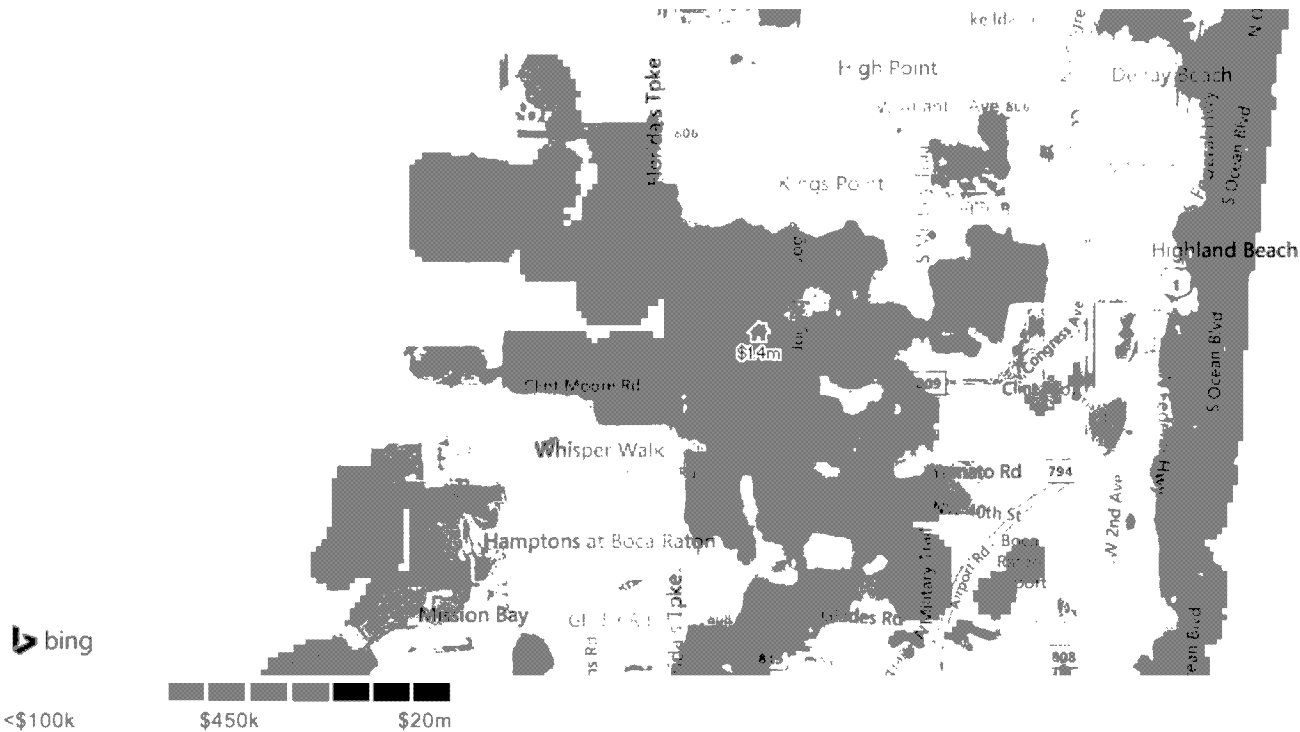
Update Frequency: Valuations are updated twice monthly; actions on the home, such as listing activity or distressed property notices, are updated daily as made available from public records sources

## Price Change History

Change Date	Description	New List Price	% Change
3/19/2015	Contingent	\$1,395,000	-
10/21/2014	Active	\$1,395,000	-12.54%
7/10/2014	Active	\$1,595,000	-5.9%
12/16/2013	Active	\$1,695,000	-5.57%
10/7/2013	-	\$1,795,000	-

# Market Activity for 33496

## Estimated Home Values



This map layer shows the average estimated home values, based on the AVMs and RVMS® for properties in an area. Source(s): Public records and MLS data where licensed; updated Quarterly.

### Market Snapshot

Compared with Last Year: April 08, 2014 vs. April 08, 2015

Median Est. Home Value

**\$348K**

Up 8.5%

Median Est. Listing Price

**\$525K**

Up 11.1%

Median Days in RPR

**101**

Down -7.3%

Sales Volume

**35**

Down -40.7%

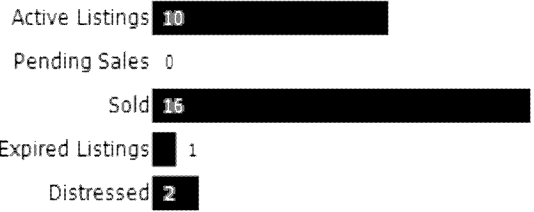
## Market Activity

This chart summarizes market activity by listing status for various time periods.

Data Source: Public records and proprietary data; listing data from on- and off-market listings sources

Update Frequency: Monthly

### 12 Months Ago



### Last 30 Days



### Month Prior



## Listing Price vs. Sales Price

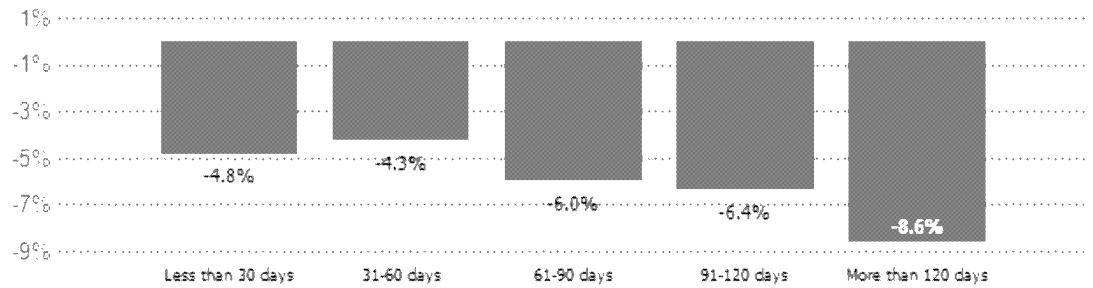
This chart displays the average percentage difference between the listing and selling price, compared by length of time properties were for sale in this market.

Data Source: On- and off-market listings sources

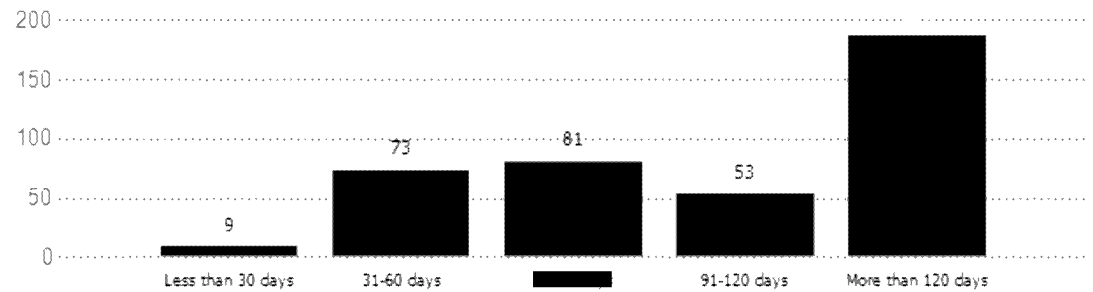
Update Frequency: Monthly

- Below Listing Price
- Number of Sales

### Percentage Difference in Price



### Number of Sales



## Average Price Adjustments

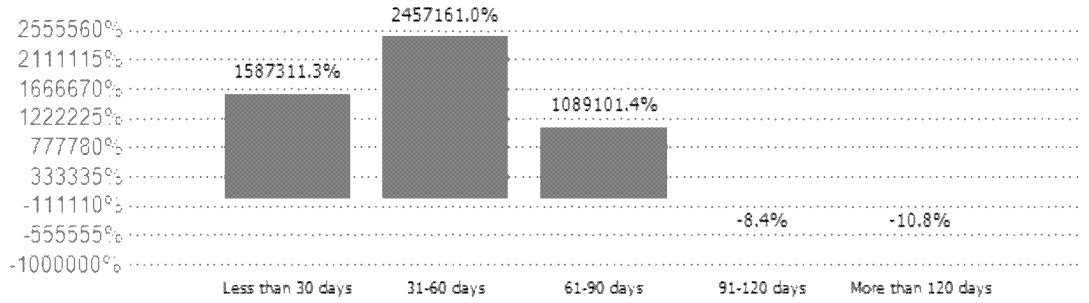
This chart displays the average percentage adjustment from the original list price, compared by length of time properties have been for sale in this market.

Data Source: On- and off-market listings sources

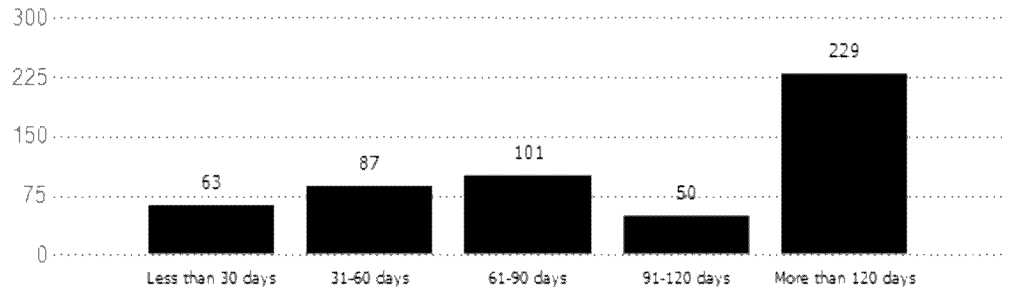
Update Frequency: Monthly

- Price Adjustments (+)
- Price Adjustments (-)
- Number of Price Adjustments - All Listings

## Percentage Change in Listing Price



## Number of Price Adjustments - All Listings



# Market Health Charts and Comparisons

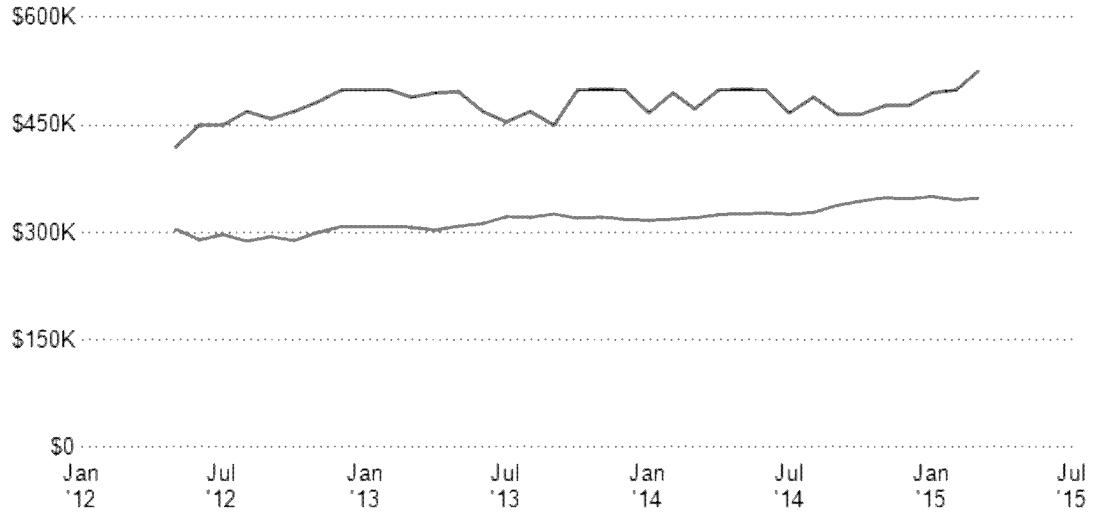
## Median Estimated Home Value vs. Median Listing Price

This chart compares a ZIP code's median estimated home value with its median listing price. Estimated home values are generated by a valuation model and are not formal appraisals.

Data Source: Public records data; listing price data from on- and off-market listings sources

Update Frequency: Monthly

- Median Estimated Value
- Median List Price



## Median Sales Price vs. Sales Volume

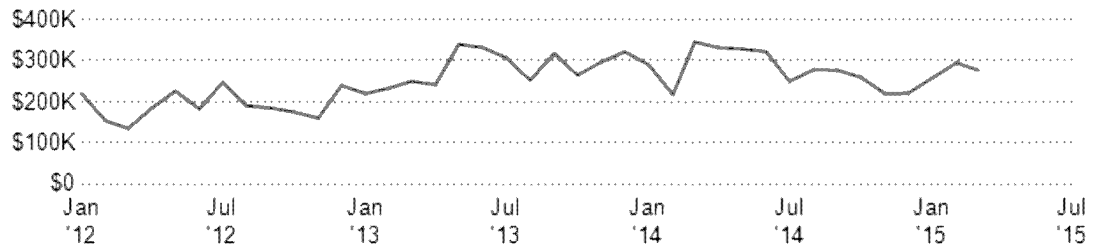
This chart compares the price trend and sales volume for homes in an area. Home prices typically follow sales volume, with a time lag, since sales activity is the driver behind price movements.

Data Source: Public records data

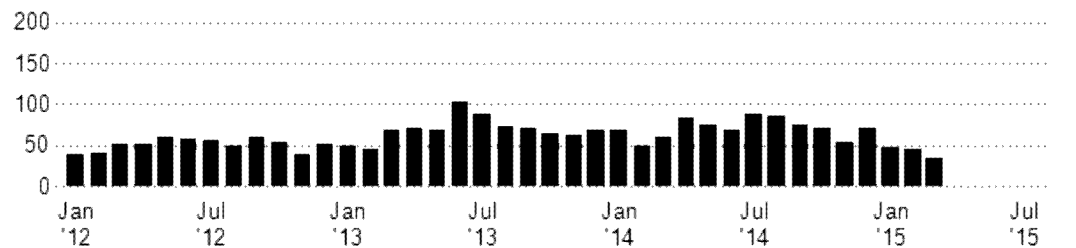
Update Frequency: Monthly

- Median Sales Price
- Sales Volume

Median Sales Price



Sales Volume





## Median Listing Price vs. Listing Volume

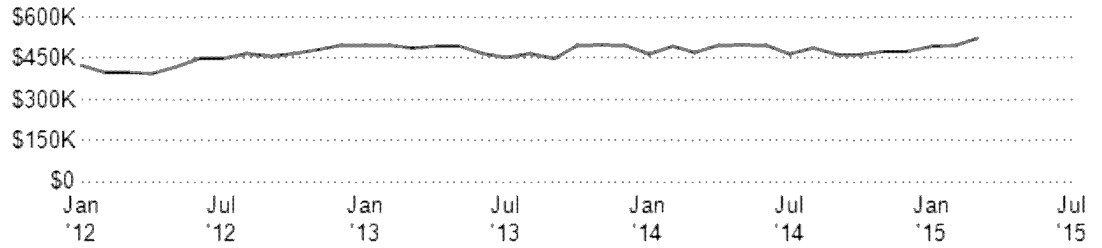
This chart compares the listing price and listing volume for homes in an area. Listing prices often follow listing volume, with a time lag, because supply can drive price movements.

Data Source: On- and off-market listings sources

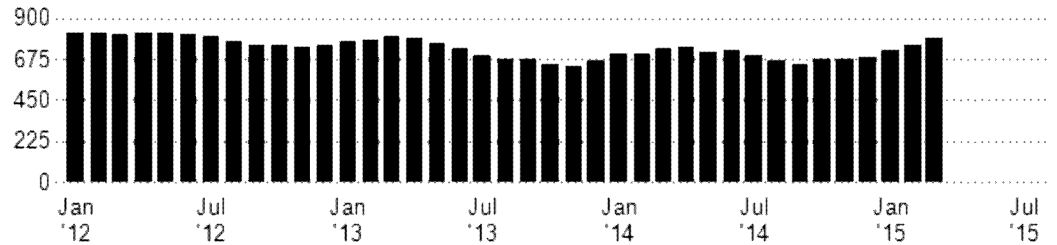
Update Frequency: Monthly

- Median List Price
- Listing Volume

Median List Price



Listing Volume



## Listing Inventory

This chart shows the number of active listings in a ZIP code.

Data Source: On- and off-market listings sources

Update Frequency: Daily

- ZIP Count Listings by PropertyType



## Price per Bedroom of Homes Sold

This chart shows the distribution of homes reported sold in the past six months at different prices per bedroom in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records and MLS data where licensed

Update Frequency: Monthly

- This House
- Comps

This House



Comps



## Median Sales Price by Square Footage

This chart shows the median price of homes reported sold in the past six months, according to the size of the living space, in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records and MLS data where licensed

Update Frequency: Monthly

- This House
- Comps



## Price Range of Homes Sold

This chart shows the distribution of homes reported sold in the past six months within different price ranges in the area of your search. The amount shown for the subject property is sold data where available, or the property's estimated value when sales data are unavailable (such as a non-disclosure state) or provided in range format.

Data Source: Public records data

Update Frequency: Monthly

- This House
- Comps
- 33496



## Price per Square Foot of Homes Sold

This chart shows the distribution of homes reported sold in the past six months at different prices per square foot in the area of your search.

Data Source: Public records data

Update Frequency: Monthly

- This House
- Comps



## Age Range of Homes Sold

This chart shows the distribution of homes reported sold in the past six months of different age ranges in the area of your search.

Data Source: Public records data  
Update Frequency: Monthly

■ This House  
■ Comps

This House

22 yrs 1

Comps

25 - 30 yrs 2

20 - 25 yrs 4

10 - 15 yrs 1

5 - 10 yrs 1

## Number of Bedrooms in Homes Sold

This chart shows the distribution of homes reported sold in the past six months, according to the number of bedrooms, in the area of your search.

Data Source: Public records data  
Update Frequency: Monthly

■ Sales Count by Bedroom

7 1

6 3

5 18

4 37

3 124

2 88

## Inventory of Distressed Properties

This chart shows the count of distressed properties in a ZIP code.

Data Source: Public records and MLS data where licensed

Update Frequency: Daily

■ Inventory of Distressed Properties

Short Sale 21

Pre-Foreclosure 6

Foreclosure 46

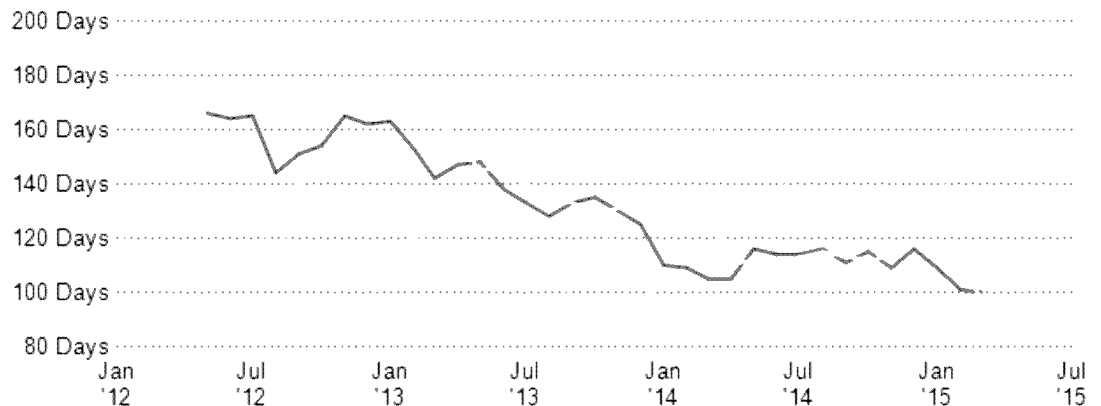
## Median Days in RPR

This chart shows how long homes are listed on RPR before their status is converted to sold. The median is calculated for all homes sold in a given month.

Data Source: On- and off-market listings sources

Update Frequency: Monthly

■ 33496  
Palm Beach County  
Florida



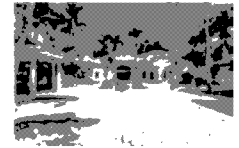
# Selected Market Activity



	Active Listings	Pending Sales	Sold	Distressed	Expired Listings
Total Number of Properties	8	8	8	8	8
Lowest Listing Price/Est. Value	\$899,000	\$589,900	\$995,000	\$795,000	\$750,000
Median Listing Price/Est. Value	\$1,517,000	\$1,472,000	\$1,944,500	\$1,857,425	\$1,262,500
Highest Listing Price/Est. Value	\$2,100,000	\$2,300,000	\$3,950,000	\$2,480,000	\$4,995,000
Median Living Area	5,163	4,883	6,284	5,941	4,375
Median Price per sq.ft.	\$266	\$284	\$290	\$295	\$296
Median Days in RPR	8	167	435	138	286
Median Age	16	26	16	17	19

FOR SALE

## Active



Address	7020 Lions Head Ln Boca Raton, FL 33496	17334 Pavaroso St Boca Raton, FL 33496	17152 Mandylynn Ct Boca Raton, FL 33496	17120 Northway Cir Boca Raton, FL 33496	18000 Fieldbrook Cir S Boca Raton, FL 33496
Status	Subject Property	For Sale	For Sale	For Sale	For Sale
Amount	\$1,395,000 List Amount	\$1,795,000 List Amount	\$1,785,000 List Amount	\$1,195,000 List Amount	\$2,100,000 List Amount
Listing Date	1/24/2012	3/27/2015	3/30/2015	3/31/2015	4/7/2015
Days in RPR	1,170	12	9	8	1
Price Per Sq. Ft.	\$222	\$340	\$353	\$252	\$387
Bedrooms	5	4	5	5	6
Total Baths	10	7	6	7	7
Partial Baths	3	1	1	1	1
Total Rooms	-	-	-	-	-
Living Area	6,293	5,272	5,055	4,736	5,433
Lot Size	0.33 acres	9,000 sq ft	0.43 acres	0.33 acres	1 acres
Year Built	1993	2013	1989	1987	1995
Living Area Range (low)	-	-	-	-	-
Living Area Range (high)	-	-	-	-	-
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	RX 3255290	RX 10123089	RX 10124815	RX 10123695	RX 10125927
Listing Broker	Listing Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Property One Realty LLC	Listing Courtesy of Boca Executive Realty	Listing Courtesy of Douglas Elliman	Listing Courtesy of The Agency Luxe, Inc

Description	7020 Lions Head Ln	17334 Pavaroso St	17152 Mandylynn Ct	17120 Northway Cir	18000 Fieldbrook Cir S
<p>ESTATE SALE.</p> <p>Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>This chef has gotten out all of the "kinks" in this rare vallejo model for sale. This chef's personal home has been totally upgraded and customized to prepare any type of gourmet meal from a custom pizza to a formal dinner. Wood flooring throughout the home, custom wood closets, and plantation shutters. 72 extra hi hats! custom glass double door entry, all windows are impact glass. Custom sound system throughout home with speakers built into every room. Full surround sound in great room and media room. Genstar whole house generator with computerized monitor and uplink to aps for monitoring, programmed to run a once a week exercise to ensure operation. All lighting fixtures and decorativ...</p>	<p>Extraordinary, expansive &amp; panoramic lake &amp; golf views enrich this spacious 5-bedroom home in a rarely-available prime cul-de-sac location. A circular drive leads to a grand interior entrance where an open floor plan &amp; floor-to-ceiling windows offer lots of natural light &amp; stunning views. The large, bright kitchen opens to a breakfast area &amp; alcove. The huge master suite, located on the ground floor, has a sitting area &amp; his/her baths with marble counters. Three more guest bedrooms are on the ground floor. Second floor features a loft/office and another guest bedroom &amp; bath. Outside, the backyard maximizes the almost 1/2 acre of property with a large pool, expansive patio with built-in barb...</p>	<p>Situated on panoramic lake and golf course lot, beautifully renovated with extensive custom mill work, marble floors, featuring 5 bedrooms including master suite with his &amp; her baths, gourmet kitchen overlooking family room and breakfast area, wood paneled library. The information herein is deemed reliable and subject to errors, omissions and changes without notice. All measurements are approximate.</p>	<p>Anyone entering the main house is immediately captivated by the 2 enormous crystal chandeliers hanging from the 21 foot high ceilings, as well as the large impact windows offering a full view of the pool and backyard. The 36 x 36 marble floors flow throughout almost every room in the house with the exception of a few which have rich hardwood instead. Directly off to the left is the fully upgraded kitchen. The open kitchen is outfitted with granite counter tops, custom wood cabinetry, a center island, and all stainless steel miele appliances. Appliances included with purchase are the enormous fridge and freezer hidden behind elegant wood paneling, dual ovens, stove top, and 2 wine coolers. O...</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

FOR SALE

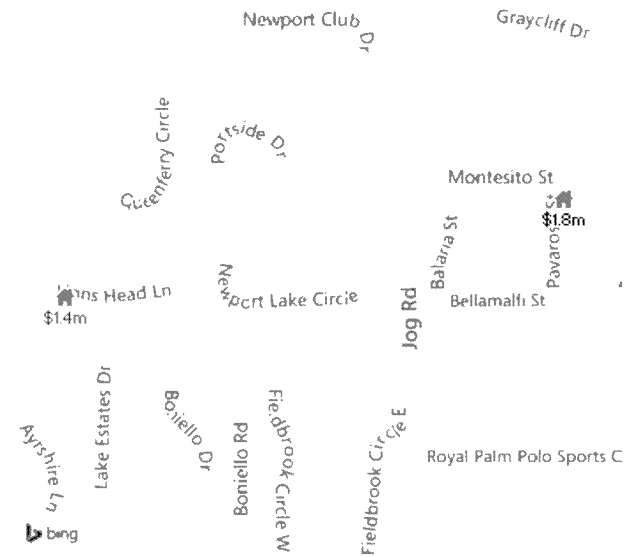
## Active



Address	7020 Lions Head Ln Boca Raton, FL 33496	9098 Pintura Way Boca Raton, FL 33496	17911 Monte Vista Dr Boca Raton, FL 33496	3746 NW 53rd St Boca Raton, FL 33496	17693 Circle Pond Ct Boca Raton, FL 33496
Status	Subject Property	For Sale	For Sale	For Sale	For Sale
Amount	\$1,395,000 List Amount	\$1,999,000 List Amount	\$899,000 List Amount	\$1,249,000 List Amount	\$1,199,000 List Amount
Listing Date	1/24/2012	3/26/2015	3/27/2015	4/7/2015	4/2/2015
Days in RPR	1,170	13	12	1	6
Price Per Sq. Ft.	\$222	\$265	\$163	\$267	\$253
Bedrooms	5	6	7	5	6
Total Baths	10	10	8	6	8
Partial Baths	3	2	2	1	1
Total Rooms	-	-	-	-	-
Living Area	6,293	7,555	5,505	4,671	4,734
Lot Size	0.33 acres	0.46 acres	0.24 acres	0.36 acres	0.26 acres
Year Built	1993	2010	2007	1988	2003
Living Area Range (low)	-	-	-	-	-
Living Area Range (high)	-	-	-	-	-
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	RX 3255290	RX 10122600	RX 10122931	RX 10125966	RX 10124716
Listing Broker	Listing Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of Champagne & Parisi Real Estate	Listing Courtesy of All Florida Property Group Inc	Listing Courtesy of Lang Realty/ BR	Listing Courtesy of Ocean Realty Group, Inc.
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Absolutely magnificent 6 bedroom 7 bath home situated on a private cul-de-sac lot. From the moment you enter this home through the fabulous grand marble foyer you will see the panoramic lake views with an infinity pool, rock waterfall/slide and jacuzzi. Impact glass windows throughout, wood and marble flooring, fireplace, built in bar, wine cellar and a wrought iron staircase. The chef kitchen boasts an oversized island, natural gas, top of the line appliances, snack bar and breakfast nook. Master suite includes his and her marble baths with a private balcony overlooking the pool and lake. Enjoy movies in your own home theatre. No expense has been spared. Very motivated seller.</p>	<p>This is not a short sale. This property has chinese drywall. Magnificent seven bedroom, six bath pool home has ceramic tile and marble flooring, gourmet kitchen with solid stone countertops, custom cabinets, breakfast bar and cooking island overlooking a spacious family room. The large master has a walk in closet and private en suite with separate tub &amp; shower. The home is a split bedroom plan and has a large covered lanai overlooking the tropical pool and patio area. Great home for entertaining!! please see attached chinese drywall reports. All information recorded in the mls is intended to be accurate but cannot be guaranteed, buyer advised to verify. Sold as-is.</p>	<p>Located on a private pie-shaped lot on a cul-de-sac, this spacious home of contemporary flair offers 6 bedrooms, 2 family rooms, 5 1/2 baths &amp; a 3 car garage. With almost 4700 sf under air, this light &amp; bright home features volume &amp; vaulted ceilings; white tile floors; a bar in the living/dining great room; spacious living &amp; entertaining areas; an open remodeled kitchen with white high-gloss cabinetry, granite countertops &amp; backsplash and a large breakfast nook; marble master bathroom; built-in entertainment centers &amp; secondary bedroom furnishings; garage storage cabinetry; a circular driveway and an inviting, totally private patio offering a pool &amp; spa and plenty of sun!</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

# 17334 Pavaroso St, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**

New, Active: 3/27/2015

List Price

**\$1,795,000**

Last Price Update: –  
Days in RPR: 12

Current Estimated Value

**\$1,464,480**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,244,808 – \$1,684,152**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$13,970**

↑ RVM® Change  
Last 12 Months: **30.4%**

This chef has gotten out all of the "kinks" in this rare Vallejo model for sale. This chef's personal home has been totally upgraded and customized to prepare any type of gourmet meal from a custom pizza to a formal dinner. Wood flooring throughout the home, custom wood closets, and plantation s...

Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

Public Facts

**Single Family Residence**  
**Zero Lot Line**  
**4**  
**7**  
**6**  
**1**  
**5,272**  
**8,999 sq ft**  
**8999 SF**  
**Yes**  
**3**  
**Yes**  
**2013**  
**–**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**4**  
**7**  
**6**  
**1**  
**5,272**  
**9,000 sq ft**  
**75.0 ft x 0.0 ft**  
**–**  
**3**  
**Yes**  
**2013**  
**Less Than 4 Floors, Mediterranean, Multi-Level**  
**Barrel, S-Tile**  
**Central**  
**Central, Paddle Fan**  
**Cbs Construction**  
**–**  
**–**  
**2**

Listing Courtesy of Property One Realty LLC

# 17152 Mandylynn Ct, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**  
New, Active: 3/30/2015

List Price  
**\$1,785,000**

Last Price Update: –  
Days in RPR: 9

Current Estimated Value  
**\$1,288,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$837,200 – \$1,738,800**

AVM Confidence:



➔ AVM Change  
Last 1 Month: –

⬆️ AVM Change  
Last 12 Months: **14.48%**

Extraordinary, expansive & panoramic lake & golf views enrich this spacious 5-bedroom home in a rarely-available prime cul-de-sac location. A circular drive leads to a grand interior entrance where an open floor plan & floor-to-ceiling windows offer lots of natural light & stunning views. The large...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

**Single Family Residence**  
**Single Family**  
**5**  
**6**  
**5**  
**1**  
**5,055**  
**0.43 acres**  
**18639 SF**  
**Yes**  
**2**  
**Yes**  
**1989**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**5**  
**6**  
**5**  
**1**  
**5,055**  
**–**  
**.43/acre**  
**–**  
**3**  
**Yes**  
**1989**  
**–**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
**–**  
**–**  
**2**

Listing Courtesy of Boca Executive Realty



# 17120 Northway Cir, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**  
New, Active: 3/31/2015

List Price  
**\$1,195,000**

Last Price Update: –  
Days in RPR: 8

Current Estimated Value  
**\$1,204,200**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,083,780 – \$1,324,620**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$2,630**

↓ RVM® Change  
Last 12 Months: **-5.25%**

Situated on panoramic lake and golf course lot, beautifully renovated with extensive custom mill work, marble floors, featuring 5 bedrooms including master suite with his & her baths, gourmet kitchen overlooking family room and breakfast area, wood paneled library. The information herein is deemed...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

**Single Family Residence**  
**Single Family**  
**5**  
**7**  
**6**  
**1**  
**4,736**  
**0.33 acres**  
**14170 SF**  
**Yes**  
**2**  
**Yes**  
**1987**  
**–**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**5**  
**7**  
**6**  
**1**  
**4,736**  
**0.33 acres**  
**103.0 ft x 0.0 ft**  
**–**  
**2**  
**Yes**  
**1987**  
**Less Than 4 Floors**  
**S-Tile**  
**Central, Zoned**  
**Central, Zoned**  
**Cbs Construction**  
**–**  
**–**  
**2**

Listing Courtesy of Douglas Elliman

# 18000 Fieldbrook Cir S, Boca Raton, FL 33496



**FOR SALE**

New, Active: 4/7/2015

List Price  
**\$2,100,000**

Last Price Update: –  
Days in RPR: 1

Current Estimated Value  
**\$1,341,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$1,059,390 – \$1,622,610**

AVM Confidence:



↑ AVM Change  
Last 1 Month: **\$62,000**

↑ AVM Change  
Last 12 Months: **7.28%**

Anyone entering the main house is immediately captivated by the 2 enormous crystal chandeliers hanging from the 21 foot high ceilings, as well as the large impact windows offering a full view of the pool and backyard. The 36 x 36 marble floors flow throughout almost every room in the house with the...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

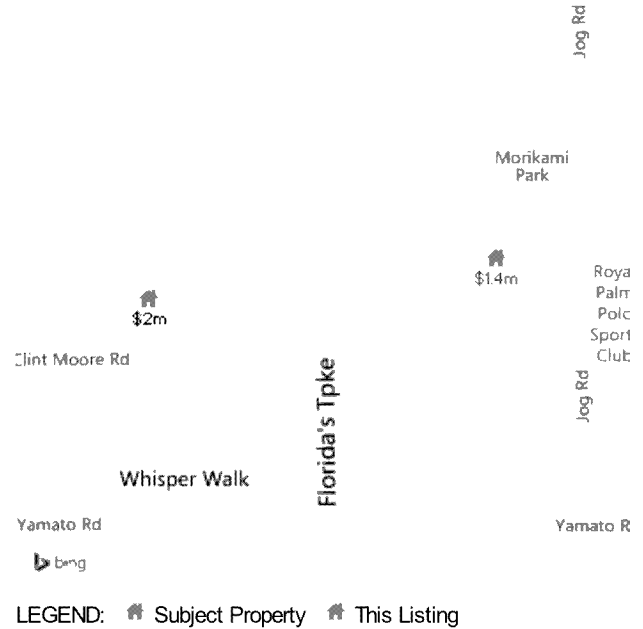
**Single Family Residence**  
**Single Family**  
**6**  
**6**  
**5**  
**1**  
**4,445**  
**1 acres**  
**1.00 AC**  
**Yes**  
**3**  
**Yes**  
**1995**  
**–**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**2**  
**1**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**6**  
**7**  
**6**  
**1**  
**5,433**  
**1 acres**  
**151.0 ft x 0.0 ft**  
**–**  
**3**  
**Yes**  
**1995**  
**European**  
**S-Tile**  
**Central**  
**Central**  
**Cbs Construction**  
**–**  
**–**  
**2**

Listing Courtesy of The Agency Luxe, Inc

# 9098 Pintura Way, Boca Raton, FL 33496



**FOR SALE**  
New, Active: 3/26/2015

List Price  
**\$1,999,000**

Last Price Update: –  
Days in RPR: 13

Current Estimated Value  
**\$2,110,140**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,899,126 – \$2,321,154**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$15,050**

↑ RVM® Change  
Last 12 Months: **17.23%**

Absolutely magnificent 6 bedroom 7 bath home situated on a private cul-de-sac lot. From the moment you enter this home through the fabulous grand marble foyer you will see the panoramic lake views with an infinity pool, rock waterfall/slide and Jacuzzi. Impact glass windows throughout, wood and mar...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

Single Family Residence  
Single Family  
6  
9  
7  
2  
7,555  
0.46 acres  
20081 SF  
Yes  
3  
Yes  
2010  
–  
Tile  
Forced air unit  
Yes  
Masonry  
Stucco  
0  
2

## Listing Facts

Single Family Residence  
Single Family Detached  
6  
10  
8  
2  
7,555  
0.46 acres  
65.0 ft x 0.0 ft  
–  
3  
Yes  
2010  
Mediterranean  
S-Tile  
Central, Zoned  
Ceiling Fan(S), Zoned, Central  
Cbs Construction  
–  
–  
2

Listing Courtesy of Champagne & Parisi Real Estate

# 17911 Monte Vista Dr, Boca Raton, FL 33496



**FOR SALE**

\* Foreclosure  
 \* Reo  
 \* New, Active: 3/27/2015

List Price  
**\$899,000**

Last Price Update: -  
 Days in RPR: 12

Current Estimated Value  
**\$1,077,710**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$948,385 – \$1,207,035**

RVM® Confidence:



↑ RVM® Change  
 Last 1 Month: **\$62,210**

↑ RVM® Change  
 Last 12 Months: **12.84%**

This is not a short sale. This property has Chinese Drywall. Magnificent seven bedroom, six bath pool home has ceramic tile and marble flooring, gourmet kitchen with solid stone countertops, custom cabinets, breakfast bar and cooking island overlooking a spacious family room. The large master has a...

## Home Facts

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Exterior Walls  
 Number of Buildings  
 Number of Stories

## Public Facts

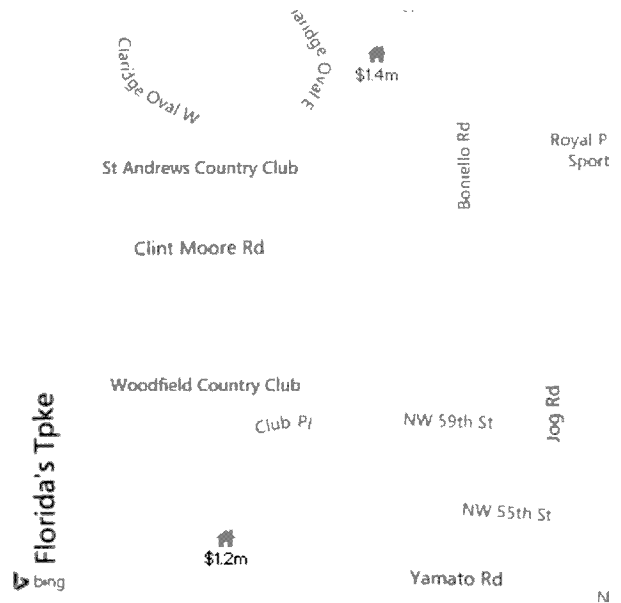
**Single Family Residence**  
**Single Family**  
 -  
**8**  
**6**  
**2**  
**5,505**  
**0.24 acres**  
**10454 SF**  
**Yes**  
**3**  
**Yes**  
**2007**  
 -  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
 7  
 8  
 6  
 2  
**5,505**  
**0.24 acres**  
 .24  
 -  
 3  
**Yes**  
**2007**  
**Mediterranean**  
**Concrete Tile, Wood Trusses**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction, Concrete**  
 -  
 -  
**2**

Listing Courtesy of All Florida Property Group Inc

# 3746 NW 53rd St, Boca Raton, FL 33496



LEGEND: Subject Property This Listing

**FOR SALE**  
New, Active: 4/7/2015

List Price  
**\$1,249,000**

Last Price Update: –  
Days in RPR: 1

Current Estimated Value  
**\$1,144,820**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,041,787 – \$1,247,853**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$1,040**

↓ RVM® Change  
Last 12 Months: **-5.54%**

Located on a private pie-shaped lot on a cul-de-sac, this spacious home of contemporary flair offers 6 bedrooms, 2 family rooms, 5 1/2 baths & a 3 car garage. With almost 4700 sf under air, this light & bright home features volume & vaulted ceilings; white tile floors; a bar in the Living/Dining gr...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

**Single Family Residence**  
**Single Family**  
5  
5  
5  
–  
4,671  
0.36 acres  
15499 SF  
Yes  
3  
Yes  
1988  
–  
Tile  
Forced air unit  
Yes  
Masonry  
Stucco  
0  
1

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
5  
6  
5  
1  
4,671  
–  
.31 acre  
–  
3  
Yes  
1988  
**Less Than 4 Floors, Contemporary**  
**Concrete Tile**  
**Central, Electric**  
**Ceiling Fan(S), Central, Electric**  
**Cbs Construction**  
–  
–  
2

Listing Courtesy of Lang Realty/ BR

# 17693 Circle Pond Ct, Boca Raton, FL 33496



**FOR SALE**

New, Active: 4/2/2015

List Price

**\$1,199,000**

Last Price Update: –  
Days in RPR: 6

Current Estimated Value

**\$1,235,970**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,112,373 – \$1,359,567**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$22,070**

↓ RVM® Change  
Last 12 Months: **-4.48%**

Home Facts

Property Type	<b>Single Family Residence</b>
Property Subtype	<b>Single Family</b>
Bedrooms	–
Total Baths	8
Full Baths	7
Partial Baths	1
Living Area (sq ft)	4,734
Lot Size	0.26 acres
Lot Dimensions	11173 SF
Garage	Yes
Garage (spaces)	2
Pool	Yes
Year Built	2003
Style	–
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

Public Facts

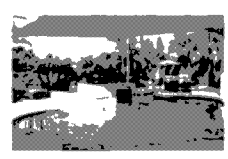
Listing Facts

Property Type	<b>Single Family Residence</b>
Property Subtype	<b>Single Family Detached</b>
Bedrooms	6
Total Baths	8
Full Baths	7
Partial Baths	1
Living Area (sq ft)	4,734
Lot Size	0.26 acres
Lot Dimensions	87.0 ft x 0.0 ft
Garage	–
Garage (spaces)	3
Pool	Yes
Year Built	2003
Style	Courtyard, Mediterranean
Roofing	S-Tile
Heating	Central Building A/C, Central Individual A/C, Electric, Zoned
Cooling	Central Individual A/C, Electric, Paddle Fan
Construction	Cbs Construction
Exterior Walls	–
Number of Buildings	–
Number of Stories	2

Listing Courtesy of Ocean Realty Group, Inc.

**SALE PENDING**

## Pending

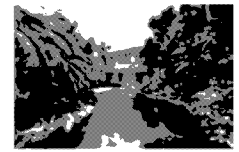
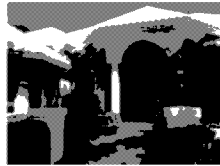


Address	7020 Lions Head Ln Boca Raton, FL 33496	7155 Ayrshire Ln Boca Raton, FL 33496	17776 Fieldbrook Cir W Boca Raton, FL 33496	6932 Queenferry Cir Boca Raton, FL 33496	6955 Queenferry Cir Boca Raton, FL 33496
Status	Subject Property	Pending	Pending	Pending	Pending
Amount	\$1,395,000 List Amount	\$2,000,000 List Amount	\$2,300,000 List Amount	\$1,095,000 List Amount	\$1,695,000 List Amount
Offer Amount	—	—	—	—	—
Listing Date	1/24/2012	9/12/2014	1/30/2015	1/19/2013	8/24/2014
List/Offer Ratio	—	—	—	—	—
Days in RPR	1,170	208	68	809	227
Price Per Sq. Ft.	\$222	\$324	\$390	\$235	\$388
Bedrooms	5	6	6	5	3
Total Baths	10	7	6	6	5
Partial Baths	3	1	1	1	1
Total Rooms	—	—	—	—	—
Living Area	6,293	6,174	5,893	4,650	4,366
Lot Size	0.33 acres	0.39 acres	1 acres	0.5 acres	0.4 acres
Year Built	1993	1987	1995	1989	1989
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	<i>RX-3255290</i>	<i>RX-10072186</i>	<i>RX-10107195</i>	<i>RX-3339028</i>	<i>RX-10067074</i>
Listing Broker	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Listing Courtesy of Boca Executive Realty</i>	<i>Listing Courtesy of Boca Expert Realty LLC</i>	<i>Listing Courtesy of Boca Executive Realty</i>	<i>Listing Courtesy of Douglas Elliman</i>
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Beautiful renovated custom-built 6-bedrm home with high-end finishes &amp; architectural details. Marble &amp; porcelain tile floors, coffered ceilings, crown moldings, french doors, plantation shutters &amp; more. Living room with fireplace, formal dining room, custom office, large gourmet kitchen with marble counters. Master suite on ground floor features a fireplace, large custom closets, motorized window treatments and access to the pool &amp; garden. Addit'l 2 bedrooms downstairs; upstairs, 2 bedrooms + a loft with fireplace and a bonus room (could be 2nd office, retreat, etc) and terrace with spectacular views. The lushly landscaped backyard has a large pool, covered and open patio &amp; garden areas, su...</p>	<p>Rare opportunity to buy a 5 bedroom + office on one floor. Oversized lot, side yard, pool &amp; patio with southern exposure. New roof. Must see!</p>	<p>This "all new" home has been rebuilt from studs and is located on one of the best lake front lots in st andrews, featuring gourmet kitchen, stainless steel appliances, master suite w/sitting area, and marble his &amp; her baths, library w/built-ins, 24x24 saturnia marble floors, over the top outdoor entertainment area with all new salt water pool &amp; spa. All new lighting , mechanical systems. The information herein is deemed reliable and subject to errors, omissions and changes without notice. All measurements are approximate.</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

**SALE PENDING**

## Pending



Address	7020 Lions Head Ln Boca Raton, FL 33496	7219 Queenferry Cir Boca Raton, FL 33496	17134 Ericarose Ct Boca Raton, FL 33496	7212 Queenferry Cir Boca Raton, FL 33496	6195 NW 24th Ter Boca Raton, FL 33496
Status	Subject Property	Pending	Pending	Pending	Pending
Amount	\$1,395,000 List Amount	\$589,900 List Amount	\$1,800,000 List Amount	\$975,000 List Amount	\$1,249,000 List Amount
Offer Amount	—	—	—	—	—
Listing Date	1/24/2012	3/2/2015	12/3/2014	4/17/2013	1/5/2015
List/Offer Ratio	—	—	—	—	—
Days in RPR	1,170	37	126	721	93
Price Per Sq. Ft.	\$222	\$134	\$428	\$188	\$244
Bedrooms	5	4	4	4	6
Total Baths	10	6	7	6	8
Partial Baths	3	1	1	1	1
Total Rooms	—	—	—	—	—
Living Area	6,293	4,413	4,209	5,183	5,116
Lot Size	0.33 acres	0.32 acres	0.4 acres	0.35 acres	0.29 acres
Year Built	1993	1989	1989	1988	1990
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	<i>RX-3255290</i>	<i>RX-10117191</i>	<i>RX-10092978</i>	<i>RX-3360777</i>	<i>RX-10099487</i>
Listing Broker	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Listing Courtesy of Berkshire Hathaway Florida Realty</i>	<i>Listing Courtesy of Boca Executive Realty</i>	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Listing Courtesy of Boca Executive Realty</i>
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Coveted and comfortable st andrew's country club community has it all! convenient boca raton location with a spacious home (approximately 4400sq.ft) boasting an open floor plan, making your private living or entertaining lifestyle a dream come true. First floor master sweet with three additional bedrooms and 5.5 baths, private office area, eat in kitchen and separate dining room for those fun occasions. Private pool with screened and open areas, overlooking private lake. Second floor loft area and bedroom offer a private guest suite. The list goes on, so just take a look for yourself.</p>	<p>This spectacular single-story, 4-bedroom + office home is ideally located and meticulously maintained. It offers breathtaking lake and golf course views from virtually every room. Situated on a quiet cul-de-sac, it is exquisitely landscaped and features a unique dramatic entrance. Inside, marble floors, architectural details, plantation shutters, volume ceilings and tall windows create a light and airy ambiance of luxury. The floor plan features a split bedroom plan with a large mater suite and his/her baths. The kitchen opens onto the beautiful family room and breakfast area. Extras include a 3.5 car garage and full hurricane protection. This home is a must see!</p>	<p>Spectacular lakefront home with gorgeous golf vista. There is a sit down bar in the living room. Featured is a bright and open flowing split floor plan. Four bedrooms plus office/media room, plus loft, plus maid's room. The downstairs spacious master has fantastic views and features abundant closets. There are two walk-in gentlemen's closets and the hers walk-in closet is every woman's dream at 26 x 9 ft. His and hers bathrooms with his doubling as a cabana bath. Every bedroom is en suite. Downstairs there are 3 bedrooms plus maid's bedroom off of laundry room. Upstairs there is one bedroom and a private loft and balcony overlooking the pool, lake, and golf. The downstairs are two beautifu...</p>	<p>One of the most beautiful homes you will find at broken sound country club. This immaculate courtyard home has a fabulous panoramic golf and water vista view. Over 5,000 sq. Ft. Under air with 6 bedrooms and 7 1/2 baths. Fabulous master suite with huge closets. Some of its features include a newer roof, new a/c's, hurricane shutters, extra deep garage, new washer &amp; dryer, 4 zone ac, high volume ceilings, open floor plan, jerusalem stone floors in the main house and tumbled marble pavers in the courtyard, heated pool, and a two bedroom 2 bath guest house with kitchen. Enjoy the beautiful private landscaped pool area with an amazing waterfall and black bottom pool. This is a dream home that yo...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.



# 7155 Ayrshire Ln, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

\* Active Contingent: 2/13/2015

List Price

**\$2,000,000**

Last Price Update: –  
Days in RPR: 208

Current Estimated Value

**\$1,941,220**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,747,098 – \$2,135,342**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$10,980**

↑ RVM® Change  
Last 12 Months: **47.39%**

Beautiful renovated custom-built 6-bedrm home with high-end finishes & architectural details. Marble & porcelain tile floors, coffered ceilings, crown moldings, French doors, plantation shutters & more. Living room with fireplace, formal dining room, custom office, large gourmet kitchen with marble...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Fireplaces  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

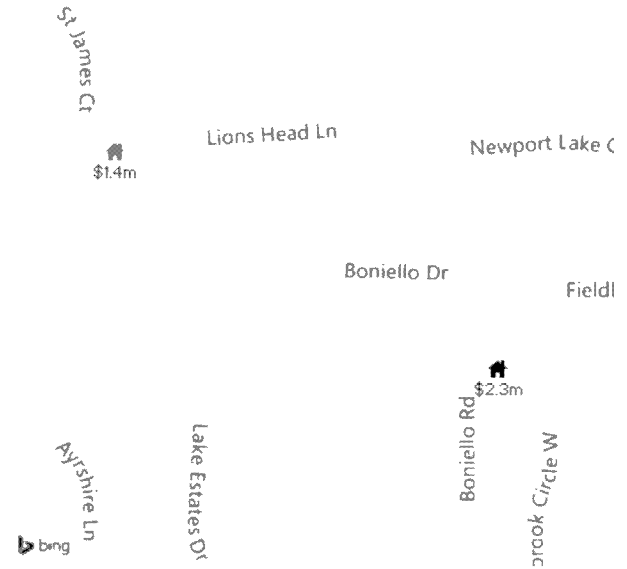
**Single Family Residence**  
**Single Family**  
4  
7  
6  
1  
6,174  
0.39 acres  
16801 SF  
Yes  
2  
Yes  
1987  
Tile  
Forced air unit  
Yes  
1  
Masonry  
Stucco  
0  
2

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
6  
7  
6  
1  
6,174  
0.39 acres  
.39 ACRE  
–  
3  
Yes  
1987  
Concrete Tile  
Central, Zoned  
Central, Zoned  
–  
Cbs Construction  
–  
–  
2

*Listing Courtesy of Boca Executive Realty*

# 17776 Fieldbrook Cir W, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

• Pending: 1/30/2015

List Price

**\$2,300,000**

Last Price Update: –  
Days in RPR: 68

Current Estimated Value

**\$2,223,350**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$2,112,183 – \$2,334,517**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$38,190**

↑ RVM® Change  
Last 12 Months: **56.9%**

## Home Facts

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	5,893
Lot Size	1 acres
Lot Dimensions	1.00 AC
Garage	Yes
Garage (spaces)	2
Pool	Yes
Year Built	1995
Style	–
Roofing	Built-up
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

## Public Facts

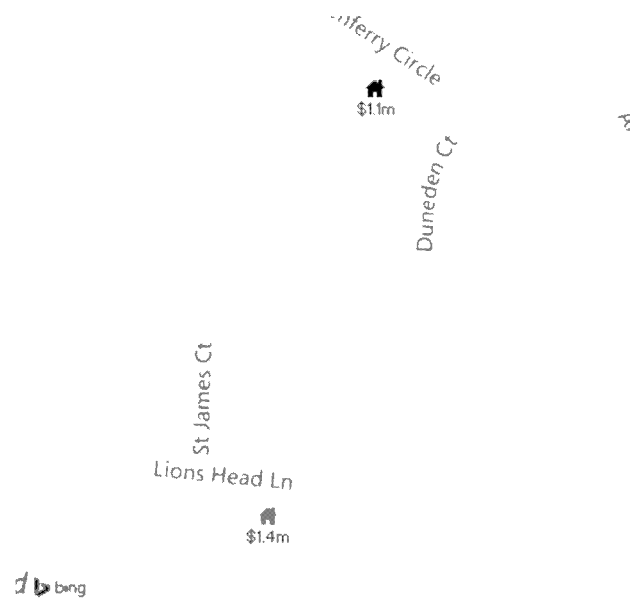
Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	5,893
Lot Size	1 acres
Lot Dimensions	1.00 AC
Garage	Yes
Garage (spaces)	2
Pool	Yes
Year Built	1995
Style	–
Roofing	Built-up
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

## Listing Facts

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	6
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	5,893
Lot Size	1 acres
Lot Dimensions	283.0 ft x 0.0 ft
Garage	–
Garage (spaces)	2
Pool	Yes
Year Built	1995
Style	Contemporary
Roofing	Built Up
Heating	Central, Zoned
Cooling	Central
Fireplaces	–
Construction	Cbs Construction
Exterior Walls	–
Number of Buildings	–
Number of Stories	2

Listing Courtesy of Boca Expert Realty LLC

# 6932 Queenferry Cir, Boca Raton, FL 33496



LEGEND: Subject Property This Listing

**SALE PENDING**

Pending: 2/13/2015

List Price

**\$1,095,000**

Last Price Update: 12/26/2014  
Days in RPR: 809

Current Estimated Value

**\$1,054,650**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$949,185 – \$1,160,115**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$10,670**

↓ RVM® Change  
Last 12 Months: **-12.91%**

Rare opportunity to buy a 5 bedroom + office on one floor. Oversized lot, side yard, pool & patio with southern exposure. New roof. Must see!

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Fireplaces  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

**Single Family Residence**  
**Single Family**  
**5**  
**6**  
**5**  
**1**  
**4,650**  
**0.5 acres**  
**21989 SF**  
**Yes**  
**3**  
**Yes**  
**1989**  
**Tile**  
**Forced air unit**  
**Yes**  
**1**  
**Masonry**  
**Stucco**  
**0**  
**1**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**5**  
**6**  
**5**  
**1**  
**4,650**  
**-**  
**.5**  
**-**  
**3**  
**Yes**  
**1989**  
**-**  
**Central**  
**Central**  
**-**  
**Cbs Construction**  
**-**  
**-**  
**1**

Listing Courtesy of Boca Executive Realty

# 6955 Queenferry Cir, Boca Raton, FL 33496



LEGEND: Subject Property This Listing

**SALE PENDING**

Pending: 2/27/2015

List Price

**\$1,695,000**

Last Price Update: –  
Days in RPR: 227

Current Estimated Value

**\$1,560,390**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,404,351 – \$1,716,429**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$32,390**

↑ RVM® Change  
Last 12 Months: **10.35%**

This "all new" home has been rebuilt from studs and is located on one of the best lake front lots in St Andrews, featuring gourmet kitchen, stainless steel appliances, master suite w/sitting area, and marble his & her baths, library w/built-ins, 24x24 Satamia marble floors, over the top outdoor...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

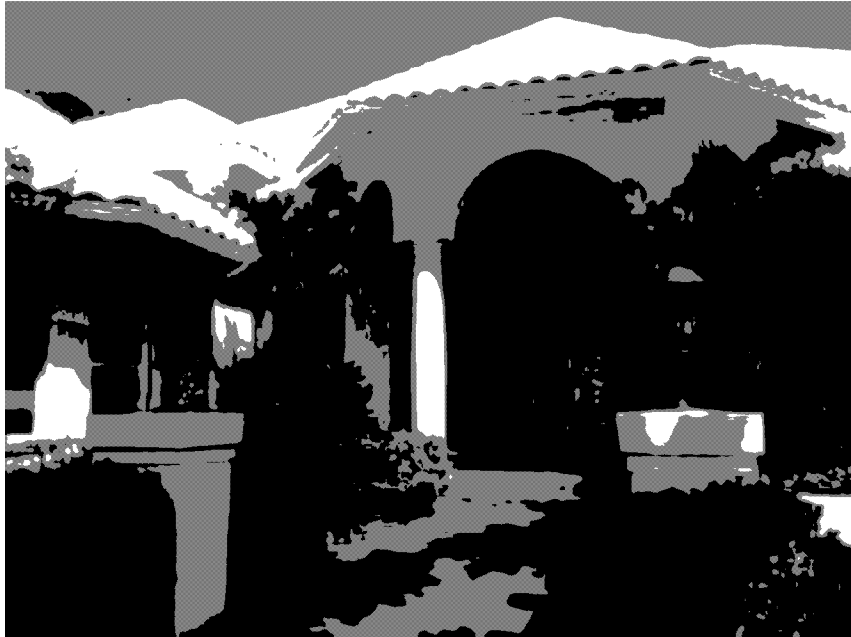
**Single Family Residence**  
**Single Family**  
**3**  
**5**  
**5**  
**–**  
**4,216**  
**0.4 acres**  
**17328 SF**  
**Yes**  
**2**  
**Yes**  
**1989**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**1**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**3**  
**5**  
**4**  
**1**  
**4,366**  
**0.4 acres**  
**.40 ACRE**  
**–**  
**2**  
**Yes**  
**1989**  
**S-Tile**  
**Central, Zoned**  
**Central, Zoned**  
**Cbs Construction**  
**–**  
**–**  
**1**

Listing Courtesy of Douglas Elliman

# 7219 Queenferry Cir, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

• Pending: 3/20/2015

List Price

**\$589,900**

Last Price Update: –  
Days in RPR: 37

Current Estimated Value

**\$594,040**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$564,338 – \$623,742**

RVM® Confidence:  
★★★★★

➔ RVM® Change  
Last 1 Month: –

⬇ RVM® Change  
Last 12 Months: **-37.86%**

Coveted and comfortable St Andrew's Country Club community has it all! Convenient Boca Raton location with a spacious home (approximately 4400sq.ft) Boasting an open floor plan, making your private living or entertaining lifestyle a dream come true. First floor master sweet with three additional...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

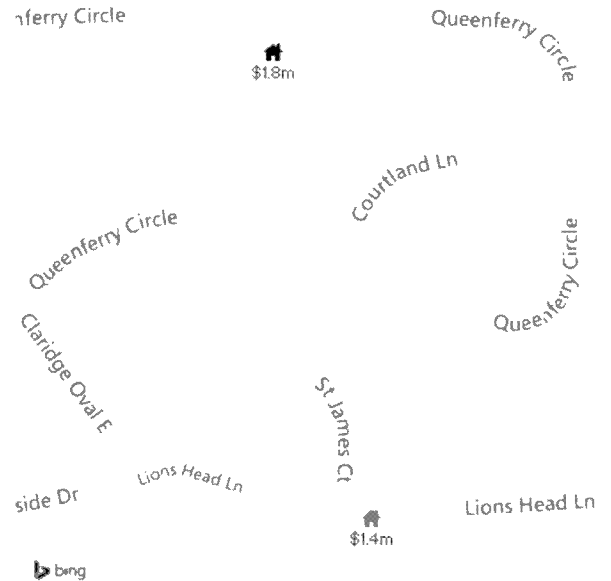
**Single Family Residence**  
**Single Family**  
–  
**6**  
**5**  
**1**  
**4,413**  
**0.32 acres**  
**13874 SF**  
**Yes**  
**2**  
**Yes**  
**1989**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**4**  
**6**  
**5**  
**1**  
**4,413**  
**0.32 acres**  
**111.0 ft x 0.0 ft**  
–  
**2**  
**Yes**  
**1989**  
**Concrete Tile**  
**Central, Electric**  
**Electric**  
**Concrete**  
–  
–  
**2**

Listing Courtesy of Berkshire Hathaway Florida Realty

# 17134 Ericarose Ct, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

• Pending: 1/15/2015

List Price

**\$1,800,000**

Last Price Update: –  
Days in RPR: 126

Current Estimated Value

**\$1,762,710**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,586,439 – \$1,938,981**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$14,210**

↑ RVM® Change  
Last 12 Months: **12.63%**

This spectacular single-story, 4-bedroom + office home is ideally located and meticulously maintained. It offers breathtaking lake and golf course views from virtually every room. Situated on a quiet cul-de-sac, it is exquisitely landscaped and features a unique dramatic entrance. Inside, marble flo...

## Home Facts

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	4,209
Lot Size	0.4 acres
Lot Dimensions	17346 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1989
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	1

## Public Facts

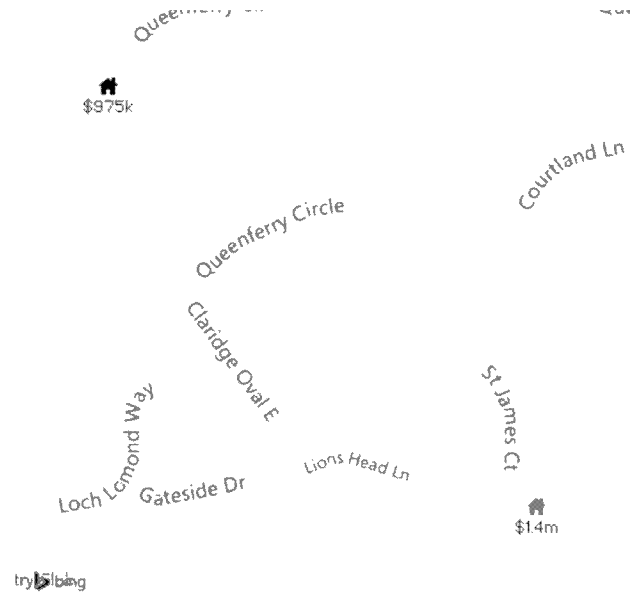
Single Family Residence
Single Family
–
6
5
1
4,209
0.4 acres
17346 SF
Yes
3
Yes
1989
Tile
Forced air unit
Yes
Masonry
Stucco
0
1

## Listing Facts

Single Family Residence
Single Family Detached
4
7
6
1
4,209
–
–
–
4
Yes
1989
–
Central, Electric
Central, Electric
Cbs Construction
–
–
1

Listing Courtesy of Boca Executive Realty

# 7212 Queenferry Cir, Boca Raton, FL 33496



try | bing

LEGEND: Subject Property This Listing

**SALE PENDING**

• Pending: 2/16/2015

List Price  
**\$975,000**

Last Price Update: 7/7/2014  
Days in RPR: 721

Current Estimated Value

**\$1,026,640**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$923,976 – \$1,129,304**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$22,160**

↓ RVM® Change  
Last 12 Months: **-7.34%**

Spectacular lakefront home with gorgeous golf vista. There is a sit down bar in the living room. Featured is a bright and open flowing split floor plan. Four bedrooms plus office/media room, plus loft, plus maid's room. The downstairs spacious master has fantastic views and features abundant closet...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

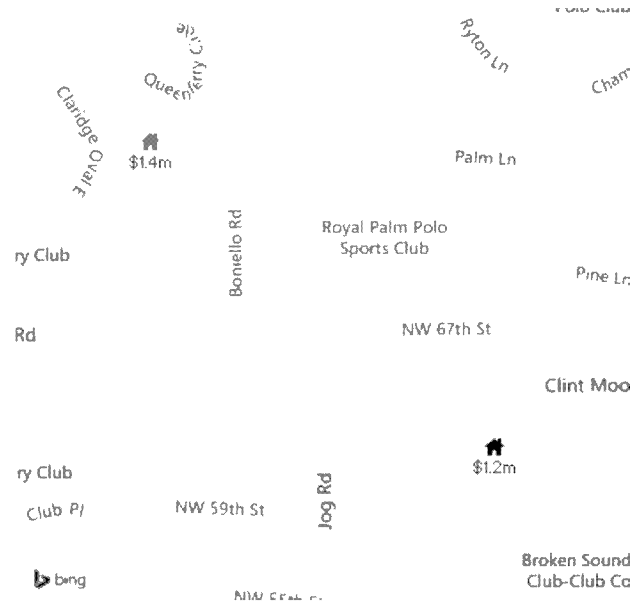
**Single Family Residence**  
**Single Family**  
**5**  
**5**  
**4**  
**1**  
**5,183**  
**0.35 acres**  
**15333 SF**  
**Yes**  
**2**  
**Yes**  
**1988**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**4**  
**6**  
**5**  
**1**  
**5,183**  
**-**  
**.35**  
**-**  
**2**  
**Yes**  
**1988**  
**-**  
**Central**  
**Central**  
**Cbs Construction**  
**-**  
**-**  
**2**

Listing Courtesy of Nestler Poletto Sothebys Int'l

# 6195 NW 24th Ter, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

• Pending: 1/17/2015

List Price

**\$1,249,000**

Last Price Update: –  
Days in RPR: 93

Current Estimated Value

**\$1,164,450**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,036,361 – \$1,292,539**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$9,500**

↑ RVM® Change  
Last 12 Months: **30.39%**

One of the most beautiful homes you will find at Broken Sound Country Club. This immaculate courtyard home has a fabulous panoramic golf and water vista view. Over 5,000 Sq. ft. under air with 6 bedrooms and 7 1/2 baths. Fabulous master suite with huge closets. Some of its features include a newer...

Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

Public Facts

**Single Family Residence**  
**Zero Lot Line**  
–  
**6**  
**6**  
–  
**5,112**  
**0.29 acres**  
**12480 SF**  
**Yes**  
**2**  
**Yes**  
**1990**  
–  
**Tile**  
**Forced air unit**  
**Yes**  
**Wood**  
**Combination**  
**0**  
**2**

Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**6**  
**8**  
**7**  
**1**  
**5,116**  
–  
**.33 ACRE**  
–  
**2**  
**Yes**  
**1990**  
**Multi-Level, Traditional**  
**Barrel, S-Tile, Concrete Tile**  
**Central, Electric**  
**Ceiling Fan(S), Electric, Central**  
**Cbs Construction, Frame With Stucco**  
–  
–  
**2**

Listing Courtesy of Boca Executive Realty



RECENTLY SOLD

## Recently Sold

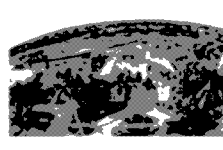


Address	7020 Lions Head Ln Boca Raton, FL 33496	17346 Saint James Ct Boca Raton, FL 33496	17370 Balaria ST Boca Raton, FL 33496	7154 Ayrshire Ln Boca Raton, FL 33496	7228 Queenferry Cir Boca Raton, FL 33496
Status	Subject Property	Recently Sold	Recently Sold	Recently Sold	Recently Sold
Amount	\$1,395,000 List Amount	\$1,650,000 Sold Amount	\$1,440,000 Sold Amount	\$1,300,000 Sold Amount	\$650,000 Sold Amount
List Price	\$1,395,000	\$2,195,000	\$1,649,000	\$1,899,000	\$995,000
Recording Date	—	3/30/2015	1/9/2015	3/11/2015	4/1/2015
List/Sold Ratio	—	75%	87%	68%	65%
Days in RPR	1,170	487	208	384	383
Price Per Sq. Ft.	\$222	\$256	\$229	\$165	\$118
Bedrooms	5	6	—	6	5
Total Baths	10	8	7	9	8
Partial Baths	3	1	1	2	1
Total Rooms	—	—	—	—	—
Living Area	6,293	6,435	6,294	7,876	5,506
Lot Size	0.33 acres	0.36 acres	8,712 sq ft	0.39 acres	0.32 acres
Year Built	1993	1990	2008	1988	1989
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	<i>RX-3255290</i>	<i>RX-9999278</i>	<i>RX-10072103</i>	<i>RX-10026198</i>	<i>RX-10026428</i>
Listing Broker	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Courtesy of Estates &amp; Fine Homes LLC</i>	<i>Courtesy of Douglas Elhiman</i>	<i>Courtesy of Boca Executive Realty</i>	<i>Courtesy of Boca Executive Realty</i>
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>A beautiful transitional contemporary with panoramic lake and golf course views, this gracious family home features a spacious open living room and dining room, remodeled gourmet kitchen opening to breakfast area &amp; family room, master suite with dressing area &amp; his &amp; her marble baths, three additional en suite bedrooms downstairs &amp; a second story featuring 2 en suite bedrooms with adjoining center living area/play area. A large patio and sparkling pool create additional outdoor entertainment area. The information herein is deemed reliable and subject to errors, omissions and changes without notice. All measurements are approximate.</p>	<p>Luxury estate built by renowned gordon homes. Enter through private gates to a mediterranean style community with expansive lake views. Residence features 6 large bedrooms, 6 full and 1 half bath, media room, elevator and 3 car garage with the finest finishes through out.</p>	<p>Just reduced \$300,000. Move right in to this magnificent, 6-bedroom + office home which features high-end finishes and architectural details and offers expansive views as well as a southern exposure for the patio, heated pool, and summer kitchen. Full hurricane protection plus a generator. The exceptional floor plan is perfect for entertaining inside or out. The main level features a beautiful living room with fireplace, stunning dining room, sparkling white gourmet kitchen with granite countertops, large family room with fireplace, an extra-large master suite with his and her baths, an oversized office, plus an exercise room/6th bedroom and bath. Four large en-suite guest bedrooms plus a s...</p>	<p>Beautiful custom-built mediterranean-villa-inspired courtyard home with guest house plus golf course views. New theater/media room in stunning high-gloss cherry wood with coffered ceilings, automated lighting &amp; sound system. Incredible wine room: temperature-controlled and air-conditioned with dramatic leaded glass double doors. Spacious floor plan with 3 bedrooms in the main house and one bedroom plus sitting room, kitchenette, and full bath in the second floor guest house which features a terrace overlooking the large pool and patio area. Guest bedrooms are en-suite. Large master suite features a fireplace and sitting area. The light and bright kitchen is open to a large family...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

RECENTLY SOLD

## Recently Sold



Address	7020 Lions Head Ln Boca Raton, FL 33496	17104 Northway Cir Boca Raton, FL 33496	17309 White Haven Dr Boca Raton, FL 33496	7757 Charney Ln Boca Raton, FL 33496	3765 Coventry Ln Boca Raton, FL 33496
Status	Subject Property	Recently Sold	Recently Sold	Recently Sold	Recently Sold
Amount	\$1,395,000 List Amount	\$1,800,000 Sold Amount	\$3,800,000 Sold Amount	\$1,147,200 Sold Amount	\$1,900,000 Sold Amount
List Price	\$1,395,000	\$1,990,000	\$3,950,000	\$1,299,000	\$2,095,000
Recording Date	—	3/27/2015	2/5/2015	2/26/2015	3/31/2015
List/Sold Ratio	—	90%	96%	88%	91%
Days in RPR	1,170	33	567	596	630
Price Per Sq. Ft.	\$222	\$287	\$479	\$229	\$377
Bedrooms	5	5	6	4	4
Total Baths	10	8	9	7	6
Partial Baths	3	1	2	1	2
Total Rooms	—	—	—	—	—
Living Area	6,293	6,274	7,933	5,020	5,037
Lot Size	0.33 acres	0.35 acres	0.45 acres	0.32 acres	0.37 acres
Year Built	1993	2001	2007	2003	1996
Living Area Range (low)	—	—	—	—	—
Living Area Range (high)	—	—	—	—	—
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	<i>RX-3255290</i>	<i>RX-10117082</i>	<i>RX-9978761</i>	<i>RX-9971029</i>	<i>RX-9962211</i>
Listing Broker	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Courtesy of Boca Executive Realty</i>	<i>Courtesy of Elite Realty of South Florida</i>	<i>Courtesy of Estates &amp; Fine Homes LLC</i>	<i>Courtesy of Coldwell Banker/BR</i>
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Views views!! direct golf &amp; lake views that amaze as you enter this 5 bedroom 7.5 bath estate home built for entertaining &amp; relaxing. Office/library features custom wood built-ins, garages for 3 cars &amp; golf cart. Satamia floors w/granite inlays open to spectacular large rooms for entertaining that each feature breathtaking lake and fairway views. Open entertaining in the large kitchen &amp; spacious family room. Expansive master down suite w/separate his &amp; hers bath offer large closets. The grand staircase w/wood &amp; iron railing lead to the 2nd level offering 3 ensuite bed/guest rooms. Relax and watch the water and fairways on the 2nd fl balcony an oversized media room &amp; additional second fa...</p>	<p>Fabulous estate home in a cul-de-sac location with total privacy. This home was designed with utmost attention to details and the most beautiful materials one could ask for. The ground floor boasts the master bedroom, a club room, office, and theater. The fabulous oversized kitchen open up to the grand family room and on to the very private pool deck. There is also a en-suite guest bedroom downstairs. All other en-suite bedrooms are on the second floor. other luxuries include an elevator, a 4 car garage and impact glass throughout and a full house generator. This home isa must see.</p>	<p>Features a formal living room, dining room area, family room, kitchen, office and master bedroom&amp; bath on first floor, 3 bedrooms and bathrooms upstairs, outdoor patio and pool overlooking lake view. mandatory golf membership in st andrews country club, non refundable initiation fee of \$95,000. the information herein is deemed reliable and subject to errors, omissions and changes without notice. All measurements are approximate.</p>	<p>Located in a premier section of magnificent woodfield country club, this 2 story golf course home features an open plan with all the bells and whistles a discriminating buyer is looking for! volume ceilings, picture window, satamia floors and more this 4 bedroom plus library &amp; loft has an open plan with a huge view. Stunning finishes with stone fireplace, summer kitchen and built out library. The magnificent gourmet kitchen features top of the line appliances including viking stove with 6 burners &amp; grill, island with own refrigerated vegetable drawer &amp; bread warmer, granite counters &amp; wood cabinetry &amp; wood floors. The rest of the home has satamia marble floors or carpet. Beautiful decorat...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

# 17346 Saint James Ct, Boca Raton, FL 33496



er Hazard

bing

LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 3/30/2015
- MLS listing RX-9999278, 12/7/2013

**Sold Price**

**\$1,650,000**

Sold Date: 3/30/2015  
Days in RPR: 487

**Current Estimated Value**

**\$2,115,310**

Last RVM® Update: 3/16/2015

RVM® Est. Range:

**\$1,882,626 – \$2,347,994**

RVM® Confidence:



↑ RVM® Change  
Last 1 Month: **\$100,710**

↑ RVM® Change  
Last 12 Months: **3.53%**

A beautiful transitional contemporary with panoramic lake and golf course views, this gracious family home features a spacious open living room and dining room, remodeled gourmet kitchen opening to breakfast area & family room, master suite with dressing area & his & her marble baths, three additiona...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

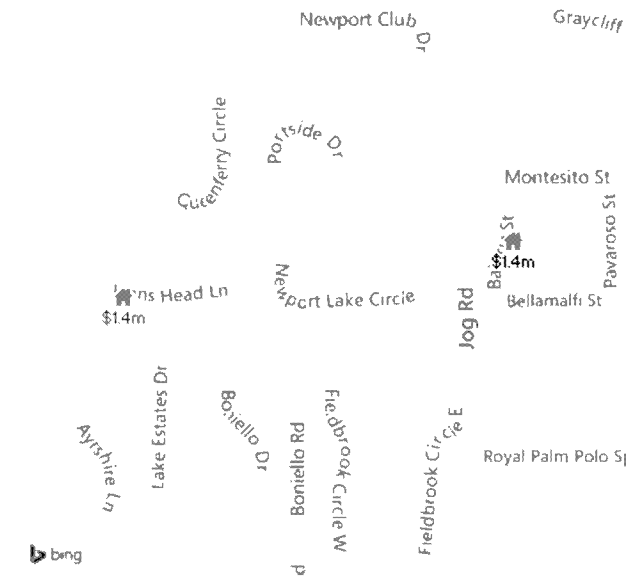
- Single Family Residence**
- Single Family**
- 5**
- 8**
- 7**
- 1**
- 6,435**
- 0.36 acres**
- 15747 SF**
- Yes**
- 4**
- Enclosed**
- 1990**
- Tile**
- Forced air unit**
- Yes**
- Masonry**
- Stucco**
- 0**
- 2**

**Listing Facts**

- Single Family Residence**
- Single Family Detached**
- 6**
- 8**
- 7**
- 1**
- 6,435**
- 
- .36 ACRE**
- 
- 3**
- Yes**
- 1990**
- 
- Central, Electric**
- Central, Electric**
- Cbs Construction**
- 
- 
- 2**

Courtesy of Estates & Fine Homes LLC

# 17370 Balaria ST, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 1/9/2015
- MLS listing RX-10072103, 9/12/2014

**Sold Price**

**\$1,440,000**

Sold Date: 1/9/2015  
Days in RPR: 208

**Current Estimated Value**

**\$1,511,590**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,436,011 – \$1,587,169**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$17,590**

↓ RVM® Change  
Last 12 Months: **-5.46%**

Luxury Estate built by renowned Gordon homes. Enter through private gates to a Mediterranean style community with expansive lake views. Residence features 6 large bedrooms, 6 full and 1 half bath, media room, elevator and 3 car garage with the finest finishes through out.

**Home Facts**

- Property Type
- Property Subtype
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

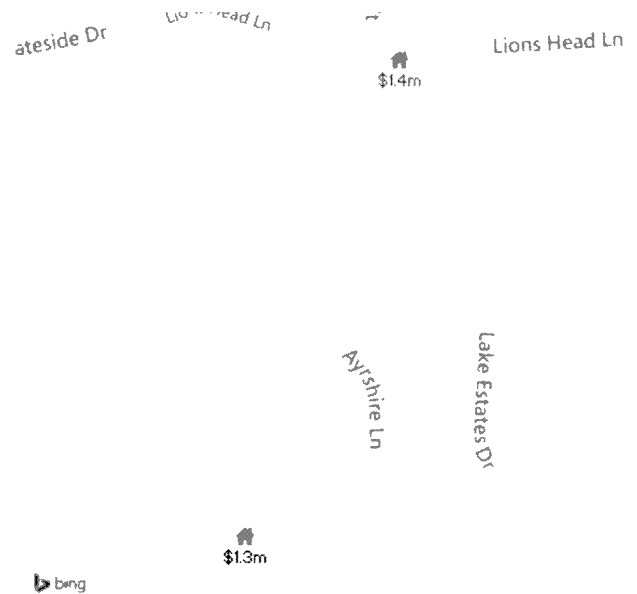
- Single Family Residence**
- Zero Lot Line**
- 7**
- 6**
- 1**
- 6,294**
- 8,786 sq ft**
- 8786 SF**
- Yes**
- 3**
- Yes**
- 2008**
- Tile**
- Forced air unit**
- Yes**
- Masonry**
- Stucco**
- 0**
- 2**

**Listing Facts**

- Single Family Residence**
- Single Family Detached**
- 
- 
- 
- 
- 8,712 sq ft**
- 
- 
- 
- 
- 
- 
- 
- 
- 
- 2.00,**

Courtesy of Douglas Elliman

# 7154 Ayrshire Ln, Boca Raton, FL 33496



LEGEND: Subject Property This Property

**RECENTLY SOLD**

- Sold Date: 3/11/2015
- MLS listing RX-10026198, 3/20/2014

**Sold Price**

**\$1,300,000**

Sold Date: 3/11/2015  
Days in RPR: 384

**Current Estimated Value**

**\$2,117,200**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,884,308 – \$2,350,092**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$86,170**

↓ RVM® Change  
Last 12 Months: **-17.23%**

Just reduced \$300,000. Move right in to this magnificent, 6-bedroom + office home which features high-end finishes and architectural details and offers expansive views as well as a Southern exposure for the patio, heated pool, and Summer kitchen. Full hurricane protection plus a generator. The exce...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Fireplaces
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

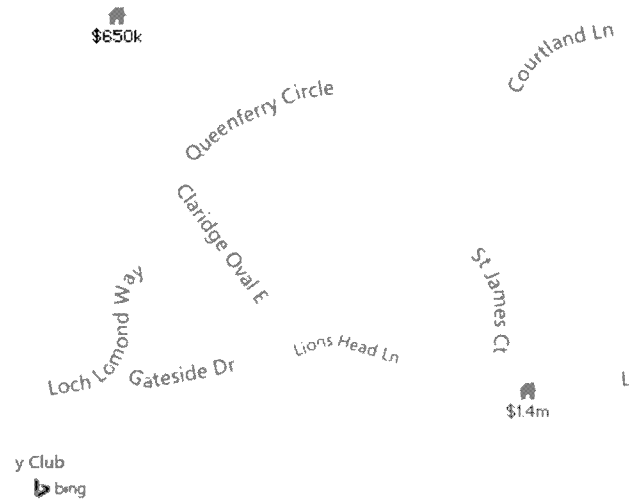
- Single Family Residence
- Single Family
- 6
- 9
- 7
- 2
- 7,876
- 0.39 acres
- 16801 SF
- Yes
- 4
- Enclosed
- 1988
- Tile
- Forced air unit
- Yes
- Yes
- Masonry
- Stucco
- 0
- 2

**Listing Facts**

- Single Family Residence
- Single Family Detached
- 6
- 9
- 7
- 2
- 7,876
- 
- 
- 
- 3
- Yes
- 1988
- 
- Central, Electric
- Central, Electric
- 
- Cbs Construction
- 
- 2

Courtesy of Boca Executive Realty

# 7228 Queenferry Cir, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 4/1/2015
- MLS listing RX-10026428, 3/21/2014

**Sold Price**

**\$650,000**

Sold Date: 4/1/2015  
Days in RPR: 383

**Current Estimated Value**

**\$1,050,030**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$945,027 – \$1,155,033**

RVM® Confidence:



↑ RVM® Change  
Last 1 Month: **\$16,470**

↑ RVM® Change  
Last 12 Months: **4.79%**

Beautiful custom-built Mediterranean-villa-inspired courtyard home with guest house plus golf course views. New theater/media room in stunning high-gloss cherry wood with coffered ceilings, automated lighting & sound system. Incredible wine room: temperature-controlled and air-conditioned with dram...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Fireplaces
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

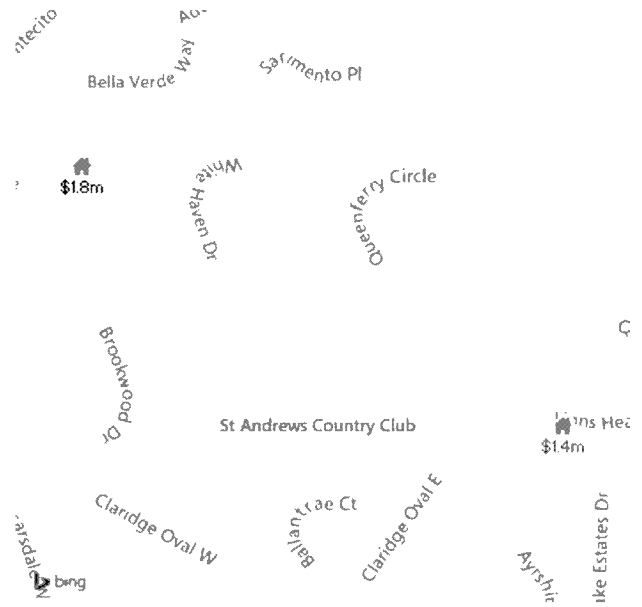
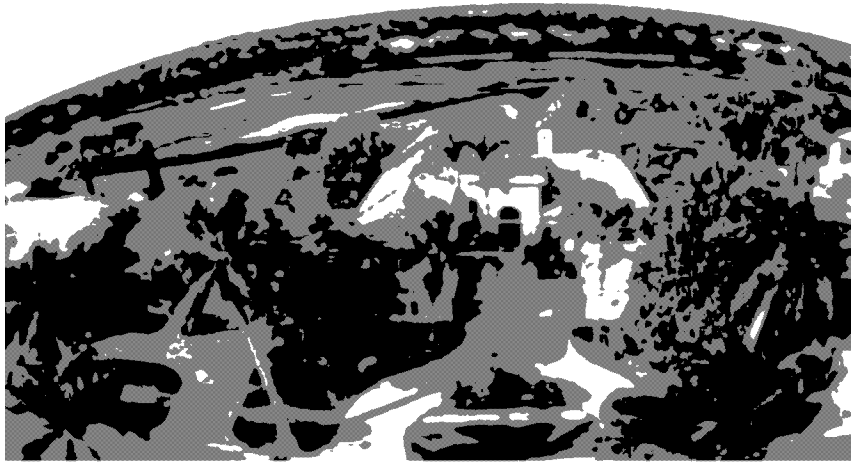
- Single Family Residence
- Single Family
- 
- 6
- 6
- 
- 5,506
- 0.32 acres
- 14048 SF
- Yes
- 2
- Yes
- 1989
- Tile
- Forced air unit
- Yes
- 1
- Masonry
- Stucco
- 0
- 2

**Listing Facts**

- Single Family Residence
- Single Family Detached
- 5
- 8
- 7
- 1
- 5,506
- 
- 
- 
- 3
- Yes
- 1989
- 
- Central, Electric
- Central, Electric
- 
- Cbs Construction
- 
- 
- 2

Courtesy of Boca Executive Realty

# 17104 Northway Cir, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 3/27/2015
- MLS listing RX-10117082, 3/6/2015

**Sold Price**

**\$1,800,000**

Sold Date: 3/27/2015  
Days in RPR: 33

**Current Estimated Value**

**\$1,956,750**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,858,913 – \$2,054,587**

RVM® Confidence:  
★★★★★

➔ RVM® Change  
Last 1 Month: –

⬇ RVM® Change  
Last 12 Months: **-21.32%**

VIEW VIEWS!! DIRECT GOLF & LAKE VIEWS THAT AMAZE AS YOU ENTER THIS 5 BEDROOM 7.5 BATH ESTATE HOME BUILT FOR ENTERTAINING & RELAXING. OFFICE/LIBRARY FEATURES CUSTOM WOOD BUILT-INS, GARAGES FOR 3 CARS & GOLF CART. SATURNIA FLOORS W/GRANITE INLAYS OPEN TO SPECTACULAR LARGE ROOMS FOR ENTERTAINING THA...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Style
- Roofing
- Heating
- Cooling
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

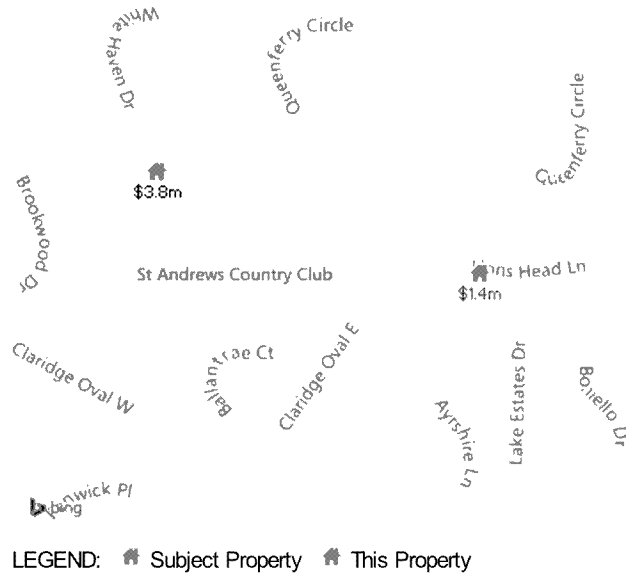
- Single Family Residence
- Single Family
- 5
- 7
- 6
- 1
- 6,274
- 0.35 acres
- 15263 SF
- Yes
- 4
- Yes
- 2001
- 
- Tile
- Forced air unit
- Yes
- Masonry
- Stucco
- 0
- 2

**Listing Facts**

- Single Family Residence
- Single Family Detached
- 5
- 8
- 7
- 1
- 6,274
- 
- .35 ACRE
- 
- 3
- Yes
- 2001
- Less Than 4 Floors
- S-Tile
- Central, Zoned
- Central, Zoned, Electric
- Cbs Construction
- 
- 
- 2

Courtesy of Boca Executive Realty

# 17309 White Haven Dr, Boca Raton, FL 33496



**RECENTLY SOLD**

- Sold Date: 2/5/2015
- MLS listing RX-9978761, 9/18/2013

**Sold Price**

**\$3,800,000**

Sold Date: 2/5/2015  
Days in RPR: 567

**Current Estimated Value**

**\$3,726,780**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$3,540,441 – \$3,913,119**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$34,620**

↑ RVM® Change  
Last 12 Months: **5.87%**

Fabulous Estate home in a cul-de-sac location with total privacy. This home was designed with utmost attention to details and the most beautiful materials one could ask for. The ground floor boasts the master bedroom, a club room, office, and theater. The fabulous oversized kitchen open up to the g...

**Home Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	9
Full Baths	7
Partial Baths	2
Living Area (sq ft)	7,933
Lot Size	0.45 acres
Lot Dimensions	19576 SF
Garage	Yes
Garage (spaces)	4
Pool	Yes
Year Built	2007
Style	–
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Public Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	9
Full Baths	7
Partial Baths	2
Living Area (sq ft)	7,933
Lot Size	0.45 acres
Lot Dimensions	19576 SF
Garage	Yes
Garage (spaces)	4
Pool	Yes
Year Built	2007
Style	–
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

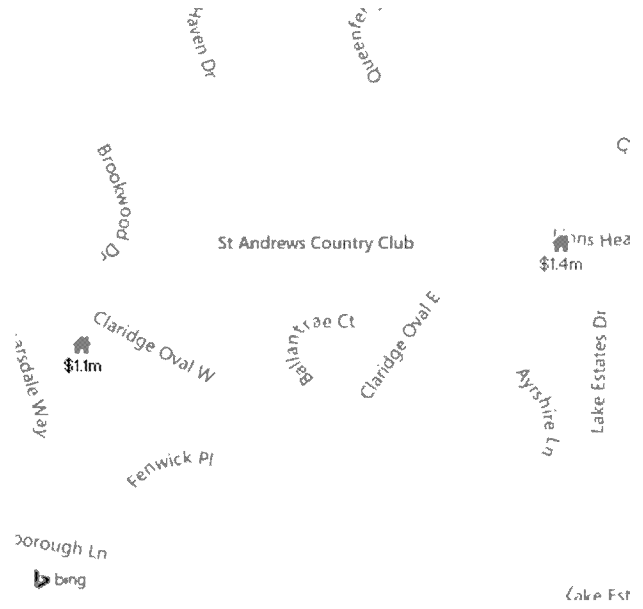
**Listing Facts**

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	6
Total Baths	9
Full Baths	7
Partial Baths	2
Living Area (sq ft)	7,933
Lot Size	–
Lot Dimensions	.44
Garage	–
Garage (spaces)	4
Pool	Yes
Year Built	2007
Style	European
Roofing	Concrete Tile
Heating	Central
Cooling	Central
Construction	Cbs Construction
Exterior Walls	–
Number of Buildings	–
Number of Stories	2

Courtesy of Elite Realty of South Florida



# 7757 Charney Ln, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 2/26/2015
- MLS listing RX-9971029, 8/20/2013

**Sold Price**

**\$1,147,200**

Sold Date: 2/26/2015  
Days in RPR: 596

**Current Estimated Value**

**\$1,145,050**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,087,798 – \$1,202,302**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$101,660**

↓ RVM® Change  
Last 12 Months: **-30.97%**

Features a formal living room, dining room area, family room, kitchen, office and master bedroom & bath on first floor, 3 bedrooms and bathrooms upstairs, outdoor patio and pool overlooking lake view. Mandatory golf membership in St Andrews Country Club, non refundable initiation fee of \$95,000. The in...

**Home Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	5,020
Lot Size	0.32 acres
Lot Dimensions	13769 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	2003
Style	—
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Public Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	5,020
Lot Size	0.32 acres
Lot Dimensions	13769 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	2003
Style	—
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Listing Facts**

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	4
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	5,020
Lot Size	—
Lot Dimensions	.32 ACRES
Garage	—
Garage (spaces)	3
Pool	Yes
Year Built	2003
Style	Mediterranean
Roofing	S-Tile
Heating	Central, Zoned, Electric
Cooling	Central, Zoned
Fireplaces	—
Construction	Cbs Construction
Exterior Walls	—
Number of Buildings	—
Number of Stories	2

Courtesy of Estates & Fine Homes LLC

# 3765 Coventry Ln, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Property

**RECENTLY SOLD**

- Sold Date: 3/31/2015
- MLS listing RX-9962211, 7/17/2013

**Sold Price**

**\$1,900,000**

Sold Date: 3/31/2015  
Days in RPR: 630

**Current Estimated Value**

**\$2,407,290**

Last RVM® Update: 3/16/2015

RVM® Est. Range:

**\$2,166,561 – \$2,648,019**

RVM® Confidence:



↑ RVM® Change  
Last 1 Month: **\$48,660**

↑ RVM® Change  
Last 12 Months: **7.37%**

LOCATED IN A PREMIER SECTION OF MAGNIFICENT WOODFIELD COUNTRY CLUB, THIS 2 STORY GOLF COURSE HOME FEATURES AN OPEN PLAN WITH ALL THE BELLS AND WHISTLES A DISCRIMINATING BUYER IS LOOKING FOR! VOLUME CEILINGS, PICTURE WINDOW, SATURNIA FLOORS AND MORE THIS 4 BEDROOM PLUS LIBRARY & LOFT HAS AN OPEN PLA...

**Home Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	5,037
Lot Size	0.37 acres
Lot Dimensions	15982 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1996
Style	—
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Public Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	5,037
Lot Size	0.37 acres
Lot Dimensions	15982 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1996
Style	—
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

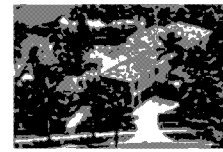
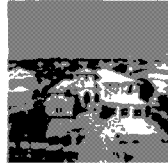
**Listing Facts**

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	4
Total Baths	6
Full Baths	4
Partial Baths	2
Living Area (sq ft)	5,037
Lot Size	—
Lot Dimensions	—
Garage	—
Garage (spaces)	3
Pool	Yes
Year Built	1996
Style	Less Than 4 Floors
Roofing	—
Heating	Central, Zoned
Cooling	Ceiling Fan(S), Zoned, Central
Fireplaces	—
Construction	Cbs Construction
Exterior Walls	—
Number of Buildings	—
Number of Stories	2

Courtesy of Coldwell Banker/BR

DISTRESSED

## Distressed



Address	7020 Lions Head Ln Boca Raton, FL 33496	7121 Lions Head Ln Boca Raton, FL 33496	17735 Boniello Dr Boca Raton, FL 33496	17171 Coral Cove Way Boca Raton, FL 33496	6558 Landings Ct Boca Raton, FL 33496
Status	Subject Property	Distressed	Distressed	Distressed	Distressed
Estimated Value	\$1,594,780	\$2,004,800	\$1,819,850	\$1,867,740	\$1,495,710
Amount	\$1,395,000 List Amount	\$1,999,999 List Amount	\$1,819,850 Est. Value	\$1,995,000 List Amount	\$1,495,000 List Amount
Past Due Amt.	-	-	-	-	-
Recording Date	-	-	-	-	-
Days in RPR	1,170	44	-	342	124
Price Per Sq. Ft.	\$222	\$304	\$329	\$314	\$330
Bedrooms	5	5	5	6	5
Total Baths	10	7	5	7	7
Partial Baths	3	1	1	1	2
Total Rooms	-	-	-	-	-
Living Area	6,293	6,586	5,528	6,355	4,535
Lot Size	0.33 acres	0.32 acres	1 acres	0.68 acres	9,148 sq ft
Year Built	1993	2002	1998	1989	1998
Living Area Range (low)	-	-	-	-	-
Living Area Range (high)	-	-	-	-	-
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single	Single Family	Single Family Detached	Single Family Detached
MLS ID	RX-3255290	F1329818	-	RX-10037556	RX-10093629
Listing Broker	Listing Courtesy of Nestler Poletto Sothebys Int'l	Listing Courtesy of BERKSHIRE HATHAWAY FL REALTY	-	Listing Courtesy of Mizner Grande Realty LLC	Listing Courtesy of Lang Realty/BR
Description	ESTATE SALE. Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors & cast stone columns. Off the entry & living room, there is a powder bathroom, with separate men's & woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room & dining room area. Walls have stucco a...	Gorgeous mediterranean 5 bed 6 1/2 bath 2 story home with separate game room & library - nice open floor plan and much more....		Master bedroom on first floor, whole house generator, all impact glass new 2008, new roof 2008, addition all new 2008, all new floors. Turnkey optional.see additional comments in documents regarding all fees.	Gorgeous 5 bedrooms 5.2 baths estate with amazing lake views, up 3br suites+loft. This amazing family home features floor to ceiling windows and beautiful dark hardwood floors throughout the house. Dr w/built-in buffet, 1st flr master w/sitting rm, 2 walk-in closets, custom built-in office/library.wood flrs, granite kit. & bar, volume& tray ceilings, family rm custom built-in.south lake view pool area, 2 car gar.+ golf cart, lushly lanscaped

Highlighted fields were changed by agent to reflect knowledge of this property.

DISTRESSED

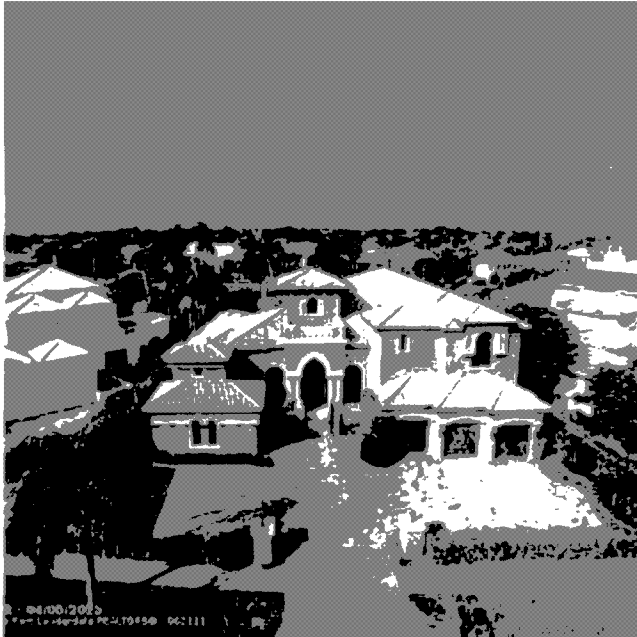
## Distressed



Address	7020 Lions Head Ln Boca Raton, FL 33496	7312 Ballantrae Ct Boca Raton, FL 33496	7140 Queenferry Cir Boca Raton, FL 33496	3998 NW 52nd Pl Boca Raton, FL 33496	17828 Scarsdale Way Boca Raton, FL 33496
Status	Subject Property	Distressed	Distressed	Distressed	Distressed
Estimated Value	\$1,594,780	\$2,027,910	\$776,520	\$1,613,030	\$2,965,000
Amount	\$1,395,000 List Amount	\$1,895,000 List Amount	\$795,000 List Amount	\$1,499,000 List Amount	\$2,480,000 List Amount
Past Due Amt.	-	-	-	-	-
Recording Date	-	-	-	-	-
Days in RPR	1,170	367	19	152	1,670
Price Per Sq. Ft.	\$222	\$246	\$185	-	\$287
Bedrooms	5	6	4	-	7
Total Baths	10	9	5	7	12
Partial Baths	3	2	1	-	4
Total Rooms	-	-	-	-	-
Living Area	6,293	7,697	4,295	5,143	8,639
Lot Size	0.33 acres	0.56 acres	0.32 acres	0.62 acres	0.32 acres
Year Built	1993	1993	1992	1991	2008
Living Area Range (low)	-	-	-	-	-
Living Area Range (high)	-	-	-	-	-
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	<i>RX-3255290</i>	<i>RX-10030645</i>	<i>RX-10121260</i>	<i>RX-10087048</i>	<i>RX-3139239</i>
Listing Broker	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>	<i>Listing Courtesy of Boca Executive Realty</i>	<i>Listing Courtesy of Boca Executive Realty</i>	<i>Listing Courtesy of Town and Country Realty LLC</i>	<i>Listing Courtesy of Nestler Poletto Sothebys Int'l</i>
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>This magnificent two-story custom-built home is situated on over 1/2 acre and offers expansive lake views. Beautiful etched-glass front doors open to an elegant entryway and a spacious floor plan that includes 6 bedrooms, custom theater, wood-paneled office, extra-large loft, a light &amp; bright kitchen open to the family room, breakfast area, and much more. The large master suite includes a sitting area, his &amp; her baths, and lots of closet space. All guest bedrooms are en-suite. Beautiful large-square inlaid marble floors, floor-to-ceiling windows, architectural details, and custom cabinetry are some of the high-end extras. This home also features prime outdoor entertaining space with screene...</p>	<p>One-of-a-kind contemporary designer courtyard home with beautiful lake and golf views. Impeccably maintained. Great layout for entertaining.</p>	<p>Beautiful, spacious estate home in devon place with over one half acre, overlooks a serene lake, golf and glorious sunsets! In addition to a secluded cul-de-sac, this home features a dramatic courtyard entry. This residence is perfect for those who love to entertain graciously with large living and family rooms, well appointed wood and granite chef's kitchen with 2 new dishwashers 2 refrigerators, large informal wet bar area, screened patio for outdoor dining, balcony overlooking lush tropical foliage, large pool, gazebo, cabana with outdoor kitchen/barbeque area, spa, etc.</p>	<p>Bank approved short sale. . spanish renaissance home, 7 en-suite bedrooms, 1 suite down and 6 suites upstairs including mbr. Also featured are a convertible bedroom/office, exercise/yoga room, home theater, and children's play/study. Simply the finest offering of its kind in a country club community in south florida. Several outdoor marble and paver loggias, patios and verandas. Cul-de-sac home site has multiple golf course vistas. First floor media room off the grand staircase, exquisite library, living room with cast stone columns and fireplace and intricate ceiling detail. Separate dining room and a sensational kitchen that opens to a breakfast family room. All other bedrooms are on sec...</p>

Highlighted fields were changed by agent to reflect knowledge of this property.

# 7121 Lions Head Ln, Boca Raton, FL 33496



\$2m

St James Ct

\$1.4m

bing

LEGEND: Subject Property This Listing

**FOR SALE**

- Preforeclosure
- Short Sale
- Active-Available: 2/23/2015

List Price  
**\$1,999,999**

Last Price Update: -  
Days in RPR: 44

Current Estimated Value  
**\$2,004,800**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,804,320 – \$2,205,280**

RVM® Confidence:  
★★★★★

➔ RVM® Change  
Last 1 Month: -

⬆ RVM® Change  
Last 12 Months: **17.44%**

GORGEOUS MEDITERRANEAN 5  
BED 6 1/2 BATH 2 STORY HOME  
WITH SEPARATE GAME ROOM &  
LIBRARY - NICE OPEN FLOOR  
PLAN AND MUCH MORE....

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Fireplaces  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

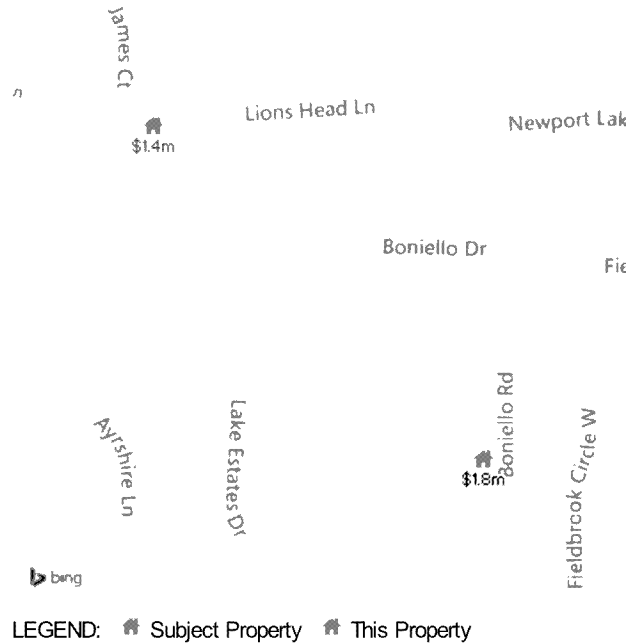
**Single Family Residence**  
**Single Family**  
-  
6  
5  
1  
**6,586**  
**0.32 acres**  
**14013 SF**  
Yes  
3  
**Enclosed**  
**2002**  
Tile  
**Forced air unit**  
Yes  
Yes  
**Masonry**  
**Stucco**  
0  
2

## Listing Facts

**Single Family Residence**  
**Single**  
5  
7  
6  
1  
**6,586**  
**0.32 acres**  
-  
3  
**Yes**  
**2002**  
-  
-  
-  
-  
-  
-

Listing Courtesy of BERKSHIRE HATHAWAY FL REALTY

# 17735 Boniello Dr, Boca Raton, FL 33496



**OFF MARKET**

Foreclosure

Current Estimated Value

**\$1,819,850**

Last RVM® Update: 3/16/2015

RVM® Est. Range:

**\$1,601,468 – \$2,038,232**

RVM® Confidence:



↑ RVM® Change  
Last 1 Month: **\$165,180**

↑ RVM® Change  
Last 12 Months: **19.41%**

## Home Facts

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Fireplaces
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

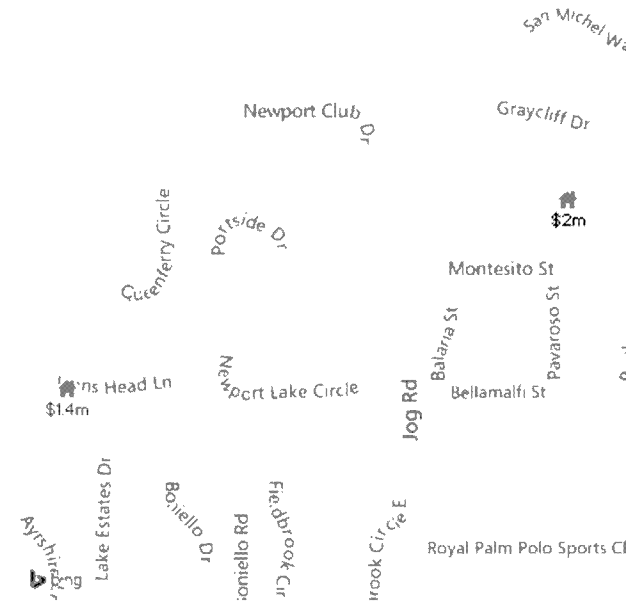
## Public Facts

- Single Family Residence**
- Single Family**
- 5**
- 5**
- 4**
- 1**
- 5,528**
- 1 acres**
- 43477 SF**
- Yes**
- 4**
- Yes**
- 1998**
- Tile**
- Forced air unit**
- Yes**
- 1**
- Masonry**
- Stucco**
- 0**
- 1**

## Listing Facts

- 
- 
- 
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-

# 17171 Coral Cove Way, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**

- \* Preforeclosure
- \* Foreclosure Judgment Entered
- \* Active: 5/1/2014

List Price

**\$1,995,000**

Last Price Update: –  
Days in RPR: 342

Current Estimated Value

**\$1,867,740**

Last RVM® Update: 3/16/2015

RVM® Est. Range:

**\$1,643,612 – \$2,091,868**

RVM® Confidence:



↓ RVM® Change  
Last 1 Month: **-\$34,740**

↑ RVM® Change  
Last 12 Months: **84.92%**

Master Bedroom on first floor, whole house generator, all impact glass new 2008, new roof 2008, addition all new 2008, all new floors. Turnkey optional. See additional comments in Documents regarding all fees.

Home Facts

Property Type	Single Family Residence
Property Subtype	Zero Lot Line
Bedrooms	–
Total Baths	5
Full Baths	4
Partial Baths	1
Living Area (sq ft)	6,355
Lot Size	0.68 acres
Lot Dimensions	29625 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1989
Style	–
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

Public Facts

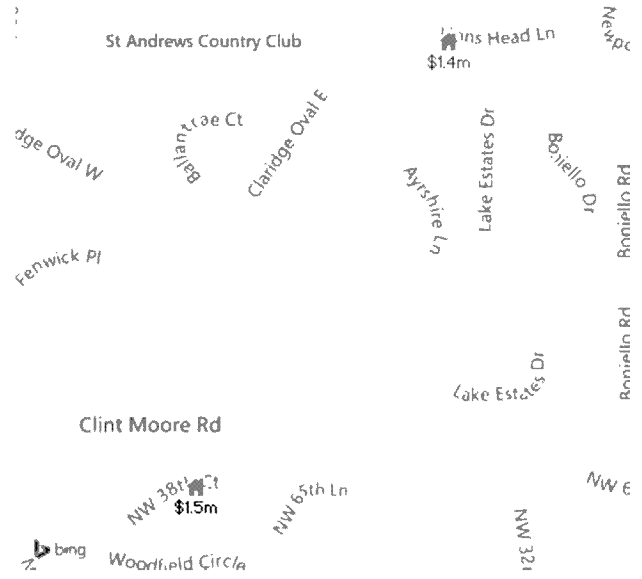
Property Type	Single Family Residence
Property Subtype	Zero Lot Line
Bedrooms	–
Total Baths	5
Full Baths	4
Partial Baths	1
Living Area (sq ft)	6,355
Lot Size	0.68 acres
Lot Dimensions	29625 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1989
Style	–
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Fireplaces	1
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

Listing Facts

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	6
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	6,355
Lot Size	0.68 acres
Lot Dimensions	–
Garage	–
Garage (spaces)	3
Pool	Yes
Year Built	1989
Style	Less Than 4 Floors
Roofing	S-Tile
Heating	Central, Electric
Cooling	Central, Electric
Fireplaces	–
Construction	Cbs Construction
Exterior Walls	–
Number of Buildings	1
Number of Stories	2

Listing Courtesy of Mizner Grande Realty LLC

# 6558 Landings Ct, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**

- \* Preforeclosure
- \* Notice of Lis Pendens
- \* Active: 12/5/2014

List Price  
**\$1,495,000**

Last Price Update: -  
Days in RPR: 124

Current Estimated Value  
**\$1,495,710**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,420,925 – \$1,570,495**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$11,320**

↑ RVM® Change  
Last 12 Months: **6.53%**

Gorgeous 5 Bedrooms 5.2 Baths Estate with Amazing Lake Views, up 3BR suites+loft. This Amazing Family Home features floor to ceiling windows and beautiful dark hardwood floors throughout the house. DR w/built-in buffet, 1st flr master w/sitting rm, 2 walk-in closets, custom built-in office/library.

...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

**Single Family Residence**  
**Single Family**  
-  
**6**  
**6**  
-  
**4,535**  
**9,100 sq ft**  
**9100 SF**  
**Yes**  
**2**  
**Yes**  
**1998**  
-  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

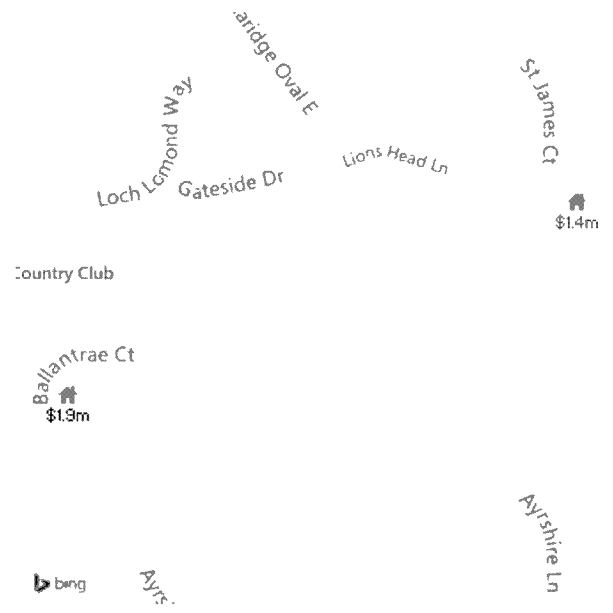
## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**5**  
**7**  
**5**  
**2**  
**4,535**  
**9,148 sq ft**  
**65.0 ft x 0.0 ft**  
-  
**2**  
**Yes**  
**1998**  
**Less Than 4 Floors, Mediterranean**  
**Concrete Tile**  
**Central**  
**Central, Electric**  
**Cbs Construction**  
-  
**1**  
**2**

Listing Courtesy of Lang Realty/BR



# 7312 Ballantrae Ct, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**FOR SALE**

- \* Preforeclosure
- \* Notice of Lis Pendens
- \* Active: 4/6/2014

List Price  
**\$1,895,000**

Last Price Update: –  
Days in RPR: 367

Current Estimated Value  
**\$2,027,910**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,825,119 – \$2,230,701**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$72,650**

↑ RVM® Change  
Last 12 Months: **1.39%**

This magnificent two-story custom-built home is situated on over 1/2 acre and offers expansive lake views. Beautiful etched-glass front doors open to an elegant entryway and a spacious floor plan that includes 6 bedrooms, custom theater, wood-paneled office, extra-large loft, a light & bright kitch...

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

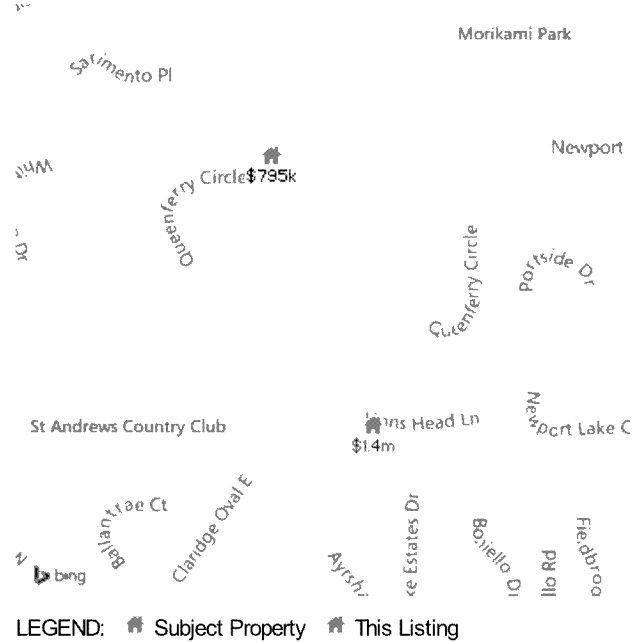
**Single Family Residence**  
**Single Family**  
–  
**5**  
**4**  
**1**  
**7,323**  
**0.56 acres**  
**24333 SF**  
**Yes**  
**4**  
**Enclosed**  
**1993**  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
**6**  
**9**  
**7**  
**2**  
**7,697**  
**0.56 acres**  
**.56 Acre**  
**–**  
**4**  
**Yes**  
**1993**  
**–**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
**–**  
**–**  
**2**

*Listing Courtesy of Boca Executive Realty*

# 7140 Queenferry Cir, Boca Raton, FL 33496



**FOR SALE**

- Preforeclosure
- Short Sale
- Active: 3/20/2015

List Price  
**\$795,000**

Last Price Update: –  
Days in RPR: 19

Current Estimated Value  
**\$776,520**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$698,868 – \$854,172**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **–\$6,010**

↓ RVM® Change  
Last 12 Months: **–0.7%**

One-of-a-kind Contemporary designer courtyard home with beautiful lake and golf views. Impeccably maintained. Great layout for entertaining.

## Home Facts

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Exterior Walls  
Number of Buildings  
Number of Stories

## Public Facts

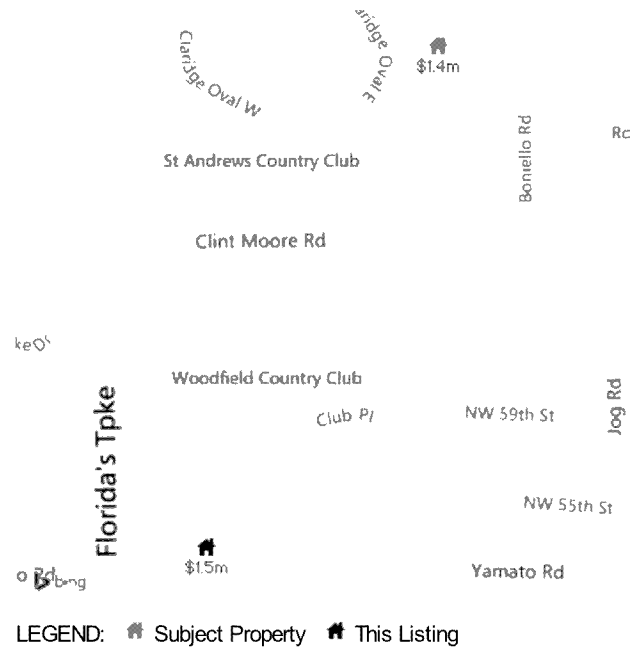
**Single Family Residence**  
**Single Family**  
–  
**6**  
**5**  
**1**  
**4,295**  
**0.32 acres**  
**13991 SF**  
**Yes**  
**3**  
**Yes**  
**1992**  
–  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
–  
**4**  
**5**  
**4**  
**1**  
**4,295**  
–  
**96.0 ft x 0.0 ft**  
–  
**3**  
**Yes**  
**1992**  
**Contemporary**  
–  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
–  
–  
**2**

*Listing Courtesy of Boca Executive Realty*

# 3998 NW 52nd Pl, Boca Raton, FL 33496



**SALE PENDING**

- \* Preforeclosure
- \* Short Sale
- \* Back Up

List Price  
**\$1,499,000**

Last Price Update: –  
 Days in RPR: 152

Current Estimated Value  
**\$1,613,030**

Last RVM® Update: 3/16/2015

RVM® Est. Range:  
**\$1,467,858 – \$1,758,202**

RVM® Confidence:  
 ★★★★★

↓ RVM® Change  
 Last 1 Month: **-\$162,060**

↓ RVM® Change  
 Last 12 Months: **-13.55%**

Beautiful, spacious estate home in Devon Place with over one half acre, overlooks a serene lake, golf and glorious sunsets! In addition to a secluded cul-de-sac, this home features a dramatic courtyard entry. This residence is perfect for those who love to entertain graciously with large living and...

## Home Facts

Property Type  
 Property Subtype  
 Total Baths  
 Full Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage  
 Garage (spaces)  
 Pool  
 Year Built  
 Roofing  
 Heating  
 Cooling  
 Fireplaces  
 Construction  
 Exterior Walls  
 Number of Buildings  
 Number of Stories

## Public Facts

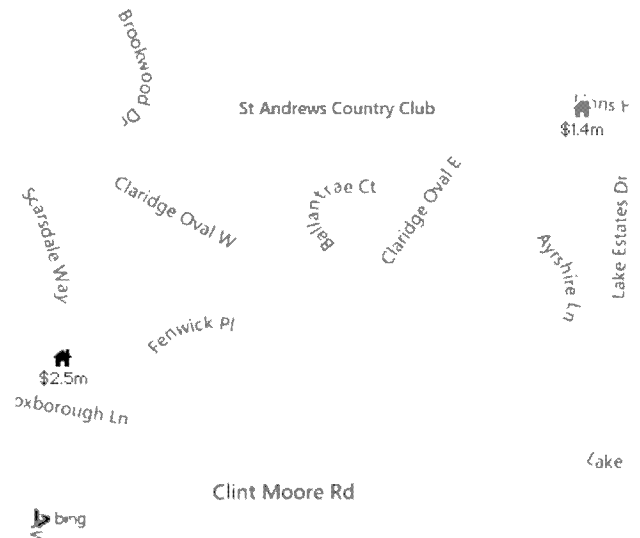
**Single Family Residence**  
**Single Family**  
 7  
 7  
 5,143  
**0.62 acres**  
**27112 SF**  
**Yes**  
**4**  
**Yes**  
**1991**  
**Tile**  
**Forced air unit**  
**Yes**  
**1**  
**Masonry**  
**Stucco**  
**0**  
**2**

## Listing Facts

**Single Family Residence**  
**Single Family Detached**  
 –  
 –  
 –  
**0.62 acres**  
**.62 ACRE**  
 –  
 –  
 –  
 –  
 –  
 –  
 –  
 –  
**2.00,**

*Listing Courtesy of Town and Country Realty LLC*

# 17828 Scarsdale Way, Boca Raton, FL 33496



LEGEND: 🏠 Subject Property 🏠 This Listing

**SALE PENDING**

- \* Preforeclosure
- \* Short Sale
- \* Pending: 1/20/2015

List Price  
**\$2,480,000**

Last Price Update: –  
Days in RPR: 1,670

Current Estimated Value  
**\$2,965,000**

Last AVM Update: 3/16/2015

AVM Est. Range:  
**\$2,490,600 – \$3,439,400**

AVM Confidence:



➔ AVM Change  
Last 1 Month: –

⬆️ AVM Change  
Last 12 Months: **5.03%**

**BANK APPROVED SHORT SALE.** Spanish Renaissance home, 7 en-suite bedrooms, 1 suite down and 6 suites upstairs including MBR. Also featured are a convertible bedroom/office, exercise/yoga room, home theater, and children's play/study. Simply the finest offering of its kind in a country club communit...

## Home Facts

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	<b>8,639</b>
Lot Size	<b>0.32 acres</b>
Lot Dimensions	<b>13991 SF</b>
Garage	<b>Yes</b>
Garage (spaces)	<b>4</b>
Pool	<b>Yes</b>
Year Built	<b>2008</b>
Style	–
Roofing	<b>Tile</b>
Heating	<b>Forced air unit</b>
Cooling	<b>Yes</b>
Construction	<b>Masonry</b>
Exterior Walls	<b>Stucco</b>
Number of Buildings	<b>0</b>
Number of Stories	<b>2</b>

## Public Facts

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	–
Total Baths	7
Full Baths	6
Partial Baths	1
Living Area (sq ft)	<b>8,639</b>
Lot Size	<b>0.32 acres</b>
Lot Dimensions	<b>13991 SF</b>
Garage	<b>Yes</b>
Garage (spaces)	<b>4</b>
Pool	<b>Yes</b>
Year Built	<b>2008</b>
Style	–
Roofing	<b>Tile</b>
Heating	<b>Forced air unit</b>
Cooling	<b>Yes</b>
Construction	<b>Masonry</b>
Exterior Walls	<b>Stucco</b>
Number of Buildings	<b>0</b>
Number of Stories	<b>2</b>

## Listing Facts

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	7
Total Baths	12
Full Baths	8
Partial Baths	4
Living Area (sq ft)	<b>8,639</b>
Lot Size	–
Lot Dimensions	<b>.32</b>
Garage	–
Garage (spaces)	<b>3</b>
Pool	<b>Yes</b>
Year Built	<b>2008</b>
Style	<b>Mediterranean</b>
Roofing	<b>S-Tile</b>
Heating	<b>Central, Zoned</b>
Cooling	<b>Central, Zoned</b>
Construction	<b>Cbs Construction</b>
Exterior Walls	–
Number of Buildings	–
Number of Stories	<b>2</b>

Listing Courtesy of Nestler Poletto Sothebys Int'l

## Expired



Address	7020 Lions Head Ln Boca Raton, FL 33496	7140 Queenferry Cir Boca Raton, FL 33496	17731 Boniello Dr Boca Raton, FL 33496	17938 Lake Estates Dr Boca Raton, FL 33496	3221 NW 61st St Boca Raton, FL 33496
Status	Subject Property	33 Recently Expired	34 Recently Expired	35 Recently Expired	36 Recently Expired
Amount	\$1,395,000 List Amount	\$750,000 List Amount	\$1,695,000 List Amount	\$950,000 List Amount	\$1,175,000 List Amount
Listing Date	1/24/2012	6/1/2014	9/8/2014	7/29/2013	9/3/2014
Days in RPR	1,170	311	212	618	217
Price Per Sq. Ft.	\$222	\$175	\$337	\$213	\$325
Bedrooms	5	4	5	4	5
Total Baths	10	5	6	5	5
Partial Baths	3	1	1	1	1
Total Rooms	-	-	-	-	-
Living Area	6,293	4,295	5,037	4,456	3,618
Lot Size	0.33 acres	0.33 acres	1 acres	0.67 acres	0.24 acres
Year Built	1993	1992	1998	1994	1993
Living Area Range (low)	-	-	-	-	-
Living Area Range (high)	-	-	-	-	-
Property Type	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
Property Subtype	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
MLS ID	RX 3255290	RX 10045579	RX 10070765	RX 9965601	RX 10069297
Listing Broker	Listing Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Douglas Elliman	Courtesy of Luxury Partners Realty	Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Lang Realty/BR
Description	<p><b>ESTATE SALE.</b> Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Stunning contemporary styled estate on panoramic golf and water lot with private courtyard and guest house with two separate en suite bedrooms, main house features volume ceilings, marble floors, master suite with sitting area, formal living and dining rooms, wet bar, kitchen, family room and en suite guest bedroom.the information herein is deemed reliable and subject to errors, omissions and changes without notice. All measurements are approximate.</p>	<p>Elegant, comfortable and luxurious renovated estate home in boniello acres. 5 bedrooms, 5 1/2 baths plus study and huge game room. All new gourmet kitchen with 48" dacor range, double ovens, large island, thick slab granite. Tropical paradise outdoors! new summer kitchen, new oversized heated pool and spa with beach entry with salt system. Lots of fruit trees, inground fire pit and sitting area. 4 newer a/c (3 yrs). Whole house generator. Water filtration system. Reverse osmosis and water softener. "a" rated schools: calusa elementary, omni middle &amp; spanish river hs.</p>	<p>Estate sale offering- this 4 bedroom, study and library residence is located within the estate section referred to as the hills of st. Andrews country club where home sites are oversized in both width and depth. A circular driveway leads to a front entry where a foyer opens to a grand living room with vistas of the pool and large back yard area. An oversized master suite with his and hers bathrooms has poolside views. A bedroom study services two en suite bedroom suites in addition to a fourth en suite bedroom area across the front of the house. In addition is a full paneled library which opens to the living room area. There is a separate dining room area and a kitchen which open to a break...</p>	<p>This finely appointed 5 bedroom 4.5 bath home with expansive water views will redefine your expectations of luxury living.double doors lead to lushly landscaped private courtyard with heated pool, spa, outdoor kitchen and one bedroom one bath guest house.a finely appointed home with french limestone floors, soaring ceilings, french door, built in speakers and electronics included.entertainme nt size living room with stained glass window above french door and formal dining room with venetian plaster walls.wood paneled dengourmet chefs kitchen with custom wood cabinets, granite counters,jennair cook top. Adjoining family room with media centerlarge master bedroom with sitting alcove and...</p>

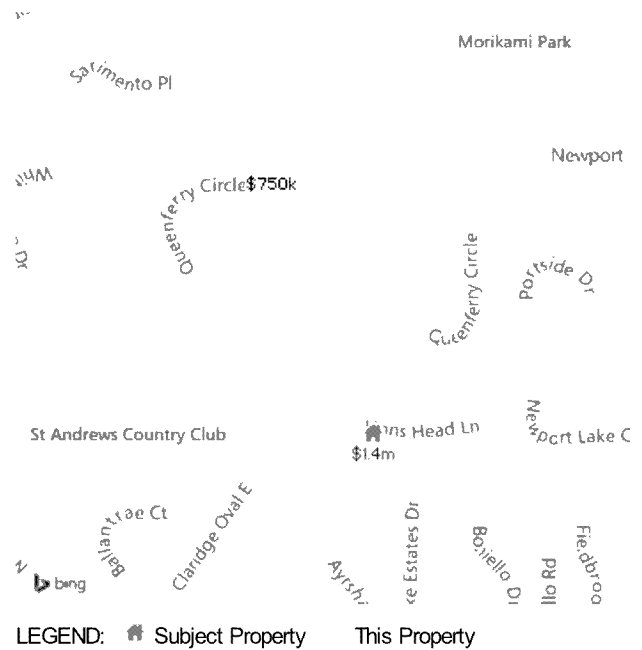
Highlighted fields were changed by agent to reflect knowledge of this property.

## Expired

<b>Address</b>	7020 Lions Head Ln Boca Raton, FL 33496	6451 Enclave Way Boca Raton, FL 33496	18279 Long Lake Dr Boca Raton, FL 33496	4147 Briarcliff Cir Boca Raton, FL 33496	17577 Middlebrook Way Boca Raton, FL 33496
<b>Status</b>	Subject Property	37 Recently Expired	38 Recently Expired	39 Recently Expired	40 Recently Expired
<b>Amount</b>	\$1,395,000 List Amount	\$1,550,000 List Amount	\$4,995,000 List Amount	\$889,900 List Amount	\$1,350,000 List Amount
<b>Listing Date</b>	1/24/2012	7/21/2014	2/22/2014	4/2/2014	2/2/2015
<b>Days in RPR</b>	1,170	261	410	371	65
<b>Price Per Sq. Ft.</b>	\$222	\$426	\$475	\$261	\$268
<b>Bedrooms</b>	5	5	7	4	6
<b>Total Baths</b>	10	5	11	8	7
<b>Partial Baths</b>	3	1	2	4	2
<b>Total Rooms</b>	-	-	-	-	-
<b>Living Area</b>	6,293	3,635	10,515	3,407	5,044
<b>Lot Size</b>	0.33 acres	0.25 acres	1.2 acres	7,915 sq ft	0.25 acres
<b>Year Built</b>	1993	1997	1999	1994	2003
<b>Living Area Range (low)</b>	-	-	-	-	-
<b>Living Area Range (high)</b>	-	-	-	-	-
<b>Property Type</b>	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence	Single Family Residence
<b>Property Subtype</b>	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached	Single Family Detached
<b>MLS ID</b>	RX 3255290	RX 10058788	RX 10018959	RX 10029713	RX 10108010
<b>Listing Broker</b>	Listing Courtesy of Nestler Poletto Sothebys Int'l	Courtesy of Lang Realty/ BR	Courtesy of Boca Executive Realty	Courtesy of Keller Williams Boca Raton	Courtesy of Mizner Grande Realty LLC
<b>Description</b>	<p>ESTATE SALE. Spanish/Mediterranean design two story, courtyard home with S-tile roof, elevator, impact glass windows, and generator The back of the house faces due south and the front faces north. There is glazed Spanish tile flooring throughout, with each room having a different patterned tile. In entry area there are custom hand carved doors &amp; cast stone columns. Off the entry &amp; living room, there is a powder bathroom, with separate men's &amp; woman's powder rooms. Spiral staircase leads to the second floor. Separate raised dining room area steps down to a living room with a wood burning fireplace with extensive use of stained glass in the living room &amp; dining room area. Walls have stucco a...</p>	<p>Situated at the end of a cul-de-sac with spectacular lake views, this elegant one-story home of 5 bedrooms, 4.5 baths &amp; 3 car garage is neutral &amp; open with tasteful appointments--volume ceilings; satumia marble floors; wide foyer with marble inlays; remodeled kitchen with white 42" shaker-style cabinets, granite counters, subway tile backsplash &amp; lovely breakfast nook; remodeled master bath with shaker-style cabinets, marble counters, seamless shower door &amp; private commode; plantation shutters; extra high-hats; central vacuum; solid core molded doors; surround sound speakers; custom closet design; 2 newer a/c units; newer washer &amp; dryer, hurricane accordion shutters &amp; an inviting patio offering...</p>	<p>Look no further! exquisitely updated lakefront 4 br w loft , 3 car garage in gated sough after country club community! formal foyer entry leads to expansive family room and gourmet eat in kitchen with stainless steel appliances and easy roll out cabinet shelves and drawers overlooking the lake. Grand master suite with master bath dual sinks and jacuzzi. All custom top of the line built in closets. Hunter douglas automatic window treatments and high ceilings with lots of light, complete this magnificent home!</p>	<p>Incredible lakefront mansion model perfect. 6 bedroom, 5 full and 2 half baths. Gorgeous library, exercise room or 7th bedroom (no closet), marble floors, coffered ceilings, gourmet kitchen, luxurious master suite on the first floor, his &amp; hers separate master bathrooms, summer kitchen, resort style pool and backyard. Upstairs loft area. Family room with built-in wall unit. Gorgeous fireplace and wet bar.</p>	

Highlighted fields were changed by agent to reflect knowledge of this property.

# 7140 Queenferry Cir, Boca Raton, FL 33496



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-10045579, 6/1/2014

**Current Estimated Value**

**\$776,520**

Last RVM® Update: 3/16/2015  
Days in RPR: 311

RVM® Est. Range:  
**\$698,868 – \$854,172**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$6,010**

↓ RVM® Change  
Last 12 Months: **-0.7%**

STUNNING CONTEMPORARY STYLED ESTATE ON PANORAMIC GOLF AND WATER LOT WITH PRIVATE COURTYARD AND GUEST HOUSE WITH TWO SEPARATE EN SUITE BEDROOMS, MAIN HOUSE FEATURES VOLUME CEILINGS, MARBLE FLOORS, MASTER SUITE WITH SITTING AREA, FORMAL LIVING AND DINING ROOMS, WET BAR, KITCHEN, FAMILY ROOM AND EN SU...

**Home Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	4,295
Lot Size	0.32 acres
Lot Dimensions	13991 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1992
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Public Facts**

Property Type	Single Family Residence
Property Subtype	Single Family
Bedrooms	—
Total Baths	6
Full Baths	5
Partial Baths	1
Living Area (sq ft)	4,295
Lot Size	0.32 acres
Lot Dimensions	13991 SF
Garage	Yes
Garage (spaces)	3
Pool	Yes
Year Built	1992
Roofing	Tile
Heating	Forced air unit
Cooling	Yes
Construction	Masonry
Exterior Walls	Stucco
Number of Buildings	0
Number of Stories	2

**Listing Facts**

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	4
Total Baths	5
Full Baths	4
Partial Baths	1
Living Area (sq ft)	4,295
Lot Size	0.33 acres
Lot Dimensions	.33
Garage	—
Garage (spaces)	3
Pool	Yes
Year Built	1992
Roofing	—
Heating	[E - COMM/INDUSTRY],
Cooling	.TXT,
Construction	—
Exterior Walls	—
Number of Buildings	—
Number of Stories	2

Courtesy of Douglas Elliman

# 17731 Boniello Dr, Boca Raton, FL 33496



**RECENTLY EXPIRED**

\* Expired  
 \* MLS listing RX-10070765, 9/8/2014

**Current Estimated Value**  
**\$1,647,700**

Last RVM® Update: 3/16/2015  
 Days in RPR: 212

RVM® Est. Range:  
**\$1,482,930 – \$1,812,470**

RVM® Confidence:

RVM® Change  
 Last 1 Month: **\$12,260**

RVM® Change  
 Last 12 Months: **9.84%**

ELEGANT, COMFORTABLE AND LUXURIOUS RENOVATED ESTATE HOME IN BONIELLO ACRES. 5 BEDROOMS, 5 1/2 BATHS PLUS STUDY AND HUGE GAME ROOM. ALL NEW GOURMET KITCHEN WITH 48" DACOR RANGE, DOUBLE OVENS, LARGE ISLAND, THICK SLAB GRANITE. TROPICAL PARADISE OUTDOORS! NEW SUMMER KITCHEN, NEW OVERSIZED HEATED PO...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Exterior Walls  
 Number of Buildings  
 Number of Stories

**Public Facts**

**Single Family Residence**  
**Single Family**  
 4  
 4  
 3  
 1  
 5,037  
 1 acres  
 1.00 AC  
 Yes  
 4  
 Yes  
 1998  
 –  
 Tile  
 Forced air unit  
 Yes  
 Masonry  
 Stucco  
 0  
 1

**Listing Facts**

**Single Family Residence**  
**Single Family Detached**  
 5  
 6  
 5  
 1  
 5,037  
 1 acres  
 DP 285  
 –  
 3  
 Yes  
 1998  
**Less Than 4 Floors, Ranch**  
 S-Tile  
 Central, Electric  
 Ceiling Fan(S), Electric, Central  
 Cbs Construction  
 –  
 –  
 1

Courtesy of Luxury Partners Realty



# 17938 Lake Estates Dr, Boca Raton, FL 33496



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-9965601, 7/29/2013

**Current Estimated Value**

**\$1,084,450**

Last RVM® Update: 3/16/2015  
Days in RPR: 618

RVM® Est. Range:  
**\$1,030,228 – \$1,138,672**

RVM® Confidence:  
★★★★★

↑ RVM® Change  
Last 1 Month: **\$137,950**

↓ RVM® Change  
Last 12 Months: **-16.38%**

ESTATE SALE OFFERING- This 4 bedroom, study and library residence is located within the estate section referred to as the Hills of St. Andrews Country Club where home sites are oversized in both width and depth. A circular driveway leads to a front entry where a foyer opens to a grand living room w...

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Style
- Roofing
- Heating
- Cooling
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

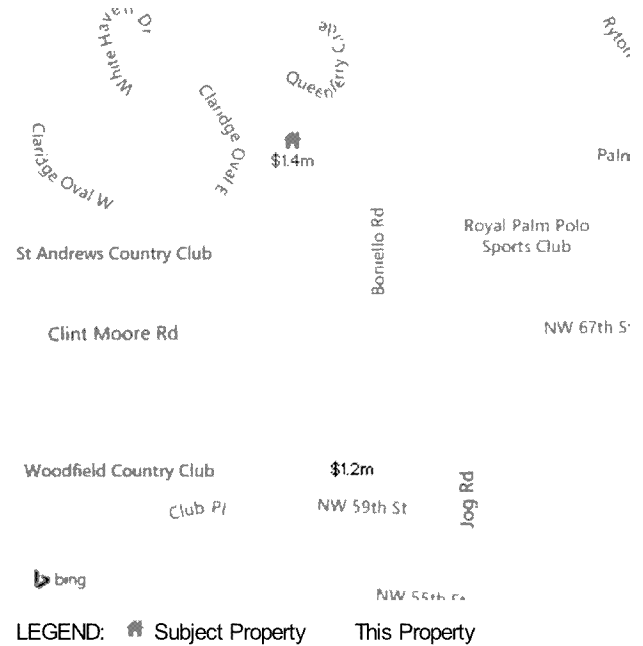
- Single Family Residence
- Single Family
- 
- 5
- 4
- 1
- 4,456
- 0.68 acres
- 29481 SF
- Yes
- 4
- Yes
- 1994
- 
- Tile
- Forced air unit
- Yes
- Masonry
- Stucco
- 0
- 1

**Listing Facts**

- Single Family Residence
- Single Family Detached
- 4
- 5
- 4
- 1
- 4,456
- 0.67 acres
- 
- 
- 3
- Yes
- 1994
- Contemporary, Mediterranean
- 
- Central, Electric
- Central, Electric
- Cbs Construction
- 
- 
- 1

Courtesy of Nestler Poletto Sothebys Int'l

# 3221 NW 61st St, Boca Raton, FL 33496



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-10069297, 9/3/2014

**Current Estimated Value**  
**\$1,128,880**

Last RVM® Update: 3/16/2015  
 Days in RPR: 217

RVM® Est. Range:  
**\$1,027,281 – \$1,230,479**

RVM® Confidence:

RVM® Change  
 Last 1 Month: **\$29,700**

RVM® Change  
 Last 12 Months: **20.86%**

THIS FINELY APPOINTED 5 BEDROOM 4.5 BATH HOME WITH EXPANSIVE WATER VIEWS WILL REDEFINE YOUR EXPECTATIONS OF LUXURY LIVING. DOUBLE DOORS LEAD TO A LUSHLY LANDSCAPED PRIVATE COURTYARD WITH HEATED POOL, SPA, OUTDOOR KITCHEN AND ONE BEDROOM ONE BATH GUEST HOUSE. A FINELY APPOINTED HOME WITH FRENCH LIMESTO...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Exterior Walls  
 Number of Buildings  
 Number of Stories

**Public Facts**

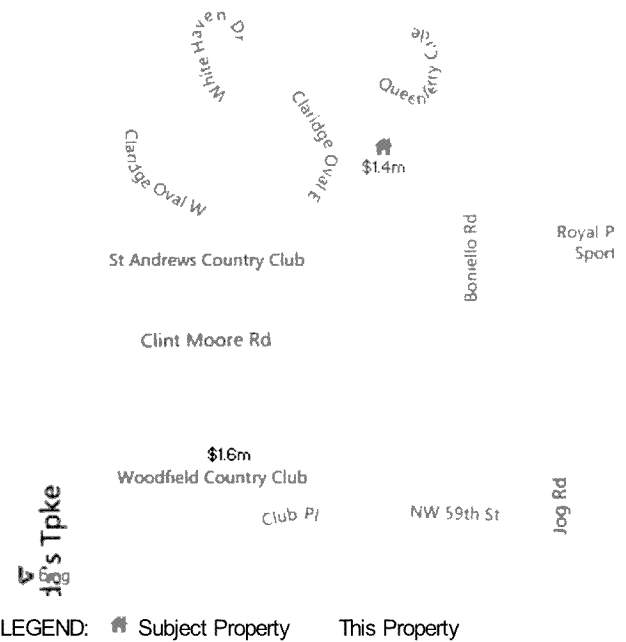
**Single Family Residence**  
**Single Family**  
 –  
**5**  
**4**  
**1**  
**3,602**  
**0.24 acres**  
**10533 SF**  
**Yes**  
**2**  
**Yes**  
**1993**  
 –  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
**0**  
**2**

**Listing Facts**

**Single Family Residence**  
**Single Family Detached**  
**5**  
**5**  
**4**  
**1**  
**3,618**  
 –  
 –  
 –  
**3**  
**Yes**  
**1993**  
**Courtyard, Multi-Level, Mediterranean**  
**S-Tile**  
**Central, Electric**  
**Central, Zoned, Electric**  
**Cbs Construction**  
 –  
 –  
**2**

Courtesy of Lang Realty/BR

# 6451 Enclave Way, Boca Raton, FL 33496



**RECENTLY EXPIRED**

• Expired  
• MLS listing RX-10058788, 7/21/2014

**Current Estimated Value**  
**\$1,409,860**

Last RVM® Update: 3/16/2015  
Days in RPR: 261

RVM® Est. Range:  
**\$1,254,776 – \$1,564,944**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$19,130**

↑ RVM® Change  
Last 12 Months: **13.06%**

Situated at the end of a cul-de-sac with spectacular lake views, this elegant one-story home of 5 bedrooms, 4.5 baths & 3 car garage is neutral & open with tasteful appointments—volume ceilings; Saturnia marble floors; wide foyer with marble inlays; remodeled kitchen with white 42" Shaker-style cabin...

**Home Facts**

Property Type  
Property Subtype  
Bedrooms  
Total Baths  
Full Baths  
Partial Baths  
Living Area (sq ft)  
Lot Size  
Lot Dimensions  
Garage  
Garage (spaces)  
Pool  
Year Built  
Style  
Roofing  
Heating  
Cooling  
Construction  
Number of Buildings  
Number of Stories

**Public Facts**

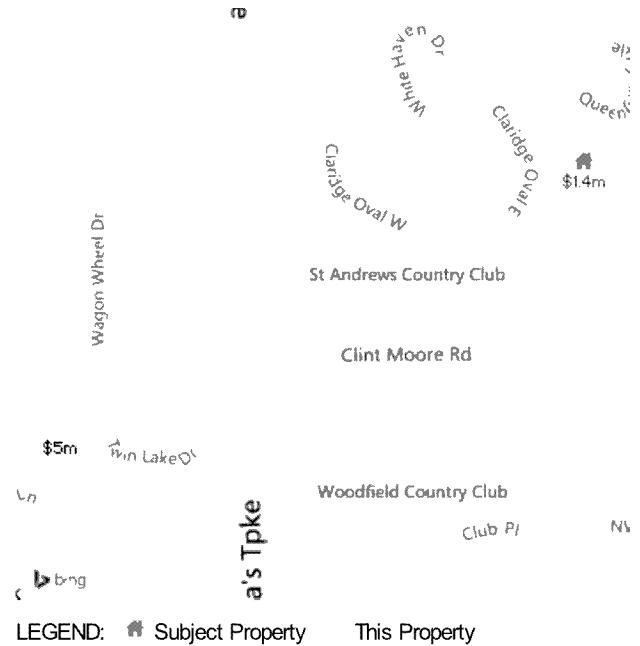
**Single Family Residence**  
**Zero Lot Line**  
**4**  
**4**  
**4**  
**—**  
**3,635**  
**0.25 acres**  
**10742 SF**  
**Yes**  
**2**  
**Yes**  
**1997**  
**—**  
**—**  
**—**  
**—**  
**Masonry**  
**0**  
**1**

**Listing Facts**

**Single Family Residence**  
**Single Family Detached**  
**5**  
**5**  
**4**  
**1**  
**3,635**  
**—**  
**.25 acre**  
**—**  
**3**  
**Yes**  
**1997**  
**Mediterranean**  
**S-Tile**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
**—**  
**1**

Courtesy of Lang Realty/ BR

# 18279 Long Lake Dr, Boca Raton, FL 33496



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-10018959, 2/22/2014

**Current Estimated Value**

**\$2,997,690**

Last RVM® Update: 3/16/2015  
Days in RPR: 410

RVM® Est. Range:  
**\$2,548,037 – \$3,447,343**

RVM® Confidence:  
★★★★★

➔ RVM® Change  
Last 1 Month: –

⬆ RVM® Change  
Last 12 Months: **44.18%**

**Home Facts**

- Property Type
- Property Subtype
- Bedrooms
- Total Baths
- Full Baths
- Partial Baths
- Living Area (sq ft)
- Lot Size
- Lot Dimensions
- Garage
- Garage (spaces)
- Pool
- Year Built
- Roofing
- Heating
- Cooling
- Fireplaces
- Construction
- Exterior Walls
- Number of Buildings
- Number of Stories

**Public Facts**

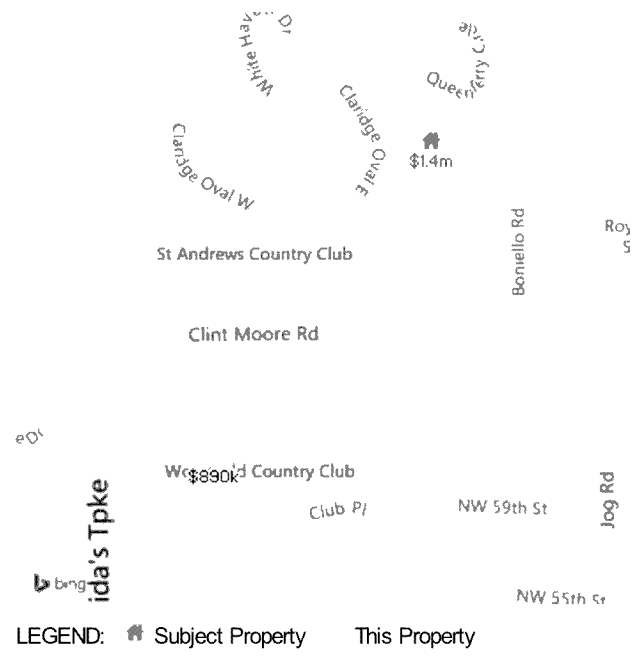
- Single Family Residence
- Single Family
- 
- 8
- 8
- 
- 10,515
- 1.13 acres
- 1.13 AC
- Yes
- 4
- Yes
- 1999
- Tile
- Forced air unit
- Yes
- 1
- Masonry
- Stucco
- 0
- 2

**Listing Facts**

- Single Family Residence
- Single Family Detached
- 7
- 11
- 9
- 2
- 10,515
- 1.2 acres
- 
- 
- 4
- Yes
- 1999
- Barrel
- Central
- Central
- 
- Cbs Construction
- 
- 
- 2

Courtesy of Boca Executive Realty

# 4147 Briarcliff Cir, Boca Raton, FL 33496



**RECENTLY EXPIRED**

- Expired
- MLS listing RX-10029713, 4/2/2014

**Current Estimated Value**

**\$896,890**

Last RVM® Update: 3/16/2015  
Days in RPR: 371

RVM® Est. Range:  
**\$852,046 – \$941,734**

RVM® Confidence:  
★★★★★

↓ RVM® Change  
Last 1 Month: **-\$33,310**

↑ RVM® Change  
Last 12 Months: **2.85%**

Look no further! Exquisitely updated lakefront 4 BR w loft , 3 car Garage in Gated sough after Country Club community! Formal foyer entry leads to expansive family room and gourmet eat in kitchen with stainless steel appliances and easy roll out cabinet shelves and drawers overlooking the lake. Gra...

**Home Facts**

Property Type	Single Family Residence
Property Subtype	Zero Lot Line
Bedrooms	4
Total Baths	4
Full Baths	4
Partial Baths	-
Living Area (sq ft)	3,355
Lot Size	7,915 sq ft
Lot Dimensions	7915 SF
Garage	Yes
Garage (spaces)	2
Pool	Yes
Year Built	1994
Style	-
Roofing	-
Heating	-
Cooling	-
Construction	Masonry
Number of Buildings	0
Number of Stories	1

**Public Facts**

Property Type	Single Family Residence
Property Subtype	Zero Lot Line
Bedrooms	4
Total Baths	4
Full Baths	4
Partial Baths	-
Living Area (sq ft)	3,355
Lot Size	7,915 sq ft
Lot Dimensions	7915 SF
Garage	Yes
Garage (spaces)	2
Pool	Yes
Year Built	1994
Style	-
Roofing	-
Heating	-
Cooling	-
Construction	Masonry
Number of Buildings	0
Number of Stories	1

**Listing Facts**

Property Type	Single Family Residence
Property Subtype	Single Family Detached
Bedrooms	4
Total Baths	8
Full Baths	4
Partial Baths	4
Living Area (sq ft)	3,407
Lot Size	-
Lot Dimensions	.18 ACRE
Garage	-
Garage (spaces)	3
Pool	Yes
Year Built	1994
Style	Mediterranean
Roofing	S-Tile
Heating	Central, Electric
Cooling	Ceiling Fan(S), Electric, Central
Construction	Concrete
Number of Buildings	1
Number of Stories	2

Courtesy of Keller Williams Boca Raton

# 17577 Middlebrook Way, Boca Raton, FL 33496



**RECENTLY EXPIRED**

• Expired  
 • MLS listing RX-10108010, 2/2/2015

**Current Estimated Value**

**\$1,324,720**

Last RVM® Update: 3/16/2015  
 Days in RPR: 65

RVM® Est. Range:  
**\$1,192,248 – \$1,457,192**

RVM® Confidence:  
 ★★★★★

↑ RVM® Change  
 Last 1 Month: **\$8,640**

↑ RVM® Change  
 Last 12 Months: **9.66%**

Incredible Lakefront Mansion Model Perfect. 6 bedroom, 5 full and 2 half baths. Gorgeous Library, Exercise Room or 7th Bedroom (no closet), Marble Floors, Coffered Ceilings, Gourmet Kitchen, Luxurious Master Suite on the First Floor, His & Hers separate Master bathrooms, Summer Kitchen, Resort Styl...

**Home Facts**

Property Type  
 Property Subtype  
 Bedrooms  
 Total Baths  
 Full Baths  
 Partial Baths  
 Living Area (sq ft)  
 Lot Size  
 Lot Dimensions  
 Garage  
 Garage (spaces)  
 Pool  
 Year Built  
 Style  
 Roofing  
 Heating  
 Cooling  
 Construction  
 Exterior Walls  
 Number of Buildings  
 Number of Stories

**Public Facts**

**Single Family Residence**  
**Single Family**  
 –  
 7  
 5  
 2  
**5,044**  
**0.25 acres**  
**10851 SF**  
**Yes**  
 3  
**Yes**  
**2003**  
 –  
**Tile**  
**Forced air unit**  
**Yes**  
**Masonry**  
**Stucco**  
 0  
 2

**Listing Facts**

**Single Family Residence**  
**Single Family Detached**  
 6  
 7  
 5  
 2  
**5,044**  
**0.25 acres**  
**86.0 ft x 0.0 ft**  
 –  
 3  
**Yes**  
**2003**  
**Less Than 4 Floors, Mediterranean**  
**S-Tile**  
**Central, Electric**  
**Central, Electric**  
**Cbs Construction**  
 –  
 –  
 2

Courtesy of Mizner Grande Realty LLC

## Recommended Pricing Strategy

	Active Listings	Distressed	Expired Listings	Pending Sales	Sold
<b>Lowest Price</b>	\$899,000	\$795,000	\$750,000	\$589,900	\$995,000
<b>Median Price</b>	\$1,517,000	\$1,857,425	\$1,262,500	\$1,472,000	\$1,944,500
<b>Highest Price</b>	\$2,100,000	\$2,480,000	\$4,995,000	\$2,300,000	\$3,950,000
<b>Median Price Per Sq. Ft.</b>	\$266	\$295	\$296	\$284	\$290
<b>Days in RPR</b>	8	138	286	167	435

### Comparable Sold Property Price Analysis

	Sold Price	Price Per Sq. Ft.
<b>Lowest Price</b>	\$229,900	\$128
<b>Median Price</b>	\$995,000	\$181
<b>High Price</b>	\$3,950,000	\$498

#### Sellers

_____	_____
Signature	Date
_____	_____
Signature	Date

#### Broker / Agent

_____	_____
Signature	Date

# Seller's Proceeds

Low

High

Price

Encumbrances

First Loan

Second Loan

Est. Closing Costs

Commissions

Escrow Items

Escrow Fees

Home Warranty

Other Work

Pest Inspection

Tax Stamp

Termite Work

Title Insurance

Total Encumbrances

Estimated Closing Costs

Net Cash to Seller

*I understand that the above is an estimate only and not the actual costs which would be incurred if an actual sale is consummated. The estimated amounts above are not guaranteed in any way.*

*Seller*

*date*



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

**SUPPLEMENT TO MOTION TO APPROVE SALE OF TRUST PROPERTY**  
**RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S HOMESTEAD**

Plaintiff, Ted S. Bernstein, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"),  
files this Supplement to his Motion to Approve Sale of Trust Property, and states:

1. This supplements the pending Motion to Approve Sale of the Trust's property located  
at 7020 Lions Head Lane, Boca Raton, Florida (the "House"), the most significant asset now held  
by the Shirley Bernstein Trust. The closing has been extended to April 30th to allow the Court to  
address these issues at the evidentiary hearing now set for April 23rd at 10:00 a.m.

2. The record owner of the House is the Shirley Bernstein Trust (the "Trust"). The Trust obtained title by a Quit Claim Deed signed by Shirley Bernstein, joined by her spouse Simon L. Bernstein. (Exhibit A) Although Simon raised no homestead issues while alive, and there has been no such claim by anyone else since Shirley's death, the title insurer has requested resolution of the issues addressed in this Supplement as part of insuring title.

3. When Shirley died, the house was her homestead, even though owned by the Trust. Shirley was survived by a spouse (Simon) and five adult children (Ted, Pam, Eliot, Lisa and Jill). Under Florida law, because the house was the homestead property of Shirley Bernstein at the time of her death, the title company has advised that under the case of *Aronson v. Aronson*, 81 So. 3d 515 (Fla. 3d DCA 2012), the fact that the house was titled in the name of a revocable trust has no impact on any homestead rights of Simon L. Bernstein. The Trustee does not necessarily agree with that position, but it is the position of the prospective title insurer.

4. It is the Trust's position that its title is valid because Simon L. Bernstein waived his homestead rights by signing the Quit Claim Deed. Under Florida law, "[t]he rights of a surviving spouse to . . . homestead . . . may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses." § 732.702(1), Fla. Stat. (2008). Further, "**[u]nless the waiver provides to the contrary, a waiver of `all rights,' or equivalent language" may constitute a waiver of all homestead rights that would otherwise pass to the waiving spouse by intestate succession. *Id.***

5. In *Stone v. Stone*, Case No. 4D11-4541, 157 So. 3d 295, 2014 WL 5834826 (Fla. 4th DCA Nov. 12, 2014, *reh'g denied*, Mar. 16, 2015), the Fourth DCA held that the following language in a properly executed deed waived the surviving spouse's homestead rights:

"grants, bargains, sells, aliens, remises, releases, conveys, and confirms" the property "together with all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining."

6. The Fourth DCA held that this constituted a waiver of any constitutional homestead rights the surviving spouse had in the homestead property. *Id.*

7. Here, the Quit Claim Deed signed by Simon before two subscribing witnesses and a notary provides that Simon:

does hereby remise, release and quit-claim<sup>1</sup> to Grantee and Grantee's heir and assigns forever, the following described real property . . .

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining."

That language is virtually indistinguishable from, and in all intents is the functional legal equivalent of, the language in the deed in *Stone*. Importantly, this document was recorded in the public records of Palm Beach County on May 30, 2008, so there is no issue as to the authenticity of the signatures of Simon or Shirley.

8. Moreover, the only person who could have raised a claim of homestead rights was Simon while he was alive. "When there are no surviving minor children and the surviving spouse has waived her homestead rights, there is no constitutional restriction on the devise of the homestead." *Stone*, quoting *Hartwell v. Blasingame*, 584 So. 2d 6 (Fla. 1991) (finding that an adult child was not entitled to seek the protection of the constitutional homestead devise restrictions where the surviving spouse had validly waived her homestead rights because the child was bound by the spouse's waiver); *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 4th DCA 2006) (holding that

---

<sup>1</sup> "Quitclaim" means to transfer and terminates (i.e. "quit") any right and claim to the property, thereby allowing the right or claim to transfer to the recipient/grantee.

a spouse's waiver is the legal equivalent of predeceasing the decedent, so that the decedent may devise the homestead property free of the constitutional restrictions).

9. Because Simon did not assert any homestead rights while he was alive, and there were no minor children of Shirley when she died, none of the adult children would be permitted to raise this, even if they wanted to. *Stone* ("there were no surviving minor children and Alma waived her homestead rights. Ross, as an adult child, is not entitled to seek the protection of the homestead devise restrictions.").

10. On the other hand, if Simon L. Bernstein did not waive his homestead rights, then title to the House passed by operation of law at Shirley's death, outside of probate and outside of the Trust, creating a life estate in Simon Bernstein with the remainder to his five children. In this scenario, under section 732.401(1) of the Florida Statutes, "the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes," and this remainder interest "descend[s] in the same manner as other intestate property."

11. Under this scenario, notwithstanding Shirley's desire to exclude Ted and Pam from her estate planning, Ted and Pam each would own 20% of the House. Likewise, notwithstanding Simon's intent to bypass all of the children and pass the wealth to ten grandchildren, the grandchildren would get nothing and the House would have passed 20% to each child. That is so regardless of the testamentary plan and the documents signed by Simon and Shirley. *King v. Ellison*, 648 So. 2d 666(Fla. 1994)(descent of homestead "was governed by section 732.401(1), Florida Statutes (1991), notwithstanding any provision in his will to the contrary.).

12. The Trust's position is that Simon Bernstein waived his homestead rights by signing the Quit Claim Deed on May 20, 2008. Despite the fact that they stand to gain the most, Ted and Pam have acknowledged that there should be a declaration that Simon waived his homestead. Lisa and Jill have as well. Eliot has been asked to agree, but his consent is unlikely.

13. Importantly, Eliot stands be only person who loses financially on this issue:

<b>2008 Docs</b>	<b>Beneficial Interest in House as Trust Asset under 2008 Docs</b>	<b>Interest in House under Homestead</b>	<b>Difference</b>
Eliot	33.33%	20.00%	-13.33%
Lisa	33.33%	20.00%	-13.33%
Jill	33.33%	20.00%	-13.33%
Ted	0.00%	20.00%	20.00%
Pam	0.00%	20.00%	20.00%

<b>2012 Docs</b>	<b>Beneficial Interest in House as Trust Asset – 2012 Docs</b>	<b>Interest in House under Homestead</b>	<b>Difference</b>
Eliot's kids	30.00%	20.00%	-10.00%
Lisa's, Jill's, Ted's, Pam's kids	70.00%	80.00%	10.00%

Any rational economic actor in Eliot's position would prefer the waiver of the homestead to a situation in which Eliot's interest or his kids is diluted either -10.00% or -13.33%.

14. To close the transaction based upon that waiver, the title insurer has requested a court order determining that Simon Bernstein waived his homestead rights and, therefore, the ownership of the house remains in the Shirley Bernstein Trust. Accordingly, based upon the foregoing, the Trust requests entry of an order approving the sale and overruling Eliot's objections thereto; ruling that Simon waived any homestead rights; authorizing Ted S. Bernstein, the current Successor Trustee, to take all steps necessary and sign all documents necessary to effect a closing of the sale of the House; directing that the net sales proceeds shall be held in escrow or an attorney's trust account pending further order of this Court; prohibiting anyone from interfering with the sale or the closing; and granting such other relief as the Court deems necessary.

15. Alternatively in the absence of such a court order, and indeed more preferable to the title insurer, the title insurer is willing to close with a Quit Claim Deed signed by each of the surviving children of Shirley Bernstein, transferring any right, title, or interest he or she may have back to the trust, so that the property can be sold with insurable title. Not surprisingly, and despite the fact that it is contrary to their individual economic best interests, Pam and Ted have signed or are signing Quit Claim Deeds, as have Lisa and Jill, conditioned upon Eliot signing same. Although any rational economic actor in Eliot's position would prefer to sign a Quit Claim Deed so that (i) his and his children's beneficial interest in the House is not diluted, and (ii) the Trust can avoid incurring substantial legal fees to address this title issue, it is doubtful that Eliot would sign such a document. Obviously, if he does agree before the hearing, that will resolve this issue.

WHEREFORE, the Successor Trustee respectfully requests an Order:

- (i) approving the sale and overruling Eliot's objections thereto;
- (ii) ruling that Simon waived any homestead rights;
- (iii) authorizing Ted S. Bernstein, the current Successor Trustee, to take all steps necessary and sign all documents necessary to effect a closing of the sale of the House;
- (iv) directing that the net sales proceeds shall be held in escrow or an attorney's trust account pending further order of this Court;
- (v) prohibiting anyone from interfering with the sale or the closing; and
- (vi) granting such other relief as the Court deems necessary.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 16th day of April, 2015.

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

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

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

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\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
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561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)





CFN 20080203512  
 OR BK 22668 PG 0448  
 RECORDED 05/30/2008 09:05:38  
 Palm Beach County, Florida  
 AMT 10.00  
 Doc Stamp 0.70  
 Sharon R. Beck, CLERK & COMPTROLLER  
 Pgs 0448 - 449; (2pgs)

PREPARED BY AND RETURN TO:  
 Robert L. Spallina, Esquire  
 Tescher & Spallina, P.A.  
 2101 Corporate Blvd., Suite 107  
 Boca Raton, Florida 33431  
 Telephone: 561-998-7847

Parcel Control No. 00-42-46-33-11-000-7810

**QUIT CLAIM DEED**

THIS QUIT CLAIM DEED, is made this 20 day of MAY, 2008, between SHIRLEY BERNSTEIN, joined by her spouse, SIMON L. BERNSTEIN, as Grantor, and SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, whose mailing address is 7020 Lions Head Lane, Boca Raton, Florida 33498, as Grantee.

(WHEREVER used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and their heirs, legal representatives and assigns of such individuals, and the successors and assigns of corporations.)

WITNESSETH, that said Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby remise, release and quit-claim to Grantee and Grantee's heirs and assigns forever, the following described real property situated, lying and being in Palm Beach County, Florida, to-wit:

Lot 781, ST. ANDREWS COUNTRY CLUB, PLAT NO. 14, according to the Plat thereof, as recorded in Plat Book 57, Pages 132, 135, inclusive, of the Public Records of Palm Beach County, Florida.

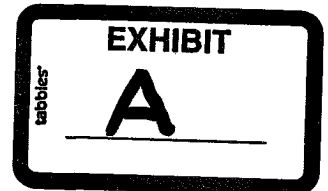
This conveyance is subject to the following:

1. Taxes and assessments for the year 2008 and subsequent years.
2. Conditions, restrictions, limitations, dedications, reservations, existing zoning ordinances, and easements of record including, but not limited to, water, sewer, gas, electric and other utility agreements of record.

Grantor hereby certifies that said property is the grantor's homestead.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.



In WITNESS WHEREOF, Grantor has set Grantor's hand and seal as of the day and year first above written.

Signed, sealed and delivered in the presence of:

[Signature]  
\_\_\_\_\_  
(Print Name)

[Signature]  
\_\_\_\_\_  
(Print Name)

TRACI KRATISH  
\_\_\_\_\_  
(Print Name)

[Signature]  
\_\_\_\_\_  
(Print Name)

[Signature]  
\_\_\_\_\_  
(Print Name)

[Signature]  
\_\_\_\_\_  
(Print Name)

TRACI KRATISH  
\_\_\_\_\_  
(Print Name)

[Signature]  
\_\_\_\_\_

SHIRLEY BERNSTEIN, individually  
Address: 7020 Lions Head Lane  
Boca Raton, FL 33498

[Signature]  
\_\_\_\_\_

SIMON BERNSTEIN, individually  
Address: 7020 Lions Head Lane  
Boca Raton, FL 33498

STATE OF FLORIDA     )  
                                  )  
COUNTY OF PALM BEACH )

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN and SIMON BERNSTEIN, who  are personally known to me; or  produced the following identification \_\_\_\_\_.

NOTARY PUBLIC-STATE OF FLORIDA  
Kimberly Moran  
Commission # DD766470  
Expires: APR. 28, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]  
\_\_\_\_\_  
Signature of Notary Public, State of Florida

\_\_\_\_\_  
(Print, Type or Stamp Commissioned Name of Notary Public)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

SUPPLEMENTAL NOTICE OF SPECIAL SET HEARING

(Pursuant to Instructions from Court on 04/02/15)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, April 23, 2015

**TIME:** 10:00 a.m. (two hours)

**JUDGE:** Honorable Martin Colin

**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue,  
Courtroom 8, Delray Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION TO REMOVE  
TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF THE SIMON L.  
BERNSTEIN AMENDED AND RESTATED TRUST**

**MOTION TO HOLD ELIOT BERNSTEIN IN CONTEMPT OF  
COURT AND FOR SANCTIONS**

**MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY**

**SUPPLEMENT TO MOTION TO APPROVE SALE OF TRUST  
PROPERTY RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S  
HOMESTEAD**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 17th day of April, 2015.

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

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

## SERVICE LIST

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

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

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### **CREOLE**

**Si ou sè yon moun ki enfim, ki bészwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; téléfonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF SPECIAL SET HEARING**

(Pursuant to Instructions from Court on 04/23/15)

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Wednesday, May 6, 2015  
**TIME:** 10:00 a.m. (two hours)  
**JUDGE:** Honorable Martin Colin  
**PLACE:** Palm Beach South County Courthouse, 200 West Atlantic Avenue,  
Courtroom 8, Delray Beach, FL 33444

**MATTER(S) TO BE HEARD:**

**CONTINUED EVIDENTIARY HEARING ON TRUSTEE'S  
MOTION TO APPROVE SALE OF TRUST ASSET**

**EVIDENTIARY HEARING ON ELIOT BERNSTEIN'S  
MOTION TO STOP SALE OF 7020 LIONS HEAD LANE PROPERTY**

**EVIDENTIARY HEARING ON TRUSTEE'S SUPPLEMENT TO  
MOTION TO APPROVE SALE OF TRUST PROPERTY  
RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S HOMESTEAD**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of April, 2015.

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

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



## SERVICE LIST

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

2015 MAY -5 AM 9:54  
SHARON R. BOGGS, CLERK  
PALM BEACH COUNTY FILED  
SOUTHGATE BRANCH

**ORDER DETERMINING THAT ELIOT BERNSTEIN'S PETITION  
TO REMOVE TED S. BERNSTEIN IS AN ADVERSARY PROCEEDING**

THIS CAUSE came before the Court during hearings held on April 23, 2015, upon consideration of Eliot Bernstein's Petition to Remove Ted S. Bernstein as Successor Trustee of the Shirley Bernstein Trust, Motion to Strike and Motion to Stay Proceedings (the "Petition"). The Court, having reviewed the Petition and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Petition, seeking the removal of a trustee, is determined to be an adversary proceeding as specified in Florida Probate Rule 5.025(c).

2. These proceedings, as nearly as practicable, must be conducted similar to suits of a civil nature. Interested persons must serve written defenses, if any, within 20 days from the date of the order.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 4 day of April, 2015.

MAY



\_\_\_\_\_  
Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
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Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

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Pamela Beth Simon  
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Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[ifoglietta@ciklinlubitz.com](mailto:ifoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
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TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
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LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
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minor child, C.F.,

Defendants.

2015 MAY -5 AM 9:54  
SHARON R. EGOR, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

**ORDER ON TRUSTEE'S MOTION TO DISMISS ELIOT BERNSTEIN'S PETITION  
TO REMOVE TED S. BERNSTEIN, MOTION TO STRIKE AND MOTION TO STAY**

THIS CAUSE came before the Court for hearing on April 23, 2015, upon Trustee's Motion to Dismiss Eliot Bernstein's Petition to Remove Ted S. Bernstein as Successor Trustee of the Shirley Bernstein Trust, Motion to Strike and Motion to Stay Proceedings (the "Motion"). The Court, having reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

Motion to Dismiss

1. As to paragraph 1, the Court orally instructed as to which parties are properly named and which should not have been named. The proper Respondents are:

- a. TED S. BERNSTEIN, as Successor Trustee;
- b. ALEXANDRA BERNSTEIN;
- c. ERIC BERNSTEIN;
- d. MICHAEL BERNSTEIN;
- e. MOLLY SIMON;
- f. PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12;
- g. JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.;
- h. MAX FRIEDSTEIN; and
- i. LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

(collectively, the "Respondents"). No other person or entity is properly named as a party to this Petition. The Court has determined that because each of the above Respondents already has been served with process in connection with the Complaint by the Successor Trustee, no further formal service is required upon the Respondents. Except as noted above, paragraph 1 of the Motion is denied.

2. As to paragraphs 2 - 7, for the same reason as the Court ruled in the related case involving the Simon Bernstein Trust, the Court denies the Motion to Dismiss as to these paragraphs.

Motion to Strike

3. As to paragraphs 8, 9, 12 and 13 of the Motion to Strike, for the same reasons as the Court struck portions of the Petition in the related case involving the Simon Bernstein Trust, the Court grants the Motion to Strike as to paragraphs 8, 9, 12, and 13 of the pending Motion.

4. As to paragraph 10, the Motion to Strike is denied.

5. As to paragraph 11, the Court strikes all references to an email which the Court previously has determined to be privileged, and otherwise denies the Motion.

Motion to Stay

6. For the same reasons as expressed in the Simon Bernstein Trust proceeding, the Court denies the Motion to Stay.

Further Proceedings

7. The Court has determined that the Petition shall be treated as an adversary proceeding.

8. The Petition is deemed modified by the rulings set forth above, without the need for Eliot Bernstein to file an amended pleading.



9. Ted S. Bernstein and any other Respondent desiring to plead shall have 20 days from the date of this order to respond to the allegations of the Petition which were not stricken by this Order.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 4 day of April, 2015.

*mm*



---

Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra Bernstein,  
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[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
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Alan Rose, Esq.  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

Defendants.

2015 MAY -5 AM 9:54  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY, FL  
SOUTHGATE BRANCH FILED

**ORDER ON MOTION TO HOLD**  
**ELIOT BERNSTEIN IN CONTEMPT OF COURT**

THIS CAUSE came before the Court for hearing for evidentiary hearings on April 23, 2015, upon Ted S. Bernstein's, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"), *Motion to Motion to Hold Eliot Bernstein in Contempt of Court and for Sanctions* (the "Motion"). The Court, having reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Motion is denied.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 4 day of

~~April~~, 2015.

*MHC*



---

Martin H. Colin

CIRCUIT COURT JUDGE

cc: All parties on the attached service list

## SERVICE LIST

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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children, and as natural guardian for J.I. a minor  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

2015 MAY -6 PM 2:36  
SHARON R. JOUA, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

**FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S  
MOTION TO APPROVE SALE OF TRUST PROPERTY**

THIS CAUSE came before the Court for hearing on March 25, 2015, and for evidentiary hearings on March 26, 2015, and May 6, 2015, upon Ted S. Bernstein's, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"), *Motion to Approve Sale of Trust Property and For Order Prohibiting Interference With Closing etc. and Supplement to Motion to Approve Sale of Trust Property Re: Closing and Title Issues for Shirley's Homestead* ("the Motion"). The Court, having

reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

**Findings of Fact**

A. The Court has been asked to approve a pending a sale of real property owned by the Trust located at 7020 Lions Head Lane, Boca Raton, Florida 33496 (the "House"). The Successor Trustee has entered into a contract to sell the House for \$1.1 Million, in an all-cash, no contingency deal to sell the House in "as is" condition.

B. Eliot Bernstein has served a Notice of Lis Pendens and has objected to the sale, in part claiming that the sale price of the pending contract is indicative of a "fire sale" rather than a sale at the current fair market value of the property. In his oral objection, Eliot suggested that this pending contract was at a price that is too low to be reasonable.

C. The Court has heard testimony from the realtor who has been handling the marketing of the House under a listing agreement for well over two years; advising the Trustee; and handling the negotiations with potential buyers. The Court finds, based upon that testimony, that the pending offer is representative of the current fair market value of the property; that the House has been adequately and professionally marketed; and that the buyer and seller engaged in arms-length, good faith negotiations. In the opinion of the professional realtor handling the matter, which testimony the Court accepts, the sale price of the House is fair, reasonable, and should be approved by the Court.

D. The Court has afforded Eliot Bernstein time to produce competent evidence to oppose the sale of the House. Eliot has consulted with a real estate broker, but has failed to submit sufficient evidence to warrant the Court not approving the sale.

E. The Court further finds that it is in the best interests of the Trust and the beneficiaries of the Trust to sell the property under the pending contract, given the extended period of time it has taken so far for marketing; the carrying costs of the property; and the fact that the equity membership contribution required at St. Andrew's Country Club has increased, which will not improve the prospects for selling the House.

F. The Court also finds that the House is properly titled in the name of and owned by the Shirley Bernstein Trust. To the extent that the House was the homestead of Shirley Bernstein as the time of her death, the Court finds that Simon Bernstein waived his homestead rights by signing a Quit Claim Deed, before two subscribing witnesses and a notary, which provides that Simon, as Grantor:

does hereby remise, release and quit-claim to Grantee and Grantee's heirs and assigns forever, the following described real property . . .

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

G. Although there is a claim by Eliot that the Trustee should be removed, such claim should not and does not prevent the sale of Trust assets on terms which are arm's-length, fair and reasonable.

Accordingly, based upon the foregoing factual findings which are adopted by the Court as part of this Order, it is hereby ORDERED AND ADJUDGED:

1. The Motion to Approve the Sale of the House is GRANTED. The Trustee may take all reasonable steps to effectuate and close on the transaction.
2. Eliot Bernstein's objections are overruled.



3. All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

4. Simon waived any homestead rights he may have had under Florida law, section 732.702(1), Fla. Stat. (2008), which allows the rights of a surviving spouse to homestead to be waived by a written contract, agreement or waiver signed in the presence of two subscribing witnesses, and further provides: "**[u]nless the waiver provides to the contrary, a waiver of `all rights,' or equivalent language" may constitute a waiver of all homestead rights that would otherwise pass to the waiving spouse by intestate succession.** *Id.* A quitclaim deed transfers and terminates any right and claim to the property. Therefore, as set forth in *Stone v. Stone*, Case No. 4D11-4541, 157 So. 3d 295, 2014 WL 5834826 (Fla. 4th DCA Nov. 12, 2014, *reh'g denied*, Mar. 16, 2015), the language of the Quit Claim Deed waived any homestead rights held by Simon. As a result of Simon waiving his homestead rights, Shirley's children do not have a vested remainder in the House.


5. Ted S. Bernstein, the current Successor Trustee, is authorized to take all steps necessary and sign all documents necessary to close on the sale of the House, and to utilize the sales proceeds to satisfy any liens and pay all customary closing costs, including any closing costs required by the Agreement and any amendments to be paid by the Seller.

6. All remaining net sales proceeds (after the payments identified above) realized from the sale of the House shall be delivered by the title company or closing attorney to the Trust Account of the Trustee's Counsel, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., who are

directed to ~~hold these funds in their attorney's trust account or, at their option,~~ to open a separate escrow account at an FDIC insured financial institution, pending further order of this Court. \*

7. THE COURT RESERVES JURISDICTION TO ENFORCE THIS ORDER  
DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 6 day of May,

2015.



Martin H. Colin  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

\* NO WITHDRAWALS FROM THIS ACCOUNT  
W/O COURT ORDER. ALL BENEFICIARIES  
SHALL RECEIVE A COPY OF THE  
DOCUMENT FROM THE BANK SHOWING  
THE DEPOSIT OF NET PROCEEDS,  
AS WELL AS A COPY OF THE CLOSING  
STATEMENT OF THE TRANSACTION SALE.

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

FILE NO.: 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee of the  
Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

v.

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

Defendants.

---

**ANSWER AND AFFIRMATIVE DEFENSES TO  
ELIOT BERNSTEIN'S PETITION TO REMOVE  
THEODORE BERNSTEIN AS SUCCESSOR TRUSTEE**

Defendants, MOLLY SIMON, ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and  
MICHAEL BERNSTEIN, by and through their undersigned attorney, answer and affirmatively  
defend against the Petition to Remove Theodore Stuart Bernstein as Alleged Successor Trustee  
filed by Eliot Bernstein on or about December 5, 2014, and state:

**Answer**

1. Admitted that Eliot Bernstein ("Eliot") is over 18 years of age and a resident of Palm Beach County; otherwise denied.
2. Admitted that Eliot is the natural guardian of his three minor children; otherwise denied.
3. Admitted.
4. The referenced statute "speaks for itself;" otherwise denied.
5. Denied.
6. Admitted.
7. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
8. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
9. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
10. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
11. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
12. Denied.

13. Denied.
14. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
15. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
16. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
17. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
18. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
19. Denied.
20. Without knowledge and therefore denied.
21. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
22. Without knowledge and therefore denied.
23. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
24. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.

25. Denied.
26. Denied.
27. The referenced statute "speaks for itself;" otherwise denied.
28. Denied.
29. The referenced statute "speaks for itself;" otherwise denied.
30. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
31. Denied.
32. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
33. Denied.
34. Denied.
35. Denied.
36. Denied.
37. Denied that Theodore Bernstein ("Ted") has failed to properly account; otherwise denied.
38. Denied.
39. Admitted, with exception to the extent that this allegation attributes wrongful conduct on the part of Ted as Trustee.
40. The referenced statute "speaks for itself;" otherwise denied.

41. Without knowledge and therefore denied.
42. Without knowledge and therefore denied.
43. Without knowledge and therefore denied.
44. Admitted that Simon Bernstein ("Simon") exercised a power of appointment;  
otherwise denied.
45. The first sentence is denied. With respect to the second sentence, without  
knowledge and therefore denied.
46. With respect to the first sentence, without knowledge and therefore denied. The  
second sentence is denied.
47. The Court struck this allegation by Order entered on May 4, 2015; otherwise  
denied.
48. Denied.
49. Without knowledge and therefore denied.
50. Denied.
51. Denied.
52. Admitted, with exception to the reference that the policy was "allegedly  
payable."
53. Without knowledge and therefore denied.
54. Without knowledge and therefore denied.
55. Without knowledge and therefore denied.



56. Without knowledge and therefore denied.
57. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
58. Admitted that Simon's estate would be entitled to the insurance proceeds if Simon's Irrevocable Trust was not entitled to those proceeds; otherwise denied.
59. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
60. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.
61. Any Memorandum of Law or other pleadings filed in the Illinois life insurance litigation "speaks for itself;" otherwise denied.
62. Any Memorandum of Law filed in the Illinois life insurance litigation "speaks for itself;" otherwise denied.
63. Admitted that Ted stands to benefit if it is determined that Simon's Irrevocable Trust is entitled to the life insurance proceeds; otherwise denied.
64. Admitted that Simon's estate was allowed to intervene in the Illinois life insurance litigation; otherwise denied.
65. Without knowledge and therefore denied.
66. Denied.
67. Denied.

68. With respect to the first sentence, the referenced statute "speaks for itself." The second sentence is denied.

69. With respect to the first sentence, without knowledge and therefore denied. The second sentence is denied.

70. Admitted, with exception to the extent this allegation suggests that Simon's estate and/or Trust are entitled to the insurance proceeds.

71. Denied.

72. Denied.

73. Admitted that Simon's estate was allowed to intervene in the Illinois life insurance litigation; otherwise denied.

74. Denied.

75. Admitted that Simon's estate and Trust will not benefit if it is determined that Simon's Irrevocable Trust is entitled to the life insurance proceeds; otherwise denied.

76. Denied.

77. Denied.

78. Denied.

79. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.

80. The referenced order "speaks for itself;" otherwise denied.

81. Denied.

82. Denied.
83. Without knowledge and therefore denied.
84. Admitted that Simon acted as Personal Representative of Shirley's estate and that Shirley's estate was reopened after Simon's death; otherwise denied.
85. Without knowledge concerning Robert Spallina's statements and therefore denied; otherwise denied.
86. Without knowledge concerning Ted's claims and therefore denied; otherwise denied.
87. Denied.
88. Denied.
89. The Court struck this allegation by Order entered on May 4, 2015; otherwise denied.

#### **Affirmative Defenses**

90. As and for a First Affirmative Defense, Eliot is not a beneficiary of the Shirley Bernstein Trust, and he therefore lacks standing to seek the relief requested in his Petition. F.S. § 736.0706(1) ("The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee . . ."); *see also Palmer v. Horton*, 469 So.2d 903 (Fla. 3<sup>rd</sup> DCA 1985).
91. As and for a Second Affirmative Defense, Eliot alleges in his Petition that he is "legal guardian of this three minor children . . . alleged beneficiaries of the Shirley Trust." Eliot is not qualified to act for his children due to a conflict of interest. Eliot has (in a separate

action) challenged the validity of estate planning documents which would essentially eliminate any beneficial interests that his children may have in Simon's and/or Shirley's trust estates.

92. As and for a Third Affirmative Defense, Eliot essentially alleges that Ted should be removed as Successor Trustee of the Shirley Bernstein Trust on the ground that hostility exists between Ted and Eliot. Eliot is not a beneficiary of the Shirley Bernstein Trust wherein he seeks Ted's removal as Successor Trustee, so any purported hostility between Ted and Eliot is irrelevant and of no consequence. Furthermore, hostility or disharmony between a trustee and beneficiaries is not cause for the trustee's removal under Florida law. In *Parr v. Cushing*, 507 So.2d 1227 (Fla. 5<sup>th</sup> DCA 1987), the court held that friction between a trustee and contingent beneficiaries, without more, could not justify removal of the trustee. It has also been held that an "acrimonious relationship" between a trustee and a beneficiary, coupled with "questionable and vindictive" actions taken by the trustee, did not rise to a level justifying removal of a trustee selected by the settlor. *Parker v. Shullman*, 843 So.2d 960, 961 (Fla. 4<sup>th</sup> DCA 2003).

93. As and for a Fourth Affirmative Defense, Eliot has failed to allege (nor can he show) a sufficient basis in law or fact to remove Ted as Successor Trustee of the Shirley Bernstein Trust. The general rule is that removal of a trustee must be predicated on a "clear showing of abuse or wrongdoing in the *actual* administration of the trust." *Parr*, 507 So.2d at 1228. It is not enough to allege or show that there is a *potential* for mismanagement or conflict of interest by the trustee; rather, a plaintiff must allege and prove *actual* conduct by the trustee

amounting to a breach of trust. *Id.* Even then, minor mistakes or neglect of duty by a trustee will not justify removal unless the breach is serious enough to threaten loss or mismanagement of the trust property. *Nickels v. Philips*, 18 Fla. 732 (1882).

94. The aforementioned Defendants have retained the undersigned attorney to represent them in this action and are obligated to pay him a reasonable fee. These Defendants are entitled to an award of their attorney's fees and costs pursuant to F.S. §§ 736.1004, 736.1005, 736.1006 and all other applicable statutes.

WHEREFORE, the aforementioned Defendants respectfully request that this Court dismiss Eliot's Petition with prejudice, award attorney's fees to the aforementioned Defendants from the Shirley Bernstein Trust, to be assess against Eliot's and/or Eliot's children's shares pursuant to F.S. §§ 736.1004, 736.1005 and 736.1006, and grant such other and further relief as this Court deems proper and just.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail to: ALAN ROSE, Esquire, 505 South Flagler Drive, Suite 600, West Palm Beach, Florida 33401 ([arosc@pm-law.com](mailto:arosc@pm-law.com)); PETER M. FEAMAN, Esquire, 3615 West Boynton Beach Boulevard, Boynton Beach, Florida 33436 ([service@feamanlaw.com](mailto:service@feamanlaw.com)); PAMELA SIMON, 950 North Michigan Avenue, #2603, Chicago, Illinois 60611 ([psimon@stpcorp.com](mailto:psimon@stpcorp.com)); JILL IANTONI, 2101 Magnolia Lane, Highland Park, Illinois 60035 ([jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)); LISA FRIEDSTEIN, 2142 Churchill Lane, Highland Park, Illinois 60035 ([lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)); BRIAN M. O'CONNELL, Esquire, 515 North Flagler Drive, 20<sup>th</sup>

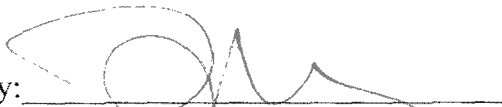
Bernstein v. Bernstein  
File No.: 502014CP003698XXXXSB  
Answer and Affirmative Defenses to  
Eliot Bernstein's Petition to Remove  
Theodore Bernstein as Successor Trustee  
Page 11

Floor, West Palm Beach, Florida 33401 ([boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)); and ELIOT

BERNSTEIN, 2753 NW 34<sup>th</sup> Street, Boca Raton, Florida 33436 ([iviewit@iviewit.tv](http://iviewit.com)), this

8<sup>TH</sup> day of May, 2015.

JOHN P. MORRISSEY, P.A.

By: 

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
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Florida Bar #: 993727

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate

Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

Case # 502014CP003698XXXXSB – Shirley Trust Construction

Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE #  
502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN**

COMES NOW Eliot Bernstein (“Petitioner”) and files under information and belief this Verified  
Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin, pursuant to Fla R.  
Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit  
judges in all matters in all divisions of court.**

1. Judge Martin Colin is a circuit judge in the 15th Judicial Circuit Probate Division.



Motion for Disqualification Judge Colin

1 / Page

Thursday, May 14, 2015

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Colin provided by rules, statute and by the Code of Judicial Conduct.

a. Judge Colin has violated the following Judicial Canons, including but not limited to,

- i. Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary
- ii. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities
- iii. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

**B. Adjudicative Responsibilities.**

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

**D. Disciplinary Responsibilities.**

(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.

(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.

**E. Disqualification.**



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(I) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding

(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(iv) is to the judge's knowledge likely to be a material witness in the proceeding;

**F. Remittal of Disqualification.**

A judge disqualified by the terms of Section 3E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

- b. Judge Colin has violated Statutes related to, including but not limited to,
  - i. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and more.
  - ii. Fraud in the Court
  - iii. Fraud by the Court
  - iv. Obstruction of Justice through Denial of Due Process

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v. Aiding and Abetting and more.

c. Judge Colin has violated Probate Statutes and Rules

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

3. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the movant**  
**relies as the grounds for disqualification.**

4. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or by a**  
**separate affidavit.**

5. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to disqualify**  
**filed under this rule in the case and the dates of the orders granting**  
**those motions.**

6. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that the**  
**motion and the client's statements are made in good faith. In addition**  
**to filing with the clerk, the movant shall immediately serve a copy of**  
**the motion on the subject judge as set forth in Florida Rule of Florida**  
**Rule of Civil Procedure 1.080.**

7. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Colin under Rule 1.080.

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**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

8. That Petitioner asserts that he will not and has not received a fair trial or hearing because of the following specifically described prejudices and biases of Judge Colin under Rule 2.330 (d), and shall be mandatory disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

9. Judge Colin had reasons to voluntarily disqualify himself from these proceedings prior to and regardless of this Motion to Disqualify him by Petitioner and has failed to do so prompting Pro Se Petitioner to file this disqualification on multiple grounds.

10. Judge Colin's Court Docket in this case reflects an Entry on Nov. 6, 2012 which is the Filed and Time-Stamped Date by the Court Clerk's Office of a Memorandum<sup>1</sup> allegedly made by

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<sup>1</sup> November 05, 2012 Memorandum

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Receipts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

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Astride Limouzin, Case Manager which by the express notations on said document was done on behalf of Judge Martin Colin, the Judge in this case at that time.

11. Notwithstanding the fact that this is listed as an Ex Parte communication in the Court's own Docket which will be addressed later, the Ex Parte communication is addressed to Attorney Robert L. Spallina. The Memorandum document purports to be notifying Attorney Spallina on behalf of Judge Colin that "Receipts for assets from all of the specific beneficiaries were not notarized." It is important to note that Attorney Spallina is fully aware at this time that his client Simon Bernstein the Personal Representative has passed away on September 13, 2012 and yet he continues to file with the Court documents on his deceased clients behalf to close the Estate months after his passing and presumably without notifying the Court.
12. However, by the time of this Ex Parte communication which purports to be by Astride Limouzin of Judge Colin's Court on behalf of Judge Colin to Attorney Spallina dated Nov. 5, 2012 by the express language of the document and is rejecting for filing Waivers not notarized by decedent Shirley's deceased at the time husband, Simon Bernstein<sup>2</sup>, and, Eliot Ivan Bernstein, Jill Bernstein-Iantoni, Pam Bernstein-Simon, Theodore Stuart Bernstein and Lisa Bernstein-Friedstein, as the adult surviving children of Shirley Bernstein in the Shirley Bernstein Estate case, Judge Colin's Court had already received for filing:
  - a. A Petition for Discharge (Full Waiver)<sup>3</sup> (also needing notarization but not notarized) to close Shirley's Estate allegedly dated April 9th, 2012 and allegedly signed by Simon

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<sup>2</sup> Simon Bernstein un-notarized Waiver @ URL

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

<sup>3</sup> Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL

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Bernstein on said date and Subscribed before Attorney Robert Spallina on same date of April 9, 2012, yet which is not Filed and Docketed with the Court until Oct. 24, 2012 with Judge Colin's Court and time-stamped by the Clerk's Office on said date, thus meaning Simon Bernstein was acting as Personal Representative/Executor to close Shirley's Estate a month after he was Deceased on Sept. 13 2012; being filed and time-stamped as received by the Court Clerk of Judge Colin's Court nearly 2 weeks before the Nov. 5, 2012 Ex Parte Memo above;

- b. A Tax Statement<sup>4</sup> allegedly dated April 9, 2012 and allegedly signed by Simon Bernstein on said date indicating no Florida Estate Tax due yet again this Document was Filed and Time-stamped with Judge Colin's Court Oct. 24, 2012 nearly 2 weeks before the Ex Parte Memo from Judge Colin to Robert Spallina allegedly made by Judge Colin's Case Manager Astride Limouzin on Nov. 5, 2012 and again posited with the Court by Simon acting as the Personal Representative/Executor after he is deceased; and
- c. A Probate Checklist<sup>5</sup> dated Feb. 15, 2012 which again references Attorney Robert Spallina as the involved attorney, Simon Bernstein as the Personal

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

<sup>4</sup> Affidavit of No Florida Estate Tax Due @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

<sup>5</sup> Probate Checklist

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Representative/Executor of the Estate but which is not only substantially defective in the items it references but again is not filed until Oct. 24, 2012 and time-stamped as received by Judge Colin's Court Clerks on said date again being filed by Simon acting as Personal Representative/Executor nearly a month after Simon Bernstein passed away and was deceased but nearly 2 weeks before the Ex Parte Memo to Attorney Spallina by Judge Colin via Case Manager Astride Limouniz, dated Nov. 5, 2012.

13. Judge Colin is chargeable with knowledge of the documents filed and entered into his Court upon which he is adjudicating and presiding over.
14. Thus, prior to transmitting the Nov. 5th 2012 Ex Parte Memorandum from Judge Colin via his Case Manager Astride Limouzin to Attorney Robert Spallina, Judge Colin's Court had received multiple filings as referenced above which are not only dated many months prior to the actual filing date but are clearly filed nearly an entire month after Simon Bernstein was deceased and at least one of these documents is Subscribed and witnessed by Attorney Robert Spallina being the Petition to Discharge to close Shirley's Estate and Judge Colin is now communicating with Attorney Spallina Ex Parte according to the Court's own Docket.
15. As of this date itself, Nov. 5, 2012, Judge Colin should have been Disqualified under the Florida Rules and Statutes and now should be Disqualified under at least 3 separate grounds of the Rules and Codes as an instance in which a Judge's impartiality may be reasonably questioned, as one with knowledge of disputed evidentiary facts concerning the proceeding and both as a material witness or likely material witness and - or fact witness of disputed and material evidentiary facts in the proceeding.

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

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16. Now, back to the Ex Parte nature of the Nov. 5, 2015 Memo from Judge Colin through Judge Colin's Caseworker Astride Limouzin to Attorney Robert Spallina who is now shown and presumably already known to Judge Colin and his Court Clerks to have filed with the Court multiple documents on behalf of a Deceased person Simon Bernstein and being filed months and months after allegedly performed and completed, yet secrets this information from the Court presumably.
17. A careful review of the Nov. 5, 2012 Ex Parte Memo shows that while the Memo is dated Nov. 5, 2012 on the face of the document, the document is not time-stamped with the Court Clerk's for 24 hours or so or at least until sometime the next day Nov. 6, 2012 as shown by the time stamp on the face of the document.
18. Judge Colin's impartiality can reasonably be questioned by the act of he and his Court Clerk Case Manager Astride Limouzin discovering filings in the Court by Attorney Robert Spallina on Oct. 24, 2012 purporting to act on behalf of a Deceased person Simon Bernstein without any authority demonstrated to act for now Deceased Simon Bernstein and by filing documents purportedly completed nearly 6 months earlier in April 2012, yet instead of Ordering Attorney Spallina for Disciplinary Investigation and to also immediately appear before his Court to Show Cause why said actions should not be immediately referred to Investigative and Prosecutorial authorities, Judge Colin and his Case Manager send an Ex Parte Memo to correct un-notarized Waivers with no mention of the Petition for Discharge now filed on behalf of Deceased Simon Bernstein clearly not able to act on said date.
19. This lack of impartiality by Judge Colin and his Court is further compounded by the facts shown by the face of the Court's own Docket and files that it took at least overnight to even Docket the Nov. 5, 2012 Ex Parte Memo on Nov. 6th, 2012 which leads right in and goes hand

in hand with the other mandatory grounds for Disqualification on his own initiative for now having knowledge of disputed evidentiary facts involving the proceeding and being likely to be called as a material and-or fact witness, as it is unknown:

- a. Were the Oct. 24, 2012 Filings filed in person and if so by whom?;
- b. If filed in person is Case Manager Astride Limouzin the person who "received" the filings for the Court or is she just the go between with Spallina office and Judge Colin on the Ex Parte Memo?
- c. Who communicated on the file with Judge Colin? Just Limouzin or any other Clerks and Case Managers?
- d. If filed by Mail then by whom and where is the correspondence and envelopes that the filings arrived in to show who signed the correspondence and mailed them if so? ;
- e. If filed by mail then where are the envelopes and correspondence or has this evidence been destroyed?
- f. Why such a long delay between when the Nov. 5th 2012 Ex Parte Memo was created and then Docketed on Nov. 6, 2012?
- g. How was the Memo transmitted to Spallina office? By fax, by mail? Were any phone calls made by the Court or Court Clerks and Case Managers? Any other Ex Parte communications?
- h. Why was the Nov. 5th, 2012 Memo done Ex Parte and not Communicated to all parties with standing in Shirley's case not only for purposes of avoiding impartiality but also to timely apprise the parties of said filings and defects?
- i. Did Judge Colin review the documents?
- j. Did Judge Colin know if Simon was deceased and when did he know? Who told him?

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20. For purposes of avoiding even the appearance of impropriety, Judge Colin should have Disqualified on Nov. 5, 2012 or at the moment his Court and - or Court Clerk or Case Manager had any involvement in the receipt, handling and processing of any of the filings of Oct. 24, 2012 made by a deceased Personal Representative/Executor, Simon Bernstein.
21. Judge Colin should have disqualified then and must be disqualified now.
22. Even assuming arguendo that Judge Colin had no actual knowledge of the Oct. 24, 2012 filings attempting to use Deceased Simon Bernstein to close the Estate of Shirley Bernstein and had no actual knowledge of the Nov. 5th 2012 Ex Parte communication on his behalf to Attorney Spallina directly involved in the fraudulent illegal acts of using Deceased Simon Bernstein to close Shirley's Estate, at that time, clearly by the time Judge Colin issued the Order to Close the Estate in Jan. 2013<sup>6</sup> Judge Colin must be presumed to have read and reviewed the documents and filings upon which he issues and rationally bases his Order closing the Estate in Jan. 2013 upon and thus should have not only not issued such an Order but should have halted, frozen and stayed the case and case files of all those involved for investigation by this time and then Disqualified himself as clearly at minimum his own Court officers and Case Manager Astride Limouzin had direct involvement and knowledge of material facts and he could not be in charge of investigating himself and his officers.
23. Now if it is assumed arguendo that Judge Colin will somehow claim he had no knowledge of the Court Docket and filings upon which he issued in Jan. 2013 closing Shirley's Estate upon documents filed by Attorney Spallina which purport to have Simon Bernstein take action as the Personal Representative/Executor while deceased because somehow Judge Colin will claim

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<sup>6</sup> Order of Discharge

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

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that he had not read the documents upon which he based this Order, then this raises a separate basis of Disqualification under the rule requiring the Judge to diligently ( and competently ) hear cases that are assigned and thus Judge Colin should have been disqualified then and must now be disqualified.

24. Yet even if it is assumed arguendo that Judge Colin had no knowledge of these matters as of the date he issues the Jan. 2013 Order to close Shirley's estate, which of course again raises Disqualification under the rule of "diligently" hearing cases assigned, clearly by the time of May 06, 2013 upon the first filing of Petitioner's "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"<sup>7</sup> this Court and Attorney Spallina are both put on Notice by Petitioner's motion of :

- a. The fraud and alleged fraud in the filings directly involving Spallina including but not limited to documents filed to close Shirley's Estate by Simon Bernstein acting as the Personal Representative of Shirley when Simon Bernstein was already Deceased (Pages 40-43 - Section "IX.FORGED AND FRAUDULENT DOCUMENTS FILED IN THE ESTATE OF SHIRLEY IN THIS COURT BY TESCHER AND SPALLINA CONSTITUTING A FRAUD ON THIS COURT AND THE BENEFICIARIES AND MORE);

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<sup>7</sup> May 06, 2013 Petition @ URL

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

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- b. That there were improper notarizations in Dispositive Documents including a Will and Trust (Pages 43-45 Section “X. INCOMPLETE NOTARIZATION IN THE ALLEGED 2012 AMENDED TRUST OF SIMON AND MORE” and “XI. INCOMPLETE NOTARIZATION IN THE 2012 WILL OF SIMON AND MORE”)
- c. That Spallina and Tescher had withheld from beneficiaries in violation of Probate Rules and Statutes any documents on Shirley’s Estate and Trusts for approximately 18 months which should have created further bases for this Court to Order investigation and a prompt hearing to determine truth and authenticity in the Trusts and Estate dispositive documents (Pages 37-40 Section “VIII. PETITIONER FORCED TO RETAIN COUNSEL DUE TO PERSONAL REPRESENTATIVES LACK OF DUTY AND CARE, BREACHES OF FIDUCIARY DUTIES AND CONFLICTS OF INTEREST REGARDING MISSING ESTATE ASSETS AND DOCUMENTS AND MORE”);
- d. Of utmost importance should have been information that Ted Bernstein himself and with the aid of his counsel reported the possible Murder of he and Petitioner’s Father, which was reported by Ted Bernstein on the date Simon passes away to the Palm Beach County Sheriff and the Coroner and starting two official inquiries into allegations of Murder<sup>8</sup> (Pages 85-86 Section “XVII. ALLEGED MURDER OF SIMON BERNSTEIN”);

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<sup>8</sup>Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

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- e. That the Court and Spallina are notified of substantial personal property missing (stolen) including jewelry and artwork worth millions of dollars and that Shirley's condominium had already been sold by Ted Bernstein and yet no Determination had been made by this Court regarding the validity of the Trusts and Ted Bernstein's right to act and dispose of assets (Pages 51-57 "XIV. VANISHING ESTATE ITEMS AND ASSETS");
- f. That the Court and Spallina are notified of the "Elephant in the Room" relating to the Iviewit stock and Intellectual Property Interests that Simon Bernstein had, worth an estimated billions of dollars, which is tied into a prior RICO action and a prior car-bombing of Petitioner's Minivan (see [www.iviewit.tv](http://www.iviewit.tv) for graphic images of the Car Bombing that looks like a scene from a war) that was now relating to the case before this Court (Pages 57-82 Section "XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS.");
- g. That the Court is notified of an alleged Life Insurance fraud scheme (Pages 27-37 Sections "VI. MISSING LIFE INSURANCE TRUST AND LIFE INSURANCE POLICY OF SIMON" and "VII. INSURANCE PROCEED DISTRIBUTION SCHEME");
- h. That other assets were remaining that should have been been frozen such as the St. Andrew's home recently listed by Petitioner's father weeks before his passing for over \$3 million.

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25. Simply reviewing the September 13, 2013 Hearing Transcript<sup>9</sup> of a proceeding before Judge Colin regarding the Emergency Petition filed on May 06, 2013 and heard on September 13, 2013 (held on the anniversary of Simon's death four months after filing) shows further clear basis for Disqualification of Judge Colin on numerous grounds including knowledge of disputed evidentiary facts and likelihood of being called as a fact witness premised upon his involvement and knowledge of the Ex Parte Communications with Attorney Spallina on Nov. 5th 2012 after the fraudulent filings of Spallina on Oct. 24, 2012 but also based upon clear bias and prejudice and lack of impartiality as by this date September 13, 2013 Judge Colin:

- a. knows about Tescher and Spallina using alleged documents of Deceased Simon Bernstein to close Shirley's Estate filed on Oc. 24, 2012;
- b. knows of the fraudulent Notaries made upon the Waivers that had first been rejected by his Court via the Ex Parte Memo of Nov. 5, 2012 for having no Notaries and then later submitted with the fraudulent Notaries to help close the Estate;
- c. knows that Tescher and Spallina have never been Ordered to Show Cause before his Court about the fraud;
- d. knows he had not referred Tescher and Spallina's law firm's conduct for Attorney Discipline investigation;
- e. knows of the claims of substantial personal properties stolen and missing from Shirley's Estate;

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<sup>9</sup> September 13, 2013 Hearing Judge Colin

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

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- f. knows of Spallina's firm withholding any documents on Shirley's Trusts from beneficiaries for over two years, which should have raised clear red flags particularly in light of the frauds on his own Court by Tescher and Spallina's firm;
- g. knows of the failure to have any Accounting of Shirley's Estate with the failure ongoing for years by this time in violation of Probate Rules and Statutes;
- h. knows he has conducted no Hearing to determine the proper construction and meaning of Shirley's Trusts and Estate, which remains incomplete to this date and determine who the proper Beneficiaries, Trustee and Representatives should be, all which remains unknown to this date;
- i. knows that Ted Bernstein himself reported possible Murder of Simon Bernstein to police authorities and the state Medical Examiner for autopsy on the date of Simon's passing<sup>10</sup>;
- j. knows of the "elephant in the room"<sup>11</sup> being Iviewit and the Iviewit stock and patents valued in the billions involving Simon Bernstein and now a missing part of the Estates and Trusts and tied into a prior RICO and Antitrust Lawsuit and a car-bombing of Petitioner's minivan reported and investigated by authorities; and
- k. knows that Petitioner's minor children have been intentionally and with scienter denied the trust and inheritance funds for their food, shelter, and well being for months that were all part of their inheritance and yet Judge Colin wants to talk instead that day for most of the hearing about Dunkin Donuts, Burger King and having Petitioner cut his

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<sup>10</sup> May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"

<sup>11</sup> May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82

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Court lawn<sup>12</sup>, instead of addressing any of the serious crimes and frauds in his own Court where he and his Court staff are now witnesses and centrally involved in the fraudulent activities.

26. Now perhaps Judge Colin missed lunch and was hungry that first hearing four months after an Emergency Motion was filed by Petitioner and was thinking about Dunkin Donuts and Burger King but there is no way to look at this proceedings and the transcript without not only finding clear bias and prejudice and lack of impartiality in adjudicating rights to such a gross degree as to constitute not only an abdication of Judicial function, duties and responsibility but done in such a way as to be a mockery of the judicial system and process and denying very important rights and claims raised in Petitioner's filings.
27. Consistent with what has emerged in not only this and other Florida Probate Courts but other Courts in New York and around the nation, a review of the Transcripts of proceedings before Judge Colin shows the standard "M.O.", modus operandi, used by corrupted and conflicted Courts by neglecting and burying the real issues of fraud and integrity of proceedings and filings and actions of licensed attorneys and instead proceeding to threaten and harass those exposing the wrongdoings, as is the case with Petitioner as the exposor of fraud, who then is assaulted with multiple hearings for his alleged Contempt, attempts to have Guardians appointed over his family, threats of sanctions and acts of judicial mockery.
28. Judge Colin falsely claims on this September 13, 2013 date not only that no Emergency issues had been raised in Petitioner's Emergency Motion but also that no assets were left to freeze as

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<sup>12</sup> September 13, 2013 Hearing Page 11

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergencv%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENT S.pdf>

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requested in the relief of the Emergency Motion when in fact the St. Andrews's home that had been listed and valued at over \$3 million dollars by Simon Bernstein in the months before his passing still had not been sold and of course there is and was the millions in personal property reported as missing and stolen and the illegal sale of Shirley's Trust Beach Condominium all of which can be subject to claw back processes and other injunctive relief while of course the very real emergency issues of actual fraud upon the Court had been shown involving Judge Colin, the Courts employees and his appointed Officers and Fiduciaries making them all Fact and Material Witnesses at minimum and thus emergency and related relief could and should have been granted, including the voluntary disqualification and more.

29. By the time of this hearing on September 13, 2013, not only did Judge Colin wholly fail to have attorneys Tescher and Spallina Show Cause after the Nov. 5, 2012 Ex Parte Memo and discovery of fraud filings by their office knowingly acting on behalf of their client a deceased Personal Representative/Executor Simon Bernstein to FRAUDULENTLY close Shirley's Estate, Judge Colin also wholly failed to have Attorney Tescher and Spallina and the alleged Fiduciary of Shirley's Trust Ted Bernstein answer in Court that day, especially after Tescher, Spallina and Ted Bernstein had never even submitted a written answer to Petitioner's very specific, detailed Emergency Motion filed May 06, 2013 and subsequently filed motions (Non-Emergency as Colin had forced Eliot to refile his Emergency Pleading several times as a Non-Emergency before allowing it to be heard) placing Tescher, Spallina and Ted Bernstein on further notice of fraud allegations and more.
30. The date of this Hearing was nearly an entire year after Tescher and Spallina had first submitted the fraudulent filings before Judge Colin's Court in Oct. 2012 and yet they were not Ordered to answer the Emergency Petition while allowing Shirley's Estate and Trust to be

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squandered in fraud and unaccounted for, as Spallina, Tescher and Ted seized Dominion and Control of the Estates and Trusts of both Simon and Shirley Bernstein through a series of fraudulent dispositive documents and refused to give beneficiaries any documents in violation of Probate Statutes and Rules and Colin remained asleep at the wheel.

31. It is respectfully submitted that by this time on September 13, 2013, Judge Colin is engaging in the aiding and abetting of the fraud and attempting to cover up past fraud in, upon and by the Court, by what is known as "Steering" and orchestrating of the proceedings away from the crimes and criminals and begins a cleverly disguised retaliation against Petitioner that continues to bias and prejudice Petitioner to this date.
32. This can be more clearly seen in the subsequent Evidentiary Hearing of Oct 28, 2013<sup>13</sup> when again, Judge Colin at the helm, steers and directs the proceedings to avoid the issues of Fraud upon and before his own Court by limiting the proceeding to testimony about a \$25,000 value to Shirley's Estate Inventory (which was never served to beneficiaries in Violation of Probate Rules and Statutes) and discusses not throwing Spallina's Legal Assistant and Notary Public, Kimberly Moran "under the bus" who has by this time admitted to the Governor's Office and West Palm Beach police that she not only falsely Notarized the Waivers, including for a deceased Simon but also forged the signatures for six separate parties, including for the decedent Simon Bernstein Post Mortem, that are ultimately filed before Judge Colin to illegally close the Shirley Estate. Note, while Moran admits to falsifying Notaries and forging signatures on Waivers, not only is there no full record of her acts before Colin's Court but more importantly none of her admissions addresses the other clear fraud such as the Petition for

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<sup>13</sup> October 28, 2013 Evidentiary Hearing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

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Discharge containing Spallina's signature on the document filed on behalf of Deceased Simon Bernstein on Oct. 24, 2012 by Tescher and Spallina, utilizing a Deceased person to close Shirley's Estate and Colin has direct knowledge that no examination of Spallina and Tescher regarding their involvement in the Petition and other document frauds used to close the Estate illegally and knowledge of Moran's admitted activities has occurred even to this date in his Court with his own office and Case Manager implicated by the Ex Parte Memo yet Colin has continued to allow Ted Bernstein who has been represented by Spallina and Tescher continue to act with no accountability where almost all the crimes committed directly benefited Ted Bernstein who had been disinherited.

33. At no time does Judge Colin in the Evidentiary Hearing with Tescher, Spallina and Ted Bernstein present seek to ascertain the truth of the fraud, forgeries and fraud on his Court but more importantly wholly failed to force Spallina or Tescher to Show Cause or swear them in to answer questions to explain the acts of Tescher and Spallina's Legal Assistant and Notary Public Moran and explain their law firms acts of filing documents with a deceased client acting as a fiduciary while dead and more importantly no investigation into how Spallina's signature is on the Petition for Discharge also fraudulently filed before Judge Colin, which is Not the subject of any Admissions by his employee Kimberly Moran and where she was not involved in that crime.

34. Judge Colin simply later permits Spallina and Tescher to withdraw as attorneys, instead of removing them instantly and securing their files and the corpus of the Estate and Trusts while the material facts surrounding the fraud that directly involve Spallina by his own Signature on the Petition for Discharge, Judge Colin and his Case Manager Limouzin, by the Nov. 5th 2012 Ex Parte Memo communication remain undetermined and unheard.

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35. These are additional grounds for removal in that Judge Colin's failure to Order attorneys Tescher, Spallina and the fiduciary Ted Bernstein at minimum to Show Cause before the Court on the frauds on the Court and for Discipline having actual knowledge of the substantial likelihood of misconduct by the fraud by presence of Spallina's own signature on the document purported to be April 9, 2012 Petition for Discharge but not filed with Judge Colin's Court until Oct. 2012 when Simon Bernstein is Deceased nearly a month is itself a failure to discharge Judicial obligations; and then being further Disqualified for being the necessary fact witness of his own Ex Parte Communication to Spallina as evidenced by the Nov. 5th, 2012 Memo and by prejudice and bias shown by the failure to Order Tescher, Spallina and Ted Bernstein for investigation and discipline and Show Cause before his own Court not only in Nov. 2012 but which has still not happened to this day in May of 2015 some 2.5 years later while permitting Ted Bernstein to continue to act as Trustee and Personal Representative/Executor when Ted Bernstein is directly intertwined, interconnected and involved with his own counsel Spallina and Tescher (as they represented Ted in Shirley's Estate and Trusts while acting as Co-Personal Representatives and Co-Trustees of Simon's Estate and Trusts and further represented themselves in their fiducial capacities in Simon's Estate and Trusts) as attorneys involved in the fraud that ultimately benefit their client and business associate Ted and his lineal descendants who are all considered predeceased for all purposes of dispositions of the Shirley Trust and without their fraudulent documents and fraudulent scheme upon the Court would remain so.
36. That after reopening the illegally closed Estate of Shirley in the September 13, 2013 Hearing and immediately prior to the Evidentiary Hearing, Judge Colin, knowing of the Fraud on the Court and already stated to Ted and his counsel Spallina, Tescher and Manceri that he had enough evidence in the hearing to read them all their Miranda Warnings for two separate

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crimes identified in the hearing (the Moran fraudulent notarizations and forgeries and Spallina's using a dead Simon to posit documents with Court to close Shirley's Estate) then shockingly and appallingly appointed Ted as a Successor Personal Representative to the newly reopened Shirley Estate shortly thereafter although Ted was not then qualified to serve under Florida Probate Rules and Statutes..

37. It is noted that while an Attorney was present as Counsel for the Petitioner's Minor children in the hearing this Court held on or about Oct. 28 2013, the record should reflect that this counsel Brandan J. Pratt, Esq. not only failed to inform the Court he was retained to represent Petitioner's Minor children Josh, Jacob and Danny Bernstein and instead in the hearing misrepresented to the Court he was representing Eliot and Candice despite their opposition to this claim, but said counsel Pratt further wholly failed to properly and competently cross examine Spallina, Tescher, Moran and Ted Bernstein and call proper witnesses at this hearing to delve into the criminal and civil torts against the beneficiaries despite advance preparation and planning to the contrary with Eliot and Candice. Pratt claimed he was very close to Judge Colin after the hearing and knew what he wanted.
38. Counsel Pratt failed to examine any of the witnesses about the Tescher and Spallina Petition to Discharge fraud, the fraudulent positing of fraudulent records with the court and failed to examine Ted Bernstein, Spallina and Tescher about known personal property items valued at over \$1 million that they were in had custody over as fiduciaries that he knew were alleged stolen and Counsel Pratt was immediately after the hearing withdrawing as counsel but was requested by Petitioner in writing to notify his malpractice carrier of malpractice for his conduct and misrepresentations of this hearing. The Transcript in this regard clearly speaks for

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itself on what material issues were not only never addressed by Judge Colin but also never asked by Counsel Pratt. See Discharge letter to Counsel Pratt<sup>14</sup>.

39. Improper representation by attorney Pratt, likely malpractice itself, does not eliminate Judge Colin's obligations to address fraud upon his own Court by licensed attorneys and fiduciaries he appointed and in fact the actions of attorney Pratt may likely be part of additional steering and orchestration of the proceedings to cover-up the real fraud and delay and denial to Petitioner, his wife Candice Bernstein, and their Minor children Josh, Jacob and Danny of lawful inheritance and monies due under the Trusts.
40. Pratt seemingly falls out of the sky days before the Hearing and is retained by Eliot and Candice for their children's representation, it was later learned that Pratt, on information and belief, was close personal friends and business associates with Andrew Shamp, Esq. and where Shamp it was later learned worked directly for Ted Bernstein in the past as an employee.
41. This pattern of aiding, abetting and obfuscation of the fraud and criminal enterprise and pattern of acts at play as seen further in Judge Colin's continued abdication of judicial functions in duties in relation to the sale of the St. Andrew's home.
42. This Court's recent Order on May 06, 2015 (which falls under the 10 day rule for disqualification herein) permitting the Sale of the St. Andrew's Home shows even further grounds for mandatory Disqualification of Judge Colin (on his own initiative without waiting for Pro Se Petitioner to file a disqualification pleading) although ample grounds have already been established dating back to Nov. 2012.

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<sup>14</sup> Brand Pratt Letter and Conflict of Interest Disclosure Form

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

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43. Judge Colin has absolute, unequivocal direct knowledge that no testimony of the alleged “buyer” occurred during the Hearing on the sale of the St. Andrew’s Home and knows Florida law requires no undue influence or pressure must be exerted on buyer or seller for there to be an “arms-length” transaction yet issues an Order May 6, 2015 as if the Buyer provided testimony when in fact the buyer’s identity is not even known.
44. In fact, despite Florida’s rigid Disclosure laws Judge Colin has withheld a lis pendens I attempted to file on the property and still has not let said lis pendens be filed or published to this Buyer or any prospective buyer and has threatened Petitioner that if he disclosed the Lis Penden or the fact that the home was tangled in these litigations he would hold him in contempt.
45. According to the Florida Real Property Appraisal Guidelines Adopted Nov. 26, 2002 by the Florida Department of Revenue Property Tax Administration Program Definitions Section 3.1.8 Arm’s-Length Transaction: “ This means a sale or lease transaction for real property where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors.” See, <http://dor.myflorida.com/dor/property/tp/pdf/FLrpe.pdf>.
46. Yet, not only does Judge Colin have actual knowledge he took no testimony from the Buyer since the Buyer was not only not present in Court but the identity not disclosed, but Judge Colin knows the case is ripe with nothing but pressure and undue influence such that Judge Colin has covered up fraud upon his own Court involving licensed attorneys, failed to discharge Judicial obligations and failed to abide by the Code of Judicial Conduct, knows the Trustee he is permitting to act Ted Bernstein reported a possible murder of Petitioner’s father Simon Bernstein the property owner prior to passing, allowing Ted Bernstein to act despite knowing his attorneys and Ted are involved in fraud on the Court and yet failing to conduct a

hearing into the construction and truth of the Trusts even though he says on the Record he knows he has to conduct a hearing and feigned at reading the attorneys Miranda Warnings, has reasons to investigate and suspect these are a continuation of RICO acts tied to a car-bombing, knows or has reason to know the sale is grossly undervalued at \$1,100,000.00 as the property was listed for \$3,200,000.00 weeks prior to the possible murder of Simon Bernstein, knows he and his own Court staff are at least involved as witnesses if not for the fraud itself and is willing to forego his own Judicial responsibilities which could lead to the end of his Judicial career but issues a false order nonetheless saying an arm's length transaction to an unknown buyer, possible straw man buyer was made.

47. Judge Colin knows and should know due process is violated by withholding the identity of the alleged buyer and making such person or entity available for cross-examination.
48. This would seem more than reflective of substantial pressure and influence at play and reflective of a fire sale.
49. Last, fair market value has been defined as "the sum arrived at by fair negotiation between an owner willing to sell and a purchaser willing to buy, neither being under pressure to do so." *Flagship Bank of Orlando v. Bryan*, 384 So.2d 1323 (Fla. 5th DCA 1980). A witness for the appellee admitted at the deficiency hearing that the bank was under pressure to sell the lots and that its bid was lowered because the bank would not be able to sell the lots for what they were worth. The bid price was therefore more an indication of a "quick sale" value than of the property's true fair market value. *BARNARD v. FIRST NAT. BK. OF OKALOOSA CTY.* 482 So.2d 534 (1986) District Court of Appeal of Florida, First District. February 4, 1986.
50. Judge Colin could have Judicially Subpoenaed the Realtor Petitioner had originally spoken to who initially had a far differing opinion of the sales price and value of the home but who then

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refused to get involved due to the presence of another of Ted Bernstein's attorneys Alan Rose who, according to his bio at his firm's website, "Handled securities arbitration for investor in a Madoff feeder fund against major brokerage firm which recommended the investment. confidential terms." The case was settled on confidential terms." See, <http://mrachek-law.com/ourteam/alan-b-rose/>.

51. Further, Judge Colin silenced Petitioner via an illegal Order that mandated that Petitioner could do nothing to directly or indirectly notify the buyer of the Lis Penden or that litigation involving the house was at play and had testimony from the Realtor, John Poletto that he had not notified the buyer of any potential litigation and this seems to force Petitioner to not disclose pertinent facts to a buyer in opposite Florida's disclosure laws.
52. Finally, in his own words in the first day of the hearing to sell the house on March 26, 2015, Colin stated that he first had to have hearings to remove Ted, hearings for trust construction to determine validity and investigation of wrongdoings beyond Tescher and Spallina before being able to proceed further and yet with none of those things were achieved and at the next hearing he allows the sale of the house ignoring his prior statement:

13 MR. ROSE: We didn't share the appraisal  
14 because, frankly, we were concerned it would be  
15 public and that would defeat their chance of  
16 selling it.  
17 THE COURT: I'm not -- look, nothing is easy  
18 here. It's not going to get easier until we can  
19 get hearings where I can start to knock off some  
20 of the issues, which is what I have been saying  
21 now like a broken record.  
22 At some point, either Eliot is going to be  
23 sustained on his positions or he's going to be  
24 overruled, but one way or the other, we can put  
25 some of this stuff to rest. The problem is we're  
I doing all of this business with some of the metes [matters?]

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2 of the case still up in the air where I haven't  
3 been able to adjudicate; the claims that Ted  
4 should be removed; the claims that there's  
5 wrongdoing beyond Spallina and Tescher, the trust  
6 is not valid. I mean, give me a chance to rule on  
7 that, because once I rule on that, then the matter  
8 is over with on those and you'll know one way or  
9 the other what to do.

53. That since May 06, 2013 Judge Colin, knowing of the fraudulent documents in the Estates and Trusts of Simon and Shirley Bernstein, knowing that Simon Bernstein's 2012 Will and Amended Trust done only days before his death when Simon was suffering severe mental and physical duress have been determined by Governor Rick Scott's Notary Public Division to be improperly notarized and further Petitioner has alleged they are wholly fraudulent, knowing that there are ongoing criminal investigations into the documents of both Estates and Trusts, knowing that the new Executor of Simon's Estate has claimed that Ted is not a legally valid Trustee of Simon's Trust<sup>15</sup> by the very terms of the Trust that claim that a Successor cannot be related to the issuer, knowing that Ted is considered predeceased for all purposes of dispositions under the Shirley and Simon trust, knowing that Peter Feaman, Esq., has stated to Colin that Ted and his counsel Alan B. Rose are not qualified as Trustee and Counsel due to serious problems with Ted and Alan's misconduct<sup>16</sup>, knowing that Ted and his counsel Alan B. Rose are counter defendants in two counter complaints filed by Petitioner in these matters with allegations of serious breaches of fiduciary duties (which Colin stayed) and more, knowing that Eliot has filed a

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<sup>15</sup> O'Connell Affirmative Defense, Ted is not a valid Trustee

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

<sup>16</sup> Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

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Counter Complaint in the Shirley Trust case that has both he and Judge French listed as material and fact witnesses that may be Defendants in future amended pleadings<sup>17</sup>, has ignored all of these facts and held hearing, after hearing, after hearing and has:

- a. allowed Estate and Trust properties to be disposed of and distributed without knowing who the beneficiaries are at this time due to the fraudulent documents affects not being resolved at this time,
- b. allowed Estate and Trust properties to be disposed of and distributed without knowing if the Wills and Trusts are valid,
- c. allowed assets to be converted and changed, including allowing a JP Morgan IRA to be converted to a new account when the old account was missing beneficiaries and monies are alleged stolen from it,
- d. allowed assets to be sold and converted without any accountings in violation of Probate Statutes and Rules,
- e. allowed assets to be sold and distributions made to improper beneficiaries despite not having held trust construction or validity hearings to determine first who the true and proper beneficiaries are, thus delaying intentionally beneficiaries inheritances, while allowing assets to be distributed will now have to be clawed back,
- f. allowed fiduciaries and counsel involved in the commission of the fraud to continue to operate in the courtroom with impunity,
- g. allowed continuous hearings where the alleged Trustee Ted has brought in up to five lawyers to defend himself misusing Trust and Estate assets to do so, who have all now resigned other than Alan B. Rose,

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<sup>17</sup> Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

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- h. deprived Minor possible beneficiaries from counsel despite their need arising from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- i. deprived Eliot's family from inheritances that has caused massive financial damages to them despite their financial damage arising from the delays in their inheritances from the criminal misconduct of his Court and its Officers, Fiduciaries and employees,
- j. forced the Creditor William Stansbury for two years to accrue hundreds of thousands of dollars of legal fees, while blocking him from being able to have his counsel file to remove Ted, while the job of removing Ted was Colin's from the moment he became aware that Ted and his counsel had committed Fraud on the Court and stated he had enough to read them all their Miranda's twice,
- k. allowed a settlement with Stansbury where Ted Bernstein acting as the Trustee of the Shirley Trust and simultaneously a Defendant in the Stansbury Lawsuit with his attorney at law Rose acting as counsel to Ted in his conflicting capacities, that settled Ted personally out of the lawsuit and shifted the burden of the settlement cost entirely to the Trusts of Shirley and Simon beneficiaries and where Ted has no beneficial interests, thereby stiffing the beneficiaries with the settlement cost for acts Stansbury alleges were done primarily by Ted,
- l. allowed Ted and his counsel to block the Estate and Trust of Simon to intervene in an Illinois Federal Breach of Contract Lawsuit where the beneficiaries of the Estate and Trusts of Simon have potential interest in an insurance policy, where Ted is acting in conflict to achieve this as the Plaintiff in the Breach of Contract lawsuit who stands to get one fifth of the insurance benefit, whereas if the Estate and Trusts of Simon receive the proceeds Ted again would get nothing. Colin only allowing the Estate to intervene after Stansbury, in efforts to protect the beneficiaries who were unrepresented in the Federal lawsuit and himself to pay the entire cost of the litigation expense for the Estate?

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m. been rude to Petitioner repeatedly and continuously shut him down during hearings, whenever fraud on the court is brought to his attention, and,

n. interfered with Palm Beach County Sheriff investigations, having detectives told not to pursue Petitioner's criminal complaints and claiming his Court would handle the criminal matters and fraud upon his Court.

54. That from at least the September 13, 2013 hearing Judge Colin had a mandated duty to disqualify himself on his own initiative according to Judicial Cannons, Attorney Conduct Codes and Law, as he became fully cognizant that his Court had become a crime scene involving Fraud on the Court and Fraud in the Court, directly involving Judge Colin and Judge French and their court, the Officers of the Court, including Attorneys at Law practicing before them, Fiduciaries appointed by them (Personal Representatives and Trustees) and other Court employees.

55. That once it was determined that crimes had been committed in Judge Colin and Judge French's courts constituting Fraud on the Courts and Fraud in the Courts in which Judge Colin would now be a material and fact witnesses to events in the matter, to avoid the appearance of impropriety and conflicts caused due to his direct involvement as both a material and fact witness, Judge Colin should have voluntarily on his own initiative disqualified himself and distanced himself from the matters, allowing a conflict free adjudicator to replace him who could have investigated the involvement of, the Court, Judge Colin, Judge French, the Officers of the Court and the Fiduciaries of the Court and this would have eliminated the appearance of impropriety created due to Judge Colin's direct involvement in the frauds that had occurred and his subsequent handling of investigations or lack thereof of himself and his court.

56. That failing to disqualify himself on his own initiative for mandated causes by Judicial Canons, Attorney Conduct Codes and Law, Judge Colin lost jurisdiction in this case and his continued actions are all outside the color of law.

57. That Judge Colin's acts forward in these matters from the point that he had knowledge of criminal misconduct in the Court that would make him a material and fact witness constitute Fraud by the Court.

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It is alleged that Judge Colin began a Pattern and Practice of Fraud by the Court by continuing to rule in a matter where disqualification was mandated on his own initiative and so each judicial ruling and proceeding is therefore void.

58. That Petitioner fears that Judge Colin's acts after having cause to disqualify himself have prejudiced and biased the case and continue to prejudice and bias the case, as they are now viewed as part of a Cover Up of the crimes committed in his Court and on his Court by Colin's court appointed Officers and Fiduciaries and the effectuation of new crimes by his Court.
59. That Petitioner fears that Judge Colin's acts outside the color of law after knowing of the causes mandating him to instantly disqualify have been prejudicial to Petitioner and favor those Court officials and fiduciaries that he appointed who committed the criminal acts in and on his Court and these acts have protected himself, his Court appointed officials, fiduciaries and employees who were involved and aid and abet them in evading prosecution and investigation in efforts to cover up criminal acts and have provided legal cover for new criminal acts to be committed under the guise of legal proceedings.
60. Colin is biased and prejudiced against Petitioner who has exposed the crimes of his Court and those committed in Judge David E. French's court in the Simon and Shirley Bernstein Estate and Trust cases and the case involving Petitioner's Minor children.
61. The Estate and Trust cases of Simon and Shirley Bernstein were improperly merged by Judge Colin and Judge French in violation of Probate Rules and Statutes as it was achieved without separate hearings by both Judges and thus improperly transferred to Colin's Court. This included a complex bait and switch, whereby once Colin had approved the transfer to himself of Judge French's case. Judge French's hearing was scheduled on the day before Christmas when the courthouse was closed entirely and Petitioner and his wife showed up to an empty building, ruining their holiday family planned trip to attend. That at the subsequent rescheduled hearing before Judge French, Judge Colin was instead presiding and when asked where Judge French was Colin stated it did not matter if he were there as he routinely handled French's cases. When Petitioner cited the rule calling for separate hearings by each

Judge, Colin proceeded ahead. That Petitioner fears that since the crimes were committed in both courts this improper merging of the cases was to cover up and protect Judge French and his court officials from investigation and possible prosecution and remove one of the crime scenes entirely since similar acts of fraud are alleged in Judge French's court and similarly all his case files should have been sealed for investigation and he and his court officials questioned as to the Fraud on the Court and Fraud in the Court.

62. Once Colin had evidence that FELONY crimes were committed in his Court and Judge French's court by Officers of their courts and fiduciaries of their courts, Colin and French had obligations under Judicial Cannons, Rules of Professional Conduct and Law to report the misconduct to the proper criminal and civil authorities for investigation and failed to do so.
63. Once Colin had evidence of Fraud on the Court, he had obligations to immediately disqualify and allow for the resetting of the proceeding by removing all elements of the fraud, removing all officers of the court involved, all fiduciaries involved and have all court and other records of those involved seized for investigation, have all assets seized and frozen and turn the case over to a new adjudicator and Judge Colin did not do any of these things, in fact, he has intentionally and with scienter done the opposite.
64. That instead of doing what was mandated when Fraud on the Court is discovered, Colin has allowed a pattern and practice of retaliation against Eliot to take place for his efforts in exposing the criminal acts and has continuously allowed conflicted attorneys at law and fiduciaries, involved with the original fraudsters, to file pleading after pleading to attempt to harm Eliot and his family, including several contempt and guardianship hearings held against Eliot, all bleeding the estates and trusts of thousands upon thousands of illegal legal billings for conflicted counsel.
65. Petitioner has blown the whistle on corruption that took place in both Judge Colin and French's courts and has also been involved in an over a decade old whistleblowing lawsuit and other actions against members of this courthouse the 15<sup>th</sup> Judicial, The Florida Bar and many Judges of the Supreme Court of

Florida and Petitioner fears this also creates prejudice and bias against Petitioner with virtually the entire State of Florida legal machine conflicted with him.

66. Petitioner's prior Federal RICO sued the following parties of the Florida Bar Association:

STATE OF FLORIDA,  
OFFICE OF THE STATE COURTS  
ADMINISTRATOR, FLORIDA,

HON. JORGE LABARGA in his official and individual capacities,  
[this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Ivievit, Case #CASE NO. CA 01-04671 AB.]

**THE FLORIDA BAR.**

JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,  
KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,  
LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,  
ERIC TURNER, ESQ. in his official and individual capacities,  
KENNETH MARVIN, ESQ. in his official and individual capacities,  
JOY A. BARTMON, ESQ. in her official and individual capacities,  
JERALD BEER, ESQ. in his official and individual capacities,  
BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities.  
JAMES J. WHEELER, ESQ. in his professional and individual capacities,

**FLORIDA SUPREME COURT,**

Hon. Charles T. Wells, in his official and individual capacities,  
Hon. Harry Lee Anstead, in his official and individual capacities,  
Hon. R. Fred Lewis, in his official and individual capacities,  
Hon. Peggy A. Quince, in his official and individual capacities,  
Hon. Kenneth B. Bell, in his official and individual capacities,  
THOMAS HALL, ESQ. in his official and individual capacities,  
DEBORAH YARBOROUGH in her official and individual capacities.

DEPARTMENT OF BUSINESS AND  
PROFESSIONAL REGULATION – FLORIDA,  
CITY OF BOCA RATON, FLA., [Police Department]

DETECTIVE ROBERT FLECHAUS in his official and individual capacities,  
CHIEF ANDREW SCOTT in his official and individual capacities,  
CHRISTOPHER C. WHEELER, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]  
MATTHEW M. TRIGGS, ESQ. in his official and individual capacity for The Florida Bar and his professional and individual capacities as a partner of Proskauer,

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ALBERT T. GORTZ, ESQ. in his professional and individual capacities. [now involved in the Estate and Trust matters]<sup>18</sup>

67. Petitioner feels that Judge Colin's acts outside the color of law have been intentional to prevent Petitioner from gaining his inheritance and having funds that could be used in this legal action against his court and Petitioner's other legal actions against members of the Florida Bar, including protecting what Judge Colin claims in a Florida Bar Publication to be his mentor<sup>19</sup>, Chief Judge Jorge Labarga, who is a central figure in Petitioner's ongoing civil and criminal complaints regarding theft of Intellectual Properties of Petitioner's and his father.

68. Judge Colin is acting outside his jurisdiction once he was mandated to disqualify on his own initiative and acting outside the color of law and therefore he should disqualify on his own initiative instantly and his orders must then be voided. Judge Colin is a disqualified judge who has not relinquished his unlawful jurisdiction.

69. Judge Colin now is also adverse to Petitioner because Petitioner has filed with the Federal Court in the Northern District of Illinois under The Honorable John Robert Blakey exposing the corruption in his Colin's court and throughout the Probate courts in Florida<sup>20</sup>. Petitioner is seeking to have these Probate cases transferred to the Federal Court involving estate related subject matter (the insurance breach of contract proceeds) under Blakey for investigation, review and further adjudication of the matters free

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<sup>18</sup> Full List of Iviewit RICO Defendants @

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

<sup>19</sup> Colin statement regarding Labarga as his mentor

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

<sup>20</sup> Omnibus Motion Federal Court

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

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of conflicts and illegal activities, once Judge Colin complies with the mandated disqualification or is forced off the case if he continues to refuse.

70. Petitioner has sought Federal Court intervention due to the fact that Petitioner is adverse to all Florida State Bar Members and where he has taken civil action and filed criminal complaints against the Florida State Bar and thus all members are technically and legally conflicted and adverse to Petitioner as members of the organization Petitioner is pursuing.
71. Petitioner has been viciously retaliated by Judge Colin by denying him due process in one manner or another, acting above the law and removing rights of Petitioner and his Minor children, while protecting his Court and those involved in criminal misconduct from exposure of the crimes committed in his and Judge French's court by Officers and Fiduciaries of the Court.
72. Where it may be learned by investigation that both Judge Colin and Judge French may be involved directly in the original Frauds Upon the Court and were willing participants in such crimes against Petitioner and his family, including but not limited to, Fraud on the Court, Fraud in the Court, Fraud by the Court, Forged documents posited with the Court by officers and fiduciaries of the Court, Fraudulent Notarizations (including Post Mortem for decedents in the actions) filed and posited with the Court, Illegal Closing of an Estate using a deceased person's identity and ultimately the possible Murder of Simon Bernstein as alleged by Ted Bernstein and others (not Petitioner) on the day Simon died.
73. Judge Colin's actions once he failed to disqualify as mandated, outside the color law and without jurisdiction, make him an accomplice to current and ongoing fraud against Eliot and Eliot's Minor children who are beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein and it is clear that Eliot has valid fear that he has been denied due process and procedure once his mandatory disqualification was not entered on his own initiative.

**Rule 2.330 (d) Grounds.**

**(2) That the judge before whom the case is pending, or some person related to said judge by consanguinity or affinity within the third degree, is a party thereto or is interested in the result thereof, or that**

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**said judge is related to an attorney or counselor of record in the cause by consanguinity or affinity within the third degree, or that said judge is a material witness for or against one of the parties to the cause.**

74. Judge Colin will be a material and fact witness regarding his direct involvement in the documents used fraudulently in his Court, regarding the interaction with the Officers of his Court involved, regarding the interaction with the Fiduciaries of his Court he appointed and his interaction with the Court employees involved in this case as described above, regarding the criminal misconduct that has occurred in and on his Court and that of Judge French's court. Judge Colin's position now as a material and fact witness MANDATE under Judicial Canon his INSTANT DISQUALIFICATION.
75. Judge Colin due to his direct involvement in the matters and failure to disqualify upon mandated grounds requiring his disqualification on his own initiative will now also make him a party of interest in ongoing and future criminal and civil actions to determine if he has committed felony acts and more in so acting outside the color of law. Now there is not only an appearance of impropriety but the alleged possible criminal misconduct of Judge Colin which may constitute criminal impropriety and again cause for MANDATORY DISQUALIFICATION.
76. Judge Colin cannot investigate his own court, himself and the officers and fiduciaries of his Court, especially where he is directly involved, due to the appearance of impropriety this creates and this appearance of impropriety prejudices Petitioner from due process rights.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and**

Motion for Disqualification Judge Colin

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**promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

77. This Motion is being made within 10 days from Petitioner's receipt of a "FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S MOTION TO APPROVE SALE OF TRUST PROPERTY signed May 06, 2015. Where this Order, as with all Orders issued after Judge Colin's Mandatory Disqualification was failed, is an illegally obtained Order and therefore legally void, other grounds for this Order mandating disqualification have also been described herein.

78. This Motion for Disqualification is timely because all actions past and future of Judge Colin are void as his disqualification from the matters should have occurred the instant he was aware that crimes occurred in his Court and on his Court by his appointed Officers and Fiduciaries and thus all judicial acts both past, present and future are all grounds for immediate investigation, disqualification, voiding of all orders and sanctions.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

79. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Colin has to voluntarily disqualify under Judicial Canons, Attorney Conduct Codes and Law and whereby whether legally sufficient or not 2.330 allows Colin to disqualify on his own.

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**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

80. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

81. Petitioner seeks that upon disqualification of Judge Colin, that all prior factual or legal rulings be vacated by the successor judge due to the alleged criminal acts and civil torts against Petitioner. That further, Petitioner seeks a replacement Judge who is not a member of the Florida Bar to preside over the cases of Judge Colin involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. That due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida by members of the Florida Bar Petitioner is seeking this Court to move the matters to a Federal Court<sup>21</sup>. The following cases that Judge Colin presides over are all tainted for the same reasons as stated herein and judge Colin should immediately voluntarily disqualify himself from these cases as well and save Petitioner the expense and aggravation of having to file Disqualification pleadings in each case to force his mandated disqualification:

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<sup>21</sup> May 14, 2015 Letter to Judge Blakey

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

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- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD  
Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

82. Petitioner states that Judge Colin should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him but refused to do so on the repeated requests of Petitioner. If for any reason Judge Colin finds this Motion legally insufficient for any reason, Judge Colin must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes and Law.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

83. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive Probate rulings thus far that have interfered intentionally with their and Petitioner's expectancies that this Disqualification be made instantly as it is legally sufficient and MANDATED. Delays could cause further harm of Petitioner's minor children and Petitioner which would result in

Motion for Disqualification Judge Colin

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additional damages and liabilities to those parties ultimately held accountable for the acts of Judge Colin outside the Color of Law.

84. That PRIOR to any other actions by Judge Colin, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits; etc.—**

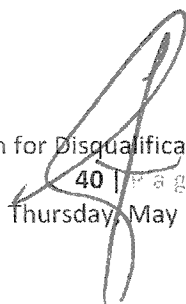
**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

85. Petitioner has supplied a legally sufficient Affidavit herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Colin immediately disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Colin that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law.

Under Penalties of perjury, I swear under oath and affirm that I have read the foregoing and the facts

Motion for Disqualification Judge Colin



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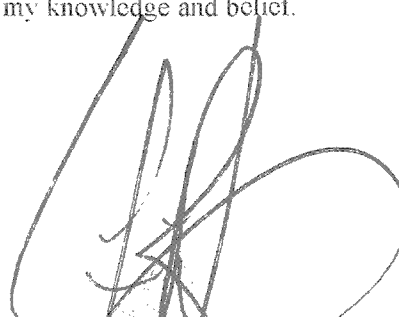
Thursday, May 14, 2015

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alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 14<sup>th</sup> day of May, 2015

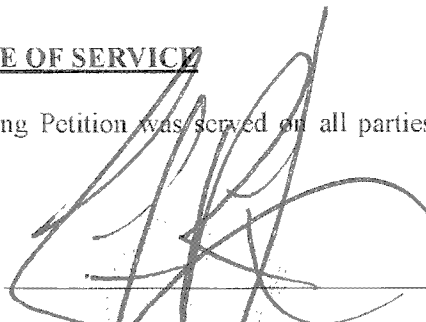
Respectfully Submitted,



Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone: 561-245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 14th day of May, 2015.



Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone: 561-245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

STATE OF FLORIDA

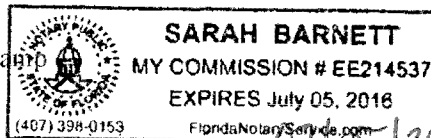
COUNTY OF PALM BEACH COUNTY

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification. California DL #C6956008

NOTARY PUBLIC



Print name of Notary:



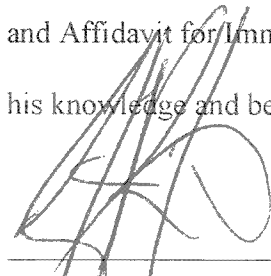
My commission expires: 07/05/2016

Motion for Disqualification Judge Colin

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Thursday, May 14, 2015

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin Colin is true and correct to the best of his knowledge and belief



Eliot Ivan Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

May 14<sup>th</sup>, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 14<sup>th</sup> day of May, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification California DL #C6A56008

Notary Public Sarah Barnett  
Print name: Sarah Barnett

Stamp

My commission expires: 07/05/2016



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**EXHIBIT 1 - URL EXHIBITS FULLY INCORPORATED BY REFERENCE HEREIN IN THE  
MOTION**

**1. November 05, 2012 Memorandum**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121105%20Court%20Memorandum%20Need%20Notarization%20Reciepts%20for%20assets%20from%20all%20of%20specific%20beneficiaries%20were%20not%20notarized.pdf>

**2. Simon Bernstein un-notarized Waiver @ URL**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20WAIVER%20SIMON%20UNNOTARIZED%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024%20EIB%20COMMENTS.pdf>

**3. Simon Bernstein un-notarized Petition for Discharge (Full Waiver) @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

**4. Affidavit of No Florida Estate Tax Due @ URL**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Affidavit%20of%20No%20Florida%20Estate%20Tax%20Due%20SIGNED%2020110409%20NOT%20FILED%20until%2020121024%20Shirley.pdf>

**5. Probate Checklist**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20120215%20Prbate%20Checklist%20Shirley%20NOT%20FILED%20UNTIL%20OCTOBER%2024%202010.pdf>

**6. Order of Discharge**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130103%20Order%20of%20Discharge%20Shirley%20Signed%20Judge%20Colin%20Scratched%20Date%20no%20initials.pdf>

**7. May 06, 2013 Petition @ URL**

Motion for Disqualification Judge Colin

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<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>

**8. Palm Beach County Sheriff and Coroner's Reports (Pages 25-28 Sheriff Report and Pages 32-41 Coroner Report)**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

The Court should note that the initial autopsy failed to run a poison heavy metal test but Petitioner upon finding out that this had not been done ordered the Coroner to test for poison and on March 10, 2014, over a year and half after Simon died, it was completed (Pages 42-44) and several poisons showed elevated levels and the deceased had morphed to a **113 year old male**.

**9. September 13, 2013 Hearing Judge Colin**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20mirandas.pdf>

**10. May 06, 2013 Petition - Section III "POST MORTEM AUTOPSY DEMAND AND SHERIFF DEPARTMENT INVESTIGATION OF ALLEGATIONS OF MURDER"**

**11. May 06, 2013 Petition - Section XV "The Elephant in the Room" Pages 57-82**

**12. September 13, 2013 Hearing Page 11**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri%20ELIOT%20COMMENTS.pdf>

**13. October 28, 2013 Evidentiary Hearing**

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20131028%20Evidentiary%20Hearing%20TRANSCRIPT%20Shirley%20Estate.pdf>

**14. Brand Pratt Letter and Conflict of Interest Disclosure Form**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131109HuthPrattWithdrawalLetterandConflictDisclosure.pdf>

**15. O'Connell Affirmative Defense, Ted is not a valid Trustee**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf> (Page 7)

Motion for Disqualification Judge Colin

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Thursday, May 14, 2015

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**16. Peter Feaman, Esq. Letter to Brian O'Connell Regarding Ted Bernstein and Alan Rose, Esq. misconduct**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O%27Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

**17. Answer and Counter Complaint Oppenheimer Lawsuit Page 2 - Colin and French listed as Witnesses and Possible Defendants**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140902%20Final%20Signed%20Printed%20Counter%20Complaint%20Trustee%20Construction%20Lawsuit%20ECF%20Filing%20Copy.pdf>

**18. Full List of Iviewit RICO Defendants @**

<http://iviewit.tv/CompanyDocs/Appendix%20A/index.htm>

**19. Colin statement regarding Labarga as his mentor**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20061224%20Palm%20Beach%20County%20Bar%20Association%20Judge%20Martin%20Colin%20Mentor%20Judge%20Labarga.pdf>

**20. Omnibus Motion Federal Court**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20FINAL%20ESIGNED%20NOTICE%20OF%20OMNIBUS%20MOTION%20ECF%20STAMPED%20COPY.pdf>

**21. May 14, 2015 Letter to Judge Blakey**

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20Letter%20Scheduling%20and%20Discovery%20to%20Hon%20Judge%20John%20Robert%20Blakey.pdf>

Motion for Disqualification Judge Colin

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Thursday, May 14, 2015

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*"Surf with Vision"*

Eliot I. Bernstein  
Founder & Inventor  
Direct Dial: (561) 245-8588 (o)  
(561) 886-7628 (c)

Thursday, May 14, 2015

The Honorable John Robert Blakey  
United States District Court for the Northern District of Illinois Eastern Division  
Everett McKinley Dirksen  
United States Courthouse  
219 South Dearborn Street  
Chicago, IL 60604  
Courtroom 1725 | Chambers 1046  
Telephone Number: (312) 435-6058  
Fax Number: (312) 554-8195

**RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY**

Dear Honorable Judge John Robert Blakey,

I write to acknowledge and express my understanding of my obligations to conform my filings to the formatting rules of the Court and matters within the Court's jurisdiction. I also write in regards to Scheduling issues after our status call this week with your Court indicating Discovery to be closed upon the taking of the Deposition of my brother, Plaintiff, Ted Bernstein.

I will respectfully be seeking leave by way of formal motion to open the Discovery not only for further examination of Ted Bernstein but also to Notice for

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Page 1 of 6  
Thursday, May 14, 2015

001500

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Deposition Judge Martin Colin of the Palm Beach Probate Court who I have just petitioned for Mandatory Disqualification on numerous grounds under the Florida Rules and Code including but not limited to being a necessary fact witness and material witness to actions of fraud upon his Court involving licensed attorneys Tescher and Spallina who have also been part of the litigation before this Court.

I have attached the Disqualification motion herein with respect to Florida Judge Colin for good faith reference and seek leave to move by way of formal motion within this Court's formatting rules to demonstrate the intertwined nature of the actions in this Court with the fraud and actions in Judge Colin's Court.

Please note that the car-bombing of my family mini-van in Boynton Beach, Florida was a very real thing and not a day goes by when I don't wonder what will happen any time my wife, children or I get in to a car. Full pictorial evidence and reports by involved authorities thus far can be found at [www.iviewit.tv](http://www.iviewit.tv) .

This car-bombing was also reported as part of a Petition I filed with the White House to President Obama, the White House Counsel's Office, the US Attorney General, FBI, SEC and other related federal and state agencies and I have attached a link to this Petition which provides a good overview of the "elephant in the room" being the nature of my Technology which is used on the Hubble Space Telescope, for a mass of US Defense applications, across the globe for digital imaging across the internet and more and also outlines how I was directed by Harry I. Moatz of the Office of Enrollment and

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**Iviewit Holdings, Inc./Iviewit Technologies, Inc.**  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245-8588 (b) / (561) 886-7628 (c) / (561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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Discipline of the USPTO to file a Petition claiming fraud upon the United States as well as myself and shareholders involving the Technology, which led to suspensions of the Intellectual Properties. The Technology was validated, used, tested and approved by leading engineers and computer experts on property owned by Lockheed Martin in Orlando, Florida at Real3d, Inc. which was at that time a consortium owned by the Intel Corporation, Lockheed Martin and Silicon Graphics and the technologies were valued in the hundreds of billions of dollars over the life of the IP claimed as the "holy grail" of the internet by these leading engineers. See,

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20.pdf> .

Also please note that not only is the car-bombing a very real event that occurred in my life during this ongoing Technology fraud and theft, but as noted in the White House Petition and elsewhere even a Federal Agent such as FBI Special Agent Luchessi of the Palm Beach Office of the FBI has "gone missing" according to West Palm Beach Florida FBI Office (leading to my being directed to former Inspector General Glenn Fine of the Department of Justice for resolution, which still has not occurred) while investigating the Iviewit matters leaving myself in a position of not being able to trust even federal officers and agents and thus I typically err on the side of documenting all

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245-8588 (o) / (561) 886-7628 (c) / (561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)

RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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important information in all known places and federal state and international offices. Now as you may be aware from my prior filings, there are new frauds and criminal acts by same, similar, and/or related actors with reports that my father may have been murdered.

Since the time of the February 2009 White House Petition filing when I was personally on the phone line confirming the fax number and receipt for the White House and White House Counsel's office, not a single US Secret Service Officer, Capitol Police, US Marshall or other federal agent has shown up to say I filed a frivolous and harassing Petition to the President or to challenge the veracity of my statements in the Petition. Again, I respectfully remind the Court that I was directed by a Federal official, Harry I. Moatz, Director of the Office of Enrollment and Discipline, to file a petition for suspension claiming Fraud Upon the United States by Patent Bar Attorneys and others

Judge St. Eve had already granted me Leave to Amend my Complaint and the motion to take Florida Judge Colin's Deposition in this Court will demonstrate the relevance to these proceedings and action by the intertwined orchestration of fraud cover up by Judge Colin in his Court also involving Ted Bernstein who is a party in this action and attorney Spallina and others common in both cases also exposing the depth and breadth of the powerful financial interests at play. See the 2009 SEC Petition for general background.

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245-8588 (o) / (561) 886-7628 (c) / (561) 245-8644 (f)  
[info@iviewit.com](mailto:info@iviewit.com) - [www.iviewit.com](http://www.iviewit.com)

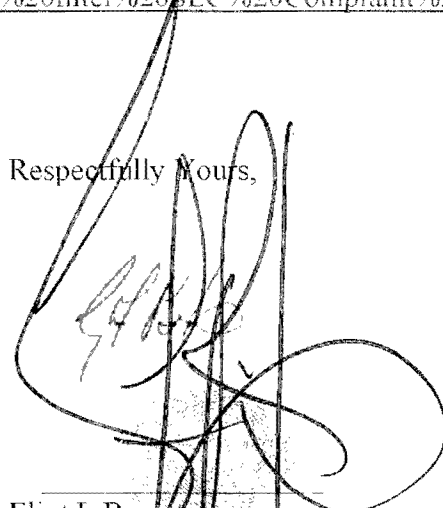
RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Respectfully Yours,



Eliot I. Bernstein  
Founder & Inventor

Iviewit Holdings, Inc. – DL  
Iviewit Holdings, Inc. – DL  
Iviewit Holdings, Inc. – FL  
Iviewit Technologies, Inc. – DL  
Uview.com, Inc. – DL  
Iviewit.com, Inc. – FL  
Iviewit.com, Inc. – DL  
I.C., Inc. – FL  
Iviewit.com LLC – DL  
Iviewit LLC – DL  
Iviewit Corporation – FL  
Iviewit, Inc. – FL  
Iviewit, Inc. – DL  
Iviewit Corporation

cc/ec:

Enclosure(s)/Attachment(s)/URL's

**All Uniform Resource Locators ( URL's ) and the contents of those URL's are incorporated in entirety by reference herein and therefore must be included in your hard copy file WITH ALL EXHIBITS, as part of this correspondence and as further evidentiary material to be Investigated. Due**

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245-8588 (o) / (561) 886-7628 (c) / (561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) - [www.iviewit.tv](http://www.iviewit.tv)

001504



RE: CASE NO. 13 CV 3643 - SCHEDULING AND DISCOVERY

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to allegations alleged by New York State Supreme Court Whistleblower Christine C. Anderson and similar claims in the Iviewit RICO & ANTITRUST Lawsuit regarding Document Destruction and Tampering with Official Complaints and Records, PRINT all referenced URL's and their corresponding exhibits and attach them to your hard copy file, as this is now necessary to ensure fair and impartial review.

In order to confirm that NO DOCUMENT DESTRUCTION OR ALTERCATIONS have occurred, once complete forward a copy of this correspondence with all exhibits and materials included to, Eliot I. Bernstein at the address listed herein. This will insure that all parties are reviewing the same documentation and no additional illegal activity is taking place. If you, for any reason, are incapable of providing this confirmation copy, please put your reasons for failure to comply in writing and send that to Eliot I. Bernstein at the address listed herein. Note, that this is a request only for a copy of this Correspondence and the referenced materials and NOT a request for any Case Investigation information, which may be protected by law.

cmb/eib

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Iviewit Holdings, Inc./Iviewit Technologies, Inc.  
2753 N.W. 34<sup>th</sup> St. Boca Raton, Florida 33434-3459  
(561) 245.8588 (o) / (561) 886.7628 (c) / (561) 245-8644 (f)  
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001505

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE /GUARDIANSHIP DIVISION "TY"

CASE NO. 502014CP003698XXXXSB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,  
Plaintiff,

v.

ALEXANDER BERNSTEIN; ET AL.,  
Defendants.

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**ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN  
COLIN**

**THIS CAUSE** came before the Court on Eliot Bernstein's Verified Sworn  
Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin  
Colin. It is hereby,

**ORDERED AND ADJUDGED** that the Eliot Bernstein Verified Sworn  
Emergency Petition and Affidavit for Immediate Disqualification is **Denied** as legally  
insufficient.

**DONE AND ORDERED** in chambers, at Delray Beach, Palm Beach County,  
Florida this 18<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
MARTIN H. COLIN  
Circuit Court Judge

JARON R. GREGG, CLERK  
PALM BEACH COUNTY, FL  
SOUTHGATE BRANCH-FILED

2015 MAY 18 PM 3:05

**Copies furnished:**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, Fl. 33401

Alan Rose, Esquire  
505 South Flagler Drive, Suite 600  
West Palm Beach, Fl. 33401

Pamela Beth Simon  
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Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401

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

CASE NO: 502014CP003698XXXXSB  
PROBATE DIVISION: IY

**TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,**  
Plaintiff,

v.

**ALEXANDER BERNSTEIN; ET AL.,**  
Defendants.

2015 MAY 19 PM 3:54  
SHARON H. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH COUNTY BRANCH FILED

**ORDER OF RECUSAL**

**SUA SPONTE**, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

**DONE and ORDERED** in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
**MARTIN H. COLIN**  
Circuit Judge

Copies furnished:  
Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

John P. Morrissey, Esquire  
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IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT IN AND FOR PALM  
BEACH COUNTY, FLORIDA

PROBATE DIVISION  
CASE NUMBER: 502014CP003698XXXXNB  
DIVISION: IJ

IN RE: SHIRLEY BERNSTEIN TRUST AGREEMENT

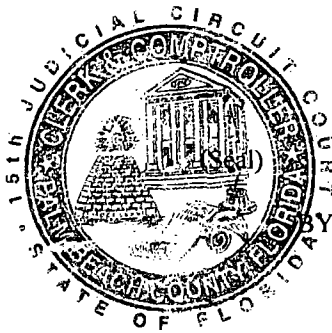
**DTD MAY 20, 2008, AS AMENDED**

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE MARTIN H COLIN** dated *05/19/15*, the above styled case is reassigned to Division *IJ*, Judge(s) **JUDGE HOWARD K COATES** for all further proceedings.

WITNESS my hand and seal of this Court this 19 day of May, 2015.



Sharon R. Bock  
Clerk & Comptroller

*Sharon R. Bock*  
Deputy Clerk

2015 MAY 19 PM 4: 27  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY  
SOUTH CITY BRANCH FILED

cc:  
CC: ALL PARTIES

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_/

**SUCCESSOR TRUSTEE'S ANSWER AND AFFIRMATIVE DEFENSES**  
**TO AMENDED COMPLAINT DATED APRIL 28, 2015**

Plaintiff, Ted S. Bernstein, as Successor Trustee (the "Trustee") of the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Trustee"), serves his Answer and Affirmative Defenses to the Amended Complaint to Remove Theodore Stuart Bernstein as Successor Trustee (the "Complaint") filed by Eliot Bernstein in numerous capacities ("Eliot"), and states:

**ANSWER**

1. As to paragraph 1, admitted that Eliot is over 18 years old; denied that Eliot is a beneficiary of the Trust as a result of Simon Bernstein's exercise of his special power of appointment; and otherwise without knowledge. In the unlikely event that and to the extent that Eliot is a beneficiary or is judicially determined to be beneficiary of the Trust, he has contractually agreed that payments made by his parents to him or for his benefit, in the amount of \$100,000 annually or more, from and after August 15, 2007, shall reduce dollar-for-dollar any inheritance of Eliot individually.

2. As to paragraph 2, admitted that Eliot is the father of three minor children; admitted that the three minor children are beneficiaries of the Trust under the power of appointment; and otherwise without knowledge.

3. As to paragraphs 3 and 6, admitted.

4. As to paragraph 4, 27, 39-40, 46, admitted that there are applicable Florida Statutes, which set forth the requirements of law as written and as interpreted by Courts, and otherwise denied.

5. As to paragraphs 5, 12, 13, 25, 26, 28-38, 43-45, 48-55, 58-59, 61, 63-79, and 84-88, denied.

6. As to paragraphs 7-11, 14-18, 21, 23, 24, 30, 32, 47, 56-57, 60, 83 and 89, the paragraphs were stricken by the Court, so no response is necessary. If for any reason it is determined that a response is necessary to any of these paragraphs, denied.

7. As to paragraphs 19, 20, 41 and 42, denied. The original Trust Agreements for Simon and Shirley Bernstein remain in the Tescher and Spallina law firm, where they were maintained



during the settlors' lives and where they been and remained throughout these proceedings, and the Trustee has possession of two duplicate originals of each Trust signed by Simon and Shirley Bernstein.

8. As to paragraph 22, the testimony of a witness if admissible is expressed in a written transcript; without knowledge as to whether the paraphrasing of such testimony is accurate; admitted that Simon's Will dated May 20, 2008 (later revoked) and Simon's Trust Agreement dated May 20, 2008 (later amended and restated) are similar but not identical to the Will and Trust signed by Shirley on May 20, 2008; and otherwise denied.

9. As to paragraph 62, the pleadings and court filings made in Illinois set forth the participants' respective positions; and otherwise denied.

10. As to paragraphs 80-82, denied. The Court approved the parties' agreement that the Trustee would make a partial interim distribution to Eliot and/or his children, directly to the St. Andrews School. The Trustee was ready, able and willing to complete the distribution, but Eliot refused to accept the distribution under the terms approved by the Court, and refused to cooperate with the Trustee for reasons known only to Eliot. Indeed, Eliot's recent testimony under oath suggested that either he did not want his children to attend St. Andrews or did not care if they did had to attend a suitable public school, which may help explain Eliot's conduct in refusing a partial interim distribution to him and/or his kids.

#### **AFFIRMATIVE DEFENSES**

11. Trustee, who is expressly named in the Trust Agreement, is entitled to indemnification to the fullest extent provided in the Trust, Article IV(G)(1-3), and hereby makes demand for all such indemnification rights.

12. The alleged conflicts of interest between Eliot and the Trustee, which are denied, were anticipated by the Settlor given Eliot's prior actions, his physical and mental health history, and his track record in dealing with persons of authority or persons who will not give in to Eliot's unreasonable demands. Any potential conflicts were specifically waived in the Trust. In truth, there is no conflict between the Trustee and Eliot; instead, this entire proceeding is simply Eliot expressing displeasure with the size of his inheritance and otherwise abusing the judicial system. To the extent that Eliot perceives there to be a personality issue, removal of a trustee must be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the trust, not a personality issue by a beneficiary nor any potential mismanagement of the trust.

13. The alleged conflicts of interest relating to the life insurance policy and litigation in Illinois, although denied, are irrelevant to this matter because Shirley Bernstein Trust is not a beneficiary of the policy. Moreover, any potential conflicts were anticipated by the Settlor, and any potential conflicts were specifically waived in the Trust.

14. The Petition contains a misjoinder of causes of action, because Eliot has filed suit in numerous independent capacities, in violation of Rule 1.110(g), Fla. R. Civ.P.; *General Dynamics Corp. v. Hewitt*, 225 So. 2d 561, 563 (Fla. 3d DCA 1969); *County of Sarasota v. Wall*, 403 So. 2d 500 (Fla. 2d DCA 1981); 1 Am.Jur.2d Actions § 94 (1994).

15. Eliot is not a beneficiary of the Trust because Simon exercised his power of appointment. Eliot also is neither a beneficiary of Shirley's Estate (everything given to Shirley's Trust) nor Shirley's Trust (Simon exercised his Power of Appointment to distribute equal shares to his grandchildren). Thus, for all intents and purposes, Eliot was disinherited entirely and also was not named in any fiduciary role in either estate or trust. Simply, he lacks individual standing.

Pursuant to statute, only a "settlor, a cotrustee, or a beneficiary may request the court to remove a trustee." Fla. Stat. § 736.0706(1).

16. Eliot also is not qualified to act for his children because he admits there is a conflict between his position and theirs, and because Eliot is not a suitable representative for his children's interests based upon his vexatious and inappropriate litigation tactics demonstrated in this case. Eliot has stated that there is a conflict, between he and his children, as more fully explained in Oppenheimer's Motion to Appoint Guardian Ad Litem dated September 19, 2014 in Case No. 502014CP002815XXXXSB (IY)(incorporated herein by reference), which case is separate and unrelated to these estate and trust matters, but involves some of the same players. Oppenheimer stated:

Courts are inclined to appoint a parent as a child's litigation representative *unless "it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent."* 1 Leg. Rts. Child. (Legal Rights of Children) Rev. 2d § 12:3 (2d ed. 2013), citing *Mistretta v. Mistretta*, 566 So. 2d 836, 837 (Fla. 5th DCA 1990)(other internal citations omitted). In this case, Eliot Bernstein has confirmed, by the allegations of his Counter-Complaint that he has interests which conflict (or certainly which may conflict) with those of the Minors. For instance, in the Counter-Complaint:

- Mr. Bernstein alleges that *beneficiary designations were changed from him to his children based upon fraudulent documents and frauds on this Court*. See Counter-Complaint, ¶ 253.
- Mr. Bernstein alleges that "approximately 1/3 of all assets [are] *either going to Eliot or his children or a combination of both depending on how this Court rules regarding the validity of the Wills and Trusts that have been challenged* and already found fraught with fraud, fraudulent notarizations, improper notarizations, forgeries and more." See Counter-Complaint, ¶ 186.
- Even though the Minors are clearly listed as the sole beneficiaries of the Grandchildren Trusts, Eliot Bernstein alleges that he himself is a beneficiary. Specifically, he alleges that "Simon and Shirley [Bernstein] set

up [the Grandchildren Trusts and Bernstein Family Realty, LLC] while living, in order to fund all of their living expenses due to the fact that Eliot has had a bomb put in his car, death threats and is in the middle of a very intense RICO and ANTITRUST lawsuit where he and his family have been in grave danger for many years fighting corruption inside the very framework of the legal system." ***He alleges that the Grandchildren Trusts were "set up by Simon and Shirley [Bernstein] for the benefit of Eliot, Candice and their children."*** See Counter-Complaint, ¶¶ 109-110

Eliot has demonstrated disrespect for the judicial system, this Court, the fiduciaries, counsel and others involved in the administration of this Trust and the related estates and trusts of his parents, and has engaged in frivolous and vexatious litigation. The Court should appoint a guardian ad litem to represent the interests of his minor children to prevent further loss or damage to his children and the Trust.

17. The costs and expenses of this proceeding should be borne by Eliot and surcharged against any inheritance of Eliot.

18. In addition to the Settlor's express naming of Ted S. Bernstein to serve as the successor trustee after the death of the Settlor and Simon, the majority of beneficiaries of the Trust favor, support and ratify the appointment of Ted S. Bernstein as Successor Trustee, and the only person opposing Ted S. Bernstein is Eliot Bernstein.

19. In all limited actions taken to date by this Trustee, the Trustee has acted in good faith, in the best interests of the beneficiaries, consistent with the powers granted by the Settlor in the Trust, and within the wide discretion granted under the business judgment rule and Florida law for the exercise of the Trustee's powers.

20. Trustee reserves the right to amend or supplement this Answer and the Affirmative Defenses based upon information learned through discovery.

WHEREFORE, for the foregoing reasons, and having fully answered the Complaint, the Trustee respectfully requests this Court enter judgment in his favor; award Trustee its costs and attorneys' fees under any applicable contract, trust or statute, and further order that such be paid by or from any eventual distribution to any of Plaintiffs; and grant such other relief as is just.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 20th day of May, 2015.

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THOMAS & WEISS, P.A.  
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Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

## SERVICE LIST

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA  
PROBATE /GUARDIANSHIP DIVISION "IY"

CASE NO. 502014CP003698XXXXSB <sup>NB</sup>

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,  
Plaintiff,

v.

ALEXANDER BERNSTEIN; ET AL.,  
Defendants.

2015 MAY 26 AM 10:15  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

**ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN  
COLIN**

**THIS CAUSE** came before the Court on Eliot Bernstein's Verified Sworn  
Emergency Petition and Affidavit for Immediate Disqualification of Judge Martin  
Colin. It is hereby,

**ORDERED AND ADJUDGED** that the Eliot Bernstein Verified Sworn  
Emergency Petition and Affidavit for Immediate Disqualification is **Denied** as legally  
insufficient.

**DONE AND ORDERED** in chambers, at Delray Beach, Palm Beach County,  
Florida this 18<sup>th</sup> day of May, 2015.

  
\_\_\_\_\_  
MARTIN H. COLIN  
Circuit Court Judge

2015 MAY 18 PM 3:05  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

Copies furnished:

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Fl. 33434

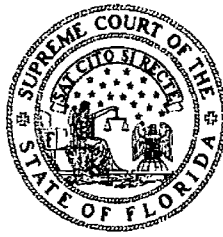
John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
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Chicago, IL 60601

Brian M. O'Connell, Esquire  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Fl. 33401





# Supreme Court of Florida

Office of the Clerk  
500 South Duval Street  
Tallahassee, Florida 32399-1927

**FILED**  
JUN 10 2015  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

JOHN A. TOMASINO  
CLERK  
MARK CLAYTON  
CHIEF DEPUTY CLERK  
KRISTINA SAMUELS  
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125  
[www.floridasupremecourt.org](http://www.floridasupremecourt.org)

## ACKNOWLEDGMENT OF NEW CASE

June 10, 2015

RE: ELIOT BERNSTEIN

IN RE: ESTATE OF SIMON  
BERNSTEIN

CASE NUMBER: SC15-1077

Lower Tribunal Case Number(s): 502011CP000653XXXXSB;  
502014CA014637XXXXMB; 502014CP002815XXXXSB;  
502014CP003698XXXXSB; 502015CP001162XXXXNB;  
502015CP002717XXXXNB

The Florida Supreme Court has received the following documents reflecting a filing date of 6/10/2015.

Petition to Invoke All Writs Jurisdiction  
Applications for Determination of Civil Indigent Status

The Florida Supreme Court's case number must be utilized on all pleadings and correspondence filed in this cause.

tr

cc:

IRWIN J. BLOCK  
BRIAN M. O'CONNELL  
ALAN B. ROSE  
GARY ROBERT SHENDELL

HON. SHARON BOCK, CLERK  
ELIOT BERNSTEIN  
JOHN PATRICK MORRISSEY

# Supreme Court of Florida

WEDNESDAY, JUNE 10, 2015

CASE NO.: SC15-1077

Lower Tribunal No(s):

502011CP000653XXXXSB;  
502014CA014637XXXXMB;  
502014CP002815XXXXSB;  
502014CP003698XXXXSB;  
502015CP001162XXXXNB;  
502015CP002717XXXXNB

ELIOT BERNSTEIN

IN RE: ESTATE OF SIMON  
BERNSTEIN

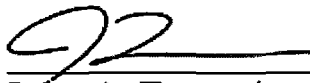
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Petitioner(s)

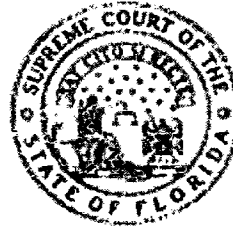
Respondent(s)

Petitioner's motions for leave to proceed in forma pauperis are hereby granted.

A True Copy  
Test:



John A. Tomasino  
Clerk, Supreme Court



tr

Served:

IRWIN J. BLOCK  
BRIAN M. O'CONNELL  
ALAN B. ROSE  
GARY ROBERT SHENDELL  
JOHN PATRICK MORRISSEY  
ELIOT BERNSTEIN

**FILED**

JUN 10 2015

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

# Supreme Court of Florida

WEDNESDAY, JUNE 10, 2015

CASE NO.: SC15-1077

**FILED**

**JUN 10 2015**

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

Lower Tribunal No(s):

502011CP000653XXXXSB;  
502014CA014637XXXXMB;  
502014CP002815XXXXSB;  
502014CP003698XXXXSB;  
502015CP001162XXXXNB;  
502015CP002717XXXXNB

ELIOT BERNSTEIN

IN RE: ESTATE OF SIMON  
BERNSTEIN

---

Petitioner(s)

Respondent(s)

The Petition for All Writs, Writ of Prohibition, Writ of Mandamus and Petition to Stay Cases and Temporarily Restrain Sale, Transfer, Disposition of Any Asset and Preservation of All Evidence, which was filed with this Court on June 10, 2015, has been treated as a Petition to Invoke All Writs Jurisdiction and does not comply with Florida Rule of Appellate Procedure 9.100(g).

The petition is hereby stricken and petitioner is allowed to and including June 30, 2015, in which to file an amended petition that does not exceed fifty pages in length.

The failure to file a proper petition with this Court within the time provided could result in the imposition of sanctions, including dismissal of this case. See Fla. R. App. P. 9.410.

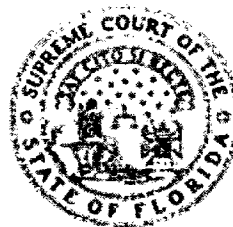
Please understand that once this case is dismissed, it may not be subject to reinstatement.

A True Copy

Test:



John A. Tomasino  
Clerk, Supreme Court



tr

Served:

IRWIN J. BLOCK  
ALAN B. ROSE  
JOHN PATRICK MORRISSEY

BRIAN M. O'CONNELL  
GARY ROBERT SHENDELL  
ELIOT BERNSTEIN

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA.  
FAMILY DIVISION "FJ"

CASE NO.: 50 2014 CP 003698 XXXX NB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN  
TRUST AGREEMENT DATED  
MAY 20, 2008, AS AMENDED,  
Plaintiff,

v.

ALEXANDER BERNSTEIN; ET AL.,  
Defendants.

---

**ORDER OF RECUSAL AND REASSIGNMENT**

The above-captioned case is presently pending in Division FJ of the Circuit Court now presided over by Judge Howard K. Coates Jr. The presiding Judge hereby disqualifies himself from the above-styled cause. This case is referred to the Clerk of the Circuit Court for reassignment to another division. All parties shall be notified by the Clerk of said reassignment.

**DONE AND ORDERED** in Palm Beach Gardens, Palm Beach County, Florida  
this the 15<sup>th</sup> day of June, 2015.



HOWARD K. COATES, JR.,  
Circuit Judge

copies furnished:

Eliot Bernstein  
2753 NW 34<sup>th</sup> Street  
Boca Raton, FL 33434

John P. Morrissey, Esquire  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401

SHARON A. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

15 JUN 15 PM 3:40

FILED

Alan Rose, Esquire  
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Jill Iantoni, Minor  
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Lisa Friedstein  
c/o Jeffrey and Lisa Friedstein  
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Highland Park, IL 60035

Brian M. O'Connell, Esquire  
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West Palm Beach, FL 33401

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601

FILED

2015 JUN 18 PM 2: 29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

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

PROBATE DIVISION  
CASE NUMBER: 502014CP003698XXXXNB  
DIVISION: IH

TED BERNSTEIN, AS TRUSTEE OF THE  
SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED

Plaintiff

V

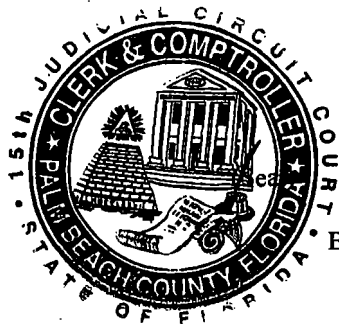
ALEXANDER BERNSTEIN; ET AL.,  
Defendants

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 15, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) **JUDGE JOHN L PHILLIPS** for all further proceedings.

WITNESS my hand and seal of this Court this 18 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY:

*Angela Budd*  
Deputy Clerk

cc:  
CC: ALL PARTIES

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

CASE # 502012CP004391XXXXNB  
CASE # 502012CP004391XXXXNB  
CASE # 502011CP000653XXXXNB  
CASE # 502014CP002815XXXXNB  
CASE # 502014CP003698XXXXNB  
CASE # 502015CP001162XXXXNB

CASE # 502012CP004391XXXXSB  
CASE # 502011CP000653XXXXSB  
CASE # 502014CP002815XXXXSB  
CASE # 502014CP003698XXXXSB  
CASE # 502015CP001162XXXXSB  
CASE # 502014CA014637XXXXMB  
CASE # 2012CP004391 IX

IN RE:

ESTATES and TRUSTS  
OF SIMON and SHIRLEY BERNSTEIN,  
Deceased.

\_\_\_\_\_/

**NOTICE OF  
UNAVAILABILITY**

PLEASE TAKE NOTICE that the undersigned counsel will be otherwise  
unavailable from *6/2/2015 through 7/14/2015*.

The undersigned requests that no hearings, depositions or other matters  
requiring appearance of counsel be scheduled during said period, and that all pending matters  
remain in status quo during this period.

/s/Eliot Ivan Bernstein

\_\_\_\_\_  
Eliot Ivan Bernstein  
Pro Se  
Tel: 561-245-8588  
2753 NW 34th St  
Boca Raton, FL 33434

**CERTIFICATE OF  
SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those on the attached service list on this 18, day of June, 2015.

/s/Eliot Ivan Bernstein

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*Counselor Molly Simon, et al.*  
Lisa Friedstein and  
Carley Friedstein, Minors  
c/o Jeffrey and Lisa Friedstein  
Parent and natural Guardian  
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Highland Park, IL 60035  
lisa@friedsteins.com  
lisa.friedstein@gmail.com

Joshua, Jacob and Daniel  
Bernstein, Minors  
c/o Eliot Bernstein  
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Chicago, IL 60611  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN,  
Plaintiff

v.

DONALD R. TESCHER, ELIOT IVAN BERNSTEIN,  
LISA SUE FRIEDSTEIN, JILL MARLA IANTONI, ET AL.,  
Defendants

---

**ORDER SETTING TRIAL on AMENDED COMPLAINT**  
**(DE 26) COUNT II**

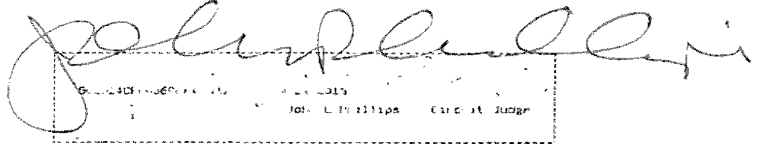
This matter came before the court on its own motion, for resolution of outstanding issues as required by the October 6, 2014, Order of the Honorable Martin H Colin, the Circuit Court Judge formerly assigned to this case. In that Order, Judge Colin severed trial of Count II of the Plaintiff's Amended Complaint from remaining claims in the action, and stayed all further proceedings in the action pending further Order of the Court. Accordingly, the Court ORDERS as follows:

1. Trial of the issues set forth in Judge Colin's October 6, 2014, Order on Amendments to Pleadings and Stay until Further Order of Court (DE 27) and Count II of Plaintiff's Amended Complaint (DE 26) shall take place on **December 15, 2015 @ 9:30AM**; 1 (one) day has been set aside for trial.
2. The Petitioner and the Respondent have an obligation to make a good faith effort to resolve this case. Towards that end, the parties are ordered to attend a pre-trial mediation that must take place no later than ten (10) days before the first day of trial of this case. *Failure to attend pre-trial mediation absent an order waiving same may result in the striking of the case from the trial docket and/or additional sanctions. THE PRE-TRIAL MEDIATION MUST TAKE PLACE REGARDLESS OF OTHER MEDIATION THAT MAY HAVE OCCURRED PRIOR TO THIS ORDER SETTING TRIAL.*

If an interpreter is needed for a party or witness in this case, it shall be the responsibility of the party needing same to provide a qualified interpreter.

3. The court reserves jurisdiction to enter such further orders as may be necessary.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 24th day of September, 2015.



JOHN L. PHILLIPS  
Circuit Judge

JOHN L PHILLIPS

Circuit Judge

**Copies furnished to:**

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and Eliot and Candice Bernstein,  
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Bernstein, Eric Bernstein, Michael Bernstein

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her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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# Supreme Court of Florida

TUESDAY, OCTOBER 13, 2015

CASE NO.: SC15-1077

Lower Tribunal No(s):

502011CP000653XXXXSB;

502014CA014637XXXXMB;

502014CP002815XXXXSB;

502014CP003698XXXXSB;

502015CP001162XXXXNB;

502015CP002717XXXXNB

ELIOT BERNSTEIN

vs. IN RE: ESTATE OF SIMON  
BERNSTEIN

---

Petitioner(s)

Respondent(s)

The "Petition for All Writs, Writ of Prohibition, Writ of Mandamus and Petition to Stay Cases and Temporarily Restrain Sale, Transfer, Disposition of Any Asset and for Preservation of All Evidence" is hereby transferred, pursuant to Harvard v. Singletary, 733 So. 2d 1020 (Fla. 1999), to the Fourth District Court of Appeal. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. The transferee court shall treat the petition as if it had been originally filed there on the date it was filed in this Court. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court.

001531

FILED  
2015 OCT 16 AM 11:31  
SEAN R. BOCK, CLERK  
COURT OF APPEALS  
FOURTH DISTRICT  
TALLAHASSEE, FLORIDA

CASE NO.: SC15-1077

Page Two

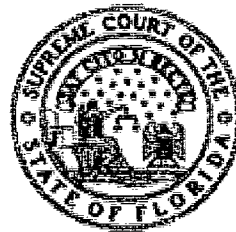
Any future pleadings filed regarding this case should be filed in the above mentioned district court at 1525 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33401.

A True Copy

Test:



John A. Tomasino  
Clerk, Supreme Court



sl

Served:

IRWIN J. BLOCK  
BRIAN M. O'CONNELL  
ALAN B. ROSE  
GARY ROBERT SHENDELL  
JOHN PATRICK MORRISSEY  
ELIOT BERNSTEIN  
HON. SHARON BOCK, CLERK  
HON. LONN WEISSBLUM, CLERK

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF MEDIATION**

**DATE:** Friday, December 4, 2015<sup>1</sup>

**TIME:** 9:00 a.m.

**MEDIATOR:** TBD

**LOCATION:** TBD

---

<sup>1</sup> Counsel hereby certifies that date and time have been coordinated with all Parties and will be coordinated with a Mediator upon appointment/agreement of selection.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 13<sup>th</sup> day of November, 2015.

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***Attorneys for Plaintiff, Ted Bernstein***

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

**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

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**NOTICE OF MEDIATION**

**DATE:** Friday, December 4, 2015<sup>1</sup>

**TIME:** 9:00 a.m.

**MEDIATOR:** TBD

**LOCATION:** TBD

---

<sup>1</sup> Counsel hereby certifies that date and time have been coordinated with all Parties and will be coordinated with a Mediator upon appointment/agreement of selection.



**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 13<sup>th</sup> day of November, 2015.

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***Attorneys for Plaintiff, Ted Bernstein***

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

**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

**AMENDED<sup>1</sup> NOTICE OF MEDIATION**

**DATE:** Friday, December 4, 2015<sup>1</sup>  
**TIME:** 10:00 a.m.  
**MEDIATOR:** Honorable Ronald Alvarez  
**LOCATION:** Office of Brian O'Connell, Esq.  
Ciklin Lubitz & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401

<sup>1</sup> Amended to add Mediator's Name and Location (date and time previously have coordinated with all Parties, and confirmed with Matrix Mediation)

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List as set forth below this 20<sup>th</sup> day of November, 2015.

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***Attorneys for Plaintiff, Ted Bernstein***

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

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC  
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Individually and as Trustee f/b/o Molly Simon  
under the Simon L. Bernstein Trust Dtd 9/13/12;  
ELIOT BERNSTEIN, individually, as Trustee  
f/b/o D.B., Ja. B. and Jo. B. under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of his  
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Individually, as Trustee f/b/o Max Friedstein and  
C.F., under the Simon L. Bernstein Trust Dtd  
9/13/12, and on behalf of her minor child, C.F.,

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S WITNESS LIST**

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

1. Ted S. Bernstein  
c/o Alan B. Rose, Esq.  
Mrachek, Fitzgerald, Rose et al  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

2. Donald Tescher  
c/o Ken Pollock, Esq.  
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2700 N Military Trl Ste 150  
Boca Raton, FL 33431
3. Robert Spallina  
c/o Ken Pollock, Esq.  
Shendell & Pollock P L  
2700 N Military Trl Ste 150  
Boca Raton, FL 33431
4. Kimberly Moran  
c/o Ken Pollock, Esq.  
Shendell & Pollock P L  
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5. Eliot Bernstein  
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6. Pamela Simon  
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Chicago, IL 60601
7. Lisa Friedstein  
2142 Churchill Lane  
Chicago, IL 60035
8. Jill Iantoni  
2101 Magnolia Lane  
Chicago, IL 60035
9. Bruce Stone, Esq. Expert Witness  
Goldman Felcoski & Stone P.A.  
95 Merrick Way, Suite 440  
Coral Gables, Florida 33134
10. Any and all witnesses listed by any other party to this litigation, subject to objections.
11. Impeachment and rebuttal witnesses

The Trustee reserves the right to amend or supplement this Witness List as discovery progresses.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 20<sup>th</sup> day of November, 2015.

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*Attorneys for Plaintiff, Ted Bernstein*

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



**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

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children, and as natural guardian for J.I. a  
minor [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S EXHIBIT LIST**

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

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
1.	May 20, 2008 Shirley Bernstein Will			
2.	May 20, 2008 Shirley Bernstein Trust Agreement			
3.	November 18, 2008 First Amendment to Shirley Trust Agreement			
4.	July 25, 2012 Will of Simon L. Bernstein	TS004297-TS004305		

<b>TAB</b>	<b>DESCRIPTION</b>	<b>BATES</b>	<b>MARKED</b>	<b>ADMITTED</b>
5.	July 25, 2012 Amended and Restated Trust Agreement of Simon L. Bernstein			
6.	<i>Invalid</i> November 18, 2008 First Amendment to Shirley Bernstein Trust Agreement	TS001397-TS001399		
7.	Bernstein Family Charts			
8.	August 15, 2007 Letter from John A. Herrera, Esq. to Eliot Bernstein Re-Advancement of Inheritance	TS006701-TS006703		
9.	November 16, 2007 Client/Case Maintenance Form of Simon & Shirley Bernstein	TS003232		
10.	Tescher & Spallina Attorney Notes Re: Bernstein	TS003638-TS003646 &TS004061-4063		
11.	April 9, 2008 Letter from Robert Spallina to Mr. and Mrs. Simon Bernstein Re- <i>Estate Planning</i>			
12.	Undated Financial Statement of Simon Bernstein			
13.	2012 Financial Statement of Simon Bernstein			
14.	May, 2012 Email from E. Bernstein to R. Spallina Re-Estate of Shirley Bernstein	TS003977		
15.	May 24, 2012 Letter enclosing draft Wills from Spallina to Simon Bernstein Re-Estate Planning	TS003983-TS004018		
16.	July 2, 2012 Simon L. Bernstein Durable Power of Attorney	TS003916-TS003919		
17.	July 26, 2012 Letter from Spallina to Simon Bernstein Re-Estate Planning	TS003982		
18.	Simon Leon Bernstein Certification of Death	TS004163		
19.	Notice of Administration In Re: Estate of Simon L. Bernstein	TS004177		
20.	October 23, 2012 Palm Beach Daily Business Review Notice of Administration In Re: Estate of Simon L. Bernstein	TS004274		
21.	iViewit.com LLC Promissory Noteholders Chart, Stock Ledger	TS004329, TS004324-TS004325		
22.	LIC Holdings, Inc. Analysis of Shareholders and Shareholdings	TS002953		

TAB	DESCRIPTION	BATES	MARKED	ADMITTED
23.	2006-2010 LIC Holdings, Inc. Tax Return 1120S Forms	TS000925, TS002419, TS002421, CBIZ148, TS001531		
24-A	December, 2013 Amended Inventory In Re: Estate of Simon Bernstein	TS004201-TS004203 TS004206-TS004207		
24-B	December 1, 2014 [2012CP004391 In Re: Estate of Simon L. Bernstein] Inventory by Brian M. O'Connell			
25.	March 26, 2015 Successor Trustee's Notice of Accounting of The Simon Bernstein Revocable Trust From: February 3, 2014 through March 15, 2015			
26.	March 31, 2015 [In Re: Estate of Shirley Bernstein, Case Number: 2011CP000653] Accounting of Successor Personal Representative			
27.	March 31, 2015 [In Re: Estate of Shirley Bernstein, Case Number 2011CP000653] Inventory by Ted S. Bernstein, As Successor Personal Representative			
28.	Fifteenth Judicial Circuit, Palm Beach County Case Number: 2011CP000653SB, In Re: Estate of Shirley Bernstein: <i>Petition to Re-Close Estate Based Upon Prior Signed Waivers and for Discharge of Successor Personal Representative</i>			
29.	Fifteenth Judicial Circuit, Palm Beach County Case Number: 2012CP00439SB, In Re: Estate of Simon L. Bernstein: <i>Ted S. Bernstein's Motion for Instructions</i>			
30.	Fifteenth Judicial Circuit, Palm Beach County Case Number 2012CA013933, Stansbury v. Bernstein et al: <i>Order of Dismissal with Prejudice of Certain Parties and Claims</i>			
31.	January 21, 2014 Resignation of Co-Trustee			
32.	March 4, 2014 Affidavit of Donald R. Tescher			

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

<b>TAB</b>	<b>DESCRIPTION</b>	<b>BATES</b>	<b>MARKED</b>	<b>ADMITTED</b>
36-G	September 14, 2015 Article by Crystal L. Cox Re: <i>Florida Probate Fraud, Forgery, and Corruption</i>			
37.	November 9, 2012 and November 29, 2012 Letters from Christine P. Yates to Robert Spallina Re-Estates of Shirley Bernstein and Simon Leon Bernstein	TS004363- TS004364, TS004365-TS004366		
38.	Accounting for Sale of 7020 Lions Head Lane, Boca Raton, FL (if sale closed)			
39.	Any and all documents listed by Defendants, subject to objections			

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

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 20<sup>th</sup> day of November, 2015.

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*Attorneys for Trustee, Ted Bernstein*

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

**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a  
minor [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S CERTIFICATE OF AUTHORITY FOR MEDIATION**

Plaintiff, Ted Bernstein as Trustee of the Shirley Bernstein Trust Agreement Dated  
May 20, 2008, as Amended ("Plaintiff") pursuant to Florida Rules of Civil Procedure 1.720,  
hereby files this Certificate of Authority, and states as follows with regard to the mediation  
scheduled to commence on December 4, 2015:

1. Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement Dated May  
20, 2008, as Amended, will appear at the mediation and shall have full authority to settle without  
further consultation.



2. Alan B. Rose, Esq., as counsel of record for Plaintiff with the undersigned law firm, will appear at mediation.

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List as set forth below this 30<sup>th</sup> day of November, 2015.

MRACHEK, FITZGERALD, ROSE,  
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*Attorneys for Plaintiff, Ted Bernstein*

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

**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors  
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*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein  
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TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement  
Dated May 20, Probate Division 2008, as Amended,  
Plaintiff (s)

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL  
CIRCUIT, IN AND FOR PALM BEACH COUNTY,  
FLORIDA

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

CASE NO.:50 2014 CP 003698 XXXX NB IJ

NOTICE OF MEDIATION

**Eliot Bernstein, individually and Eliot and  
Candice Bernstein, as Parents and Natural  
Guardians of D.B., Ja. B. and Jo. B, Minors**  
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*Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael Bernstein*

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
**Email:** lisa.friedstein@gmail.com

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Attorneys for Plaintiff, Ted Bernstein

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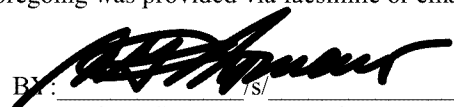
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[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

YOU ARE HEREBY NOTIFIED, pursuant to the agreement of the parties, that a confidential Mediation Conference  
subject to the provisions of Florida Statutes Chapter 44 shall be held in this case as follows:

**MEDIATOR:** RONALD ALVAREZ  
**LOCATION:** Ciklin Lubitz & O'Connell  
515 North Flagler Drive, 20th Floor  
West Palm Beach, Florida 33401  
**DATE:** FRIDAY, DECEMBER 04, 2015  
**TIME:** 10:00 AM - 2:00 PM  
**PARTIES ARE ENCOURAGED TO SUBMIT  
WRITTEN MEDIATION SUMMARIES TO:** [ron@matrixmediation.com](mailto:ron@matrixmediation.com)

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via facsimile or email to the above-  
named addressees this 30th day of November, 2015. DP



BY:   
Rodney G. Romano, Esquire  
Florida Bar No.: 0559482  
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Suite 700, The Forum  
West Palm Beach, Florida 33401  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S AMENDED<sup>1</sup> EXHIBIT LIST**

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

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

<sup>1</sup> Amended to add Exhibit(s) 40A-40F

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

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

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

<b>TAB</b>	<b>DESCRIPTION</b>	<b>BATES</b>	<b>MARKED</b>	<b>ADMITTED</b>
	<i>Fitzgerald, Rose, Konopka, Thomas, &amp; Weiss Florida Probate Case</i>			
36-G	September 14, 2015 Article by Crystal L. Cox Re: <i>Florida Probate Fraud, Forgery, and Corruption</i>			
37.	November 9, 2012 and November 29, 2012 Letters from Christine P. Yates to Robert Spallina Re-Estates of Shirley Bernstein and Simon Leon Bernstein	TS004363- TS004364, TS004365-TS004366		
38.	Accounting for Sale of 7020 Lions Head Lane, Boca Raton, FL (if sale closed)			
39.	Any and all documents listed by Defendants, subject to objections			
40-A	Envelope from S. Greenwald, P.A. to Mr. and Mrs. Simon L. Bernstein	TS000001		
40-B	October 12, 2007 Cover Letter from Greenwald to Mr. and Mrs. Bernstein	TS000043-TS000044		
40-C	August 15, 2000 Last Will and Testament of Simon Bernstein	TS000002-000022		
40-D	August 15, 2000 Last Will and Testament of Shirley Bernstein	TS000023-TS000042		
40-E	December 1, 2001 First Codicil to Last Will and Testament of Shirley Bernstein	TS000046-TS000048		
40-F	November 30, 2001 First Codicil to Last Will and Testament of Simon L. Bernstein	TS000049-TS000052		

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



**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to all persons on the Service List set forth below by email electronic transmission this 30<sup>th</sup> day of November, 2015.

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
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(561) 655-2250 Telephone  
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*Attorneys for Trustee, Ted Bernstein*

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

**SERVICE LIST**  
**CASE NO.: 502014CP003698XXXXNBIJ**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

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**PETITION OF CLAIMANT AND CREDITOR**  
**WILLIAM E. STANSBURY TO INTERVENE**

COMES NOW, William E. Stansbury (“Stansbury”), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to Fla. Rule Civ. Proc. 1.230, hereby files this Petition for Leave to Intervene, and in support thereof states as follows:

1. Stansbury, under most circumstances, would not have standing to intervene in this action between the Shirley Bernstein Trust Agreement of 2008 and the trust’s putative

beneficiaries. However, Count II of the Amended Complaint added the Simon Bernstein Last Will and Testament and the Simon Bernstein Amended and Restated Trust and recently (November 20, 2015), Plaintiff's Witness List was filed in advance of the December 15, 2015 trial date that identifies as an expert witness Bruce Stone, Esq. of Goldman, Felcoski & Stone, P.A. Upon information and belief, Mr. Stone is anticipated to offer his opinion that Ted Bernstein ("TED") is qualified to serve as Successor Trustee of the Simon Bernstein Trust Agreement of 2102 (the "Revocable Trust or Trust"). The issue of TED's fitness to serve as Trustee of the Revocable Trust is at issue in the Estate of Simon Bernstein and a Motion to Remove TED as Trustee is pending in the Estate of Simon Bernstein.

2. The attempt to have this court receive evidence on and possibly resolve the issue of TED's fitness to serve as Successor Trustee in the present unrelated action compels Stansbury to intervene to protect his interests in the Revocable Trust.

3. As background, Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein ("SIMON") and TED and several corporate defendants in August of 2012 to collect compensation, corporate distributions and other damages due Stansbury, arising out of a business in which Stansbury, SIMON and TED were principals.

4. Stansbury asserted claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million.

5. Shortly after the lawsuit was filed, SIMON BERNSTEIN passed away in September of 2012. The Estate of Simon Bernstein was substituted as a party defendant.

6. There are allegations of misconduct on the part of TED in his capacity as Personal Representative of the Estate of Shirley Bernstein, as Trustee of the Shirley Bernstein Trust Agreement of 2008, and as Trustee of the Simon Bernstein Revocable Trust.

7. The most recent inventory of the Estate of Simon Bernstein shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

8. Florida law provides that, in the event the assets of the estate are insufficient to pay its expenses, an existing revocable trust must pay them to the extent that there are assets to do so. Section 733.707(3), Fla. Stat. (2015), states:

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them...**" (emphasis added)

9. As a result of the foregoing, Stansbury, as a claimant and creditor whose claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon's Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust.

10. This result establishes Stansbury's standing to intervene in this action. Fla. R. Civ. Proc. 1.230 states, in pertinent part: "Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention ..."

11. The Supreme Court of Florida in Union Central Life Insurance Company v. Carlisle, 593 So.2d 505 (Fla. 1992), in discussing the test to determine whether intervention is appropriate, quoted from Morgareidge v. Howey, 78 So.14, 15 (Fla. 1981), as follows:

*The interest which will entitle a person to intervene. . . must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the*

*judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof. . . .*

12. Stansbury asserts that, as a person with a beneficial interest in the Simon Bernstein Trust due to the anticipated inability of the Estate of Simon Bernstein to pay his total damages, Stansbury would have standing to challenge TED's conduct as Trustee and to seek his removal. This is established by the provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stat., (2014) which establish the persons who have standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

*(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)*

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has a **present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

13. A "beneficial interest" is defined as: "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing." Black's Law Dictionary 149 (7<sup>th</sup> ed. 1999). Therefore, because Stansbury has a claim that exceeds the value of the assets of the Simon Bernstein Estate, he has a contingent interest in the assets of the Revocable Trust. The assets of the Trust may and will be called upon to pay his claim under §733.707(3).

14. The fact that Stansbury is not a named beneficiary does not defeat this analysis as he is a legal "beneficiary" by virtue of his contingent beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

15. Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a

will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1<sup>st</sup> DCA 1970).

16. While not entirely analogous to this case, the holding in Nelson makes clear that courts may look beyond the written documents to ascertain a claimant's status as beneficiary. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury is a trust beneficiary under the statute.

17. As a result of the foregoing, Stansbury seeks to intervene to protect his interests to the extent that the fitness of TED Bernstein to serve as Successor Trustee of the Simon Bernstein Revocable Trust becomes an issue in this case.

WHEREFORE, Petitioner, William E. Stansbury, respectfully requests that he be permitted to intervene in this case to protect his interests as stated herein, and or such other relief as the Court deems just and proper.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 15<sup>th</sup> day of December, 2015:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
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**Alan Rose, Esquire**  
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**John P. Morrissey, Esq.**  
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*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee  
for her children, and as natural guardian  
for M.F. and C.F., Minors; and Max  
Friedstein**

Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire  
Joielle A. Foglietta, Esq.**

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**Jill Iantoni, individually and as trustee for  
her children, and as natural guardian for  
J.I. a minor**

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PETER M. FEAMAN, P.A.

3695 West Boynton Beach Blvd., #9

Boynton Beach, FL 33436

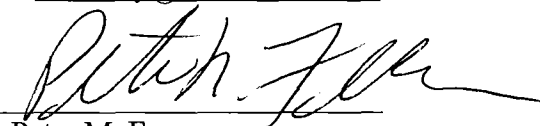
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By: \_\_\_\_\_



Peter M. Feaman

Florida Bar No. 0260347



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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L.  
PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

d. Continued Obstruction of Justice through Denial of Due Process;

e. Aiding and Abetting;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge Phillips has violated the following

Judicial Canons, including but not limited to:

**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to disqualify as it has already been alleged by Petitioner and others that the transfer of the cases to his Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

7. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

8. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been

proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

9. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims.

10. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney at Law Peter Feaman in a letter to the PR O'Connell and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

11. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

12. One of the facts concerning the proceeding and contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer Rose law firm in the same Boca Raton, FL location where fraud by his former law firm occurred against Petitioner) and with the intended

ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

13. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
14. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be “stupid.” In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
15. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

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.

16. Judge Phillips professed "love" for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified.
17. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
18. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

19. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must

be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein.

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

20. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the**  
**movant relies as the grounds for disqualification.**

21. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or**  
**by a separate affidavit.**

22. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to**  
**disqualify filed under this rule in the case and the dates of the**  
**orders granting those motions.**

23. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that**  
**the motion and the client's statements are made in good faith. In**  
**addition to filing with the clerk, the movant shall immediately**  
**serve a copy of the motion on the subject judge as set forth in**  
**Florida Rule of Florida Rule of Civil Procedure 1.080.**



24. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

25. That Petitioner asserts as set out below and further herein that he will not and has not already received a fair trial or hearing and that Judge Phillips because of the following specifically described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

26. That it is is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to

steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

27. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

28. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

29. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his “pre-judging” and “pre-determination” in the case that he would not do anything to find Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein.
30. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.
31. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.<sup>1</sup>

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<sup>1</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

32. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

33. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

34. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the proceedings.

### **OTHER ISSUES AND FACTS REQUIRING DISQUALIFICATION UNDER CANON 3**

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and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**AND OTHER JUDICIAL CANONS AND LAWS AND US AND STATE  
CONSTITUTION**

35. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution of Florida, Florida Statutes and Rules, Florida Judicial Canons, applicable Florida laws and for ongoing and continuing fraud upon the Court and fraud by the Court.
36. This written, signed motion for mandatory Disqualification is legally sufficient and timely.
37. It was just discovered by myself and my wife Candice Bernstein yesterday, Thursday Dec. 3, 2015, through a series of phone calls by my wife and myself to the Court of Judge John Phillips and related referred calls to Florida Court Administrative offices that I am not eligible to receive “Original” Certified ( “Trial Admissible” ) Transcripts of proceedings in this case despite our indigency “in pauperis” status which has been forced upon us by a series of continuing frauds upon this Court and by this Court.
38. It was further discovered yesterday, Dec. 3, 2015 through these calls that an “Original” Certified Transcript of proceedings ( “Trial Admissible” ) shall be *Signed* by the involved Stenographer.
39. It was also discovered just yesterday, Dec. 3, 2015, through these calls that there apparently is no Audio Recordings by the Court in this case for appearances before current Judge John Phillips who must now be mandatorily Disqualified.
40. This recent discovery occurred just yesterday, Dec. 3, 2015 despite diligent efforts by myself and wife to ascertain these facts on September 16, 2015 which was the day after a “Case-Management Conference” held in the North Branch by Judge John L. Phillips who must now be mandatorily Disqualified.

41. On Sept. 16, 2015, my wife Candice Bernstein and I called The Honorable John L. Phillips, Judicial Assistant: Alejandra Stelicha or “Alex” at (561) 624-6593 and left a message on her voicemail that I was calling to ask her a question regarding a hearing that had occurred the day before on Sept. 15, 2015 for case # 502012CP004391 and for her to call be back as soon as possible.
42. At no time since that diligent call on Sept. 16, 2015, has the Judicial Assistant to Judge John L. Phillips or any other Court member of the North Branch returned our call creating further Bias and Prejudice supporting the instant motion for mandatory Disqualification by Judge John L. Phillips at this time since Petitioner can reasonably fear and believe that Judge Phillips has pre-determined all matters against Petitioner and not even being responsive to basic calls on matters of procedure.
43. Still, it was also just discovered and confirmed just yesterday, Thursday Dec. 3, 2015 in a conference call with Florida Licensed attorney Peter Feaman, representing the “Creditor” William Stansbury herein, that Florida does in fact have statutory and Rules which permit a Trial Judge such as Judge John L. Phillips to void and vacate Judgments, Orders and Decrees of other Judges such as those of Necessary and Material Fact Witness Judge Martin Colin which is precisely the relief that I Petitioned the Florida Supreme Court to issue on July 30, 2015.
44. “But for” the ongoing and continuing frauds upon the Court and by the Court and illegal, tortious, extortive and criminal actions against myself and family and in the Estates and Trusts of Simon and Shirley Bernstein, I would have adequate funds and resources to obtain proper Florida licensed counsel throughout all of these proceedings herein and would not be in indigent “in pauperis” status at this time.

45. I have Petitioned Florida Judge Martin Colin on multiple occasions who is and has been a Necessary and Material fact witness since May 6, 2013 for Emergency Relief and to halt and stay these proceedings, address the frauds upon the Court as well as for financial relief in the Estates and Trust cases to have adequate funds to retain counsel of my own choosing for myself and minor children and provide for our family home which was the intent and purpose of significant Estate and Trust planning and business actions by Simon and Shirley Bernstein.
46. These frauds include but are not limited to direct frauds upon the Court by the filing of false and fraudulent instruments in the Estate of Shirley Bernstein such as 6 illegally and criminally fraudulent Notaries placed on Estate documents by a Paralegal Notary Kimberly Moran who worked for Tescher and Spallina and other documents such as an April 9, 2012 document "Witnessed" by Robert Spallina and allegedly signed by Simon Bernstein relating to the Estate of Shirley Bernstein but not filed with the Court until Oct. 2012 post-mortem and after his death.
47. A close and careful review of the Transcript of Proceedings from Sept. 13, 2013 before Judge Martin Colin who is a Necessary and Material fact witness which came up after Kimberly Moran Admitted to Florida Governor's Office the fraudulent Notaries filed in Judge Colin's Court will show that, despite Judge Colin saying on the Record he had sufficient information to read Miranda Warnings to Tescher & Spallina, Judge Colin raises but "skips by" who actually filed these documents in his Court and how these documents were filed in his Court leaving these as open questions of material fact necessary to determine the full frauds herein and for the integrity of the court and court system itself.
48. As set forth in a further mandatory Disqualification filed with Judge Colin, instead of issuing a Show Cause Order to Tescher & Spallina as Licensed Florida attorneys at that time in Sept. 2013

and issuing Emergency stay relief as I repeatedly petitioned and instead of calling Kimberly Moran to the stand at subsequent hearings in October of 2013, Judge Colin proceeded in the case for another 19 plus months permitting Ted Bernstein to act as Trustee and Fiduciary despite the fact that Tescher & Spallina were involved with Ted Bernstein as business partners, were his counsel as alleged fiduciary and were the ones to fraudulently place Ted Bernstein into this position which was approved and upheld by Colin.

49. Still further, Judge Colin even goes further as to permit Ted Bernstein to sell off and dispose of substantial assets of the Shirley Estate and Trust and was proceeding to permit Ted Bernstein to sell off Simon's multi-million dollar home from the Simon Estate without ever holding a hearing to determine the construction and validity of the Shirley and Simon Bernstein Trusts and Wills nor the validity of Ted Bernstein as a Fiduciary and Trustee and in fact was proceeding to allow Ted to fraudulently sell this multi-million dollar home to an "undisclosed" buyer while falsely claiming this as an "arms length" transaction.

**Washington DC Public Integrity Unit Prosecution of NY Judge who was involved in the  
Florida Election Re-count of 2000; Bush v Gore**

50. Judicial fraud and bribery are serious crimes which fundamentally undermine the integrity of our system of justice and laws.

51. From the Dept. of Justice Website:

"FOR IMMEDIATE RELEASE

Thursday, August 27, 2009

**Former New York State Supreme Court Justice Thomas J. Spargo Convicted  
of Attempted Extortion and Bribery**



Former New York State Supreme Court Justice Thomas J. Spargo was convicted today by a federal jury in Albany, N.Y., of attempted extortion and soliciting a bribe.

Spargo, 66, was convicted following a three-day jury trial. Evidenced introduced at trial showed that on Nov. 13, 2003, Spargo solicited a \$10,000 payment from an attorney with cases pending before him in Ulster County, while Spargo was serving as a state supreme court justice. The trial evidence showed that when the attorney declined to pay the money, Spargo increased the pressure by a second solicitation communicated through an associate. According to evidence presented at trial, on Dec. 19, 2003, Spargo directly told the attorney in a telephone conversation that he and another judge close to him had been assigned to handle cases in Ulster County, including the attorney's personal divorce case. According to the evidence at trial, the attorney felt that if he did not pay the money, both the cases handled by his law firm and his personal divorce proceeding would be in jeopardy.

"It is a sad day indeed when a judge breaks the laws that he is sworn to enforce," said Assistant Attorney General Lanny A. Breuer. "The Criminal Division's Public Integrity Section will continue in its singular mission to hold accountable wayward public officials who violate the law and the trust that has been placed in them."

"Judges are supposed to serve the people who elected them, not their own self-interests. What Mr. Spargo did is nothing more than old fashioned extortion," said FBI Special Agent in Charge John F. Pikus.

The maximum statutory penalty for the charge of soliciting a bribe is 10 years in prison and the maximum penalty for the charge of attempted extortion is 20 years. Spargo also faces a maximum fine of \$250,000 for each count on which he was convicted.

This case is being prosecuted by Senior Trial Attorney Richard C. Pilger and Trial Attorney M. Kendall Day of the Public Integrity Section, which is headed by Chief William M. Welch II. The case was investigated by the FBI's Albany Division."<sup>2</sup>

52. From the Troy Record,

"At the time, it was suggested that Spargo was seeking the funds to help defray his legal costs as he was battling the state Commission on Judicial Conduct. . . . .  
**Spargo traveled to Florida during the 2000 election vote recount on**

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<sup>2</sup> See, <http://www.justice.gov/opa/pr/former-new-york-state-supreme-court-justice-thomas-j-spargo-convicted-attempted-extortion-and>

**behalf of George W. Bush and is considered an experienced election lawyer.** ( emphasis added ).

John F. Pikus, Special Agent in Charge of the FBI's Albany division, said in a statement that the case "should demonstrate that the FBI will pursue all allegations of judicial corruption vigorously, as public corruption violations are among the most serious of all criminal conduct and can tear at the fabric of a democratic society."<sup>3</sup>

53. As set out in the Petition for All Writs which also includes a request for a Stay and Injunctive Relief, Petitioner has reported criminal and fraudulent actions relevant herein to the US Dept of Justice and related federal and state authorities.

54. This includes conduct of now Chief Judge Jorge Labarga who, like Spargo, was also involved in the Florida Re-Count of 2000, Bush v. Gore, as a Circuit Judge and who was intimately involved with the original frauds upon the Florida courts in the underlying Proskauer Rose "Billing Lawsuit" related to the Iviewit Technologies including but not limited to orchestrated fraudulent actions by Labarga to deny counsel and resources for counsel to Petitioner Eliot Bernstein in 2003.

55. These actions and the Iviewit matters were brought up before Judge Colin in a May 6, 2013 Emergency Petition after further frauds upon the Court in Florida were discovered now in the Shirley Bernstein case and Simon Bernstein case.

56. Like Spargo, a formal complaint was made by Petitioner against Judge Jorge Labarga at the Florida State Judicial Qualifications Commission.

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<sup>3</sup> See, <http://www.troyrecord.com/general-news/20081210/ex-judge-tom-spargo-indicted-by-feds-for-corruption>

57. Complaints against the involved licensed attorneys in the Proskauer Billing lawsuit heard by Labarga were filed in both the respective New York, Virginia and Florida State Bar Associations and - or appropriate State Attorney Discipline bodies.
58. Fraud by the Florida Bar in the handling of formal complaints was clearly present in the underlying Proskauer Rose Billing Lawsuit specifically involving Proskauer Rose Partner Chris Wheeler wherein the Florida Bar falsely and fraudulently determined that Proskauer was not responsible for Intellectual Property and Patent work at the USPTO despite the fact that the Florida Bar was clearly presented with a Private Placement Memorandum involving Wachovia on behalf of Iviewit that specifically referenced in the Private Placement that Proskauer Rose Partner Ken Rubenstein was Patent Counsel in the Iviewit matters and that Proskauer Partner Wheeler was listed as an Advisor to Iviewit on the Wachovia Private Placement.<sup>4</sup>
59. Upon information and belief, these fraudulent actions by Proskauer Rose and related parties in the fraudulent Wachovia Private Placement Memorandum constituted Securities Fraud in violation of SEC laws and rules.
60. Upon information and belief, attorneys Tescher and Spallina, centrally involved in the Simon and Shirley Bernstein Estates and Trusts herein have recently been charged and convicted in SEC violations and Insider Trading in another case where their roles as Fiduciaries were violated and where attorney Spallina pleaded guilty to a Felony and has now lost his Florida law license<sup>5</sup>.

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<sup>4</sup> See, Wachovia PPM

<http://www.iviewit.tv/CompanyDocs/Wachovia%20Private%20Placement%20Memorandum%20BOOKMARKED.pdf>;

Further, see Evidence provided to the Florida Bar.

<http://www.iviewit.tv/CompanyDocs/2003%2004%2030%20Bernstein%20response%20Florida%20Bar%20Wheeler%20BOOKMARKED.pdf>

<sup>5</sup> See, SEC Complaint and “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

61. This fraudulent determination by the Florida Bar was further fraudulently supported by Partner Jerald Beer of the Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell law firm during that time<sup>6</sup>.
62. The Ciklin law firm is now the current PR of the Simon Bernstein Estate brought in by Florida Licensed attorney Peter Feaman before Judge Martin Colin.
63. Upon information and belief, Florida Licensed attorney Peter Feaman, in addition to representing "Creditor" William Stansbury, is also Chief Counsel for the State Republican Party.
64. Upon information and belief, the Ciklin Managing Partner Alan Ciklin is the brother of the current Chief Judge Cory Ciklin of the 4th DCA who married a Paralegal to another Ciklin partner Martens and further that Ciklin and Labarga were both appointed to the 4th DCA at the same time by former Governor Crist<sup>7</sup>.
65. The Ciklin law firm has previously been publicly accused by a sitting Judge of maintaining 2 sets of "books" at the firm as follows:

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and Government Complaint @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tesch%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

Bernstein Emergency Petition before in Florida Probate May 2013 @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>6</sup> See,

<http://iviewit.tv/CompanyDocs/2004%2010%2022%20Florida%20Bar%20Response%20to%20Petition%20to%20Supreme%20Court.pdf>

<sup>7</sup> See, <http://www.palmbeachbar.org/judicial-profiles/2002/>; Further see

<http://www.4dca.org/judges/ciklin.shtml>;

See further;

[http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist\\_puts\\_labarga\\_ciklin\\_on\\_4.html](http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist_puts_labarga_ciklin_on_4.html)

“Evidence obtained during the case provided an inside look into the inner workings of one of Palm Beach County’s most influential real estate, land use and commercial litigation firms.

Chernow-Brown noted the evidence presented at trial showed the firm maintained at least two separate balance sheets, both dated Oct. 31, 2012. Accounts receivable listed on one were omitted on the other, Chernow-Brown wrote.

“Importantly, unbilled time, life insurance proceeds receivables and over \$1 million in cash value of life insurance policies were completely missing from both balance sheets,” Chernow-Brown wrote.”

She concluded the firm was obligated to keep books for all the property of the firm, under the firm’s partnership agreement.”

66. The Judge further went on to note about the Ciklin firm:

“The evidence on this factual issue raises a real possibility of a charade being played out in order to manipulate a matter pending in the Family Division of this Court.”<sup>8</sup>

67. Nearly a year and a half ago in August 2014, “Creditor” Stansbury’s attorney Peter Feaman went as far as demanding that the current PR Brian O’Connell of the Ciklin law firm in the Simon Bernstein case “pick up the baton” in the efforts to remove Ted Bernstein as Trustee noting both that not only have Accountings not been performed for the Trusts and Estates but also that Ted Bernstein was not a valid Trustee by the express terms of the Trust.<sup>9</sup>

68. This request by Feaman of Simon Bernstein PR O’Connell went as far as requesting that O’Connell file his own Petition to remove Ted Bernstein, yet, to this date nearly a year and a half later, Brian O’Connell of the Ciklin law firm has never done so despite the fact that Ted

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<sup>8</sup> See, <http://insurancenewsnet.com/oarticle/2014/09/19/Powerful-WPB-law-firm-ordered-to-pay-22-million-to-retired-partner-a-557684.html> .

<sup>9</sup> See, <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

Bernstein has been proven to be intimately involved and central to the actions of Tescher and Spallina where Trusts are lost, documents are lost and no proper accounting occurs.

**The Instant Case Before Judge John L. Phillips**

**Fundamental Denial of Due Process, Bias, Prejudice, Appearance of Impropriety, Reasonable Fear that a Fair Trial Can Not be Obtained, Competency of Judge to Act**

69. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
70. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.
71. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.
72. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus with respect to Judge Martin Colin, current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.
73. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement the frauds upon the Florida Courts in the Proskauer Billing lawsuit.

74. It was expressly noted that the Proskauer Rose firm had “billed” for Estate Planning work involving Simon Bernstein and Bernstein family matters.
75. A status conference was scheduled by the PR O’Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.
76. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition could be discussed at a Case Management Conference that was being scheduled.
77. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.
78. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time.
79. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman for his Petition for All Writs and other relief making similar requests of the PR Brian O’Connell at the Ciklin law firm.
80. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O’Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

81. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein or other related cases.
82. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman urged PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein including but not limited to on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification as a necessary and material fact witness to the fraud upon the Court by Ted's attorneys Tescher and Spallina before Colin while also acting as Fiduciaries.
83. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015.

**Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process**

84. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite 2 specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case



Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

85. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein’s Petition for All Writs which sought to Void Judge Colin’s Orders and declared him a necessary and material fact witness.

86. Judge Phillips must be mandatorily disqualified on these grounds alone.

87. Yet Judge Phillips pre-judging, bias, prejudice and knowing mis-statement of law and procedure in Florida went further saying

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

88. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement, Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.<sup>10</sup>

89. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.<sup>11</sup> Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed.

90. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney’s filing of fraudulent documents in connection with his or her client’s lawsuit would warrant a referral of

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<sup>10</sup> See, [http://phonl.com/fl\\_law/rules/frcp/frcp1540.htm](http://phonl.com/fl_law/rules/frcp/frcp1540.htm)

<sup>11</sup> See, :Pino v the Bank of New York, Feb. 2013, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See id. at 954 & n.2.” ( emphasis added ).<sup>12</sup>

91. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.
92. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by cutting off and denying any fair opportunity to be heard on any issue.
93. This is further compounded and egregious where Pro se Petitioner Bernstein is having to be the on to try and step up and notify Judge Phillips that even licensed attorney PR O’Connell deemed Ted Bernstein to be invalid yet O’Connell failed to do so even though it was O’Connell that brought the matter on to be heard before Phillips in the first instance.
94. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest ( not raised before Phillips but raised during Colin days ) and claimed by both Feaman and O’Connell to be representing a Trustee Ted Bernstein who isn’t valid and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O’Connell’s Management Conference to Schedule a Trial in Shirley Bernstein’s case which was never Noticed to be Heard in the first

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<sup>12</sup> See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

instance denying due process both on the count of improper Notice and on Opportunity to be heard.

95. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.

96. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community.

97. It is only recently discovered this week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters..

98. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper "inside" knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it was just discovered yesterday Dec. 3rd, 2015 that Feaman will not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman's client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

99. The Petition for All Writs brings up very serious actions in the case including but not limited to proven fraud and fraud on the court, beneficiaries, including allegations of fraud against the original Personal Representatives and Trustees, the attorneys Tescher & Spallina<sup>13</sup>, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

100. The Petition for All Writs further brings up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a

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<sup>13</sup> Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See <http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420> and <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher. Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal.

101. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer.

102. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding is brought up and pending before the Florida Supreme Court presently and has been pending at all times Judge John L. Phillips has presided in this case.

103. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to causes waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Writs, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Ivieuit. It should be noted that North District is the furthest courthouse approx 20-30

miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

i. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

ii. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

iii. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

iv. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

c. Further, the Petition for All Writs brings up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

d. Moreover, the Petition for All Writs brings up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers



of the Court from the Tescher & Spallina law firm in Colin's court that were used to illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial cannon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

e. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

f. The All Writs Petition makes it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

g. Yet, while the Petition for All Writs was first filed and pending ( and remains pending ) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

h. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on

July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

i. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

j. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

i. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous conflicts and adverse

interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction

with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

k. The next sentence is wholly false, whereby Rose states,

“For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. **The sole reason [emphasis added]** for the lack of progress is their disinherited son, Eliot Bernstein.”

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit

Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

1. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, I Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

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.

...  
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.**

One look at the docket and the court could see that multiple attempts have been made by Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's

children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.”

Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

m. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:



**PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT**

**STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS**

**AFFORDED**

1. Determine Non Conflicted Venue – Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and both involved directly with the fraud perpetrated by Tescher and Spallina et al.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
  - a. Depositions, Interrogatories, etc. paid for by bad actors
  - b. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after

their law firm was found committing fraud on the court and fraud on the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

- c. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination
  - d. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner ) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.
8. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.
  9. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.
  10. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel
  11. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

- a. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs)
  - b. Determine Authenticity
  - c. Determine Beneficiaries
12. Start with Eliot first Petition, since default by all parties, all reliefs granted.

n. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.

o. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

p. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact that not only did his filing come after close of business hours the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

q. This last minute after close of business hours filing by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

r. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and

prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

s. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16\_, 2015 to determine how to obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

t. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at *no time anytime during this appearance did Judge Phillips even acknowledge* the pending Petition for All Writs at the Florida Supreme Court which brings up *very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness*, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

u. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

v. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes

through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

w. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

x. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

y. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

z. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual “Love” for Judge Martin Colin, such that Judge Phillips proclaims his “Love” for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not

even having the PR Brian O'Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

#### **OTHER ISSUES REQUIRING DISQUALIFICATION**

104. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps \$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.
105. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.
106. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100



companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

107. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

108. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues

raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time.

109. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

110. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

111. This Motion is timely because all actions past and future of Judge Phillips are void as his mandatory disqualification from the matters should have occurred the instant he was aware that he was a material and fact witness in regard to the Colin alleged improper transfer to his Court and thus all judicial acts, present, past and future are all grounds for immediate investigation, disqualification and a voiding of any/all orders and sanctions for the attempt to continue the fraud on the court that started with Colin by violating Judicial Cannons, Probate Rules and Regulations and law and continuing the fraudulent acts without rectifying the past fraud first.
112. Said Orders of Judge John L. Phillips and other material information requiring Disqualification further defined herein embody the conduct which mandates Disqualification and thus this motion for Disqualification is therefore timely and appropriate.
113. Finally, since it was only learned yesterday that Petitioner Eliot Bernstein can not get an Original Certified Transcript of the Sept. 15, 2015 Case Management Conference before Phillips, the motion is further timely for that reason and all the reasons set out herein as the Un-certified and un-signed copy of the Transcript provided by Stansbury to Petitioner and cited herein not only potentially has errors but is filled with statements by Judge Phillips that he is “not smart”, “stupid”, talks about wrestling an octopus.
114. Until such time as the frauds upon the court is corrected and due process restored, any such motion presently is timely herein.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other**

**reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

115. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

116. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

117. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

118. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley

Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

119. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

120. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper

post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

121. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.

122. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

**Disqualification of judge for prejudice; application; affidavits;  
etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

123. Petitioner has supplied a legally sufficient Affidavit herein.
124. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein.

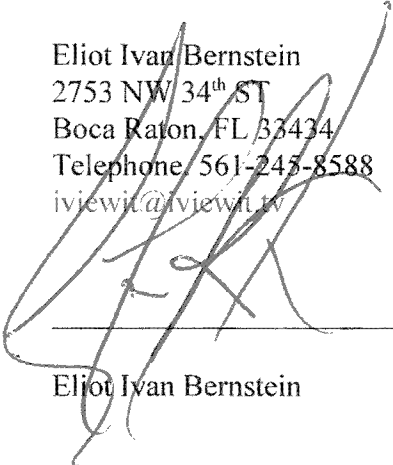
WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 4th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone: 561-245-8588  
iviewit@iviewit.tv



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Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 4th day of December, 2015.



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Eliot Ivan Bernstein

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH COUNTY**

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification. CALIFORNIA  
FL DRIVER LICENCE  
ABC




NOTARY PUBLIC

Print name of Notary:

LANCE A. CHANEY

Notary Signature:

Lance A Chaney 

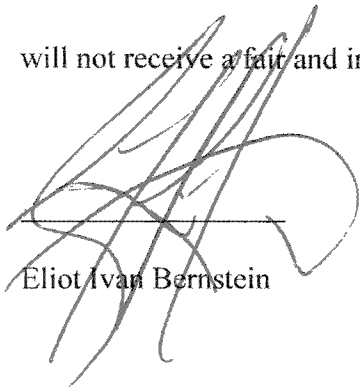
Stamp

Lance A. Chaney  
Notary Public  
State of Florida  
My Commission Expires 04/06/2018  
Commission No. FF 110089

My commission expires: 04/06/2018

AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he will not receive a fair and impartial trial with due process and procedure.

  
Eliot Ivan Bernstein

December 04, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by

Eliot Ivan Bernstein who is known to me or produced the following identification

CALIFORNIA DRIVER LICENSE

Notary Public

Print name: LANCE A. CHANEY

Notary Signature: Lance A Chaney

Stamp

My commission expires: 04/06/2018



Lance A. Chaney  
Notary Public  
State of Florida

My Commission Expires 04/06/2018  
Commission No. FF 110089

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

\_\_\_\_\_/

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate  
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate  
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children  
Case # 502014CP003698XXXXSB – Shirley Trust Construction  
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD CASE # 502014CA014637XXXXMB

\_\_\_\_\_/

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR  
IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L.  
PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification and to otherwise disqualify trial Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court – This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

d. Continued Obstruction of Justice through Denial of Due Process;

e. Aiding and Abetting;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge Phillips has violated the following

Judicial Canons, including but not limited to:

**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to disqualify as it has already been alleged by Petitioner and others that the transfer of the cases to his Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

7. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

8. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been

proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

9. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims.

10. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney at Law Peter Feaman in a letter to the PR O'Connell and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

11. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

12. One of the facts concerning the proceeding and contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer Rose law firm in the same Boca Raton, FL location where fraud by his former law firm occurred against Petitioner) and with the intended

ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

13. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.

14. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be "stupid." In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.

15. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

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.

16. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified.
17. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
18. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

19. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must

be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein.

**Rule 2.330 (c) Motion.**  
**A motion to disqualify shall:**  
**(1) be in writing.**

20. This Motion is in writing.

**Rule 2.330 (c) Motion**  
**(2) allege specifically the facts and reasons upon which the**  
**movant relies as the grounds for disqualification.**

21. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion**  
**(3) be sworn to by the party by signing the motion under oath or**  
**by a separate affidavit.**

22. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion**  
**(4) include the dates of all previously granted motions to**  
**disqualify filed under this rule in the case and the dates of the**  
**orders granting those motions.**

23. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion**  
**(4) The attorney for the party shall also separately certify that**  
**the motion and the client's statements are made in good faith. In**  
**addition to filing with the clerk, the movant shall immediately**  
**serve a copy of the motion on the subject judge as set forth in**  
**Florida Rule of Florida Rule of Civil Procedure 1.080.**

24. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se Petitioner has certified that the motion and the statements made herein are made in good faith. That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial or hearing because of specifically described prejudice or bias of the judge.**

25. That Petitioner asserts as set out below and further herein that he will not and has not already received a fair trial or hearing and that Judge Phillips because of the following specifically described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

26. That it is is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to

steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

27. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

28. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

29. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his “pre-judging” and “pre-determination” in the case that he would not do anything to find Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein.
30. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.
31. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.<sup>1</sup>

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<sup>1</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

32. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

33. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

34. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the proceedings.

### **OTHER ISSUES AND FACTS REQUIRING DISQUALIFICATION UNDER CANON 3**

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and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**AND OTHER JUDICIAL CANONS AND LAWS AND US AND STATE  
CONSTITUTION**

35. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution of Florida, Florida Statutes and Rules, Florida Judicial Canons, applicable Florida laws and for ongoing and continuing fraud upon the Court and fraud by the Court.
36. This written, signed motion for mandatory Disqualification is legally sufficient and timely.
37. It was just discovered by myself and my wife Candice Bernstein yesterday, Thursday Dec. 3, 2015, through a series of phone calls by my wife and myself to the Court of Judge John Phillips and related referred calls to Florida Court Administrative offices that I am not eligible to receive “Original” Certified ( “Trial Admissible” ) Transcripts of proceedings in this case despite our indigency “in pauperis” status which has been forced upon us by a series of continuing frauds upon this Court and by this Court.
38. It was further discovered yesterday, Dec. 3, 2015 through these calls that an “Original” Certified Transcript of proceedings ( “Trial Admissible” ) shall be *Signed* by the involved Stenographer.
39. It was also discovered just yesterday, Dec. 3, 2015, through these calls that there apparently is no Audio Recordings by the Court in this case for appearances before current Judge John Phillips who must now be mandatorily Disqualified.
40. This recent discovery occurred just yesterday, Dec. 3, 2015 despite diligent efforts by myself and wife to ascertain these facts on September 16, 2015 which was the day after a “Case-Management Conference” held in the North Branch by Judge John L. Phillips who must now be mandatorily Disqualified.

41. On Sept. 16, 2015, my wife Candice Bernstein and I called The Honorable John L. Phillips, Judicial Assistant: Alejandra Stelicha or “Alex” at (561) 624-6593 and left a message on her voicemail that I was calling to ask her a question regarding a hearing that had occurred the day before on Sept. 15, 2015 for case # 502012CP004391 and for her to call be back as soon as possible.
42. At no time since that diligent call on Sept. 16, 2015, has the Judicial Assistant to Judge John L. Phillips or any other Court member of the North Branch returned our call creating further Bias and Prejudice supporting the instant motion for mandatory Disqualification by Judge John L. Phillips at this time since Petitioner can reasonably fear and believe that Judge Phillips has pre-determined all matters against Petitioner and not even being responsive to basic calls on matters of procedure.
43. Still, it was also just discovered and confirmed just yesterday, Thursday Dec. 3, 2015 in a conference call with Florida Licensed attorney Peter Feaman, representing the “Creditor” William Stansbury herein, that Florida does in fact have statutory and Rules which permit a Trial Judge such as Judge John L. Phillips to void and vacate Judgments, Orders and Decrees of other Judges such as those of Necessary and Material Fact Witness Judge Martin Colin which is precisely the relief that I Petitioned the Florida Supreme Court to issue on July 30, 2015.
44. “But for” the ongoing and continuing frauds upon the Court and by the Court and illegal, tortious, extortive and criminal actions against myself and family and in the Estates and Trusts of Simon and Shirley Bernstein, I would have adequate funds and resources to obtain proper Florida licensed counsel throughout all of these proceedings herein and would not be in indigent “in pauperis” status at this time.



45. I have Petitioned Florida Judge Martin Colin on multiple occasions who is and has been a Necessary and Material fact witness since May 6, 2013 for Emergency Relief and to halt and stay these proceedings, address the frauds upon the Court as well as for financial relief in the Estates and Trust cases to have adequate funds to retain counsel of my own choosing for myself and minor children and provide for our family home which was the intent and purpose of significant Estate and Trust planning and business actions by Simon and Shirley Bernstein.
46. These frauds include but are not limited to direct frauds upon the Court by the filing of false and fraudulent instruments in the Estate of Shirley Bernstein such as 6 illegally and criminally fraudulent Notaries placed on Estate documents by a Paralegal Notary Kimberly Moran who worked for Tescher and Spallina and other documents such as an April 9, 2012 document "Witnessed" by Robert Spallina and allegedly signed by Simon Bernstein relating to the Estate of Shirley Bernstein but not filed with the Court until Oct. 2012 post-mortem and after his death.
47. A close and careful review of the Transcript of Proceedings from Sept. 13, 2013 before Judge Martin Colin who is a Necessary and Material fact witness which came up after Kimberly Moran Admitted to Florida Governor's Office the fraudulent Notaries filed in Judge Colin's Court will show that, despite Judge Colin saying on the Record he had sufficient information to read Miranda Warnings to Tescher & Spallina, Judge Colin raises but "skips by" who actually filed these documents in his Court and how these documents were filed in his Court leaving these as open questions of material fact necessary to determine the full frauds herein and for the integrity of the court and court system itself.
48. As set forth in a further mandatory Disqualification filed with Judge Colin, instead of issuing a Show Cause Order to Tescher & Spallina as Licensed Florida attorneys at that time in Sept. 2013

and issuing Emergency stay relief as I repeatedly petitioned and instead of calling Kimberly Moran to the stand at subsequent hearings in October of 2013, Judge Colin proceeded in the case for another 19 plus months permitting Ted Bernstein to act as Trustee and Fiduciary despite the fact that Tescher & Spallina were involved with Ted Bernstein as business partners, were his counsel as alleged fiduciary and were the ones to fraudulently place Ted Bernstein into this position which was approved and upheld by Colin.

49. Still further, Judge Colin even goes further as to permit Ted Bernstein to sell off and dispose of substantial assets of the Shirley Estate and Trust and was proceeding to permit Ted Bernstein to sell off Simon's multi-million dollar home from the Simon Estate without ever holding a hearing to determine the construction and validity of the Shirley and Simon Bernstein Trusts and Wills nor the validity of Ted Bernstein as a Fiduciary and Trustee and in fact was proceeding to allow Ted to fraudulently sell this multi-million dollar home to an "undisclosed" buyer while falsely claiming this as an "arms length" transaction.

**Washington DC Public Integrity Unit Prosecution of NY Judge who was involved in the  
Florida Election Re-count of 2000; Bush v Gore**

50. Judicial fraud and bribery are serious crimes which fundamentally undermine the integrity of our system of justice and laws.

51. From the Dept. of Justice Website:

"FOR IMMEDIATE RELEASE

Thursday, August 27, 2009

**Former New York State Supreme Court Justice Thomas J. Spargo Convicted  
of Attempted Extortion and Bribery**

Former New York State Supreme Court Justice Thomas J. Spargo was convicted today by a federal jury in Albany, N.Y., of attempted extortion and soliciting a bribe.

Spargo, 66, was convicted following a three-day jury trial. Evidence introduced at trial showed that on Nov. 13, 2003, Spargo solicited a \$10,000 payment from an attorney with cases pending before him in Ulster County, while Spargo was serving as a state supreme court justice. The trial evidence showed that when the attorney declined to pay the money, Spargo increased the pressure by a second solicitation communicated through an associate. According to evidence presented at trial, on Dec. 19, 2003, Spargo directly told the attorney in a telephone conversation that he and another judge close to him had been assigned to handle cases in Ulster County, including the attorney's personal divorce case. According to the evidence at trial, the attorney felt that if he did not pay the money, both the cases handled by his law firm and his personal divorce proceeding would be in jeopardy.

"It is a sad day indeed when a judge breaks the laws that he is sworn to enforce," said Assistant Attorney General Lanny A. Breuer. "The Criminal Division's Public Integrity Section will continue in its singular mission to hold accountable wayward public officials who violate the law and the trust that has been placed in them."

"Judges are supposed to serve the people who elected them, not their own self-interests. What Mr. Spargo did is nothing more than old fashioned extortion," said FBI Special Agent in Charge John F. Pikus.

The maximum statutory penalty for the charge of soliciting a bribe is 10 years in prison and the maximum penalty for the charge of attempted extortion is 20 years. Spargo also faces a maximum fine of \$250,000 for each count on which he was convicted.

This case is being prosecuted by Senior Trial Attorney Richard C. Pilger and Trial Attorney M. Kendall Day of the Public Integrity Section, which is headed by Chief William M. Welch II. The case was investigated by the FBI's Albany Division."<sup>2</sup>

52. From the Troy Record,

"At the time, it was suggested that Spargo was seeking the funds to help defray his legal costs as he was battling the state Commission on Judicial Conduct. . . . .  
**Spargo traveled to Florida during the 2000 election vote recount on**

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<sup>2</sup> See, <http://www.justice.gov/opa/pr/former-new-york-state-supreme-court-justice-thomas-j-spargo-convicted-attempted-extortion-and>

**behalf of George W. Bush and is considered an experienced election lawyer.** ( emphasis added ).

John F. Pikus, Special Agent in Charge of the FBI's Albany division, said in a statement that the case "should demonstrate that the FBI will pursue all allegations of judicial corruption vigorously, as public corruption violations are among the most serious of all criminal conduct and can tear at the fabric of a democratic society."<sup>3</sup>

53. As set out in the Petition for All Writs which also includes a request for a Stay and Injunctive Relief, Petitioner has reported criminal and fraudulent actions relevant herein to the US Dept of Justice and related federal and state authorities.

54. This includes conduct of now Chief Judge Jorge Labarga who, like Spargo, was also involved in the Florida Re-Count of 2000, Bush v. Gore, as a Circuit Judge and who was intimately involved with the original frauds upon the Florida courts in the underlying Proskauer Rose "Billing Lawsuit" related to the Iviewit Technologies including but not limited to orchestrated fraudulent actions by Labarga to deny counsel and resources for counsel to Petitioner Eliot Bernstein in 2003.

55. These actions and the Iviewit matters were brought up before Judge Colin in a May 6, 2013 Emergency Petition after further frauds upon the Court in Florida were discovered now in the Shirley Bernstein case and Simon Bernstein case.

56. Like Spargo, a formal complaint was made by Petitioner against Judge Jorge Labarga at the Florida State Judicial Qualifications Commission.

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<sup>3</sup> See, <http://www.troyrecord.com/general-news/20081210/ex-judge-tom-spargo-indicted-by-feds-for-corruption>

57. Complaints against the involved licensed attorneys in the Proskauer Billing lawsuit heard by Labarga were filed in both the respective New York, Virginia and Florida State Bar Associations and - or appropriate State Attorney Discipline bodies.
58. Fraud by the Florida Bar in the handling of formal complaints was clearly present in the underlying Proskauer Rose Billing Lawsuit specifically involving Proskauer Rose Partner Chris Wheeler wherein the Florida Bar falsely and fraudulently determined that Proskauer was not responsible for Intellectual Property and Patent work at the USPTO despite the fact that the Florida Bar was clearly presented with a Private Placement Memorandum involving Wachovia on behalf of Iviewit that specifically referenced in the Private Placement that Proskauer Rose Partner Ken Rubenstein was Patent Counsel in the Iviewit matters and that Proskauer Partner Wheeler was listed as an Advisor to Iviewit on the Wachovia Private Placement.<sup>4</sup>
59. Upon information and belief, these fraudulent actions by Proskauer Rose and related parties in the fraudulent Wachovia Private Placement Memorandum constituted Securities Fraud in violation of SEC laws and rules.
60. Upon information and belief, attorneys Tescher and Spallina, centrally involved in the Simon and Shirley Bernstein Estates and Trusts herein have recently been charged and convicted in SEC violations and Insider Trading in another case where their roles as Fiduciaries were violated and where attorney Spallina pleaded guilty to a Felony and has now lost his Florida law license<sup>5</sup>.

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<sup>4</sup> See, Wachovia PPM

<http://www.iviewit.tv/CompanyDocs/Wachovia%20Private%20Placement%20Memorandum%20BOOKMARKED.pdf>;

Further, see Evidence provided to the Florida Bar.

<http://www.iviewit.tv/CompanyDocs/2003%2004%2030%20Bernstein%20response%20Florida%20Bar%20Wheeler%20BOOKMARKED.pdf>

<sup>5</sup> See, SEC Complaint and “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

61. This fraudulent determination by the Florida Bar was further fraudulently supported by Partner Jerald Beer of the Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell law firm during that time<sup>6</sup>.
62. The Ciklin law firm is now the current PR of the Simon Bernstein Estate brought in by Florida Licensed attorney Peter Feaman before Judge Martin Colin.
63. Upon information and belief, Florida Licensed attorney Peter Feaman, in addition to representing "Creditor" William Stansbury, is also Chief Counsel for the State Republican Party.
64. Upon information and belief, the Ciklin Managing Partner Alan Ciklin is the brother of the current Chief Judge Cory Ciklin of the 4th DCA who married a Paralegal to another Ciklin partner Martens and further that Ciklin and Labarga were both appointed to the 4th DCA at the same time by former Governor Crist<sup>7</sup>.
65. The Ciklin law firm has previously been publicly accused by a sitting Judge of maintaining 2 sets of "books" at the firm as follows:

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and Government Complaint @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tesch%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

Bernstein Emergency Petition before in Florida Probate May 2013 @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>6</sup> See,

<http://iviewit.tv/CompanyDocs/2004%2010%2022%20Florida%20Bar%20Response%20to%20Petition%20to%20Supreme%20Court.pdf>

<sup>7</sup> See, <http://www.palmbeachbar.org/judicial-profiles/2002/>; Further see

<http://www.4dca.org/judges/ciklin.shtml>;

See further;

[http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist\\_puts\\_labarga\\_ciklin\\_on\\_4.html](http://weblogs.sun-sentinel.com/news/politics/palm/blog/2008/12/crist_puts_labarga_ciklin_on_4.html)

“Evidence obtained during the case provided an inside look into the inner workings of one of Palm Beach County’s most influential real estate, land use and commercial litigation firms.

Chernow-Brown noted the evidence presented at trial showed the firm maintained at least two separate balance sheets, both dated Oct. 31, 2012. Accounts receivable listed on one were omitted on the other, Chernow-Brown wrote.

“Importantly, unbilled time, life insurance proceeds receivables and over \$1 million in cash value of life insurance policies were completely missing from both balance sheets,” Chernow-Brown wrote.”

She concluded the firm was obligated to keep books for all the property of the firm, under the firm’s partnership agreement.”

66. The Judge further went on to note about the Ciklin firm:

“The evidence on this factual issue raises a real possibility of a charade being played out in order to manipulate a matter pending in the Family Division of this Court.”<sup>8</sup>

67. Nearly a year and a half ago in August 2014, “Creditor” Stansbury’s attorney Peter Feaman went as far as demanding that the current PR Brian O’Connell of the Ciklin law firm in the Simon Bernstein case “pick up the baton” in the efforts to remove Ted Bernstein as Trustee noting both that not only have Accountings not been performed for the Trusts and Estates but also that Ted Bernstein was not a valid Trustee by the express terms of the Trust.<sup>9</sup>

68. This request by Feaman of Simon Bernstein PR O’Connell went as far as requesting that O’Connell file his own Petition to remove Ted Bernstein, yet, to this date nearly a year and a half later, Brian O’Connell of the Ciklin law firm has never done so despite the fact that Ted

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<sup>8</sup> See, <http://insurancenewsnet.com/oarticle/2014/09/19/Powerful-WPB-law-firm-ordered-to-pay-22-million-to-retired-partner-a-557684.html> .

<sup>9</sup> See, <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

Bernstein has been proven to be intimately involved and central to the actions of Tescher and Spallina where Trusts are lost, documents are lost and no proper accounting occurs.

**The Instant Case Before Judge John L. Phillips**

**Fundamental Denial of Due Process, Bias, Prejudice, Appearance of Impropriety, Reasonable Fear that a Fair Trial Can Not be Obtained, Competency of Judge to Act**

69. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
70. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.
71. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.
72. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus with respect to Judge Martin Colin, current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.
73. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement the frauds upon the Florida Courts in the Proskauer Billing lawsuit.



74. It was expressly noted that the Proskauer Rose firm had “billed” for Estate Planning work involving Simon Bernstein and Bernstein family matters.
75. A status conference was scheduled by the PR O’Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.
76. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition could be discussed at a Case Management Conference that was being scheduled.
77. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.
78. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time.
79. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman for his Petition for All Writs and other relief making similar requests of the PR Brian O’Connell at the Ciklin law firm.
80. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O’Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

81. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein or other related cases.
82. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman urged PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein including but not limited to on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification as a necessary and material fact witness to the fraud upon the Court by Ted's attorneys Tescher and Spallina before Colin while also acting as Fiduciaries.
83. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015.

**Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process**

84. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite 2 specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case

Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

85. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein’s Petition for All Writs which sought to Void Judge Colin’s Orders and declared him a necessary and material fact witness.

86. Judge Phillips must be mandatorily disqualified on these grounds alone.

87. Yet Judge Phillips pre-judging, bias, prejudice and knowing mis-statement of law and procedure in Florida went further saying

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

88. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement, Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.<sup>10</sup>

89. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.<sup>11</sup> Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed.

90. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney’s filing of fraudulent documents in connection with his or her client’s lawsuit would warrant a referral of

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<sup>10</sup> See, [http://phonl.com/fl\\_law/rules/frcp/frcp1540.htm](http://phonl.com/fl_law/rules/frcp/frcp1540.htm)

<sup>11</sup> See, :Pino v the Bank of New York, Feb. 2013, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See id. at 954 & n.2.” ( emphasis added ).<sup>12</sup>

91. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.
92. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by cutting off and denying any fair opportunity to be heard on any issue.
93. This is further compounded and egregious where Pro se Petitioner Bernstein is having to be the on to try and step up and notify Judge Phillips that even licensed attorney PR O’Connell deemed Ted Bernstein to be invalid yet O’Connell failed to do so even though it was O’Connell that brought the matter on to be heard before Phillips in the first instance.
94. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest ( not raised before Phillips but raised during Colin days ) and claimed by both Feaman and O’Connell to be representing a Trustee Ted Bernstein who isn’t valid and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O’Connell’s Management Conference to Schedule a Trial in Shirley Bernstein’s case which was never Noticed to be Heard in the first

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<sup>12</sup> See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

instance denying due process both on the count of improper Notice and on Opportunity to be heard.

95. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.

96. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community.

97. It is only recently discovered this week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters..

98. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper "inside" knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it was just discovered yesterday Dec. 3rd, 2015 that Feaman will not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman's client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

99. The Petition for All Writs brings up very serious actions in the case including but not limited to proven fraud and fraud on the court, beneficiaries, including allegations of fraud against the original Personal Representatives and Trustees, the attorneys Tescher & Spallina<sup>13</sup>, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

100. The Petition for All Writs further brings up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a

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<sup>13</sup> Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See <http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420> and <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher. Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal.

101. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer.

102. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding is brought up and pending before the Florida Supreme Court presently and has been pending at all times Judge John L. Phillips has presided in this case.

103. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to causes waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Writs, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Ivieuit. It should be noted that North District is the furthest courthouse approx 20-30



miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

i. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

ii. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

iii. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

iv. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

c. Further, the Petition for All Writs brings up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

d. Moreover, the Petition for All Writs brings up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers

of the Court from the Tescher & Spallina law firm in Colin's court that were used to illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial cannon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

e. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

f. The All Writs Petition makes it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

g. Yet, while the Petition for All Writs was first filed and pending ( and remains pending ) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

h. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on

July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

i. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

j. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

i. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous conflicts and adverse

interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction

with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

k. The next sentence is wholly false, whereby Rose states,

“For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. The sole reason [emphasis added] for the lack of progress is their disinherited son, Eliot Bernstein.”

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit

Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

1. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, I Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

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.

...  
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.**

One look at the docket and the court could see that multiple attempts have been made by Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's

children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.”

Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

m. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:

**PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT**

**STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS**

**AFFORDED**

1. Determine Non Conflicted Venue – Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and both involved directly with the fraud perpetrated by Tescher and Spallina et al.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
  - a. Depositions, Interrogatories, etc. paid for by bad actors
  - b. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after

their law firm was found committing fraud on the court and fraud on the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

- c. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination
  - d. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner ) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.
8. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.
  9. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.
  10. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel
  11. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

- a. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs)
  - b. Determine Authenticity
  - c. Determine Beneficiaries
12. Start with Eliot first Petition, since default by all parties, all reliefs granted.

n. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.

o. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

p. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact that not only did his filing come after close of business hours the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

q. This last minute after close of business hours filing by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

r. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and

prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

s. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16\_, 2015 to determine how to obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

t. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at *no time anytime during this appearance did Judge Phillips even acknowledge* the pending Petition for All Writs at the Florida Supreme Court which brings up *very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness*, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

u. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

v. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes



through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

w. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

x. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

y. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

z. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual “Love” for Judge Martin Colin, such that Judge Phillips proclaims his “Love” for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not

even having the PR Brian O'Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

#### **OTHER ISSUES REQUIRING DISQUALIFICATION**

104. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps \$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.
105. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.
106. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100

companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

107. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

108. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues

raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time.

109. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

110. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

**Rule 2.330 Grounds.**

**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

111. This Motion is timely because all actions past and future of Judge Phillips are void as his mandatory disqualification from the matters should have occurred the instant he was aware that he was a material and fact witness in regard to the Colin alleged improper transfer to his Court and thus all judicial acts, present, past and future are all grounds for immediate investigation, disqualification and a voiding of any/all orders and sanctions for the attempt to continue the fraud on the court that started with Colin by violating Judicial Cannons, Probate Rules and Regulations and law and continuing the fraudulent acts without rectifying the past fraud first.
112. Said Orders of Judge John L. Phillips and other material information requiring Disqualification further defined herein embody the conduct which mandates Disqualification and thus this motion for Disqualification is therefore timely and appropriate.
113. Finally, since it was only learned yesterday that Petitioner Eliot Bernstein can not get an Original Certified Transcript of the Sept. 15, 2015 Case Management Conference before Phillips, the motion is further timely for that reason and all the reasons set out herein as the Un-certified and un-signed copy of the Transcript provided by Stansbury to Petitioner and cited herein not only potentially has errors but is filled with statements by Judge Phillips that he is “not smart”, “stupid”, talks about wrestling an octopus.
114. Until such time as the frauds upon the court is corrected and due process restored, any such motion presently is timely herein.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other**

**reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

115. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion.**

116. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

117. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

118. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley

Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

119. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

- a. Case# 502012CP004391XXXXSB – Simon Bernstein Estate
- b. Case# 502011CP000653XXXXSB – Shirley Bernstein Estate
- c. Case# 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- d. Case# 502014CP003698XXXXSB – Shirley Trust Construction
- e. Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD Case# 502014CA014637XXXXMB

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

120. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper

post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

121. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.

122. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

**Florida Statutes 38.10**



**Disqualification of judge for prejudice; application; affidavits;  
etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

123. Petitioner has supplied a legally sufficient Affidavit herein.
124. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein.

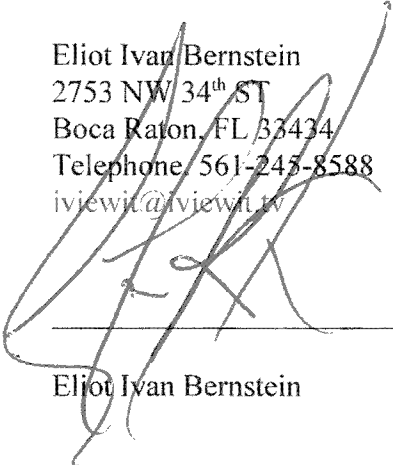
WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 4th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone: 561-245-8588  
iviewit@iviewit.tv



---

Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 4th day of December, 2015.



---

Eliot Ivan Bernstein

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH COUNTY**

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification.


*CALIFORNIA  
FL DRIVER LICENCE  
ABC*

NOTARY PUBLIC

Print name of Notary:

LANCE A. CHANEY

Notary Signature:

Lance A Chaney 

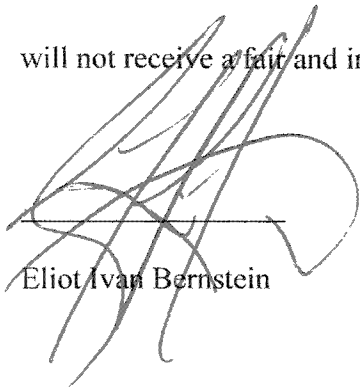
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Lance A. Chaney  
Notary Public  
State of Florida  
My Commission Expires 04/06/2018  
Commission No. FF 110089

My commission expires: 04/06/2018

AFFIDAVIT

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he will not receive a fair and impartial trial with due process and procedure.

  
Eliot Ivan Bernstein

December 04, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by

Eliot Ivan Bernstein who is known to me or produced the following identification

CALIFORNIA DRIVER LICENSE

Notary Public

Print name: LANCE A. CHANEY

Notary Signature: Lance A Chaney

Stamp

My commission expires: 04/06/2018



Lance A. Chaney  
Notary Public  
State of Florida

My Commission Expires 04/06/2018  
Commission No. FF 110089

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

**NOTICE OF CORRECTION**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
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- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

**NOTICE OF CORRECTION TO VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT  
JUDGE JOHN L. PHILLIPS**

Petitioner Eliot I. Bernstein reserves the right to correct and amend and supplement this Notice of Correction and underlying Petition for Mandatory Disqualification as the law and justice allows. Should any party be deemed aggrieved by this Notice of Correction without a Sworn Amended Petition being filed, it is requested that such party Notify Petitioner forthwith



and that despite any corrections or irregularities provided the Petition remains legally sufficient to mandate the Disqualification of Judge John L. Phillips immediately.

1. Par. 27: Should be corrected to read: “Judge Phillips now becomes a material and fact witness” instead of “new”.
2. Par. 41: Should be corrected to read: “and for her to call me back”, not “be” back but further reiterated that my wife Candice Bernstein is the one on the call asking to be called back with me present at the time.
3. Par. 43: Should be corrected to reflect “June 30, 2015” and not July 30, 2015.
4. Par. 54: Should be amended to add and read at the end of the sentence: “and / or the proper Iviewit company”.
5. Par. 73: Should be amended to add the word “in” to the sentence to read “involvement in the frauds upon the Florida Courts.”
6. Par. 82: Should be amended to add the word “having” so that it reads “Peter Feaman having urged PR O’Connell in August of 2014”.
7. Par. 89: Should be amended to add “or Eliot Bernstein could have simply sought leave to file a separate motion for a Stay and Injunctive relief other relief if he had been afforded a proper due process opportunity to be heard in a meaningful way at a meaningful time” at the end of the paragraph.
8. Par. 93: Should be corrected to say the word “one” instead of “on” so it reads: “having to be the one to step up”.
9. Par. 102: Should be corrected to read: “was” instead of “is” and should say: “was brought up and pending before the Florida Supreme Court and was pending at all times relevant to Judge



001686

John L. Phillips committed the due process and other errors and issued the Trial Order for Dec. 15, 2015 in the Shirley Bernstein case not Noticed to be heard on Sept. 15, 2015.”

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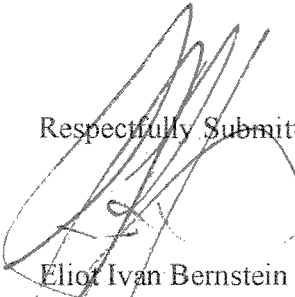
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Dated this 4th day of December, 2015

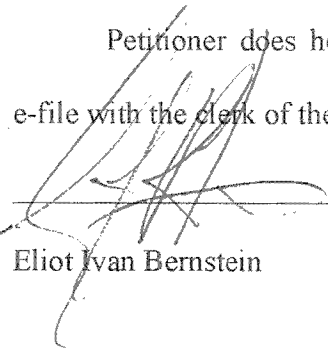
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Eliot Ivan Bernstein  
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iviewit@iviewit.tv

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Eliot Ivan Bernstein



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

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OF THE SHIRLEY BERNSTEIN TRUST  
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**NOTICE OF CORRECTION TO VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT  
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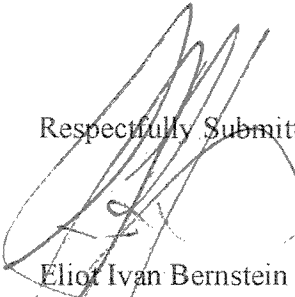
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Dated this 4th day of December, 2015

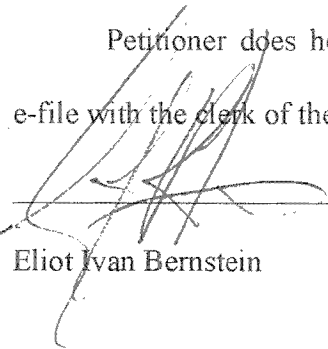
Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 4th day of December, 2015.



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Eliot Ivan Bernstein

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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERSTEIN TRUST  
TRUST AGREEMENT DATED  
MAY 20, 2008 AS AMENDED  
Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.  
Defendant(s).

---

**ORDER DENYING PETITIONER'S VERIFIED SWORN EMERGENCY PETITION  
AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF  
CIRCUIT JUDGE JOHN L. PHILLIPS**

THIS MATTER came before the Court in chambers, upon Petitioner's VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS (DE #94), and his NOTICE OF CORRECTION filed December 4, 2015, (DE # 96), alleged to apply to other applicable related cases:

2012CP004391 –Simon Bernstein Estate

2011CP000653 – Shirley Bernstein Estate

2014CP002815 – Oppenheimer v. Bernstein Minor Children

2015CP001162- Eliot Bernstein v. Trustee Simon Trust Case

Old Case -2014CA014637.

The Court has reviewed same and upon consideration it is

**ORDERED and ADJUDGED** that the Petition for Disqualification, and the Notice of Correction as set forth above, are **DENIED** as legally insufficient..

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 8th day of December, 2015.



JOHN L PHILLIPS  
Circuit Judge

**Copies furnished to:**

ALAN B ROSE ESQ. [arose@nragej-law.com](mailto:arose@nragej-law.com)  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

**SUCCESSOR TRUSTEE'S MOTION FOR ORDER RESOLVING  
INTERVENTION BY SIMON'S PERSONAL REPRESENTATIVE**

Successor Trustee, Ted S. Bernstein (the "Trustee"), moves the Court for an Order, resolving the intervention in this action by Brian O'Connell, the Successor Personal Representative of the Estate of Simon L. Bernstein ("Simon's PR"), and states:

1. Count II of this action seeks to determine the validity and enforceability of the Wills and Trusts of Simon Bernstein and Shirley Bernstein. Although this primarily is an action to construe Shirley's Trust, whether Simon's Will is valid is a necessary sub-issue. That is because, in his Will,

Simon exercised his limited power of appointment over the assets in the Shirley Trust. Also, Judge Colin ordered that this Complaint be amended to address the validity of Simon's Will.

2. Simon's PR has no interest in Shirley's Trust, but moved to intervene in this case because and to the extent Simon's Will is being challenged. The Trustee did not oppose intervention.

3. Now, however, the Trustee and Simon's PR have conferred and it appears to the Trustee that there is no need for Simon's PR to attend the trial or actively participate in this action. Simon's PR is not appointed by *any Will* of Simon. Instead, Simon's PR was appointed by this Court when the only named PRs resigned. Indeed, in either Simon's 2008 Will or his 2012 Will, there are no named persons eligible to serve as PR.

4. In the 2012 Will, Simon named two attorneys as co-PRs. They have both resigned. The 2012 Will names no one else. In the 2008 Will, the choices would have been Shirley (now dead) or Bill Stansbury (a claimant against the Estate who could not possibly be allowed to serve as PR).<sup>1</sup>

5. The Trustee's interest in the upcoming trial is aligned with Simon's PR, as both seek to enforce and uphold the 2012 Will. Indeed, one of the Trustee's primary duties in this case is to determine the validity of the 2012 Will and Trust.

6. With regard to Simon's PR, it is of little concern which Will is ultimately determined to be valid because he was not appointed under *any* of the Wills. Simon's PR, Mr. O'Connell, was appointed by this Court and his appointment will not be directly affected by the outcome of the trial. Indeed, the duties of Simon's PR will not be directly affected by the outcome of the trial. Only the

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<sup>1</sup> In the First Codicil to his 2000 Will, Simon named as PRs, singly and in order, the following: Shirley (dead); his then attorney Steven Greenwald (who he replaced in 2008); and his daughters Lisa and then Pam. Given the fact the 2000 Will provides Eliot with only 25% and names his sister Pam as a successor PR, it is highly unlikely Eliot would seek to invalidate the 2008 Will and revert to either 25% under the 2000 Will or 20% through intestacy.



ultimate beneficiaries of Simon's Estate may change; his appointment and his duties will not. And, his appearance and participation will incur significant expenses which can be avoided by entry of an Order resolving his intervention, by providing that regardless of the outcome of the trial on December 15th, Simon's PR will continue to serve as PR subject to Florida law and the Probate Code.

7. The Trustee and Simon's PR agree that during the trial on December 15, 2015, there will be no adjudication made by the Court regarding the following issues: (i) whether Ted Bernstein validly is serving as Successor Trustee of Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust"); and/or (ii) whether Ted Bernstein should be removed as Trustee of the Simon Trust.<sup>2</sup>

WHEREFORE, the Successor Trustee requests that the Court enter an Order resolving the intervention by Brian O'Connell by providing that: (i) regardless of the outcome of the trial on December 15th, Brian O'Connell shall continue to serve as Simon's PR subject to Florida law and the Probate Code.

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<sup>2</sup> Ted Bernstein individually is not a named beneficiary of the Simon Trust, and all three of Ted Bernstein's children are adults so he is not acting in a representative capacity for any minor children who are or may be beneficiaries of the Simon Trust.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 9th day of December, 2015.

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Attorneys for Ted S. Bernstein

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

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

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

Case No.: 502014CP003698XXXXNBIJ  
Probate Division

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**PLAINTIFF'S SECOND AMENDED<sup>1,2</sup> EXHIBIT LIST**

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

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

<sup>1</sup> First Amended Exhibit List added Exhibit(s) 40A-40F

<sup>2</sup> Second Amended Exhibit List adds Exhibit 41

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

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

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

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

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



**CERTIFICATE OF SERVICE**

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

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*Attorneys for Trustee, Ted Bernstein*

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

**SERVICE LIST**  
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Alan M. Rose,  
Mrachek, Fitzgerald, Rose, Konopka, Thomas, & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

*Re: Voluntary Request for Stay of Trial Dec. 15th @ 9:30 am; Judge John L. Phillips, North Branch of Palm Beach County Case No. Case # 502014CP003698XXXXSB – Shirley Bernstein Trust Construction and related CASE Numbers below (believed to be at North Branch NB now):*

1. *Case # 502012CP004391XXXXSB – Simon Bernstein Estate*
2. *Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children*
4. *Case # 502011CP000653XXXXSB – Shirley Bernstein Estate*
5. *Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case*

Dear Mr. Rose:

I am writing to advise you that I am preliminarily retained and in the process of reviewing information to permit me to complete a proper Retainer and apply Pro Hac Vice in Florida as Trial Counsel for Eliot I. Bernstein and / or his minor children and am requesting that your office Voluntarily remove the matter from the Trial Calendar for Dec. 15th at 9:30 am EST.

Being from the State of Texas as a licensed attorney in good standing who is not presently licensed in the State of Florida, I understand I need "Local Counsel" in Florida to support my Pro Hac Vice application, however, I further understand that even obtaining a proper "Local Counsel" may take considerable time and when Eliot Bernstein has interviewed with prior Local Counsel providing case information and strategy, the local counsel then showed up in Court on behalf of your client Ted Bernstein instead.

Thus, simply for these reasons I am requesting that you voluntarily move the action off the Trial Calendar for Dec. 15th, 2015.

My preliminary review shows me this case is quite complex and perhaps should have been designated as such under Florida Rules of Civil Procedure.

In any event, there is a considerable number of documents, pleadings and relevant filings I will need to review to be properly prepared for Trial and voluntarily request that you move to stay the action for at least 30 days.

My understanding is that Eliot Bernstein even recently attempted to be heard before Judge Phillips at a Case-Management Conference held on Sept. 15, 2015 on the issue of having funds from the Trust to pay for Counsel for his children but did not get an opportunity to be fully heard before the Court and was otherwise denied on this day.

I also understand that Eliot I. Bernstein had previously filed even before that Case-Management Conference and applied to the Estate and the Trust for these funds but has so far been denied or not heard.

Thus, please confirm in writing by email at your earliest convenience by Monday morning 9 a.m., EST if you are moving to Stay the Trial or even withdraw the pleading altogether. I will be checking my email all weekend so please try to respond as timely as possible.

In the event you choose not to so move Voluntarily and stay the Trial scheduled for Dec. 15, 2015, it appears from my preliminary review that there are several grounds upon which to mandate a Stay of the Trial and even your removal as Trial Counsel upon grounds of being a necessary and material fact witness for the Trial.

I also understand that you have been sued in two counter-suits in these Florida proceedings and have a likely conflict of interest in representing Ted Bernstein as Trustee in the Trial on validity of Trusts and Wills of Shirley Bernstein and Simon Bernstein and that prior Judge Colin did not let you out of these cases as a counter defendant prior to his sudden recusal within 24 hours of denying a motion for mandatory Disqualification filed by Eliot Bernstein and thereafter Judge Colin acted to transfer the matters to the North Branch.

I have preliminarily reviewed the Transcript of Proceedings ( not signed by Stenographer ) of Sept. 15, 2015 and see many disturbing issues in a Trial moving forward on Dec. 15th, 2015 before Judge Phillips.

I also am reviewing related filings, pleadings and matters in the federal District Court of the Northern District of Illinois where Ted Bernstein is a party and the Estate of Simon Bernstein has been permitted to intervene and am investigating relief in the federal venue should I not hear back from

your office in a timely manner to voluntarily Stay the Trial scheduled before Judge Phillips on Dec. 15th, 2015.

Again, these are complicated cases with a volume of paper and pleadings and documents to review and request at least 30 days, I also think due to the complexity, especially with frauds relating to fiduciaries and counsel in the matters, the court should set this trial as a complex proceeding and follow those pre-trial prerequisites.

### **Improperly NOTICED Trial**

Simply reviewing the Notice that Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: "**The matter to be considered shall be specified in the order or notice setting the conference.**"

Yet, a simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that you either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed. I further noticed that neither Florida Licensed attorneys Brian O'Connell, nor Juy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along with you and Judge Phillips Scheduling and Moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.

I know at least here in Texas and in most states of the nation lawyers have Professional Obligations to Correct matters before Courts and Tribunals although I also know Courts have inherent authority to correct mistakes and preserve the integrity of the proceedings although I have not seen from Eliot Bernstein any notice that Judge Phillips has corrected this yet despite

being specifically pointed to it in a recent Motion for Mandatory Disqualification filed against Judge Phillips.

Of course I have further seen where Licensed attorney Peter Feaman on behalf of the Creditor William Stansbury noticed you about a Conflict of Interest in your representation of Ted Bernstein and the conflicting actions Ted Bernstein is taking in the Illinois Federal litigation and yet you have taken no action to address this conflict.

I further see where Licensed attorney Peter Feaman noticed the PR Brian O'Connell back in Aug. of 2014 that he had an Absolute Duty to take action to Remove Ted Bernstein but not only has he failed to so move, but now is taking action to not even present his Defense at Trial that was scheduled at a Conference his Office NOTICED for Simon Bernstein's case.

**Case - Management and Due-Process Issues:**

All of this is very problematic from a Due Process and ethical perspective particularly where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by Eliot Bernstein on Sept. 15, 2015 creating a further basis to Stay the current Trial.

These Rules include items such as:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

“At such a conference the court may:

(1) schedule or reschedule the service of motions, pleadings, and other papers;

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Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with



the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

**Disqualification as Necessary and Material Fact Witness**

Of greater concern is that you apparently are attempting to proceed to an Improperly Noticed Trial rushed without proper Case Management on behalf of a Trustee that both the PR, Creditor and Eliot Bernstein has said is Invalid based upon Trust language.

Yet, having preliminarily reviewed your May 20, 2015 Email about alleged "Original" Documents in a related Oppenheimer Trust and your subsequent June 4, 2015 letter issued upon your Law Firm Letterhead apparently providing further information on "Original" ( actually "Duplicate Original" ) documents in Your Possession but have failed to include a Sworn Affidavit detailing the **entire links in the Chain of Custody** for this "Original" Best Evidence and in this regard, my preliminary review is that you most likely must be Disqualified under Florida ***RULE 4-3.7 LAWYER AS WITNESS*** grounds and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O'Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.

I understand from Eliot Bernstein that, contrary to the express statement in your June 4, 2015 letter on your Law Firm Letterhead, it was not you that hand-delivered this package to Eliot Bernstein but instead was the PR Brian O'Connell, further involving the PR in the chain of document and evidence custody.

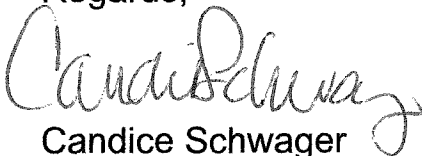
As you plan to use dispositive documents as Exhibits (any originals, duplicates, etc.) at trial please submit these records directly to the court bates stamped so that I may know nothing happened to them in transit and they do not become confused with any of the fraudulent documents already in circulation, I will then obtain them directly from the court.

Another issue of concern is payment of attorney's fees for both Eliot and his minor children and as I will be reviewing the dispositive documents once I access them from the court for the terms I am of the understanding that beneficiary legal fees may be paid through wills and trusts for counsel, especially where this benefits the estates and trusts and the need for counsel was caused by serious breaches by the fiduciaries and counsel in these matters which has caused conflicts in beneficiaries and need for validity and construction hearings and more. I would presume forensic expenses will also be encumbered by the estates and trusts once we determine who we will have examine them. I would assume the same for Eliot and his children's costs for pre-trial expenses including but not limited to witnesses, depositions, etc.

I further understand there may be other Trust and business documents that anyone that is an "interested" party would standardly review with respect to Simon's Business Records and the Discovery requested by Mr. Eliot Bernstein from both your client and PR O'Connell.

Thus, based upon all the reasons, I am respectfully requesting that you Voluntarily move to Stay the Trial to investigate these matters, get Local counsel, and admitted Pro Hac Vice. Please respond by Monday morning.

Regards,

  
Candice Schwager

CC. Brian O'Connell - [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com)

Peter Feaman [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

John Morrissey - [john@morrisseylaw.com](mailto:john@morrisseylaw.com)

Jill Lantoni - [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Lisa Friedstein - [lisa@friedsteins.com](mailto:lisa@friedsteins.com)



Candice Schwager  
SCHWAGER FIRM  
Tel: 832.315.8489  
Fax: 832.514.4738  
candiceschwager@icloud.com

December 11, 2015

**Via Facsimile:**

Court Coordinator  
15<sup>th</sup> Judicial Circuit of Florida  
NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410

*Re: EMERGENCY Application to appear pro hac vice and request for abatement or stay until counsel obtains local counsel and is admitted; Case Numbers (are believed to all be in North Branch now);*

1. Case # 502014CP003698XXXXSB – Shirley Trust Construction
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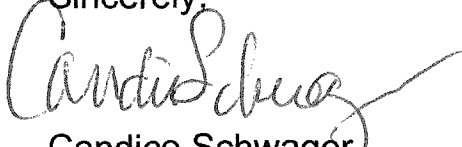
*Circuit Court of ;  
15th Judicial Circuit of Florida*

*NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410*

Dear Sir or Madam:

Please accept the attached Motion to Abate and Stay until such time as I can obtain local counsel and have my application pro hac vice to appear on behalf of Eliot Bernstein's minor children, which I expect to be brief, given I have a regular attorney who has agreed previously agreed to assist me as local counsel in Florida. Thank you for granting abatement or stay until I can enter the case, as Eliot Bernstein's rights are being comprised in terms of due process.

Sincerely,



Candice Schwager

SBN 34005603

1417 Ramada Dr.

Houston, Texas 77062

832.315.8489

832.514.4738

[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

CC: All counsel of record

## Eliot Ivan Bernstein

---

**From:** Candice Schwager <attycandie@gmail.com>  
**Sent:** Friday, December 11, 2015 5:58 PM  
**To:** Alan Rose  
**Cc:** Candice Schwager; boconnell@sicklinlubitz.com; pfeaman@feamanlaw.com; john@morrisseylaw.com; jilliantoni@gmail.com; lisa@friedsteins.com; Eliot Ivan Bernstein; Eliot Ivan Bernstein; Eliot Ivan Bernstein  
**Subject:** Re: Scanned document from HP ePrint user

I should have it filed by Monday so your objection will likely be moot

Candice L. Schwager  
SCHWAGER FIRM  
T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

On Dec 11, 2015, at 4:53 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

We do not agree.

We intend to move forward with the properly noticed trial on December 15<sup>th</sup>, pursuant to the Order dated September 24, 2015.

I am copying Eliot because you have not appeared as counsel formally, but only for his knowledge.

Alan B. Rose, Esq.  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)  
561.355.6991  
<image002.jpg>

505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
561.655.2250 Phone  
561.655.5537 Fax

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If there any documents attached to this email with the suffix ,pdf, those documents are in Adobe PDF format, If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

**From:** Candice Schwager [<mailto:candiceschwager@icloud.com>]

**Sent:** Friday, December 11, 2015 5:34 PM

**To:** Alan Rose; [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com); [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com); [john@morrisseylaw.com](mailto:john@morrisseylaw.com); [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com); [lisa@friedsteins.com](mailto:lisa@friedsteins.com)

**Cc:** Candice Schwager

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F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

Begin forwarded message:

**From:** [eprintcenter@hp.com](mailto:eprintcenter@hp.com)

**Date:** December 11, 2015 at 4:25:41 PM CST

**To:** [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

**Subject:** Scanned document from HP ePrint user

This email and attachment are sent on behalf of [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com).

If you do not want to receive this email in future, you may contact [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com) directly or you may consult your email application for spam or junk email filtering options.

Regards,  
HP Team  
<filename-1.pdf>



Schwager Firm

Litigation Family  
Guardianship

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F 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

**Via Facsimile: 561-655-5537**

**[arose@mrachek-law.com](mailto:arose@mrachek-law.com)**

Alan M. Rose,  
Mrachek, Fitzgerald, Rose, Konopka, Thomas, & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

*Re: Voluntary Request for Stay of Trial Dec. 15th @ 9:30 am; Judge John L. Phillips, North Branch of Palm Beach County Case No. Case # 502014CP003698XXXXSB – Shirley Bernstein Trust Construction and related CASE Numbers below (believed to be at North Branch NB now):*

1. *Case # 502012CP004391XXXXSB – Simon Bernstein Estate*
2. *Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children*
4. *Case # 502011CP000653XXXXSB – Shirley Bernstein Estate*
5. *Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case*

Dear Mr. Rose:

I am writing to advise you that I am preliminarily retained and in the process of reviewing information to permit me to complete a proper Retainer and apply Pro Hac Vice in Florida as Trial Counsel for Eliot I. Bernstein and / or his minor children and am requesting that your office Voluntarily remove the matter from the Trial Calendar for Dec. 15th at 9:30 am EST.

Being from the State of Texas as a licensed attorney in good standing who is not presently licensed in the State of Florida, I understand I need "Local Counsel" in Florida to support my Pro Hac Vice application, however, I further understand that even obtaining a proper "Local Counsel" may take considerable time and when Eliot Bernstein has interviewed with prior Local Counsel providing case information and strategy, the local counsel then showed up in Court on behalf of your client Ted Bernstein instead.

Thus, simply for these reasons I am requesting that you voluntarily move the action off the Trial Calendar for Dec. 15th, 2015.

My preliminary review shows me this case is quite complex and perhaps should have been designated as such under Florida Rules of Civil Procedure.

In any event, there is a considerable number of documents, pleadings and relevant filings I will need to review to be properly prepared for Trial and voluntarily request that you move to stay the action for at least 30 days.

My understanding is that Eliot Bernstein even recently attempted to be heard before Judge Phillips at a Case-Management Conference held on Sept. 15, 2015 on the issue of having funds from the Trust to pay for Counsel for his children but did not get an opportunity to be fully heard before the Court and was otherwise denied on this day.



I also understand that Eliot I. Bernstein had previously filed even before that Case-Management Conference and applied to the Estate and the Trust for these funds but has so far been denied or not heard.

Thus, please confirm in writing by email at your earliest convenience by Monday morning 9 a.m., EST if you are moving to Stay the Trial or even withdraw the pleading altogether. I will be checking my email all weekend so please try to respond as timely as possible.

In the event you choose not to so move Voluntarily and stay the Trial scheduled for Dec. 15, 2015, it appears from my preliminary review that there are several grounds upon which to mandate a Stay of the Trial and even your removal as Trial Counsel upon grounds of being a necessary and material fact witness for the Trial.

I also understand that you have been sued in two counter-suits in these Florida proceedings and have a likely conflict of interest in representing Ted Bernstein as Trustee in the Trial on validity of Trusts and Wills of Shirley Bernstein and Simon Bernstein and that prior Judge Colin did not let you out of these cases as a counter defendant prior to his sudden recusal within 24 hours of denying a motion for mandatory Disqualification filed by Eliot Bernstein and thereafter Judge Colin acted to transfer the matters to the North Branch.

I have preliminarily reviewed the Transcript of Proceedings ( not signed by Stenographer ) of Sept. 15, 2015 and see many disturbing issues in a Trial moving forward on Dec. 15th, 2015 before Judge Phillips.

I also am reviewing related filings, pleadings and matters in the federal District Court of the Northern District of Illinois where Ted Bernstein is a party and the Estate of Simon Bernstein has been permitted to intervene and am investigating relief in the federal venue should I not hear back from

your office in a timely manner to voluntarily Stay the Trial scheduled before Judge Phillips on Dec. 15th, 2015.

Again, these are complicated cases with a volume of paper and pleadings and documents to review and request at least 30 days, I also think due to the complexity, especially with frauds relating to fiduciaries and counsel in the matters, the court should set this trial as a complex proceeding and follow those pre-trial prerequisites.

### **Improperly NOTICED Trial**

Simply reviewing the Notice that Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: "**The matter to be considered shall be specified in the order or notice setting the conference.**"

Yet, a simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that you either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed. I further noticed that neither Florida Licensed attorneys Brian O'Connell, nor Juy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along with you and Judge Phillips Scheduling and Moving in the Shirley Bernstein case when the case was only Noticed for Simon Bernstein Estate.

I know at least here in Texas and in most states of the nation lawyers have Professional Obligations to Correct matters before Courts and Tribunals although I also know Courts have inherent authority to correct mistakes and preserve the integrity of the proceedings although I have not seen from Eliot Bernstein any notice that Judge Phillips has corrected this yet despite

being specifically pointed to it in a recent Motion for Mandatory Disqualification filed against Judge Phillips.

Of course I have further seen where Licensed attorney Peter Feaman on behalf of the Creditor William Stansbury noticed you about a Conflict of Interest in your representation of Ted Bernstein and the conflicting actions Ted Bernstein is taking in the Illinois Federal litigation and yet you have taken no action to address this conflict.

I further see where Licensed attorney Peter Feaman noticed the PR Brian O'Connell back in Aug. of 2014 that he had an Absolute Duty to take action to Remove Ted Bernstein but not only has he failed to so move, but now is taking action to not even present his Defense at Trial that was scheduled at a Conference his Office NOTICED for Simon Bernstein's case.

**Case - Management and Due-Process Issues:**

All of this is very problematic from a Due Process and ethical perspective particularly where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by Eliot Bernstein on Sept. 15, 2015 creating a further basis to Stay the current Trial.

These Rules include items such as:

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

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Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with

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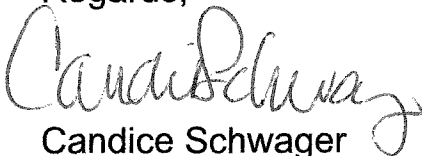
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I further understand there may be other Trust and business documents that anyone that is an "interested" party would standardly review with respect to Simon's Business Records and the Discovery requested by Mr. Eliot Bernstein from both your client and PR O'Connell.

Thus, based upon all the reasons, I am respectfully requesting that you Voluntarily move to Stay the Trial to investigate these matters, get Local counsel, and admitted Pro Hac Vice. Please respond by Monday morning.

Regards,

  
Candice Schwager

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Peter Feaman [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

John Morrissey - [john@morrisseylaw.com](mailto:john@morrisseylaw.com)

Jill Lantoni - [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Lisa Friedstein - [lisa@friedsteins.com](mailto:lisa@friedsteins.com)



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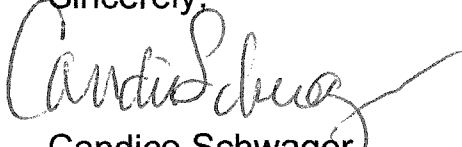
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**Cc:** Candice Schwager

**Subject:** Fwd: Scanned document from HP ePrint user

Candice L. Schwager  
SCHWAGER FIRM  
T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

Begin forwarded message:

**From:** [eprintcenter@hp.com](mailto:eprintcenter@hp.com)

**Date:** December 11, 2015 at 4:25:41 PM CST

**To:** [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

**Subject:** Scanned document from HP ePrint user

This email and attachment are sent on behalf of [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com).

If you do not want to receive this email in future, you may contact [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com) directly or you may consult your email application for spam or junk email filtering options.

Regards,  
HP Team  
<filename-1.pdf>

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXNB

PLAINTIFF,

**ELIOT BERNSTEIN'S MOTION FOR STAY &  
CONTINUANCE OF TRIAL**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

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Apply to:

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Mr. Lessne and Mr. Eliot Bernstein:

I am writing to advise that we located some files in drawers in Simon's private office in his home at Lions Head, as we were trying to assess the complexity of things that must happen between now and the closing of Lions Head. My primary reason was to visually inspect the three chandeliers that have been the subject of PR emails in the past few days.

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I also have had occasion to re-look through a small box of trust documents which I have been holding, which came from Simon's former work office. Inside file folders in a desk drawer, Simon retained duplicate originals of the trust agreements relevant to my cases. When I was looking to reexamine these documents – duplicate originals of the 2008 Trusts and the 2012 Trust (the true originals remain with Tescher & Spallina who drafted them) – I noticed a copy of the three separate irrevocable trust documents. Again, these would not have caught my eye originally because I would have never guessed that Eliot would claim the trusts were not valid. I only recently had occasion to notice these in



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These copies include IRS forms under which Traci Kratish PA, as Trustee appears to have applied for and obtained a Taxpayer ID number for each trust, and obviously she provided these to Simon. Each of the Trust documents is signed by Simon Bernstein, as Settlor, and by Traci Kratish PA as the initial Trustee, and the signatures are witnessed by two people. Simon's is witnessed by Jocelyn Johnson and someone else. I am advised that Jocelyn was an employee of Simon's, as presumably was the second witness and also the initial Trustee, Traci Kratish, who was in house counsel for the companies Simon owned part of.

Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

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Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

Alan B. Rose, Esq.  
arose@Mrachek-Law.com  
561.355.6991  
505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
561.655.2250 Phone  
561.655.5537 Fax"

20. The Trial should be stayed and continued as TED is Invalid as a Trustee and is acting contrary to his fiduciary duties in failing to get proper forensic examinations of documents and Trust and Will Agreements.

21. Simon Bernstein's business and other records which have been denied in Discovery and should have been addressed Pre-trial are necessary to assist in the determination of whether he was Unduly Influenced in any alleged signing of any of the Trust and Will instruments herein.

Wherefore it is respectfully prayed for an Order Staying and Continuing the Trial herein upon terms that are just, proper and reasonable under the facts, circumstances and the law.

Respectfully Submitted on December 15, 2015,

/s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone. 561-245-8588  
iviewit@iviewit.tv

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 15th day of December, 2015.

/s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
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Although this was long before any involvement on my part, Traci Kratish appears to have been the initial trustee (there is a typo elsewhere naming Steven Greenwald). I do not know Steven Greenwald, but I have confirmed that that these trusts were not created by Tescher & Spallina. If they had been, I'm sure they would have retained the original and given Simon duplicate originals as they did for all of the trust documents for the 2008 and 2012 Trusts they prepared. I do not know if Greenwald prepared these and made a typo leaving his name on a later section, or if Kratish prepared these from a boilerplate Greenwald form and made the typo. Either way, and it does not matter to me, the fact that this was a simple and ordinary typo should be obvious to all.

Eventually, Traci Kratish left the employ as the in-house counsel for the companies. Sometime before or at the time of her leaving, she resigned and appointed someone else, and eventually these trusts accounts along with similar trusts for Simon's other seven grandchildren and much of Simon's personal wealth, were moved to Stanford. After Stanford's collapse amid word that it was a Ponzi scheme -- Simon lost upwards of \$2 million of his own funds in the Ponzi scheme -- Simon directed the transfer of the his and these trust accounts to Oppenheimer. Simon selected Oppenheimer; paid Tescher's firm to do the necessary documents to appoint Oppenheimer as successor trustee; took the documents from Tescher and had them signed by all children, including Eliot and Candice; and returned the documents to Tescher for filing. I presume that Simon paid all of these legal fees, because that is the right thing to do from an estate planning strategy and as a favor to his grandkids. I now have seen copies of the filed Petitions, and again without being a handwriting expert, it certainly looks like Eliot's and Candice's signature on them, regardless of whether they had ever met Tescher or Spallina before their parents' deaths.

Eliot and Candice reaped the benefits of Oppenheimer's services, and in any event there is no reason to believe that Candice and Eliot did not sign these Petitions for the benefit of their children. If Eliot now suggests that his and his wife's signatures do not appear on the June 2010 Petitions appointing Oppenheimer 2010 allegation, which is highly doubtful just looking at the three sets of signatures, that would mean Eliot is accusing Simon of being a forger. Eliot already is supportive of Bill Stansbury, who accuses Simon of committing a fraud on Stansbury. I would be shocked by any accusation that Simon did not obtain from Eliot and Candice their genuine signatures on the June 2010 Petitions, and particularly shocked that Eliot, who received so much of his father's (and mother's) largesse during their lifetimes, would now malign Simon's name in such a manner.

Anyway, I'm not sure if either of you needs these any longer, but if you do, here they are.

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561.655.5537 Fax"

20. The Trial should be stayed and continued as TED is Invalid as a Trustee and is acting contrary to his fiduciary duties in failing to get proper forensic examinations of documents and Trust and Will Agreements.

21. Simon Bernstein's business and other records which have been denied in Discovery and should have been addressed Pre-trial are necessary to assist in the determination of whether he was Unduly Influenced in any alleged signing of any of the Trust and Will instruments herein.

Wherefore it is respectfully prayed for an Order Staying and Continuing the Trial herein upon terms that are just, proper and reasonable under the facts, circumstances and the law.

Respectfully Submitted on December 15, 2015,

/s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone. 561-245-8588  
iviewit@iviewit.tv

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 15th day of December, 2015.

/s/ Eliot Ivan Bernstein  
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT IN AND  
FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

---

**FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT**

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's  
*ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II* dated September 24,  
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

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SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), and JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

*The evidence shows*

*ELIOT BERNSTEIN*

*JB*

*JB*

*JB*

*JB*

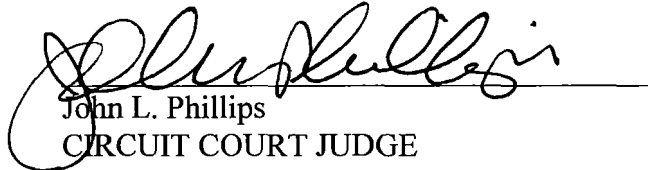
*JB*

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.

  
John L. Phillips  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list



**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,  
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Eric Bernstein, Michael Bernstein

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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008  
AS AMENDED  
Plaintiff

v.  
ALEXANDRA BERNSTEIN; ET AL.  
Defendants

---

**ORDER CONFIRMING DENIAL OF DISQUALIFICATION MOTION**

This matter came before the Court at the close of trial December 15, 2015, when defendant Elliott Bernstein orally moved for recusal of the undersigned. The Court adjourned for 5 minutes to allow Mr. Bernstein to put his motion into written form. Mr. Bernstein then presented the “Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John L Phillips”, and “Notice of Correction to Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John Phillips”, both dated December 4, 2015. These documents had previously been presented to the Court seeking disqualification of the undersigned (see Docket Entries 94 and 98) and were denied as legally insufficient by Order entered December 8, 2015 (Docket Entry 98).

In an abundance of caution, on December 15, 2015, the undersigned entered a handwritten Order denying this new presentation of the already-ruled-upon request for disqualification. Whereupon, it is **ORDERED AND ADJUDGED:**

1. The handwritten Order dated December 15, 2015, denying defendant Elliott Bernstein's previously-ruled-upon requests for disqualification, described above, is hereby **CONFIRMED**.
2. The above-described requests for disqualification are legally insufficient, and are properly **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 16th day of December, 2015.



Circuit Judge

**Copies furnished to:**

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Jill Iantoni 2101 Magnolia Lane Highland Park IL, 60035

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

CASE # 502012CP004391XXXXNB  
CASE # 502012CP004391XXXXNB  
CASE # 502011CP000653XXXXNB  
CASE # 502014CP002815XXXXNB  
CASE # 502014CP003698XXXXNB  
CASE # 502015CP001162XXXXNB  
CASE # 502012CP004391XXXXSB  
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CASE # 502014CP002815XXXXSB  
CASE # 502014CP003698XXXXSB  
CASE # 502015CP001162XXXXSB  
CASE # 502014CA014637XXXXMB  
CASE # 20I2CP004391 IX

IN RE:

ESTATES and TRUSTS  
OF SIMON and SHIRLEY BERNSTEIN,  
Deceased.

\_\_\_\_\_ /

**NOTICE OF  
UNAVAILABILITY**

PLEASE TAKE NOTICE that the undersigned Pro Se party will be otherwise  
unavailable from *1/1/2016 through 1/31/2016*.

The undersigned requests that no hearings, depositions or other matters  
requiring appearance of counsel be scheduled during said period, and that all pending matters  
remain in status quo during this period.

/s/Eliot Ivan Bernstein

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those on the attached service list and parties in the cases on this 23<sup>rd</sup>, day of December, 2015.

/s/Eliot Ivan Bernstein

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF  
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/s/Eliot Ivan Bernstein

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/s/Eliot Ivan Bernstein

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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF  
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/s/Eliot Ivan Bernstein

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/s/Eliot Ivan Bernstein

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**



001762

1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification on behalf of himself and his three minor children and to otherwise disqualify Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court –

This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

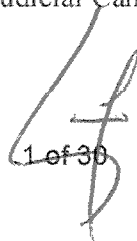
d. Continued Obstruction of Justice through Denial of Due Process;

e. Aiding and Abetting Court Appointed Fiduciaries and Court Appointed Attorneys at Law in covering up Fraud on the Court and Fraud by the Court and continuing Fraud on the Court and Fraud on the Beneficiaries;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge

Phillips has violated the following Judicial Canons, including but not limited to:



**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to mandatorily disqualify upon the filing of the Disqualification Motion<sup>1</sup> filed by Petitioner on December 04, 2015 for all the ground set forth therein and should have already Disqualified on his own motion sua sponte prior to Petitioner filing said written motion as it has already been alleged by Petitioner and suggested by Creditor attorney Peter Feaman that the transfer of the cases to Phillips Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition<sup>2</sup> filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA<sup>3</sup>

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<sup>1</sup> December 04, 2015 Disqualification Judge Phillips @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

<sup>2</sup> See All Writ Filed with the Florida Supreme Court @

7. Any competent Judge acting impartially knew or should have known prior Judge Martin Colin was a material fact witness to the multiple frauds occurring in his Court specifically involving Fiduciaries Robert Spallina, Donald Tescher, the Tescher Spallina law firm, and at minimum Ted Bernstein also purporting to act in an alleged fiduciary capacity specifically involving the very case, the Shirley Estate and Trust, which Judge Phillips illegally set for Trial on Sept. 15, 2015 acting in a case Not Noticed for Case Management by the current PR of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta of the Ciklin Lubitz & O'Connell law firm.
8. Thus, Judge Phillips should now be Disqualified further for failing to mandatorily Disqualify previously and knowing he is acting outside his jurisdiction and acting in the clear absence of jurisdiction.
9. Had Judge Phillips not been immediately disqualified due to his being a witness to relevant matters in the improper Transfer and steering of the case to the North Branch where it ended up with Judge Coates who not only was a Proskauer Rose partner (Proskauer also a Counter Defendant in these matters) but turned out he worked in the exact office across the hall from Petitioner where some of the initial frauds and thefts occurred of IP that should be a part of the Estates and Trust values for Shirley and Simon Bernstein, the only proper initial action for Judge Phillips would have been to freeze and enjoin all Court files from the Colin and French and Main Branch courts, freeze and enjoin all Estate and Trust accounts, freeze and enjoin all evidence and

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

<sup>3</sup> Transfer Order Florida Supreme Court to Fourth District Court of Appeals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20151013%20Supreme%20Court%20Florida%20Transfer%20Probate%20Trust%20Cases%20to%20Fourth%20District%20Court.pdf>

records, documents, computer files and all alleged “Originals” and other instruments which instead are still in the hands of the prior fiduciaries Spallina and Tescher who committed some of the original frauds in Judge Colin’s court, then Phillips should have further moved to invalidate the entire proceedings held under Colin and remove all Fiduciaries, Officers of the Court and attorneys involved for having committed FRAUD UPON THE COURT by OFFICERS OF THE COURT who submitted fraudulent documents to the court and used a deceased party to close the Estate of his deceased wife in a bizarre fraud lasting several months after Simon Bernstein died, where he was used post mortem to posit documents with the court to close an estate.

10. A simple, basic, non-octopus wrangling competent reading and review of the Case files assigned to Judge Phillips by the improper Transfer should have revealed to any marginally competent independent and neutral jurist acting consistent with US Constitutional due process that Ted Bernstein had to know of the frauds committed by the fiduciaries Tescher Spallina in Shirley’s Estate, the counsel he retained to represent him in his fiducial capacities before Judge Colin since Ted Bernstein had NOT signed any Waiver in Shirley’s Estate prior to April 9, 2012 and thus Ted Bernstein knew and had to know as early as 2012 or at minimum May of 2013 by Petitioners May 6, 2013 Emergency Filing that ANY document posited by the TESCHER SPALLINA law firm to the contrary to close Shirley’s Estate such as the April 9, 2012 Sworn Petition to Discharge allegedly signed by Simon Bernstein before Robert Spallina was fraud upon the Court, fraud against the Estate of Shirley Bernstein, and fraud involving the use of his father Simon Bernstein prior to his passing and after his passing.

11. A competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know that in addition to actual Frauds Upon the Court and likely involving the Court, these matters also raised the important issue of whether

Simon Bernstein himself was being unduly influenced and improperly pressured since there would be no reason for Simon Bernstein to sign an April 9, 2012 Petition to Discharge knowing this was fraudulent since a phone call to discuss matters with the Beneficiaries did not even occur until May of 2012 and some of the beneficiaries did not even sign the Waiver until after Simon passed in Sept. of 2012 and that Ted Bernstein, instead of securing ALL files and evidence away from TESCHER and SPALLINA immediately as a proper fiduciary and seeking forensic investigation of key and critical documents and instruments instead continued along and became part of the fraud acting together with TESCHER and SPALLINA and where TED and his counsel Alan Rose, a material fact witness, continued to work with and interact with former fiduciaries SPALLINA and TESCHER even into and during the illegal trial of Dec. 15, 2015. Having failed to properly act in all these matters, Judge Phillips has demonstrated bias, prejudice, lack of impartiality, complete abdication of judicial responsibilities and obligations, intentionally and knowingly denied due process, aided and abetted the crimes using the machinery of the courts and furthering the fraud using the machinery of the courts and thus must mandatorily be disqualified at this time.

12. A minimally and marginally competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know from even the most minimally marginally competent review of the Transcript of Hearings before Judge Colin on Sept. 13, 2013, that instead, not only did TED BERNSTEIN purporting to Act as Fiduciary “stay silent” on the issues of FRAUD in the Court despite having to possess actual knowledge of these frauds, but further that Judge Martin Colin immersed himself deeper as material and fact witness on such date by including but not limited to: a) failing to get any clear answers out of Spallina specifically including how and who filed the fraudulent instruments in the court; b) failing to get

admissions from Ted Bernstein on his actual knowledge that these matters had to be fraudulent; c) failing to ask Ted Bernstein and Spallina that if Ted was legally supposed to be the Trustee and PR of Shirley's Trust and Estate after Simon passed, why Spallina and Tescher simply didn't have Ted Bernstein act to file proper documents to close the Estate but instead carried on an elaborate fraud scheme; d) how Ted Bernstein could have been permitted to act to illegally sell off multi-million dollar properties such as Shirley's Condo when involved in the nucleus of fraud with TESCHER and SPALLINA; and more. Judge John Phillips having knowingly and intentionally failed in all these matters must be further mandatorily disqualified and is acting outside his jurisdiction and in the clear absence of jurisdiction by instead aiding and abetting ongoing frauds in the machinery of the Palm Beach courts by the fraudulent and illegal orchestration of an alleged Trial in his own Court on Dec. 15, 2015.

13. Judge John L. Phillips is clearly acting knowingly and intentionally outside his jurisdiction knowingly violating due process and further aiding and abetting fraud upon the Courts by the Courts by acting in concert with Alan Rose on Dec. 15, 2015 knowing Alan Rose should have been disqualified as a material fact witness for his magical sudden possession and finding of various "Original" documents and instruments herein being intertwined in the chain of custody but instead permitting Alan Rose to fraudulently hand Judge Phillips a proposed Order on Dec. 15, 2015 without permitting Petitioner to review which contained a proposed Judicial Finding by Judge Phillips that Ted Bernstein is not involved in the frauds when both Alan Rose and Judge Phillips have actual and direct knowledge that the Dec. 15, 2015 Trial which was illegally scheduled anyway was further Not Noticed to hear such matters of Ted Bernstein thus further constituting knowing, intentional and purposeful Due process violations mandating Judge



Phillips immediate Disqualification as further evidenced by the attached Order allegedly signed by Phillips on Dec. 16, 2015<sup>4</sup>,

14. That Ted Bernstein, acting as alleged fiduciary in Shirley's Estate and Trusts and his elaborate team of lawyers were all involved in the Frauds committed and the attorneys who committed the crimes were retained by Ted as his counsel and were his business associates and who committed the frauds to benefit Ted's family directly to the detriment of other beneficiaries. Yet, Phillips allowed Ted and his replacement counsel Alan Rose, as Tescher and Spallina resigned after admitting to fraud, to continue and attempt to cover up and continue the crimes in the court as did Colin.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

15. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein and as shown by the facts alleged in the entirety of this document.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

16. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has

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<sup>4</sup> December 16, 2015 Phillips Order

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151222%20Received%20US%20Mail%20Entered%20by%20Phillips%20Dec%2016%202015%20Order%20Final%20Judgment%20on%20Count%20II%20of%20the%20Amended%20Complaint.pdf>

material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court. Judge Phillips had such knowledge as of Dec. 15th, 2015 but instead of properly acting to Disqualify himself and have an illegally scheduled Trial “continued” / “stayed”, acted in disregard of his judicial obligations mandating disqualification at this time.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

17. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware prior to an illegally scheduled Trial for Dec. 15, 2015 both by Letter of Attorney Candice Schwager filing a Notice of Abatement and seeking a Continuance to enter the case Pro Hac Vice<sup>5</sup> that Attorney Alan B. Rose should be Disqualified under the Witness Advocate Rule of Florida as Alan B. Rose is a material fact Witness in the chain of custody of various “original” Instruments, Trusts, documents who should have Disqualified before and during Trial.
18. Judge Phillips received similar information by a Motion filed by Petitioner to seek a Continuance and Stay<sup>6</sup> on similar grounds that the attorney sought to enter the case pro hac vice and that Alan Rose was a material fact witness in the chain of custody and possession of critical original

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<sup>5</sup> Attorney Pro Hac Vice Filing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

<sup>6</sup> December 15, 2015 Motion to Stay and Continue Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>

documents and instruments relating to the Trial and overall case. Judge Phillips knew and should have known Disqualification of attorney Rose was necessary but disregarded all these matters on Dec. 15, 2015 despite himself who should have already mandatorily disqualified.

19. As shown in the prior Disqualification motion, Judge Phillips knew and should have known from information in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under and therefore is not a "valid" trustee<sup>7</sup>. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and Ted is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Brian O'Connell, Esq., Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims and Judge Phillips further acted on Dec. 15, 2015 continuing the frauds in the court and knowingly and intentionally disregarding judicial obligations.

20. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney

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<sup>7</sup> O'Connell Pleading Affirmative Defense 1 - Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

at Law Peter Feaman in a letter to the PR O'Connell<sup>8</sup> and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

21. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

22. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by continuing to act outside and in the clear absence of jurisdiction knowing he was mandatorily disqualified yet continued to act on Dec. 15, 2015 showing further bias and prejudice.

23. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by knowingly and intentionally mis-stating the applicable law on Dec. 15, 2015 in court to a pro se party by declaring a Motion filed by Petitioner as untimely which was seeking a Continuance of the Trial so an attorney Candice Schwager could be admitted pro hac vice and represent three minor children and to the extent not conflicted, my interests before the Court and at a properly scheduled trial as well. Judge Phillips actually knew that Florida Rules of Civil Procedure

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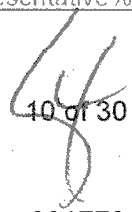
<sup>8</sup> August 29, 2014 Letter Feaman to O'Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O'Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>



**RULE 1.460 CONTINUANCES** allows said motion to be made at Trial and Petitioner's motion was filed before the Trial. Thus, Judge Phillips intentionally and actually knew he was clearly misstating and misapplying the law showing further bias and prejudice against the Petitioner.

24. Judge Phillips showed further actual bias and prejudice on Dec. 15, 2015 knowing he was already mandatorily Disqualified from conducting the trial and acting in these cases by denying proper time for proper witnesses at the trial, Traci Kratish, Kimberly Moran, Donald Tescher (who was seen outside the Courthouse but did not testify despite being one of the Estate Planners,) and other witnesses to the alleged documents and signatures by not permitting Petitioner to adequately review the alleged Exhibits Evidence being placed into the trial or having a proper time to object and by providing Petitioner a mere five minutes to "write down" a Disqualification at the end of the alleged "trial" and further denying Petitioner an opportunity to inspect a proposed "Order" submitted by Alan Rose and denying proper inspection of original instruments, denying the ability to even see a "flow chart" being used by Alan Rose, denying a continuance and counsel to minor children, and continuing knowing the trial was improperly scheduled in a case Not noticed to be heard on Sept. 15, 2015 and denying Petitioner a fair opportunity to be heard before the trial or during the alleged trial.
25. Phillips then scheduled and held a validity hearing where the star witness was a FELON, Spallina<sup>9</sup> and he was attesting to signatures of another FELON Moran on the dispositive

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<sup>9</sup> See, SEC Complaint and "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20I.state/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

documents and where both have unclean hands in these matters admitting they committed Fraud, Fraud on the Court and Fraud on the Beneficiaries in the Simon and Shirley Bernstein Estates and Trusts and yet Phillips rules to validate the documents based on Spallina's testimony alone and cuts Eliot off repeatedly, sustaining him when asking questions to probe the crimes of Spallina claiming they are not relevant, despite relevance to his character and testimony<sup>10</sup>.

26. At the hearing Spallina admitted he was under a consent order with the SEC for insider trading and had pled guilty to a felony in an unrelated matter. Spallina further admitted that he had committed a Fraud Upon the Court when he closed the Estate of Shirley with a dead Personal Representative her deceased husband Simon, submitting fraudulent documents to close the estate. Spallina further admitted that he had fraudulently created a Shirley Trust document and then mailed it to an attorney at law, Christine Yates, Esq. who was representing Eliot's minor children, as part of a fraud that benefited his client Ted Bernstein at the expense of his other client, the Estate of Simon and the beneficiaries thereunder.

27. While "doodling" through the Validity hearing, Phillips ignored the confessions to felony crimes in the matter by Spallina, who he refers to as "Bob" and his partner Tescher, who he calls "Don" and instead focused on attacking Candice Bernstein, who was served as a party in the Validity hearing service list prepared by Rose for her handing a document to Eliot and asking that Rose turn a display graphic so everyone could see, for this she was sent out of the hearing area and into the gallery where she was threatened with contempt if she made a sound. Candice Bernstein

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Bernstein Emergency Petition before in Florida Probate May 2013 @  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>.

<sup>10</sup> Article Regarding Unclean Hands and Fraud on the Court  
@<http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/fid-stern.pdf>

being the guardian of her minor children aids Eliot with his exhibits and witness questions and without her Eliot was lost at the Trial and could not find exhibits, etc. timely, as the record reflects.

28. That despite learning that an Officer of the Court had committed frauds upon the court and the beneficiaries and having admission at the trial, Judge Phillips has done nothing to notify the proper authorities as required by his Judicial Cannons and law or taken any actions to remedy the crimes. For instance, the Court, having learned of the Fraud on the Court should have then ordered all records submitted by those committing Fraud on the Court to be forensically analyzed by an expert to make sure that the documents and records in the Court are not further fraudulent and instead allowed the trustee Ted to shift the burden of investigating and forensically examining the documents to Eliot. The Court should also have ordered all parties to turn over their records, assets, etc. to the Court and provided all records of those parties and the Court to the aggrieved beneficiaries for inspection and transparency. Judge Phillips thus continued to act on Dec. 15, 2015 in the prejudicial, biased, lack of impartiality style that he had on Sept. 15, 2015 the date the “trial” was illegally scheduled and thus mandatorily must be disqualified at this time.

29. One of the facts from the prior Disqualification motion which Judge Phillips knew and knows was legally sufficient and mandatorily disqualified him from acting is contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer

Rose law firm in the same Boca Raton, Fl location where fraud by his former law firm occurred against Petitioner) and with the intended ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily, after gaining access and control to the prior Colin courts documents. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips as material witnesses about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.


30. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
31. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be "stupid." In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
32. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:



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.

33. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified as Judge Phillips further knew Judge Colin’s Orders all should have been voided or at least should have been a material fact witness subject to discovery and deposition before any such “trial” on Dec. 15, 2015 yet Judge Phillips continued to act on Dec. 15, 2015 knowing he should be mandatorily disqualified and thus must now be disqualified.
34. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
35. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

  
15 of 30  
001777

**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

36. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein. Judge Phillips continues to know he is a material fact witness and was on Dec. 15, 2015 and remains as such and thus must be mandatorily disqualified.

**Rule 2.330 (c) Motion.  
A motion to disqualify shall:  
(1) be in writing.**

37. This Motion is in writing.

**Rule 2.330 (c) Motion  
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.**

38. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion  
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.**

39. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion  
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.**

40. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion  
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately**

serve a copy of the motion on the subject judge as set forth in  
Florida Rule of Florida Rule of Civil Procedure 1.080.

41. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se  
Petitioner has certified that the motion and the statements made herein are made in good faith.  
That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial  
or hearing because of specifically described prejudice or bias of  
the judge.**

42. That Petitioner asserts for all the reasons and facts alleged herein and as set out below and  
further in the entirety of the document incorporated herein that he will not and has not already  
received a fair trial or hearing and that Judge Phillips because of the following specifically  
described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the  
reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge  
except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in  
which the judge's impartiality might reasonably be questioned,  
including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party  
or a party's lawyer, or personal knowledge of disputed  
evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third  
degree of relationship to either of them, or the spouse of such a  
person:**

**(iv) is to the judge's knowledge likely to be a material witness in  
the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those  
in which disqualification is required.**

43. Judge Phillips knew and actually knows he was acting outside his jurisdiction on Dec. 15, 2015 as he knew a legally sufficient mandatory disqualification motion was filed in writing before Trial and he should have disqualified.
44. Judge Phillips knows he was intentionally misstating and improperly applying the law on Motions for Continuance which are allowed to be made at trial and yet Judge Phillips denied as untimely.
45. Judge Phillips knows this is a “complex” case and should have been treated as a complex case under the Case Management rules but instead illegally scheduled a trial in a case not noticed for Trial and then carried on with an illegal trial on Dec. 15, 2015.
46. Judge Phillips knew on Dec. 15, 2015 that not only was an improper trial scheduled and he should be mandatorily disqualified, but further knew no possible fair trial could have been conducted in a day, without determination of proper discovery in advance and without expert witnesses and without counsel for my minor children all being matters which Judge Phillips actually knows he illegally and improperly denied being heard by Petitioner on Sept. 15, 2015, thus Phillips actually knowing he was denying Petitioner due process in violation of the US Constitution and Florida State Constitution and violation of his role and functions as a Judge.
47. In all of these manners, Judge Phillips acted with partiality, prejudice and bias creating a reasonable fear that I would not receive a fair trial and did not and that the trial itself was a sham and fraud.
48. Judge Phillips knew that he, himself is and was a material witness since it is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that

Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

49. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

50. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

51. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein throughout this document including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find

Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein and then continuing to act in fraud and further aid and abet the fraudulent criminal scheme herein using the machinery of the Florida Courts in the North Branch of Palm Beach County on Dec. 15, 2015 and by an illegal Order Dec. 16, 2015.

52. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters or even minimally afford Petitioner Due Process to be heard before Judge Phillips on the best procedural manner to bring the issues of the All Writs<sup>11</sup> before the Phillips court.

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<sup>11</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

53. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein and as set out herein throughout this filing specifically referencing ongoing continuing conduct on Dec. 15, 2015. .

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

54. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein and as set out by the entirety of this document and filing herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

55. As already stated above Judge Phillips has knowledge that he is a material and fact witness in the proceedings to highly relevant information regarding the cases at this time.

**Rule 2.330 Grounds.**

4  
21 of 30  
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**(e) Time. A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.**

56. Until such time as the frauds upon the court is corrected, the cases reset with new fiduciaries and counsel and due process restored, any such motion presently is timely herein. This motion is otherwise timely being filed on the first day the Courts were open after the Dec. 25th Holiday also closing the Courts on Dec. 26th, 2015.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

57. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motiou.**



58. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

59. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

60. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

61. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification

pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

a.	Case#	502012CP004391XXXXSB	-
Simon Bernstein Estate			
b.	Case#	502011CP000653XXXXSB	-
Shirley Bernstein Estate			
c.	Case#	502014CP002815XXXXSB	-
Oppenheimer v. Bernstein Minor Children			
d.	Case#	502014CP003698XXXXSB	-
Shirley Trust Construction			
e.	Case#	502015CP001162XXXXSB	-
Eliot Bernstein v. Trustee Simon Trust Case	OLD Case#	502014CA014637XXXXMB	

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

62. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**

63. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.
64. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

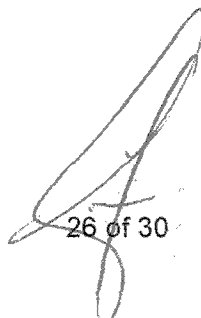
**Disqualification of judge for prejudice; application; affidavits;  
etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

65. Petitioner has supplied a legally sufficient Affidavit herein.
66. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein and as demonstrated and plead throughout the entirety of the document and filing herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015. Finally, as Eliot has filed a previous disqualification of Judge Phillips that was denied as “legally insufficient” alone with no explanation and where “legally insufficient” is a legally insufficient phrase as it has not a legal definition, Eliot asks this Court to fully explain what is legally insufficient with the pleading so corrections can be made if necessary and to explain why the previous filing did not meet a “sufficiency” standard.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I



have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 28th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein

2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone, 561-245-8588  
iviewit@iviewit.tv

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 28th day of December, 2015.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH COUNTY**

Sworn to or affirmed and subscribed before me this 28th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification. Driver License - CA

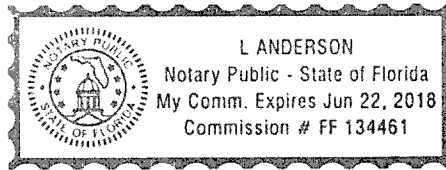
NOTARY PUBLIC

Print name of Notary:

L ANDERSON

Notary Signature:

x L Anderson



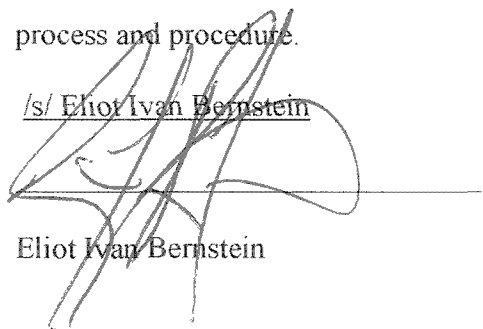
Stamp

My commission expires: 6/22/2018

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he and his minor children will not and have not thus far received a fair and impartial trial with due process and procedure.

/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein

December 28, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification

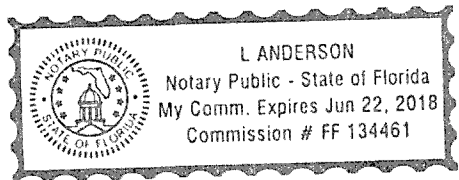
Driver License - CA

Notary Public

Print name: L Anderson

Notary Signature: L Anderson

Stamp



My commission expires: 6/22/2018



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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips, Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**



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1. Judge John Phillips is a circuit judge in the 15th Judicial Circuit Probate Division and therefore this rule applies.

**Rule 2.330 (b) Parties. Any party, including the state, may move to disqualify the trial judge assigned to the case on grounds provided by rule, by statute, or by the Code of Judicial Conduct.**

2. Petitioner, a party to the case moves for mandatory disqualification on behalf of himself and his three minor children and to otherwise disqualify Judge Phillips provided by rules, statute and by the Code of Judicial Conduct.

3. Judge Phillips is alleged to have violated Statutes and Court and Judicial Rules related to, including but not limited to;

a. Fraud on the Court and by the Court –

This Disqualification shall Reset the case, render void all relevant Orders and Decisions which shall be vacated, all OFFICERS and FIDUCIARIES presently appointed by such Judge shall be replaced and other relief as is just and proper;

b. Continued Fraud in the Court;

c. Continued Fraud by the Court;

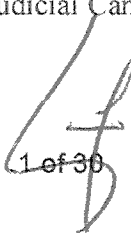
d. Continued Obstruction of Justice through Denial of Due Process;

e. Aiding and Abetting Court Appointed Fiduciaries and Court Appointed Attorneys at Law in covering up Fraud on the Court and Fraud by the Court and continuing Fraud on the Court and Fraud on the Beneficiaries;

f. Violations of Probate Statutes and Rules ;

g. Violations of Judicial Cannons - Judge

Phillips has violated the following Judicial Canons, including but not limited to:



**Canon 1 - A Judge Shall Uphold the Integrity And Independence of the Judiciary**

4. Judge Phillips has failed to Uphold the Integrity and Independence of the Judiciary as further set forth herein.

**Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities**

5. Judge Phillips express and direct conduct, statement and activities in the case have created the Appearance of Impropriety in violation of this Canon as set further set forth herein.

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.**

6. Judge Phillips was required to mandatorily disqualify upon the filing of the Disqualification Motion<sup>1</sup> filed by Petitioner on December 04, 2015 for all the ground set forth therein and should have already Disqualified on his own motion sua sponte prior to Petitioner filing said written motion as it has already been alleged by Petitioner and suggested by Creditor attorney Peter Feaman that the transfer of the cases to Phillips Court was improperly interfered with post recusal by the former Judge Martin Colin as further set forth herein and set forth in the All Writs Petition<sup>2</sup> filed with the Florida Supreme Court in these cases and then Transferred to the 4th DCA<sup>3</sup>

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<sup>1</sup> December 04, 2015 Disqualification Judge Phillips @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

<sup>2</sup> See All Writ Filed with the Florida Supreme Court @

7. Any competent Judge acting impartially knew or should have known prior Judge Martin Colin was a material fact witness to the multiple frauds occurring in his Court specifically involving Fiduciaries Robert Spallina, Donald Tescher, the Tescher Spallina law firm, and at minimum Ted Bernstein also purporting to act in an alleged fiduciary capacity specifically involving the very case, the Shirley Estate and Trust, which Judge Phillips illegally set for Trial on Sept. 15, 2015 acting in a case Not Noticed for Case Management by the current PR of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta of the Ciklin Lubitz & O'Connell law firm.
8. Thus, Judge Phillips should now be Disqualified further for failing to mandatorily Disqualify previously and knowing he is acting outside his jurisdiction and acting in the clear absence of jurisdiction.
9. Had Judge Phillips not been immediately disqualified due to his being a witness to relevant matters in the improper Transfer and steering of the case to the North Branch where it ended up with Judge Coates who not only was a Proskauer Rose partner (Proskauer also a Counter Defendant in these matters) but turned out he worked in the exact office across the hall from Petitioner where some of the initial frauds and thefts occurred of IP that should be a part of the Estates and Trust values for Shirley and Simon Bernstein, the only proper initial action for Judge Phillips would have been to freeze and enjoin all Court files from the Colin and French and Main Branch courts, freeze and enjoin all Estate and Trust accounts, freeze and enjoin all evidence and

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<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20DisqualificationECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

<sup>3</sup> Transfer Order Florida Supreme Court to Fourth District Court of Appeals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20151013%20Supreme%20Court%20Florida%20Transfer%20Probate%20Trust%20Cases%20to%20Fourth%20District%20Court.pdf>

records, documents, computer files and all alleged “Originals” and other instruments which instead are still in the hands of the prior fiduciaries Spallina and Tescher who committed some of the original frauds in Judge Colin’s court, then Phillips should have further moved to invalidate the entire proceedings held under Colin and remove all Fiduciaries, Officers of the Court and attorneys involved for having committed FRAUD UPON THE COURT by OFFICERS OF THE COURT who submitted fraudulent documents to the court and used a deceased party to close the Estate of his deceased wife in a bizarre fraud lasting several months after Simon Bernstein died, where he was used post mortem to posit documents with the court to close an estate.

10. A simple, basic, non-octopus wrangling competent reading and review of the Case files assigned to Judge Phillips by the improper Transfer should have revealed to any marginally competent independent and neutral jurist acting consistent with US Constitutional due process that Ted Bernstein had to know of the frauds committed by the fiduciaries Tescher Spallina in Shirley’s Estate, the counsel he retained to represent him in his fiducial capacities before Judge Colin since Ted Bernstein had NOT signed any Waiver in Shirley’s Estate prior to April 9, 2012 and thus Ted Bernstein knew and had to know as early as 2012 or at minimum May of 2013 by Petitioners May 6, 2013 Emergency Filing that ANY document posited by the TESCHER SPALLINA law firm to the contrary to close Shirley’s Estate such as the April 9, 2012 Sworn Petition to Discharge allegedly signed by Simon Bernstein before Robert Spallina was fraud upon the Court, fraud against the Estate of Shirley Bernstein, and fraud involving the use of his father Simon Bernstein prior to his passing and after his passing.

11. A competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know that in addition to actual Frauds Upon the Court and likely involving the Court, these matters also raised the important issue of whether

Simon Bernstein himself was being unduly influenced and improperly pressured since there would be no reason for Simon Bernstein to sign an April 9, 2012 Petition to Discharge knowing this was fraudulent since a phone call to discuss matters with the Beneficiaries did not even occur until May of 2012 and some of the beneficiaries did not even sign the Waiver until after Simon passed in Sept. of 2012 and that Ted Bernstein, instead of securing ALL files and evidence away from TESCHER and SPALLINA immediately as a proper fiduciary and seeking forensic investigation of key and critical documents and instruments instead continued along and became part of the fraud acting together with TESCHER and SPALLINA and where TED and his counsel Alan Rose, a material fact witness, continued to work with and interact with former fiduciaries SPALLINA and TESCHER even into and during the illegal trial of Dec. 15, 2015. Having failed to properly act in all these matters, Judge Phillips has demonstrated bias, prejudice, lack of impartiality, complete abdication of judicial responsibilities and obligations, intentionally and knowingly denied due process, aided and abetted the crimes using the machinery of the courts and furthering the fraud using the machinery of the courts and thus must mandatorily be disqualified at this time.

12. A minimally and marginally competent impartial judge who is neutral and independent and acting consistent with US Constitutional Due process knew and had to know from even the most minimally marginally competent review of the Transcript of Hearings before Judge Colin on Sept. 13, 2013, that instead, not only did TED BERNSTEIN purporting to Act as Fiduciary “stay silent” on the issues of FRAUD in the Court despite having to possess actual knowledge of these frauds, but further that Judge Martin Colin immersed himself deeper as material and fact witness on such date by including but not limited to: a) failing to get any clear answers out of Spallina specifically including how and who filed the fraudulent instruments in the court; b) failing to get

admissions from Ted Bernstein on his actual knowledge that these matters had to be fraudulent; c) failing to ask Ted Bernstein and Spallina that if Ted was legally supposed to be the Trustee and PR of Shirley's Trust and Estate after Simon passed, why Spallina and Tescher simply didn't have Ted Bernstein act to file proper documents to close the Estate but instead carried on an elaborate fraud scheme; d) how Ted Bernstein could have been permitted to act to illegally sell off multi-million dollar properties such as Shirley's Condo when involved in the nucleus of fraud with TESCHER and SPALLINA; and more. Judge John Phillips having knowingly and intentionally failed in all these matters must be further mandatorily disqualified and is acting outside his jurisdiction and in the clear absence of jurisdiction by instead aiding and abetting ongoing frauds in the machinery of the Palm Beach courts by the fraudulent and illegal orchestration of an alleged Trial in his own Court on Dec. 15, 2015.

13. Judge John L. Phillips is clearly acting knowingly and intentionally outside his jurisdiction knowingly violating due process and further aiding and abetting fraud upon the Courts by the Courts by acting in concert with Alan Rose on Dec. 15, 2015 knowing Alan Rose should have been disqualified as a material fact witness for his magical sudden possession and finding of various "Original" documents and instruments herein being intertwined in the chain of custody but instead permitting Alan Rose to fraudulently hand Judge Phillips a proposed Order on Dec. 15, 2015 without permitting Petitioner to review which contained a proposed Judicial Finding by Judge Phillips that Ted Bernstein is not involved in the frauds when both Alan Rose and Judge Phillips have actual and direct knowledge that the Dec. 15, 2015 Trial which was illegally scheduled anyway was further Not Noticed to hear such matters of Ted Bernstein thus further constituting knowing, intentional and purposeful Due process violations mandating Judge

Phillips immediate Disqualification as further evidenced by the attached Order allegedly signed by Phillips on Dec. 16, 2015<sup>4</sup>,

14. That Ted Bernstein, acting as alleged fiduciary in Shirley's Estate and Trusts and his elaborate team of lawyers were all involved in the Frauds committed and the attorneys who committed the crimes were retained by Ted as his counsel and were his business associates and who committed the frauds to benefit Ted's family directly to the detriment of other beneficiaries. Yet, Phillips allowed Ted and his replacement counsel Alan Rose, as Tescher and Spallina resigned after admitting to fraud, to continue and attempt to cover up and continue the crimes in the court as did Colin.

**(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.**

15. Judge Phillips has not maintained professional competence in hearing the Estate and Trust matters of Simon and Shirley Bernstein as further set forth herein and as shown by the facts alleged in the entirety of this document.

**D. Disciplinary Responsibilities.**

**(1) A judge who receives information or has actual knowledge that substantial likelihood exists that another judge has committed a violation of this Code shall take appropriate action.**

16. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another judge, Martin Colin, has committed a violation of the Judicial Cannons and has failed to take appropriate action in regards to the fraud in and on his court that has already been proven, committed by Fiduciaries and Attorneys at Law involved in these matters, which has

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<sup>4</sup> December 16, 2015 Phillips Order

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151222%20Received%20US%20Mail%20Entered%20by%20Phillips%20Dec%2016%202015%20Order%20Final%20Judgment%20on%20Count%20II%20of%20the%20Amended%20Complaint.pdf>

material impact on these matters before Judge Phillips now. Further, Judge Phillips ability to hear the case forward is now precluded for all these reasons and due to improper transfer of the case post recusal by Judge Colin through interference in the transfer process as petitioned in the All Writs Petition pending before the Florida Supreme Court. Judge Phillips had such knowledge as of Dec. 15th, 2015 but instead of properly acting to Disqualify himself and have an illegally scheduled Trial “continued” / “stayed”, acted in disregard of his judicial obligations mandating disqualification at this time.

**(2) A judge who receives information or has actual knowledge that substantial likelihood exists that a lawyer has committed a violation of the Rules Regulating The Florida Bar shall take appropriate action.**

17. Judge Phillips received information and has actual knowledge that a substantial likelihood exists that another lawyer, Alan B. Rose, Esq. has committed a violation of the Rules Regulating the Florida Bar and has failed to take appropriate action. Judge Phillips was made aware prior to an illegally scheduled Trial for Dec. 15, 2015 both by Letter of Attorney Candice Schwager filing a Notice of Abatement and seeking a Continuance to enter the case Pro Hac Vice<sup>5</sup> that Attorney Alan B. Rose should be Disqualified under the Witness Advocate Rule of Florida as Alan B. Rose is a material fact Witness in the chain of custody of various “original” Instruments, Trusts, documents who should have Disqualified before and during Trial.
18. Judge Phillips received similar information by a Motion filed by Petitioner to seek a Continuance and Stay<sup>6</sup> on similar grounds that the attorney sought to enter the case pro hac vice and that Alan Rose was a material fact witness in the chain of custody and possession of critical original

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<sup>5</sup> Attorney Pro Hac Vice Filing

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

<sup>6</sup> December 15, 2015 Motion to Stay and Continue Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>



documents and instruments relating to the Trial and overall case. Judge Phillips knew and should have known Disqualification of attorney Rose was necessary but disregarded all these matters on Dec. 15, 2015 despite himself who should have already mandatorily disqualified.

19. As shown in the prior Disqualification motion, Judge Phillips knew and should have known from information in hearings and in the case pleadings that another Attorney at Law and new Personal Representative of the Estate of Simon Bernstein made pleadings to the Court that Ted Bernstein, counseled by Alan B. Rose, Esq. is acting as a fiduciary when he is not qualified under the terms of the trust he is operating under and therefore is not a "valid" trustee<sup>7</sup>. The terms of the trust preclude a successor that is related to the issuer of the trust, Simon Bernstein and Ted is also considered predeceased in the dispositive documents for all purposes of the trust and dispositions made thereunder, yet despite knowing this, Alan B. Rose, Esq. continues to file pleadings on behalf of a client he knows is not valid and Judge Phillips refuses to address the issue of Alan Rose's client's validity as Trustee first and foremost. Despite this claim coming from a Florida Bar attorney, Brian O'Connell, Esq., Judge Phillips has chosen to allow Rose and Ted Bernstein to continue to plead fraudulently to the Court without first determining the veracity of O'Connell's claims and Judge Phillips further acted on Dec. 15, 2015 continuing the frauds in the court and knowingly and intentionally disregarding judicial obligations.

20. That Judge Phillips has information that Alan B. Rose, Esq. showing a substantial likelihood that he is acting improperly in violation of the Rules Regulating the Florida Bar with his client Ted Bernstein in an Illinois District Court case, acting in conflict and with adverse interest to parties in these matters and where this information of the improper conduct was identified by Attorney

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<sup>7</sup> O'Connell Pleading Affirmative Defense 1 - Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

at Law Peter Feaman in a letter to the PR O'Connell<sup>8</sup> and submitted to the Colin Court by Eliot Bernstein. Yet, without first determining these matters first Judge Phillips has ignored this information and moved forward with Alan B. Rose and Ted Bernstein as fiduciaries and counsel without questioning the merits of the claims by licensed Florida Bar members O'Connell or Feaman.

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:**

21. Judge Phillips impartiality is reasonably questioned as set forth herein.

**(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding**

22. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by continuing to act outside and in the clear absence of jurisdiction knowing he was mandatorily disqualified yet continued to act on Dec. 15, 2015 showing further bias and prejudice.

23. Judge Phillips showed continuing improper bias and prejudice on Dec. 15, 2015 by knowingly and intentionally mis-stating the applicable law on Dec. 15, 2015 in court to a pro se party by declaring a Motion filed by Petitioner as untimely which was seeking a Continuance of the Trial so an attorney Candice Schwager could be admitted pro hac vice and represent three minor children and to the extent not conflicted, my interests before the Court and at a properly scheduled trial as well. Judge Phillips actually knew that Florida Rules of Civil Procedure

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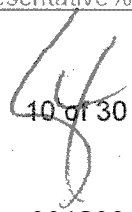
<sup>8</sup> August 29, 2014 Letter Feaman to O'Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O'Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>



**RULE 1.460 CONTINUANCES** allows said motion to be made at Trial and Petitioner's motion was filed before the Trial. Thus, Judge Phillips intentionally and actually knew he was clearly misstating and misapplying the law showing further bias and prejudice against the Petitioner.

24. Judge Phillips showed further actual bias and prejudice on Dec. 15, 2015 knowing he was already mandatorily Disqualified from conducting the trial and acting in these cases by denying proper time for proper witnesses at the trial, Traci Kratish, Kimberly Moran, Donald Tescher (who was seen outside the Courthouse but did not testify despite being one of the Estate Planners,) and other witnesses to the alleged documents and signatures by not permitting Petitioner to adequately review the alleged Exhibits Evidence being placed into the trial or having a proper time to object and by providing Petitioner a mere five minutes to "write down" a Disqualification at the end of the alleged "trial" and further denying Petitioner an opportunity to inspect a proposed "Order" submitted by Alan Rose and denying proper inspection of original instruments, denying the ability to even see a "flow chart" being used by Alan Rose, denying a continuance and counsel to minor children, and continuing knowing the trial was improperly scheduled in a case Not noticed to be heard on Sept. 15, 2015 and denying Petitioner a fair opportunity to be heard before the trial or during the alleged trial.

25. Phillips then scheduled and held a validity hearing where the star witness was a FELON, Spallina<sup>9</sup> and he was attesting to signatures of another FELON Moran on the dispositive

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<sup>9</sup> See, SEC Complaint and "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20I.state/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

and

documents and where both have unclean hands in these matters admitting they committed Fraud, Fraud on the Court and Fraud on the Beneficiaries in the Simon and Shirley Bernstein Estates and Trusts and yet Phillips rules to validate the documents based on Spallina's testimony alone and cuts Eliot off repeatedly, sustaining him when asking questions to probe the crimes of Spallina claiming they are not relevant, despite relevance to his character and testimony<sup>10</sup>.

26. At the hearing Spallina admitted he was under a consent order with the SEC for insider trading and had pled guilty to a felony in an unrelated matter. Spallina further admitted that he had committed a Fraud Upon the Court when he closed the Estate of Shirley with a dead Personal Representative her deceased husband Simon, submitting fraudulent documents to close the estate. Spallina further admitted that he had fraudulently created a Shirley Trust document and then mailed it to an attorney at law, Christine Yates, Esq. who was representing Eliot's minor children, as part of a fraud that benefited his client Ted Bernstein at the expense of his other client, the Estate of Simon and the beneficiaries thereunder.

27. While "doodling" through the Validity hearing, Phillips ignored the confessions to felony crimes in the matter by Spallina, who he refers to as "Bob" and his partner Tescher, who he calls "Don" and instead focused on attacking Candice Bernstein, who was served as a party in the Validity hearing service list prepared by Rose for her handing a document to Eliot and asking that Rose turn a display graphic so everyone could see, for this she was sent out of the hearing area and into the gallery where she was threatened with contempt if she made a sound. Candice Bernstein

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Bernstein Emergency Petition before in Florida Probate May 2013 @  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Original%20Large.pdf>.

<sup>10</sup> Article Regarding Unclean Hands and Fraud on the Court  
@<http://www.schnader.com/files/publication/e3f5e3d7-1f77-450d-80ff-26866b4aa2c4/preview/publicationattachment/514594c4-8f88-475a-b1d9-1517f201b542/fid-stern.pdf>

being the guardian of her minor children aids Eliot with his exhibits and witness questions and without her Eliot was lost at the Trial and could not find exhibits, etc. timely, as the record reflects.

28. That despite learning that an Officer of the Court had committed frauds upon the court and the beneficiaries and having admission at the trial, Judge Phillips has done nothing to notify the proper authorities as required by his Judicial Cannons and law or taken any actions to remedy the crimes. For instance, the Court, having learned of the Fraud on the Court should have then ordered all records submitted by those committing Fraud on the Court to be forensically analyzed by an expert to make sure that the documents and records in the Court are not further fraudulent and instead allowed the trustee Ted to shift the burden of investigating and forensically examining the documents to Eliot. The Court should also have ordered all parties to turn over their records, assets, etc. to the Court and provided all records of those parties and the Court to the aggrieved beneficiaries for inspection and transparency. Judge Phillips thus continued to act on Dec. 15, 2015 in the prejudicial, biased, lack of impartiality style that he had on Sept. 15, 2015 the date the "trial" was illegally scheduled and thus mandatorily must be disqualified at this time.

29. One of the facts from the prior Disqualification motion which Judge Phillips knew and knows was legally sufficient and mandatorily disqualified him from acting is contained in an All Writs Petition filed with the Florida Supreme Court and then transferred to the 4th DCA, is if Judge Martin Colin improperly steered the case POST recusal by Judge Shopping the Case and interfering with the transfer first to Judge Coates (who Sua Sponte recused after admitting conflict that should have been cleared prior to even taking the case as his former law firm is a Counter Defendant in these matters and Judge Coates had an office as a Partner in the Proskauer


Rose law firm in the same Boca Raton, Fl location where fraud by his former law firm occurred against Petitioner) and with the intended ultimate steer to Judge Phillips after reasonably knowing Coates would either be disqualified by parties involved or recuse voluntarily, after gaining access and control to the prior Colin courts documents. Therefore, it will be instrumental for Petitioner to receive the Court files regarding the matters as requested in the All Writs to then question both Coates and Phillips as material witnesses about these disputed evidentiary facts regarding their interactions with Colin prior to transfer.

30. Until Phillips knew what the decision from the Florida Supreme Court would be regarding the voiding of the transfer due to the factual interference by Colin in moving the case as a necessary and material fact witness who should have been Disqualified, Judge Phillips only action as a knowing material and fact witness to the events surrounding the improper transfer was to wait the Florida Supreme Court Ruling.
31. Yet, without regard to the All Writs pending and the answer to the improper transfer resolved, he began to deliberate on the matters, acting as he claimed in hearings to be "stupid." In fact, if it is found that the transfer was improper, despite if he was knowledgeable or not of the impropriety by Colin or involved in such act, he would still have had to disqualify because it would lead to an inescapable APPEARANCE OF IMPROPRIETY that could only be resolved by his becoming a witness and being questioned as such since due to the reasonable appearance and chance that the improper transfer by Colin to the North Branch was with criminal intent, Phillips certainly will be a suspect in criminal complaints filed against Colin and others.
32. Judge Phillips has expressed personal bias for a party to the proceeding in professing his love for Judge Martin Colin who is alleged to have participated in a fraud in and on the court when he stated on the record:

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.

33. Judge Phillips professed “love” for Judge Martin Colin on the Record who is a necessary and material fact witness before the Court creates substantial bias, prejudice and reasonable fear that Petitioner can not get a fair trial before Judge Phillips as further set forth herein and Judge Phillips must now be mandatorily disqualified as Judge Phillips further knew Judge Colin’s Orders all should have been voided or at least should have been a material fact witness subject to discovery and deposition before any such “trial” on Dec. 15, 2015 yet Judge Phillips continued to act on Dec. 15, 2015 knowing he should be mandatorily disqualified and thus must now be disqualified.
34. The bias, prejudice, appearance of impropriety and reasonable fear that Petitioner can not receive a fair trial before Judge Phillips is particularly egregious in light of the fact that Judge Phillips never even permitted Petitioner to be heard about this pending Petition for All Writs and Stay and Injunctive relief despite 2 assurances at the prior conference that this would occur and further egregious as the Record shows each time Petitioner did attempt to be heard he was cut-off by Judge Phillips without being fully or fairly heard.
35. Judge Phillips also spoke to his personal knowledge of the attorneys at law involved and how he knew them well and did not know Petitioner Eliot Bernstein and this also seemed prejudicial, since attorneys at law in the cases have already committed fraudulent acts, including fraud on the court.

**(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:**

  
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**(iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

36. Judge Phillips is a material witness in the proceeding as it is already alleged that he was a participant in the improper steering of the case, knowingly or unknowingly his involvement must be questioned to determine if Ex Parte conversations took place with Judge Colin prior to the transfer as further defined herein. Judge Phillips continues to know he is a material fact witness and was on Dec. 15, 2015 and remains as such and thus must be mandatorily disqualified.

**Rule 2.330 (c) Motion.  
A motion to disqualify shall:  
(1) be in writing.**

37. This Motion is in writing.

**Rule 2.330 (c) Motion  
(2) allege specifically the facts and reasons upon which the movant relies as the grounds for disqualification.**

38. This Motion specifically alleges specific facts and reasons upon which the movant relies as the grounds for disqualification.

**Rule 2.330 (c) Motion  
(3) be sworn to by the party by signing the motion under oath or by a separate affidavit.**

39. Petitioner is acting Pro Se and has no attorney and therefore Petitioner has sworn to and signed this Motion for Disqualification under oath and before a notary as required by Rule 2.330 (c)

**Rule 2.330 (c) Motion  
(4) include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions.**

40. There has been no previously granted motions to disqualify in this case filed under Rule 2.330

**Rule 2.330 (c) Motion  
(4) The attorney for the party shall also separately certify that the motion and the client's statements are made in good faith. In addition to filing with the clerk, the movant shall immediately**



serve a copy of the motion on the subject judge as set forth in  
Florida Rule of Florida Rule of Civil Procedure 1.080.

41. Petitioner movant is acting Pro Se and thus has no attorney at law representing him and Pro Se  
Petitioner has certified that the motion and the statements made herein are made in good faith.  
That Service is proper to Judge Phillips under Rule 1.080.

**Rule 2.330 (d) Grounds.**

**A motion to disqualify shall show:**

**(1) that the party fears that he or she will not receive a fair trial  
or hearing because of specifically described prejudice or bias of  
the judge.**

42. That Petitioner asserts for all the reasons and facts alleged herein and as set out below and  
further in the entirety of the document incorporated herein that he will not and has not already  
received a fair trial or hearing and that Judge Phillips because of the following specifically  
described prejudices and biases under Rule 2.330 (d) should be mandatorily disqualified for the  
reasons that follow:

**Canon 3 - A Judge Shall Perform the Duties of Judicial Office  
Impartially and Diligently.**

**B. Adjudicative Responsibilities.**

**(1) A judge shall hear and decide matters assigned to the judge  
except those in which disqualification is required.**

**E. Disqualification.**

**(1) A judge shall disqualify himself or herself in a proceeding in  
which the judge's impartiality might reasonably be questioned,  
including but not limited to instances where:**

**(a) the judge has a personal bias or prejudice concerning a party  
or a party's lawyer, or personal knowledge of disputed  
evidentiary facts concerning the proceeding**

**(d) the judge or the judge's spouse, or a person within the third  
degree of relationship to either of them, or the spouse of such a  
person:**

**(iv) is to the judge's knowledge likely to be a material witness in  
the proceeding;**

**CANON 3B(1) - ...A judge shall hear and decide matters assigned to the judge except those  
in which disqualification is required.**

43. Judge Phillips knew and actually knows he was acting outside his jurisdiction on Dec. 15, 2015 as he knew a legally sufficient mandatory disqualification motion was filed in writing before Trial and he should have disqualified.
44. Judge Phillips knows he was intentionally misstating and improperly applying the law on Motions for Continuance which are allowed to be made at trial and yet Judge Phillips denied as untimely.
45. Judge Phillips knows this is a “complex” case and should have been treated as a complex case under the Case Management rules but instead illegally scheduled a trial in a case not noticed for Trial and then carried on with an illegal trial on Dec. 15, 2015.
46. Judge Phillips knew on Dec. 15, 2015 that not only was an improper trial scheduled and he should be mandatorily disqualified, but further knew no possible fair trial could have been conducted in a day, without determination of proper discovery in advance and without expert witnesses and without counsel for my minor children all being matters which Judge Phillips actually knows he illegally and improperly denied being heard by Petitioner on Sept. 15, 2015, thus Phillips actually knowing he was denying Petitioner due process in violation of the US Constitution and Florida State Constitution and violation of his role and functions as a Judge.
47. In all of these manners, Judge Phillips acted with partiality, prejudice and bias creating a reasonable fear that I would not receive a fair trial and did not and that the trial itself was a sham and fraud.
48. Judge Phillips knew that he, himself is and was a material witness since it is alleged in the All Writ Petition in these matters currently before the Supreme Court of Florida that Judge Coates was never the intended party Judge Colin interfered post recusal to steer the case to, allegedly knowing of Conflict with Coates due to his being a former Proskauer Rose partner and that

Proskauer was a counter defendant in these matters and knowing the case would be moved to a new Judge who was unknown at the time. After Coates first hearing where he Sua Sponte recused himself on record, the case was transferred to Judge Phillips.

49. Where it is alleged based on information and belief that the interference by Colin was to move the case to Phillips, despite whether it is true, it can only be proven after Petitioner has access to the Court record from Colin, Coates and Phillips and Petitioner has the right to question each party under deposition or otherwise to ascertain their involvement, Judge Phillips new becomes a material and fact witness to a major allegation of fraud on the court in the transfer by Colin and to answer if he had any Ex Parte communications with Judge Coates or Judges Colin or any other party prior to taking the cases that Colin is alleged to have improperly steered to the North District.

In the fact that this question can be reasonably asked of Judge Phillips due to the improper post recusal steering of the case by Colin, Judge Phillips should on his own initiative have then disqualified himself as a witness, allowed a completely independent judge to be picked properly and thus from the start Judge Phillips could not hear the matters further without first addressing this most serious issue of the transfer.

50. That even if the Supreme Court of Florida or Appellate Court were to now attempt to permit such transfer, the fact that Phillips acted first, prior to any rulings, remains cause for his disqualification.

**CANON 3E(1) - ...A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.**

51. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein throughout this document including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find

Judge Colin “wrong” prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed “love” for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein’s Estate when the Conference was only “Noticed” for Simon Bernstein’s Estate and for other grounds as set forth herein and then continuing to act in fraud and further aid and abet the fraudulent criminal scheme herein using the machinery of the Florida Courts in the North Branch of Palm Beach County on Dec. 15, 2015 and by an illegal Order Dec. 16, 2015.

52. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters or even minimally afford Petitioner Due Process to be heard before Judge Phillips on the best procedural manner to bring the issues of the All Writs<sup>11</sup> before the Phillips court.

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<sup>11</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

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53. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein and as set out herein throughout this filing specifically referencing ongoing continuing conduct on Dec. 15, 2015. .

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

54. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein and as set out by the entirety of this document and filing herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

55. As already stated above Judge Phillips has knowledge that he is a material and fact witness in the proceedings to highly relevant information regarding the cases at this time.

**Rule 2.330 Grounds.**

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**(e) Time.** A motion to disqualify shall be filed within a reasonable time not to exceed 10 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Any motion for disqualification made during a hearing or trial must be based on facts discovered during the hearing or trial and may be stated on the record, provided that it is also promptly reduced to writing in compliance with subdivision (c) and promptly filed. A motion made during hearing or trial shall be ruled on immediately.

56. Until such time as the frauds upon the court is corrected, the cases reset with new fiduciaries and counsel and due process restored, any such motion presently is timely herein. This motion is otherwise timely being filed on the first day the Courts were open after the Dec. 25th Holiday also closing the Courts on Dec. 26th, 2015.

**Rule 2.330 Grounds.**

**(f) Determination - Initial Motion.**

**The judge against whom an initial motion to disqualify under subdivision (d)(1) is directed shall determine only the legal sufficiency of the motion and shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the judge shall immediately enter an order granting disqualification and proceed no further in the action. If any motion is legally insufficient, an order denying the motion shall immediately be entered. No other reason for denial shall be stated, and an order of denial shall not take issue with the motion.**

57. Petitioner states that the Motion is legally sufficient under Rule 2.330 as it fully complies with this code and whether Petitioner has filed a legally sufficient pleading would not negate the fact that Judge Phillips has to voluntarily and mandatorily disqualify under Judicial Canons, Attorney Conduct Codes and Law as stated herein.

**Rule 2.330 Grounds.**

**(g) Determination - Successive Motions.**

**If a judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (d)(1), a successor judge shall not be disqualified based on a successive motion by the same party unless the successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motiou.**

58. Petitioner states there have been no Successive Motions.

**Rule 2.330 Grounds.**

**(h) Prior Rulings.**

**Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist.**

59. Petitioner seeks that upon disqualification of Judge Phillips, that all prior factual or legal rulings be vacated by the successor judge due to the alleged continued civil torts against Petitioner by Judge Colin and his successors.

60. That further, Petitioner seeks a replacement Judge, who is not a member of the same jurisdiction as Judge Colin or Phillips and who is not a member of the Florida Bar to preside over the cases of Judge Colin/Coates/Phillips involving the Estates and Trusts of Simon and Shirley Bernstein and the case involving the Trusts of Petitioner's minor children. This request due to the fact that Petitioner does not feel he can get a fair and impartial hearing in the State of Florida and certainly not by the 15th Judicial, perhaps the conflicts now include any members of the Florida Bar for reasons cited herein and in the All Writ and therefore Petitioner is seeking this Court to move the matters to a Federal Court or find other suitable remedy in such serious case where the Court is alleged part of the frauds and adhering to rules and regulations is of primary concern due to the past three years of alleged fraud.

61. The following cases that Judge Phillips now presides over are all tainted for the same reasons as stated herein and Judge Phillips should immediately voluntarily disqualify himself from these cases as well, voiding any/all orders, etc. and turning over the court records to Petitioner for review and save Petitioner the expense and aggravation of having to file Disqualification

pleadings and subpoenas in each case to force his mandated disqualification and release of critical to the case court records already requested in the All Writs Petition pending:

a.	Case#	502012CP004391XXXXSB	–
Simon Bernstein Estate			
b.	Case#	502011CP000653XXXXSB	–
Shirley Bernstein Estate			
c.	Case#	502014CP002815XXXXSB	–
Oppenheimer v. Bernstein Minor Children			
d.	Case#	502014CP003698XXXXSB	–
Shirley Trust Construction			
e.	Case#	502015CP001162XXXXSB	–
Eliot Bernstein v. Trustee Simon Trust Case	OLD Case#	502014CA014637XXXXMB	

**Rule 2.330 Grounds.**

**(i) Judge's Initiative.**

**Nothing in this rule limits the judge's authority to enter an order of disqualification on the judge's own initiative.**

62. Petitioner states that Judge Phillips should have already entered an order of disqualification on his own initiative according to Judicial Canons, Statutes and Rules when he became aware that disqualification was mandated of him as a potential witness regarding the alleged improper post recusal steering of the cases by Colin but has thus far failed to do so and instead rushed into hearings without first addressing these fundamental issues of fair and impartial due process. If for any reason Judge Phillips finds this Motion legally insufficient, Judge Phillips must disqualify himself on his own initiative as set forth under this rule 2.330 (i) and Judicial Canon, Attorney Conduct Codes, Probate Rules and Statutes and Law for the reasons stated herein, whether pled sufficiently or not by Pro Se Eliot Bernstein.

**Rule 2.330 Grounds.**

**(j) Time for Determination.**

**The judge shall rule on a motion to disqualify immediately, but no later than 30 days after the service of the motion as set forth in subdivision (c). If not ruled on within 30 days of service, the motion shall be deemed granted and the moving party may seek an order from the court directing the clerk to reassign the case.**



63. Petitioner demands due to the EMERGENCY NATURE of this case where claims have been made that Petitioner's children are in life threatening dangers due to the abusive and fraudulent Probate rulings and proceedings for the last three year which have directly and intentionally interfered with inheritances/expectancies causing massive harms to them caused directly by the Fraud on the Court by the Court Appointed Attorneys at Law and Fiduciaries and potentially the Court itself and this requires that this Disqualification be made instantly. Delays cause further ongoing harms and damages of Petitioner's minor children and Petitioner's family which results in additional liabilities to those parties ultimately held accountable for the criminal acts, civil torts and frauds that occurred in Judge Colin and Judge French's courts.
64. That PRIOR to any other actions by Judge Phillips, this Disqualification must first be ruled on.

**Florida Statutes 38.10**

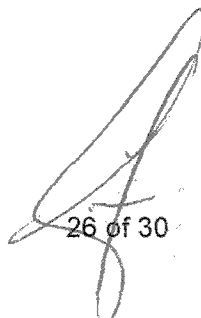
**Disqualification of judge for prejudice; application; affidavits;  
etc.—**

**Whenever a party to any action or proceeding makes and files an affidavit stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, the judge shall proceed no further, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. Every such affidavit shall state the facts and the reasons for the belief that any such bias or prejudice exists and shall be accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.**

65. Petitioner has supplied a legally sufficient Affidavit herein.
66. Judge John L. Phillips is again mandated to be Disqualified under the Rules by both express words, conduct and by omissions by creating a reasonable fear by the party Eliot I. Bernstein that he will not receive a fair trial as defined herein and as demonstrated and plead throughout the entirety of the document and filing herein.

WHEREFORE, the PRO SE Petitioner requests that Judge Phillips immediately mandatorily disqualify as this is a legally sufficient pleading. In the alternative if it is determined by Judge Phillips that this Pro Se pleading is legally insufficient then he must on his own motion and initiative disqualify himself as required by Judicial Cannons, Attorney Conduct Codes and Law. Further, all Orders of Judge Phillips should be voided including the Mediation scheduled for Dec. 4th, 2015 at 10 am EST and Trial Scheduled for Dec. 15th, 2015. Finally, as Eliot has filed a previous disqualification of Judge Phillips that was denied as “legally insufficient” alone with no explanation and where “legally insufficient” is a legally insufficient phrase as it has not a legal definition, Eliot asks this Court to fully explain what is legally insufficient with the pleading so corrections can be made if necessary and to explain why the previous filing did not meet a “sufficiency” standard.

Under Penalties of perjury, I, Eliot Ivan Bernstein, swear under oath and affirm that I



have read the foregoing and the facts alleged are made in good faith and are true to the best of my knowledge and belief.

Dated this 28th day of December, 2015

Respectfully Submitted,

Eliot Ivan Bernstein

2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone, 561-245-8588  
iviewit@iviewit.tv

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

**CERTIFICATE OF SERVICE**

Petitioner does hereby certify that the foregoing Petition was served on all parties by e-file with the clerk of the court this 28th day of December, 2015.

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein

**STATE OF FLORIDA**

**COUNTY OF PALM BEACH COUNTY**

Sworn to or affirmed and subscribed before me this 28th day of December, 2015 by Eliot Bernstein who is known to me or produced the following identification. Driver License - CA

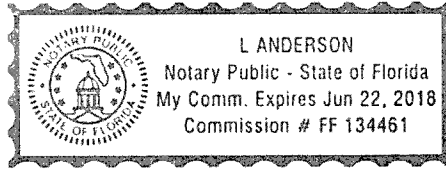
NOTARY PUBLIC

Print name of Notary:

L ANDERSON

Notary Signature:

x L Anderson



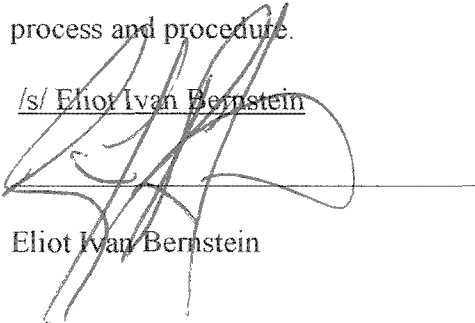
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My commission expires: 6/22/2018

**AFFIDAVIT**

Affiant, Eliot Bernstein hereby states under oath that the attached Verified Emergency Petition and Affidavit for Immediate Disqualification of Judge John L. Phillips is true and correct to the best of his knowledge and belief and that he fears that for all the reasons herein he and his minor children will not and have not thus far received a fair and impartial trial with due process and procedure.

/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein

December 28, 2015

STATE OF FLORIDA

COUNTY OF PALM BEACH

Sworn to or affirmed and subscribed before me this 4th day of December, 2015 by Eliot Ivan Bernstein who is known to me or produced the following identification

Driver License - CA

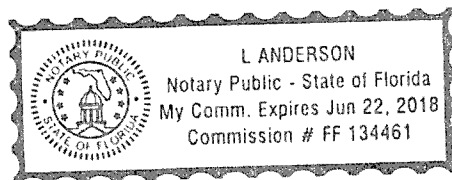
Notary Public

Print name: L Anderson

Notary Signature: L Anderson

Stamp

My commission expires: 6/22/2018



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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

**MOTION FOR NEW TRIAL**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

\_\_\_\_\_/

Other Applicable Related Cases this Motion for Stay, Injunction and New Trial Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate  
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate  
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children  
Case # 502014CP003698XXXXSB – Shirley Trust Construction  
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD CASE # 502014CA014637XXXXMB

\_\_\_\_\_/

**MOTION FOR NEW TRIAL**

COMES NOW ELIOT BERNSTEIN BEING DULY SWORN WHO MAKES THIS AFFIDAVIT AND  
MOTION IN SUPPORT OF A NEW TRIAL AND VACATING AND DECLARING LEGALLY VOID AND A  
NULLITY THE TRIAL JUDGEMENT ORDER OF JUDGE PHILLIPS DATED DEC. 16, 2015 AS FOLLOWS:

1. THIS IS A MOTION FOR A NEW TRIAL UNDER FLORIDA RULES OF CIVIL PROCEDURE 1.530 FOR AN ALLEGED “TRIAL” HELD ON DEC. 15, 2015 IN THE NORTH BRANCH OF PALM BEACH COUNTY BEFORE JUDGE JOHN L. PHILLIPS ALLEGEDLY A VALIDITY TRIAL ON CERTAIN WILLS AND TRUST INSTRUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN.
2. THIS MOTION IS TIMELY.

3. A NEW TRIAL WILL SERVE THE BEST INTERESTS OF JUSTICE WHILE DENIAL OF A NEW TRIAL WILL GREATLY PREJUDICE ELIOT I. BERNSTEIN AND HIS MINOR CHILDREN AS WELL AS THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN AND THE TRUTH SEEKING PROCESS.
4. FOR ALL THE REASONS SET FORTH HEREIN AND FOR OTHER PENDING MOTIONS THE TRIAL AND THE JUDGMENT/ORDER AFTER TRIAL ALLEGEDLY ISSUED DEC. 16, 2015 MUST BE VACATED AND DECLARED A LEGAL NULLITY. SEE EXHIBIT 1 -, ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015.
5. IT IS NOTED FOR PURPOSES OF THIS MOTION THAT PETITIONER ELIOT I. BERNSTEIN WHO HAS BEEN DECLARED LEGALLY INDIGENT HAS BEEN FURTHER PREJUDICED AND HARMED BY BEING DENIED AND DELAYED ACCESS TO ACTUAL COURT EVIDENCE EXHIBITS AND TRANSCRIPTS OF PROCEEDINGS WHICH WOULD FURTHER AID THE FILING OF THIS MOTION AND THAT ELIOT I. BERNSTEIN RESERVES ALL RIGHTS TO AMEND THIS MOTION AS ALLOWED BY LAW AND FILE PROPER MOTIONS UPON RECEIPT OF ACTUAL TRIAL EXHIBITS, EVIDENCE AND TRANSCRIPTS AND UPON ANY OTHER BASIS UNDER LAW.

**JUDGE JOHN L. PHILLIPS USED THE MACHINERY OF THE COURTS TO CONTINUE FRAUD IN THE PROCEEDINGS ON DEC. 15, 2015, FURTHER AIDING AND ABETTING ONGOING CRIMES AND ANY SUCH JUDGEMENT / ORDER MUST BE VACATED, STAYED AND DECLARED A LEGAL NULLITY**

6. JUDGE JOHN L. PHILLIPS SITTING IN THE NORTH BRANCH OF PALM BEACH COUNTY HAD ACTUAL KNOWLEDGE THAT HE WAS ACTING OUTSIDE AND BEYOND HIS JURISDICTION BY EVEN CONDUCTING THE TRIAL ON DEC. 15, 2015 SINCE JUDGE PHILLIPS KNEW AND KNOWS THAT A LEGALLY SUFFICIENT MOTION FOR HIS MANDATORY DISQUALIFICATION HAD BEEN FILED BY PETITIONER ELIOT BERNSTEIN ON DECEMBER 04, 2015 AND THAT JUDGE PHILLIPS HAD TO MANDATORILY

DISQUALIFY UNDER LAW AND ACT NO FURTHER IN THE CASE(S). SEE, MANDATORY DISQUALIFICATION OF JUDGE PHILLIPS<sup>1</sup>.

7. AS SET OUT IN THE LEGALLY SUFFICIENT MOTION FOR MANDATORY DISQUALIFICATION OF JUDGE JOHN L. PHILLIPS, JUDGE PHILLIPS HAS AND HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 AT A CASE MANAGEMENT CONFERENCE THAT THE CASE WAS NOTICED FOR CONFERENCE IN THE ESTATE OF SIMON BERNSTEIN BEING FILED BY THE CURRENT PR IN THE ESTATE OF SIMON BERNSTEIN ATTORNEYS BRIAN O'CONNELL AND JOY FOGLIETTA OF THE CIKLIN LUBITZ MARTENS & O'CONNELL LAW FIRM. SEE EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE.
8. EVEN AS A MARGINALLY AND MINIMALLY COMPETENT JUDGE, JUDGE JOHN L. PHILLIPS HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 THAT FLORIDA RULES OF CIVIL PROCEDURE 1.200: PRETRIAL PROCEDURE (A) CASE MANAGEMENT CONFERENCE PROVIDES IN PART: "THE MATTER TO BE CONSIDERED SHALL BE SPECIFIED IN THE ORDER OR NOTICE SETTING THE CONFERENCE".
9. AS THE TRANSCRIPT OF SEPT. 15, 2015<sup>2</sup> PROVIDES AND DEMONSTRATES, ELIOT I. BERNSTEIN ATTEMPTED TO CLARIFY THE CASE THAT WAS BEING HEARD ON THIS DATE BUT JUDGE PHILLIPS CONTINUALLY DENIED ELIOT BERNSTEIN A DUE PROCESS FAIR OPPORTUNITY TO BE HEARD IN A MEANINGFUL MANNER AT THE MEANINGFUL TIME DEMONSTRATING IMPERMISSIBLE BIAS AND PREJUDICE AGAINST ELIOT BERNSTEIN WHICH FURTHER MANDATED JUDGE PHILLIP'S DISQUALIFICATION RENDERING THE HOLDING OF ANY SUCH TRIAL ON DEC. 15, 2015 VOID AND A LEGAL NULLITY.

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<sup>1</sup> December 04, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>2</sup> September 15, 2015 Hearing Transcript

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf>



10. IN FACT A CLOSE AND CAREFUL REVIEW OF THE TRANSCRIPT OF THE CASE MANAGEMENT CONFERENCE BY ANY DETACHED, NEUTRAL PARTY AND/OR INVESTIGATIVE AUTHORITY WILL SHOW THE CLASSIC TEXTBOOK MODUS OPERANDI OF A JUDGE USING THE MACHINERY OF THE COURTS TO COMMIT AND FURTHER FRAUD AND CRIME AND KNOWING INTENTIONAL CONSTITUTIONAL VIOLATIONS THROUGH THE COURTS THEMSELVES.
11. IN ONE BREATH IN THIS COMPLEX CASE WHICH HAS A TOTAL OF 6-7 SEPARATE CASE NUMBERS FOR RELATED CASES, JUDGE JOHN PHILLIPS WOULD HAVE THE WORLD BELIEVE **BY HIS OWN WORDS** THAT HE IS ‘STUPID’ AND “NOT SMART” ALTHOUGH HE KNOWS HOW TO OCTOPUS WRANGLE, YET EACH AND EVERY TIME THAT ELIOT I. BERNSTEIN ATTEMPTED TO EXERCISE HIS CONSTITUTIONAL DUE PROCESS RIGHT AND OPPORTUNITY TO BE HEARD. BY REVIEWING THE TOTALITY OF THE TRANSCRIPT A DETACHED NEUTRAL INDEPENDENT REVIEWER CAN SEE THAT JUDGE JOHN L. PHILLIPS RUSHES TO CUT ELIOT BERNSTEIN OFF AND SHUT HIM DOWN KNOWINGLY AND INTENTIONALLY DENYING HIS DUE PROCESS OPPORTUNITY TO BE HEARD.
12. HOWEVER, AN INDEPENDENT, NEUTRAL, CONSTITUTIONALLY PROPER JUDGE WOULD SIMPLY SAY: THIS IS NOT RIGHT. THIS IS NOT RATIONALE? IF JUDGE PHILLIPS ACTUALLY DIDN’T KNOW WHAT WAS GOING ON IN THE CASE AND IS NOT THAT SMART AND IS STUPID BY HIS OWN WORDS, WHY DOES HE ONLY LET TED BERNSTEIN’S ATTORNEY ALAN ROSE SPEAK VOLUMES AT LENGTH WITHOUT INTERRUPTION AND YET CUT OFF ELIOT BERNSTEIN AT EACH STEP OF THE CONFERENCE WHEN A NEUTRAL DETACHED PROPER JUDGE TRYING TO BECOME BOTH EDUCATED AND GIVE EACH PARTY A FAIR AND PROPER OPPORTUNITY TO BE HEARD WOULD ALLOW ELIOT BERNSTEIN AND EACH PARTY FAIR OPPORTUNITY TO STATE THE FACTS AND LAW AND POSITION DURING THE CONFERENCE. THE TRANSCRIPTS CLEARLY SHOW OTHERWISE AND JUDGE PHILLIPS HAD TO BE DISQUALIFIED.

13. IT IS NOTED AGAIN FOR THE RECORD THAT WHEN JUDGE PHILLIPS IS PERMITTING TED BERNSTEIN'S ATTORNEY ALAN ROSE TO SPEAK VOLUMES REPEATEDLY AT LENGTH AT THE CONFERENCE ON SEPT. 15, 2015 IT WAS ATTORNEY ALAN ROSE WHO FILED A "LAST MINUTE" / "AFTER HOURS" MEMO WITH THE COURT ON THE "EVE OF THE CONFERENCE" AND FOR SOME REASON THIS APPEARS TO BE THE ONLY PART OF THE CASE JUDGE PHILLIPS IS FAMILIAR WITH DESPITE HAVING BEEN FILED AFTER HOURS THE NIGHT BEFORE.
14. FOR EXAMPLE, WHEN ELIOT BERNSTEIN BEGINS TO ANSWER WHY MORE THAN A DAY IS NEEDED FOR TRIAL HE BEGINS A DISCUSSION ABOUT WHY THE TRIAL SHOULD TAKE SEVERAL DAYS AND BEING A COMPLICATED CASE AND TED BERNSTEIN'S VALIDITY AS TRUSTEE AND THE CASE INVOLVING FRAUD YET JUDGE PHILLIPS SHUTS THIS DOWN, PRE-DETERMINES AND PREJUDGES THE MATTER. SEE, PAGES 23, STARTING AT LINES 23 AND PAGE 24, SEPT. 15, 2015 TRANSCRIPT ALREADY EXHIBITED HEREIN.
15. YET THE CASE IS COMPLEX, INVOLVES 6-7 DIFFERENT CASE NUMBERS, IS INTER-RELATED TO FEDERAL LITIGATION INVOLVING THE ESTATE OF SIMON BERNSTEIN BEING HEARD IN ILLINOIS, A DIFFERENT STATE AND HAS MULTIPLE OUTSTANDING MOTIONS AND PLEADINGS IN THE SEVERAL CASES PENDING AT THE TIME JUDGE PHILLIPS HOLDS THE CASE MANAGEMENT CONFERENCE ON SEPT. 15, 2015.
16. JUDGE PHILLIPS ACTUALLY KNOWS AND SHOULD HAVE KNOWN AS OF SEPT. 15, 2015 THAT THE ISSUE OF TED BERNSTEIN ACTING AS A VALID TRUSTEE TO EVEN HEAR AND DETERMINE A VALIDITY TRIAL ON THE INVOLVED INSTRUMENTS IS CRITICAL TO THE INTEGRITY OF PROCEEDINGS SINCE ACTUAL FRAUDED DOCUMENTS BY TED BERNSTEIN AS ALLEGED FIDUCIARY ALONG WITH HIS OWN ATTORNEYS TESCHER AND SPALLINA AND A PARALEGAL ACTING AND WORKING FOR TESCHER AND SPALLINA HAD ALREADY BEEN EXPOSED IN JUDGE COLIN'S COURT AND YET THE ATTORNEYS

INVOLVED WITH THE FRAUD TESCHER AND SPALLINA WERE STILL HOLDING ONTO ORIGINAL DOCUMENTS NEARLY TWO YEARS LATER WITHOUT TED BERNSTEIN AS ALLEGED "TRUSTEE" OR THE COURT OR THE PALM BEACH SHERIFF'S DEPARTMENT SEIZING AND IMPOUNDING THE DOCUMENTS FROM TESCHER AND SPALLINA FOR FORENSIC EXAMINATION.

17. IT IS ABSOLUTELY CLEAR AND UNDENIABLE THAT JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF AT LEAST SOME OF THIS BACKGROUND AS OF SEPT. 15, 2015 SINCE AT THE PRIOR STATUS CONFERENCE IN JULY OF 2015 IT IS BROUGHT UP ON THE RECORD FIRST BY ELIOT BERNSTEIN AND THEN BY JUDGE PHILLIPS HIMSELF AT THE CLOSE OF THE STATUS CONFERENCE THAT ELIOT BERNSTEIN'S OBJECTIONS TO THE CASE EVEN MOVING FORWARD WOULD BE HEARD AT THE NEXT CONFERENCE SINCE A PETITION FOR ALL WRITS WAS PENDING AT THE FLORIDA SUPREME COURT SPECIFICALLY SEEKING MANDAMUS AND PROHIBITION AGAINST THE PRIOR JUDGE MARTIN COLIN AS A NECESSARY AND MATERIAL FACT WITNESS TO THE FRAUDS IN THE COURT AND SEEKING THE VOIDING OF ALL HIS ORDERS.

18. YET DESPITE JUDGE PHILLIPS HAVING STATED ON THE RECORD AT THE STATUS CONFERENCE IN JULY 2015 THAT THE OBJECTIONS TO THE CASE MOVING FORWARD BASED ON THE ALL WRITS PETITION BY ELIOT BERNSTEIN WOULD BE HEARD AT THE NEXT CONFERENCE, IT IS ABSOLUTELY UNDENIABLY CLEAR THAT JUDGE PHILLIPS PREJUDICED THE ENTIRE CASE AND PRE-JUDGED THE CASE AT LEAST BY SEPT. 15, 2015 AS HE COMPLETELY AND WHOLLY DENIES ELIOT BERNSTEIN AN OPPORTUNITY TO BE HEARD ON THE WRIT DESPITE THE FACT THAT JUDGE COLIN HIMSELF IS A NECESSARY MATERIAL FACT WITNESS WHICH DIRECTLY RELATED TO JUDGE PHILLIPS QUESTION OF HOW LONG A TRIAL WOULD TAKE SINCE JUDGE COLIN WOULD ALSO HAVE TO BE A WITNESS YET JUDGE PHILLIPS SHUTS THIS ALL DOWN IN BIASED, PREJUDGING PREJUDICIAL MANNER CREATING

REASONABLE FEAR THAT A FAIR TRIAL WOULD NOT BE HELD WHICH MEANS JUDGE PHILLIPS HAD TO DISQUALIFY BEFORE THE TRIAL EVEN BEGAN.

19. AS SET OUT IN THE LEGALLY SUFFICIENT DISQUALIFICATION MOTIONS AGAINST JUDGE PHILLIPS, JUDGE PHILLIPS FURTHER PREJUDICED AND BIASED THE PROCEEDINGS ON SEPT. 15, 2015 BY NOT ONLY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON THE WRITS AND JUDGE COLIN AS A NECESSARY AND MATERIAL FACT WITNESS BUT FURTHER BY DECLARING ACTUAL “LOVE” FOR JUDGE COLIN AND FURTHER STATING HE WOULD MAKE NO FINDING THAT ANYTHING WAS DONE WRONG BY COLIN. SEE, TRANSCRIPTS AND DISQUALIFICATION MOTIONS.
20. MORE EGREGIOUS, HOWEVER, IS THE FACT THAT MOST EVERY ONE OF THESE ISSUES WHOLLY DISREGARDED INTENTIONALLY BY JUDGE PHILLIPS USING THE MACHINERY OF THE COURTS TO FURTHER FRAUD UNDER THE DISGUISE OF BEING A STUPID, NOT SMART OCTOPUS WRANGLER BY HIS OWN WORDS WERE PREVIOUSLY FILED IN THE COURT OF JUDGE COLIN AND THUS WERE IN THE CASE FILES THAT JUDGE PHILLIPS SHOULD HAVE BEEN REVIEWING IN ADDITION TO ALAN ROSE’S LAST MINUTE AFTER HOURS MEMO OF SEPT. 14, 2015.
21. FOR EXAMPLE, A MAY 6, 2013 EMERGENCY MOTION TO JUDGE COLIN EXPOSING THE FRAUDS IN THE COURT BY TESCHER SPALLINA KIMBERLY MORAN AND TED BERNSTEIN IS BUT ONE MOTION NEVER FULLY HEARD TO THIS DAY AND NOT HEARD OR ALLOWED TO BE PRESENTED BY JUDGE PHILLIPS ON SEPT. 15, 2015 EVEN THOUGH THE ISSUES IN SUCH MOTION ESPECIALLY THE FRAUD SHOULD HAVE BEEN GUIDING THE CASE MANAGEMENT AND CERTAINLY ANY TRIAL.
22. THUS FROM A RATIONALE BASIS PERSPECTIVE FROM A NEUTRAL DETACHED CONSTITUTIONALLY PROPER REVIEWER, IF JUDGE PHILLIPS WAS NOT AWARE OF THE SERIOUSNESS AND COMPLEXITY OF THESE PLEADINGS AND MOTIONS, THEN THERE IS NO WAY AS A NEUTRAL JUDGE HE WOULD SIMPLY SHUT DOWN ELIOT BERNSTEIN EACH TIME HE SPOKE WITHOUT PERMITTING A FAIR OPPORTUNITY TO

BE HEARD AS JUDGE PHILLIPS WOULD HAVE SOUGHT TO BECOME KNOWLEDGEABLE AND EDUCATED ON THE CASE BUT INSTEAD THE CLEAR EVIDENCE SHOWS HE PREJUDGED THE CASE AND PREJUDGED THE TRIAL ITSELF AS OF SEPT. 15, 2015 PARTICULARLY BY LIMITING THE TRIAL TO ONE DAY AND ANY SUCH TRIAL JUDGEMENT ORDER MUST NOW BE VACATED AS A NULLITY AND FRAUD.

23. JUST UNDER RULE 1.200 THE TRIAL JUDGMENT ORDER SHOULD BE VACATED AND DECLARED A LEGAL NULLITY AS JUDGE PHILLIPS HAS ACTUAL KNOWLEDGE AND KNOWS THE TRIAL WAS SET IN THE SHIRLEY BERNSTEIN CASE WHICH WAS NOT NOTICED TO BE HEARD ON SEPT. 15, 2015 AND THUS THIS RULE WAS KNOWINGLY VIOLATED BY JUDGE PHILLIPS IN WHAT IS A PRE-DETERMINED PRE-JUDGE PLAN TO FURTHER AID AND ABET ONGOING FRAUD AND COVER FRAUD UP HOPING ELIOT BERNSTEIN WILL SIMPLY CAVE FROM THE WAR OF FRAUDULENT ATTRITION.

24. HAD JUDGE PHILLIPS MARGINALLY AND COMPETENTLY REVIEWED ANY OF THE PRIOR PLEADINGS AND THE TRANSCRIPT HE WOULD HAVE SEEN THAT TED BERNSTEIN WAS IN FACT KNOWINGLY INVOLVED IN THE FRAUD AND INTERTWINED WITH TESCHER SPALLINA AND JUDGE COLIN BY THE APPEARANCE ON SEPT. 13, 2013 WHEN THE FRAUD IS FINALLY ADDRESSED IN A VERY MINIMAL PARTIAL DEFICIENT MANNER BY JUDGE COLIN ON THE RECORD AND YET TED BERNSTEIN STANDS SILENT BEFORE JUDGE COLIN WHEN AN APRIL 9, 2012 DOCUMENT IS REFERENCED WHICH WAS CLEARLY FRAUDED BY SPALLINA AND FILED IN JUDGE COLIN'S COURT AFTER SIMON BERNSTEIN'S DEATH, BY SIMON AS IF HE WAS ALIVE AND YET TED BERNSTEIN HAD TO KNOW THIS WAS FRAUD AS IT REFERRED TO WAIVERS HE ALLEGEDLY SIGNED BUT TED BERNSTEIN KNEW THE WAIVERS HAD NOT BEEN SIGNED YET AND INSTEAD STOOD SILENT BEFORE COLIN.

25. MORE EGREGIOUSLY ON THIS DATE SEPT. 13, 2013 WHICH IS WHY JUDGE COLIN HAS TO BE A MATERIAL FACT WITNESS NECESSARY FOR INTEGRITY AND TRUTH AND THUS A NEW TRIAL GRANTED WHERE HE IS A WITNESS IS THAT TED BERNSTEIN ANNOUNCES HE IS THERE WITH SPALLIN

AS THE TRUSTEE / PR OF THE SHIRLEY BERNSTEIN ESTATE AND YET JUDGE COLIN KNOWS THIS IS THE ESTATE HE HIMSELF AS JUDGE CLOSED ILLEGALLY IN JAN. 2013 ON FRAUDED DOCUMENTS BY TESCHER SPALLINA AND MORAN FILED BY SIMON WHILE DECEASED AND YET JUDGE COLIN NEVER ASKS TED BERNSTEIN WHEN HE BECAME TRUSTEE OR PR AND IF HE WAS WHY HE SIMPLY DIDN'T MOVE TO CLOSE THE ESTATE HIMSELF AND INSTEAD HAS PERMITTED HIS ATTORNEYS TESCHER SPALLINA TO CLOSE HIS MOTHER'S ESTATE FRAUDULENTLY USING HIS DECEASED FATHER TO DO SO, ALL LEADING TO JUDGE COLIN BEING FORCED TO REOPEN SHIRLEY BERNSTEIN'S ESTATE DUE TO THE FRAUDULENT CLOSURE BY TED AS FIDUCIARY, ALONG WITH HIS RETAINED COUNSEL TESCHER AND SPALLINA.

26. AS JUDGE PHILLIPS CLEARLY SHOULD HAVE DISCERNED FROM THE RECORD, INSTEAD OF JUDGE COLIN ASKING ANY OF THESE QUESTIONS OF TED BERNSTEIN IN SEPT. 2013, HE CONTINUES TO ALLOW THE FRAUDULENTLY ACTING ATTORNEYS TESCHER SPALLINA TO CONTINUE TO ACT FOR MANY MORE MONTHS UNTIL JAN. OF 2014 AND THEN GIVES FURTHER TIME FOR THE TESCHER SPALLINA FIRM TO "PREP" THEIR FILES BY GIVING THEM MONTHS TO TURN FILES OVER WHEN IN FACT ALL FILES SHOULD HAVE BEEN IMPOUNDED AS OF THE MAY 2013 EMERGENCY MOTION FILING WHICH IS WHAT ANY PROPER COURT WOULD BE DOING AT THIS TIME AND CERTAINLY AFTER THE SEPTEMBER 13, 2013 HEARING WHERE TED, TESCHER, SPALLINA AND OTHERS WERE INFORMED BY JUDGE COLIN THAT HE HAD ENOUGH EVIDENCE AT THAT TIME TO READ THEM ALL THEIR MIRANDA RIGHTS FOR TWO SEPARATE AND DISTINCT FRAUDS ON THE COURT HE DISCOVERED THAT DAY.

27. THIS IS NOT JUST AN AVERAGE FRAUD AND FRAUD ON THE COURT CASE AND JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF THIS WHEN HE ILLEGALLY SCHEDULED THE TRIAL IN THE CASE THAT WAS NOT NOTICED FOR THE CONFERENCE ON SEPT. 15, 2015.

28. THIS IS A CASE THAT BEGAN IN PART IN SEPT. 2012 WITH TED BERNSTEIN ALLEGING POSSIBLE MURDER OF HIS FATHER SIMON BERNSTEIN AND HOSPITAL PERSONNEL BLOCKING PETITIONER OUT OF THE ICU PRIOR TO HIS PASSING WHERE IT WAS ALLEGED MY FATHER SIMON BERNSTEIN HAD BEEN POISONED AND WHERE TED BERNSTEIN GOES ON TO CLAIM HE HAS LAWYERS TO DEAL WITH THE SHERIFF'S AND AUTHORITIES AND IS ASKING FOR AN AUTOPSY AND THE BODY OF SIMON BERNSTEIN IS CLAIMED TO BE IN MIAMI, FL WHILE I DISCOVERED ALL OF SIMON BERNSTEIN'S COMPUTER FILES WERE "WIPE CLEAN" ON THE NIGHT OF HIS PASSING.

29. THIS THEN TURNS INTO A SCENARIO WHERE TED BERNSTEIN'S ATTORNEYS TESCHER AND SPALLINA ARE NOT TURNING OVER DOCUMENTS FOR MONTHS AND IN SOME CASES YEARS ONLY TO COME TO FIND OUT THAT TESCHER AND SPALLINA USED FRAUDULENT DOCUMENTS IN THE CASE TO CLOSE SHIRLEY BERNSTEIN'S ESTATE BEFORE JUDGE COLIN USING SIMON AS IF HE WAS ALIVE WHEN TED BERNSTEIN IS LATER PURPORTING TO BE THE FIDUCIARY OF THE CLOSED ESTATE OF HIS MOTHER TO LATER FIND OUT NOT ONLY WERE FRAUDULENT DOCUMENTS USED BUT KIMBERLY MORAN WHO WAS CONSPICUOUSLY ABSENT FROM THE VALIDITY TRIAL AND SHOULD HAVE BEEN A NECESSARY WITNESS DEMANDED TO ATTEND BY JUDGE PHILLIPS LATER ADMITS TO ACTUALLY FORGING SOME OF THE DOCUMENTS BY PLACING FALSE SIGNATURES ON DOCUMENTS AFTER TRACING PRIOR SIGNATURES AND THUS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN FORENSIC EXPERTS WERE NECESSARY FOR THE TRIAL AND TED BERNSTEIN AS TRUSTEE SHOULD HAVE ARRANGED FOR THIS YET TED BERNSTEIN WAS NOT A PROPER TRUSTEE BY THE LANGUAGE OF THE DOCUMENTS AND IS INVOLVED IN THE FRAUDS THEMSELVES AND THUS SHOULD HAVE BEEN REMOVED WITH ALL PARTIES WHO WERE INVOLVED IN THE MULTIPLE FRAUDS ON THE COURT AND BENEFICIARIES.

30. YET AS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN, THERE ARE MISSING TRUSTS AND ORIGINAL DOCUMENTS FROM THE ILLINOIS FEDERAL LITIGATION, AND THEN “OTHER” ORIGINALS IN THE OPPENHEIMER AND SHIRLEY CASES MAGICALLY POPPING UP IN THE POSSESSION OF TED’S ATTORNEY ALAN ROSE YEARS LATER WHICH IS WHY ALAN ROSE HAD TO BE DISQUALIFIED NOW AS A NECESSARY MATERIAL FACT WITNESS FOR TRIAL (ALAN ROSE IS ALSO ALREADY A SERVED COUNTER DEFENDANT IN THE COUNTER COMPLAINT FILED IN THE SHIRLEY TRUST CASE) AND SHOULD HAVE BEEN A WITNESS FOR TRIAL BUT ONLY AFTER PROPER PRE-TRIAL PROCEDURES IN THIS COMPLEX LITIGATION WHERE DEPOSITIONS AND DISCOVERY WERE COMPLETED PROPERLY BEFORE TRIAL.

31. JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN THAT THE “OTHER” “ORIGINALS” WERE RELEVANT BOTH FROM CHAIN OF CUSTODY OF THE EVIDENCE BUT ALSO FOR COMPARISON PURPOSES THAT ANY EXPERT WOULD WISH TO REVIEW WHEN BLATANT IRREGULARITIES ARE CLEAR TO THE NAKED HUMAN EYE OF THE ORDINARY PERSON AND THUS JUDGE PHILLIPS KNEW WHEN HE WAS ILLEGALLY SCHEDULING THIS TRIAL FOR ONE DAY ONLY IN A CASE NOT NOTICED FOR THE CONFERENCE THAT HE HAD IN FACT ENTIRELY PRE-DETERMINED AND PRE-JUDGED THE ACTUAL TRIAL ITSELF AND IN FACT IS FOUND “DOODLING” DURING THE TRIAL WHILE THE ONLY WITNESS TO VERIFY AND VALIDATE DOCUMENTS IS ROBERT SPALLINA WHO WAS PLED GUILTY OF INSIDER TRADING AND BREACH OF FIDUCIARY DUTIES IN AN ALLEGED UNRELATED CASE BY THE US SECURITIES AND EXCHANGE COMMISSION IN THE MONTHS PRIOR TO TRIAL AND WHO HAD ADMITTED TO ALTERING THE SHIRLEY TRUST TO THE PALM BEACH SHERIFF’S AND EVEN ADMITTED AT TRIAL TO USING THE MAILS TO MAIL THE FRAUDULENT SHIRLEY TRUST DOCUMENT THAT HE CREATED AND YET ELIOT BERNSTEIN WAS LEFT AS A PRO SE LITIGANT WHO SHOULD HAVE HAD TRUST FUNDS TO FUND COUNSEL FOR HIMSELF AND MINOR CHILDREN BUT INSTEAD LEFT WITHOUT



AN ATTORNEY WHERE EVEN THE PR OF THE SIMON BERNSTEIN ESTATE BRIAN O'CONNELL AND JOY FOGLIETTA ABANDONED THEIR INVOLVEMENT IN THE TRIAL LAST MINUTE AND DID NOT APPEAR DESPITE HAVING RAISED DEFENSES THAT TED BERNSTEIN IS NOT A VALID TRUSTEE AND BEING FURTHER INTERTWINED WITH ALAN ROSE AS NECESSARY WITNESSES IN THE CUSTODY POSSESSION AND CONTROL OF OPERATIVE ORIGINAL DOCUMENTS AND OTHER RECORDS.

32. JUDGE PHILLIPS ACTUALLY KNEW THAT HE TOOK NO STEPS TO FOLLOW THE PRE-TRIAL RULES OF 1.200 AND DENIED DUE PROCESS BY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON OUTSTANDING DISCOVERY, NEED FOR DEPOSITIONS, NEED FOR EXPERT WITNESSES AND OTHER WITNESSES TO THE OPERATIVE DOCUMENTS THEMSELVES LIKE TRACI KRATISH AND THE OTHER WITNESSES TO THE ALLEGED EXECUTION OF THESE DOCUMENTS WHICH CLEARLY WOULD HAVE TAKEN THE TRIAL PAST ONE DAY AS THERE WAS NOT EVEN SUFFICIENT TIME FOR THE BARE MINIMUM WITNESSES CALLED AND THAT DOES NOT EVEN CONTEMPLATE THAT THE ESTATE OF SIMON BERNSTEIN SHOULD HAVE HAD UNCONFLICTED COUNSEL AND REPRESENTATION AT THE TRIAL BUT INSTEAD WAS UNREPRESENTED.

33. TRACI KRATISH HAD ALREADY GIVEN STATEMENTS TO THE PALM BEACH COUNTY SHERIFF'S WHICH CONTRADICTS ONE OF THE OPPENHEIMER DOCUMENTS MAGICALLY FOUND BY TED BERNSTEIN'S COUNSEL ALAN ROSE WHO MUST BE DISQUALIFIED AS A NECESSARY WITNESS AND THUS JUDGE PHILLIPS KNEW ONE DAY WOULD NEVER SUFFICE FOR THESE TWO ADDITIONAL WITNESSES AND SHOULD HAVE ALLOWED OTHER TIME FOR MORE WITNESSES SUCH AS THOSE SHOWING THE GOVERNOR'S OFFICE HAD FOUND SIMON BERNSTEIN'S WILL IMPROPERLY EXECUTED AND OTHERS SUCH AS WILLIAM STANSBURY WHO WAS FAMILIAR WITH SHIRLEY AND SIMON BERNSTEIN.

34. JUDGE PHILLIPS KNEW AND SHOULD HAVE KNOWN THE MISSING DISCOVERY AND BUSINESS RECORDS NOT PRODUCED WERE RELEVANT TO CLAIMS OF UNDUE INFLUENCE AGAINST SIMON

BERNSTEIN AND THE OVERALL PICTURE OF THE ALLEGED ESTATE PLANNING BY TESCHER AND SPALLINA AND AGAIN JUDGE PHILLIPS KNEW IT WAS IMPROPER TO FIRST SCHEDULE THIS TRIAL IN THIS MANNER AND THEN PROCEED TO HOLD SUCH TRIAL UNDER THESE CIRCUMSTANCES INCLUDING THAT HE WAS ACTING BEYOND AND OUTSIDE HIS AUTHORITY AND IN THE CLEAR ABSENCE OF JURISDICTION BEING SOMEONE WHO MANDATORILY HAD TO BE DISQUALIFIED BEFORE THE TRIAL COMMENCED.

35. JUDGE PHILLIPS KNEW HE WAS ACTING PREJUDICIALLY AND IMPROPER FURTHER FOR ALL THE REASONS SET FORTH IN THE NEW LEGALLY SUFFICIENT MOTION TO DISQUALIFY POST TRIAL WHICH IS INCORPORATED BY REFERENCE AND ATTACHED HERETO. SEE, DISQUALIFICATION POST TRIAL<sup>3</sup>.

36. JUDGE PHILLIPS FURTHER KNOWS IT WAS IMPROPER TO DENY A CONTINUANCE FOR ATTORNEY CANDICE SCHWAGER TO BE ADMITTED PRO HAC VICE TO REPRESENT THE INTERESTS OF MY MINOR CHILDREN AND MY INTERESTS TO THE EXTENT NOT CONFLICTED AND THAT ATTORNEY SCHWAGER SOUGHT A VOLUNTARY CONTINUANCE FROM ALAN ROSE WHO SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS IN ANY EVENT AND JUDGE PHILLIPS FURTHER ACTUALLY KNOWS HE INTENTIONALLY MISSTATED THE LAW TO MYSELF AS A PRO SE PARTY ON THE DAY OF THE ILLEGALLY SCHEDULED TRIAL OF DEC. 15, 2015 BY DECLARING MY MOTION FOR CONTINUANCE TO HAVE COUNSEL SCHWAGER ADMITTED PRO HAC VICE AS UNTIMELY WHEN THE LAW ALLOWS FOR THE MOTION TO EVEN BE MADE ORALLY AT TRIAL AND INSTEAD WAS FILED WITH THE COURT IN WRITING BEFORE THE ILLEGAL TRIAL COMMENCED.

37. JUDGE PHILLIPS FURTHER KNOWS UNDER THE CIRCUMSTANCES AND THE COMPLEXITY OF THE CASE AND THE EXISTENCE OF OTHER ‘ORIGINALS’ AND PROVEN FRAUD ON DOCUMENTS DEPOSITED INTO

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<sup>3</sup> December 28, 2015 - 2nd Disqualification Motion Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

THE COURT INCLUDING ACTUAL FORGERY OF SIGNATURES ON THE DOCUMENTS AND THE NEED FOR FORENSIC EXAMINATION THAT THE TESTIMONY OF A BARE WITNESS BEING ONE WHO ADMITTED TO COMMITTING FRAUD UPON THE COURT AND FURTHER VALIDATING THE SIGNATURE OF THE NOTARY WHO ALSO ADMITTED TO FRAUD IN THIS ACTUAL CASE WAS LEGALLY INSUFFICIENT AS A WHOLE TO DETERMINE OR DECLARE THE VALIDITY OF ANY OF THE DOCUMENTS AND INSTRUMENTS HEREIN.

38. JUDGE PHILLIPS FURTHER KNOWS THAT DURING THE TRIAL HE DENIED ELIOT BERNSTEIN PROPER TIME TO INSPECT ANY OF THE EVIDENCE AND EXHIBITS BEING OFFERED AND TO OBJECT THERETO AND WHILE "DOODLING" DURING THE SPALLINA TESTIMONY SOUGHT TO LATER REMOVE CANDICE BERNSTEIN WHO HAD BEEN SERVED IN THE CASE AND WAS ASSISTING ME PRO SE DURING THE TRIAL AS MY WIFE AND LEGAL GUARDIAN OF OUR THREE MINOR CHILDREN AND FURTHER DENIED AN OPPORTUNITY TO EVEN REVIEW THE IMPROPER PROPOSED ORDER HANDED TO JUDGE PHILLIPS AT THE CLOSING OF THE TRIAL BY ALAN ROSE WHO SHOULD HAVE BEEN AND SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS.

39. FOR ALL THE REASONS HEREIN THE TRIAL ORDER AND JUDGMENT OF DEC. 16, 2015 MUST BE VACATED AND DECLARED VOID AND A LEGAL NULLITY WHILE JUDGE PHILLIPS MUST MANDATORILY DISQUALIFY AND THE CASE RESET FOR FRAUD AND EVIDENCE AND DOCUMENTS IMPOUNDED FOR PROPER AUTHORITIES TO INVESTIGATE AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

WHEREFORE, IT IS RESPECTFULLY PRAYED FOR AN ORDER DECLARING THE TRIAL JUDGEMENT AND ORDER INVALID AND VOID AS A LEGAL NULLITY, VACATING SUCH ORDER AND JUDGE PHILLIPS DISQUALIFYING HIMSELF FROM FURTHER PROCEEDINGS HEREIN AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

Dated: December 31, 2015

/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 31st day of December, 2015.

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**EXHIBIT 1 - ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015**



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

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**FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT**

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's  
*ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II* dated September 24,  
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P1 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.

*The evidence shows*

*ELIOT BERNSTEIN*

*ju*

*ju*

*ju*

*ju*

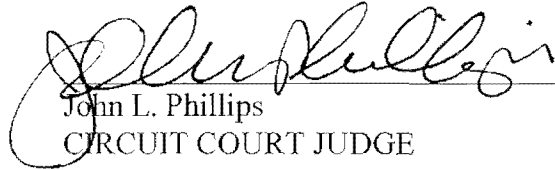
*ju*

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.

  
John L. Phillips  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of

D.B., Ja. B. and Jo. B, Minors

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JOHN L. PHILLIPS  
CIRCUIT JUDGE  
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001846

001846



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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008  
AS AMENDED  
Plaintiff

v.  
ALEXANDRA BERNSTEIN; ET AL.  
Defendants

FILED  
2015

**ORDER CONFIRMING DENIAL OF DISQUALIFICATION MOTION**

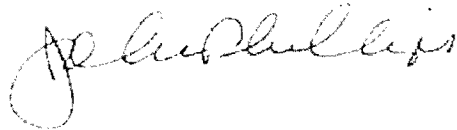
This matter came before the Court at the close of trial December 15, 2015, when defendant Elliott Bernstein orally moved for recusal of the undersigned. The Court adjourned for 5 minutes to allow Mr. Bernstein to put his motion into written form. Mr. Bernstein then presented the "Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John L Phillips", and "Notice of Correction to Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John Phillips", both dated December 4, 2015. These documents had previously been presented to the Court seeking disqualification of the undersigned (see Docket Entries 94 and 98) and were denied as legally insufficient by Order entered December 8, 2015 (Docket Entry 98).

In an abundance of caution, on December 15, 2015, the undersigned entered a handwritten Order denying this new presentation of the already-ruled-upon request for disqualification. Whereupon, it is **ORDERED AND ADJUDGED:**



1. The handwritten Order dated December 15, 2015, denying defendant Elliott Bernstein's previously-ruled-upon requests for disqualification, described above, is hereby **CONFIRMED**.
2. The above-described requests for disqualification are legally insufficient, and are properly **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 16th day of December, 2015.



Circuit Judge

**Copies furnished to:**

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

*Disqualification Motion is DENIED as legally insufficient - already ruled upon in Order of 12-8-15*

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

*DE #98 - identical to motion filed by defendant on 12-4-2015 at DE's #94 & #98*

*DONE & ORDERED [Signature] 12-15-15*

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

**EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE**

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

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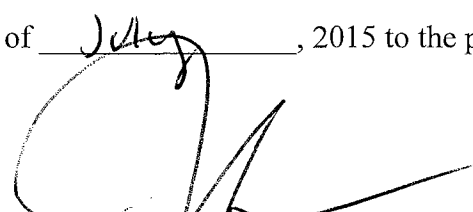
**NOTICE OF HEARING**

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside):**

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31<sup>st</sup> day of July, 2015 to the parties on the attached Service List.



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BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 037495  
JOIELLE A. FOGLIETTA  
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## SERVICE LIST

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<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p>	<p>Shendell &amp; Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a> <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a> Kenneth S. Pollock, Esq. <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a> <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>  Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34<sup>th</sup> St. Boca Raton, FL 33434 <a href="http://iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>		

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

**MOTION FOR NEW TRIAL**

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

\_\_\_\_\_/

Other Applicable Related Cases this Motion for Stay, Injunction and New Trial Should Apply to:

Case # 502012CP004391XXXXSB – Simon Bernstein Estate  
Case # 502011CP000653XXXXSB – Shirley Bernstein Estate  
Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children  
Case # 502014CP003698XXXXSB – Shirley Trust Construction  
Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case  
OLD CASE # 502014CA014637XXXXMB

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**MOTION FOR NEW TRIAL**

COMES NOW ELIOT BERNSTEIN BEING DULY SWORN WHO MAKES THIS AFFIDAVIT AND  
MOTION IN SUPPORT OF A NEW TRIAL AND VACATING AND DECLARING LEGALLY VOID AND A  
NULLITY THE TRIAL JUDGEMENT ORDER OF JUDGE PHILLIPS DATED DEC. 16, 2015 AS FOLLOWS:

1. THIS IS A MOTION FOR A NEW TRIAL UNDER FLORIDA RULES OF CIVIL PROCEDURE 1.530 FOR AN ALLEGED “TRIAL” HELD ON DEC. 15, 2015 IN THE NORTH BRANCH OF PALM BEACH COUNTY BEFORE JUDGE JOHN L. PHILLIPS ALLEGEDLY A VALIDITY TRIAL ON CERTAIN WILLS AND TRUST INSTRUMENTS IN THE ESTATES AND TRUSTS OF SIMON AND SHIRLEY BERNSTEIN.
2. THIS MOTION IS TIMELY.

3. A NEW TRIAL WILL SERVE THE BEST INTERESTS OF JUSTICE WHILE DENIAL OF A NEW TRIAL WILL GREATLY PREJUDICE ELIOT I. BERNSTEIN AND HIS MINOR CHILDREN AS WELL AS THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN AND THE TRUTH SEEKING PROCESS.
4. FOR ALL THE REASONS SET FORTH HEREIN AND FOR OTHER PENDING MOTIONS THE TRIAL AND THE JUDGMENT/ORDER AFTER TRIAL ALLEGEDLY ISSUED DEC. 16, 2015 MUST BE VACATED AND DECLARED A LEGAL NULLITY. SEE EXHIBIT 1 -, ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015.
5. IT IS NOTED FOR PURPOSES OF THIS MOTION THAT PETITIONER ELIOT I. BERNSTEIN WHO HAS BEEN DECLARED LEGALLY INDIGENT HAS BEEN FURTHER PREJUDICED AND HARMED BY BEING DENIED AND DELAYED ACCESS TO ACTUAL COURT EVIDENCE EXHIBITS AND TRANSCRIPTS OF PROCEEDINGS WHICH WOULD FURTHER AID THE FILING OF THIS MOTION AND THAT ELIOT I. BERNSTEIN RESERVES ALL RIGHTS TO AMEND THIS MOTION AS ALLOWED BY LAW AND FILE PROPER MOTIONS UPON RECEIPT OF ACTUAL TRIAL EXHIBITS, EVIDENCE AND TRANSCRIPTS AND UPON ANY OTHER BASIS UNDER LAW.

**JUDGE JOHN L. PHILLIPS USED THE MACHINERY OF THE COURTS TO CONTINUE FRAUD IN THE PROCEEDINGS ON DEC. 15, 2015, FURTHER AIDING AND ABETTING ONGOING CRIMES AND ANY SUCH JUDGEMENT / ORDER MUST BE VACATED, STAYED AND DECLARED A LEGAL NULLITY**

6. JUDGE JOHN L. PHILLIPS SITTING IN THE NORTH BRANCH OF PALM BEACH COUNTY HAD ACTUAL KNOWLEDGE THAT HE WAS ACTING OUTSIDE AND BEYOND HIS JURISDICTION BY EVEN CONDUCTING THE TRIAL ON DEC. 15, 2015 SINCE JUDGE PHILLIPS KNEW AND KNOWS THAT A LEGALLY SUFFICIENT MOTION FOR HIS MANDATORY DISQUALIFICATION HAD BEEN FILED BY PETITIONER ELIOT BERNSTEIN ON DECEMBER 04, 2015 AND THAT JUDGE PHILLIPS HAD TO MANDATORILY

DISQUALIFY UNDER LAW AND ACT NO FURTHER IN THE CASE(S). SEE, MANDATORY DISQUALIFICATION OF JUDGE PHILLIPS<sup>1</sup>.

7. AS SET OUT IN THE LEGALLY SUFFICIENT MOTION FOR MANDATORY DISQUALIFICATION OF JUDGE JOHN L. PHILLIPS, JUDGE PHILLIPS HAS AND HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 AT A CASE MANAGEMENT CONFERENCE THAT THE CASE WAS NOTICED FOR CONFERENCE IN THE ESTATE OF SIMON BERNSTEIN BEING FILED BY THE CURRENT PR IN THE ESTATE OF SIMON BERNSTEIN ATTORNEYS BRIAN O'CONNELL AND JOY FOGLIETTA OF THE CIKLIN LUBITZ MARTENS & O'CONNELL LAW FIRM. SEE EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE.
8. EVEN AS A MARGINALLY AND MINIMALLY COMPETENT JUDGE, JUDGE JOHN L. PHILLIPS HAD ACTUAL KNOWLEDGE AS OF SEPT. 15, 2015 THAT FLORIDA RULES OF CIVIL PROCEDURE 1.200: PRETRIAL PROCEDURE (A) CASE MANAGEMENT CONFERENCE PROVIDES IN PART: "THE MATTER TO BE CONSIDERED SHALL BE SPECIFIED IN THE ORDER OR NOTICE SETTING THE CONFERENCE".
9. AS THE TRANSCRIPT OF SEPT. 15, 2015<sup>2</sup> PROVIDES AND DEMONSTRATES, ELIOT I. BERNSTEIN ATTEMPTED TO CLARIFY THE CASE THAT WAS BEING HEARD ON THIS DATE BUT JUDGE PHILLIPS CONTINUALLY DENIED ELIOT BERNSTEIN A DUE PROCESS FAIR OPPORTUNITY TO BE HEARD IN A MEANINGFUL MANNER AT THE MEANINGFUL TIME DEMONSTRATING IMPERMISSIBLE BIAS AND PREJUDICE AGAINST ELIOT BERNSTEIN WHICH FURTHER MANDATED JUDGE PHILLIP'S DISQUALIFICATION RENDERING THE HOLDING OF ANY SUCH TRIAL ON DEC. 15, 2015 VOID AND A LEGAL NULLITY.

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<sup>1</sup> December 04, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>2</sup> September 15, 2015 Hearing Transcript

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20Simon%20Bernstein.pdf>



10. IN FACT A CLOSE AND CAREFUL REVIEW OF THE TRANSCRIPT OF THE CASE MANAGEMENT CONFERENCE BY ANY DETACHED, NEUTRAL PARTY AND/OR INVESTIGATIVE AUTHORITY WILL SHOW THE CLASSIC TEXTBOOK MODUS OPERANDI OF A JUDGE USING THE MACHINERY OF THE COURTS TO COMMIT AND FURTHER FRAUD AND CRIME AND KNOWING INTENTIONAL CONSTITUTIONAL VIOLATIONS THROUGH THE COURTS THEMSELVES.
11. IN ONE BREATH IN THIS COMPLEX CASE WHICH HAS A TOTAL OF 6-7 SEPARATE CASE NUMBERS FOR RELATED CASES, JUDGE JOHN PHILLIPS WOULD HAVE THE WORLD BELIEVE **BY HIS OWN WORDS** THAT HE IS ‘STUPID’ AND “NOT SMART” ALTHOUGH HE KNOWS HOW TO OCTOPUS WRANGLE, YET EACH AND EVERY TIME THAT ELIOT I. BERNSTEIN ATTEMPTED TO EXERCISE HIS CONSTITUTIONAL DUE PROCESS RIGHT AND OPPORTUNITY TO BE HEARD. BY REVIEWING THE TOTALITY OF THE TRANSCRIPT A DETACHED NEUTRAL INDEPENDENT REVIEWER CAN SEE THAT JUDGE JOHN L. PHILLIPS RUSHES TO CUT ELIOT BERNSTEIN OFF AND SHUT HIM DOWN KNOWINGLY AND INTENTIONALLY DENYING HIS DUE PROCESS OPPORTUNITY TO BE HEARD.
12. HOWEVER, AN INDEPENDENT, NEUTRAL, CONSTITUTIONALLY PROPER JUDGE WOULD SIMPLY SAY: THIS IS NOT RIGHT. THIS IS NOT RATIONALE? IF JUDGE PHILLIPS ACTUALLY DIDN’T KNOW WHAT WAS GOING ON IN THE CASE AND IS NOT THAT SMART AND IS STUPID BY HIS OWN WORDS, WHY DOES HE ONLY LET TED BERNSTEIN’S ATTORNEY ALAN ROSE SPEAK VOLUMES AT LENGTH WITHOUT INTERRUPTION AND YET CUT OFF ELIOT BERNSTEIN AT EACH STEP OF THE CONFERENCE WHEN A NEUTRAL DETACHED PROPER JUDGE TRYING TO BECOME BOTH EDUCATED AND GIVE EACH PARTY A FAIR AND PROPER OPPORTUNITY TO BE HEARD WOULD ALLOW ELIOT BERNSTEIN AND EACH PARTY FAIR OPPORTUNITY TO STATE THE FACTS AND LAW AND POSITION DURING THE CONFERENCE. THE TRANSCRIPTS CLEARLY SHOW OTHERWISE AND JUDGE PHILLIPS HAD TO BE DISQUALIFIED.

13. IT IS NOTED AGAIN FOR THE RECORD THAT WHEN JUDGE PHILLIPS IS PERMITTING TED BERNSTEIN'S ATTORNEY ALAN ROSE TO SPEAK VOLUMES REPEATEDLY AT LENGTH AT THE CONFERENCE ON SEPT. 15, 2015 IT WAS ATTORNEY ALAN ROSE WHO FILED A "LAST MINUTE" / "AFTER HOURS" MEMO WITH THE COURT ON THE "EVE OF THE CONFERENCE" AND FOR SOME REASON THIS APPEARS TO BE THE ONLY PART OF THE CASE JUDGE PHILLIPS IS FAMILIAR WITH DESPITE HAVING BEEN FILED AFTER HOURS THE NIGHT BEFORE.
14. FOR EXAMPLE, WHEN ELIOT BERNSTEIN BEGINS TO ANSWER WHY MORE THAN A DAY IS NEEDED FOR TRIAL HE BEGINS A DISCUSSION ABOUT WHY THE TRIAL SHOULD TAKE SEVERAL DAYS AND BEING A COMPLICATED CASE AND TED BERNSTEIN'S VALIDITY AS TRUSTEE AND THE CASE INVOLVING FRAUD YET JUDGE PHILLIPS SHUTS THIS DOWN, PRE-DETERMINES AND PREJUDGES THE MATTER. SEE, PAGES 23, STARTING AT LINES 23 AND PAGE 24, SEPT. 15, 2015 TRANSCRIPT ALREADY EXHIBITED HEREIN.
15. YET THE CASE IS COMPLEX, INVOLVES 6-7 DIFFERENT CASE NUMBERS, IS INTER-RELATED TO FEDERAL LITIGATION INVOLVING THE ESTATE OF SIMON BERNSTEIN BEING HEARD IN ILLINOIS, A DIFFERENT STATE AND HAS MULTIPLE OUTSTANDING MOTIONS AND PLEADINGS IN THE SEVERAL CASES PENDING AT THE TIME JUDGE PHILLIPS HOLDS THE CASE MANAGEMENT CONFERENCE ON SEPT. 15, 2015.
16. JUDGE PHILLIPS ACTUALLY KNOWS AND SHOULD HAVE KNOWN AS OF SEPT. 15, 2015 THAT THE ISSUE OF TED BERNSTEIN ACTING AS A VALID TRUSTEE TO EVEN HEAR AND DETERMINE A VALIDITY TRIAL ON THE INVOLVED INSTRUMENTS IS CRITICAL TO THE INTEGRITY OF PROCEEDINGS SINCE ACTUAL FRAUDED DOCUMENTS BY TED BERNSTEIN AS ALLEGED FIDUCIARY ALONG WITH HIS OWN ATTORNEYS TESCHER AND SPALLINA AND A PARALEGAL ACTING AND WORKING FOR TESCHER AND SPALLINA HAD ALREADY BEEN EXPOSED IN JUDGE COLIN'S COURT AND YET THE ATTORNEYS

INVOLVED WITH THE FRAUD TESCHER AND SPALLINA WERE STILL HOLDING ONTO ORIGINAL DOCUMENTS NEARLY TWO YEARS LATER WITHOUT TED BERNSTEIN AS ALLEGED “TRUSTEE” OR THE COURT OR THE PALM BEACH SHERIFF’S DEPARTMENT SEIZING AND IMPOUNDING THE DOCUMENTS FROM TESCHER AND SPALLINA FOR FORENSIC EXAMINATION.

17. IT IS ABSOLUTELY CLEAR AND UNDENIABLE THAT JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF AT LEAST SOME OF THIS BACKGROUND AS OF SEPT. 15, 2015 SINCE AT THE PRIOR STATUS CONFERENCE IN JULY OF 2015 IT IS BROUGHT UP ON THE RECORD FIRST BY ELIOT BERNSTEIN AND THEN BY JUDGE PHILLIPS HIMSELF AT THE CLOSE OF THE STATUS CONFERENCE THAT ELIOT BERNSTEIN’S OBJECTIONS TO THE CASE EVEN MOVING FORWARD WOULD BE HEARD AT THE NEXT CONFERENCE SINCE A PETITION FOR ALL WRITS WAS PENDING AT THE FLORIDA SUPREME COURT SPECIFICALLY SEEKING MANDAMUS AND PROHIBITION AGAINST THE PRIOR JUDGE MARTIN COLIN AS A NECESSARY AND MATERIAL FACT WITNESS TO THE FRAUDS IN THE COURT AND SEEKING THE VOIDING OF ALL HIS ORDERS.

18. YET DESPITE JUDGE PHILLIPS HAVING STATED ON THE RECORD AT THE STATUS CONFERENCE IN JULY 2015 THAT THE OBJECTIONS TO THE CASE MOVING FORWARD BASED ON THE ALL WRITS PETITION BY ELIOT BERNSTEIN WOULD BE HEARD AT THE NEXT CONFERENCE, IT IS ABSOLUTELY UNDENIABLY CLEAR THAT JUDGE PHILLIPS PREJUDICED THE ENTIRE CASE AND PRE-JUDGED THE CASE AT LEAST BY SEPT. 15, 2015 AS HE COMPLETELY AND WHOLLY DENIES ELIOT BERNSTEIN AN OPPORTUNITY TO BE HEARD ON THE WRIT DESPITE THE FACT THAT JUDGE COLIN HIMSELF IS A NECESSARY MATERIAL FACT WITNESS WHICH DIRECTLY RELATED TO JUDGE PHILLIPS QUESTION OF HOW LONG A TRIAL WOULD TAKE SINCE JUDGE COLIN WOULD ALSO HAVE TO BE A WITNESS YET JUDGE PHILLIPS SHUTS THIS ALL DOWN IN BIASED, PREJUDGING PREJUDICIAL MANNER CREATING

REASONABLE FEAR THAT A FAIR TRIAL WOULD NOT BE HELD WHICH MEANS JUDGE PHILLIPS HAD TO DISQUALIFY BEFORE THE TRIAL EVEN BEGAN.

19. AS SET OUT IN THE LEGALLY SUFFICIENT DISQUALIFICATION MOTIONS AGAINST JUDGE PHILLIPS, JUDGE PHILLIPS FURTHER PREJUDICED AND BIASED THE PROCEEDINGS ON SEPT. 15, 2015 BY NOT ONLY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON THE WRITS AND JUDGE COLIN AS A NECESSARY AND MATERIAL FACT WITNESS BUT FURTHER BY DECLARING ACTUAL “LOVE” FOR JUDGE COLIN AND FURTHER STATING HE WOULD MAKE NO FINDING THAT ANYTHING WAS DONE WRONG BY COLIN. SEE, TRANSCRIPTS AND DISQUALIFICATION MOTIONS.
20. MORE EGREGIOUS, HOWEVER, IS THE FACT THAT MOST EVERY ONE OF THESE ISSUES WHOLLY DISREGARDED INTENTIONALLY BY JUDGE PHILLIPS USING THE MACHINERY OF THE COURTS TO FURTHER FRAUD UNDER THE DISGUISE OF BEING A STUPID, NOT SMART OCTOPUS WRANGLER BY HIS OWN WORDS WERE PREVIOUSLY FILED IN THE COURT OF JUDGE COLIN AND THUS WERE IN THE CASE FILES THAT JUDGE PHILLIPS SHOULD HAVE BEEN REVIEWING IN ADDITION TO ALAN ROSE’S LAST MINUTE AFTER HOURS MEMO OF SEPT. 14, 2015.
21. FOR EXAMPLE, A MAY 6, 2013 EMERGENCY MOTION TO JUDGE COLIN EXPOSING THE FRAUDS IN THE COURT BY TESCHER SPALLINA KIMBERLY MORAN AND TED BERNSTEIN IS BUT ONE MOTION NEVER FULLY HEARD TO THIS DAY AND NOT HEARD OR ALLOWED TO BE PRESENTED BY JUDGE PHILLIPS ON SEPT. 15, 2015 EVEN THOUGH THE ISSUES IN SUCH MOTION ESPECIALLY THE FRAUD SHOULD HAVE BEEN GUIDING THE CASE MANAGEMENT AND CERTAINLY ANY TRIAL.
22. THUS FROM A RATIONALE BASIS PERSPECTIVE FROM A NEUTRAL DETACHED CONSTITUTIONALLY PROPER REVIEWER, IF JUDGE PHILLIPS WAS NOT AWARE OF THE SERIOUSNESS AND COMPLEXITY OF THESE PLEADINGS AND MOTIONS, THEN THERE IS NO WAY AS A NEUTRAL JUDGE HE WOULD SIMPLY SHUT DOWN ELIOT BERNSTEIN EACH TIME HE SPOKE WITHOUT PERMITTING A FAIR OPPORTUNITY TO

BE HEARD AS JUDGE PHILLIPS WOULD HAVE SOUGHT TO BECOME KNOWLEDGEABLE AND EDUCATED ON THE CASE BUT INSTEAD THE CLEAR EVIDENCE SHOWS HE PREJUDGED THE CASE AND PREJUDGED THE TRIAL ITSELF AS OF SEPT. 15, 2015 PARTICULARLY BY LIMITING THE TRIAL TO ONE DAY AND ANY SUCH TRIAL JUDGEMENT ORDER MUST NOW BE VACATED AS A NULLITY AND FRAUD.

23. JUST UNDER RULE 1.200 THE TRIAL JUDGMENT ORDER SHOULD BE VACATED AND DECLARED A LEGAL NULLITY AS JUDGE PHILLIPS HAS ACTUAL KNOWLEDGE AND KNOWS THE TRIAL WAS SET IN THE SHIRLEY BERNSTEIN CASE WHICH WAS NOT NOTICED TO BE HEARD ON SEPT. 15, 2015 AND THUS THIS RULE WAS KNOWINGLY VIOLATED BY JUDGE PHILLIPS IN WHAT IS A PRE-DETERMINED PRE-JUDGE PLAN TO FURTHER AID AND ABET ONGOING FRAUD AND COVER FRAUD UP HOPING ELIOT BERNSTEIN WILL SIMPLY CAVE FROM THE WAR OF FRAUDULENT ATTRITION.

24. HAD JUDGE PHILLIPS MARGINALLY AND COMPETENTLY REVIEWED ANY OF THE PRIOR PLEADINGS AND THE TRANSCRIPT HE WOULD HAVE SEEN THAT TED BERNSTEIN WAS IN FACT KNOWINGLY INVOLVED IN THE FRAUD AND INTERTWINED WITH TESCHER SPALLINA AND JUDGE COLIN BY THE APPEARANCE ON SEPT. 13, 2013 WHEN THE FRAUD IS FINALLY ADDRESSED IN A VERY MINIMAL PARTIAL DEFICIENT MANNER BY JUDGE COLIN ON THE RECORD AND YET TED BERNSTEIN STANDS SILENT BEFORE JUDGE COLIN WHEN AN APRIL 9, 2012 DOCUMENT IS REFERENCED WHICH WAS CLEARLY FRAUDED BY SPALLINA AND FILED IN JUDGE COLIN'S COURT AFTER SIMON BERNSTEIN'S DEATH, BY SIMON AS IF HE WAS ALIVE AND YET TED BERNSTEIN HAD TO KNOW THIS WAS FRAUD AS IT REFERRED TO WAIVERS HE ALLEGEDLY SIGNED BUT TED BERNSTEIN KNEW THE WAIVERS HAD NOT BEEN SIGNED YET AND INSTEAD STOOD SILENT BEFORE COLIN.

25. MORE EGREGIOUSLY ON THIS DATE SEPT. 13, 2013 WHICH IS WHY JUDGE COLIN HAS TO BE A MATERIAL FACT WITNESS NECESSARY FOR INTEGRITY AND TRUTH AND THUS A NEW TRIAL GRANTED WHERE HE IS A WITNESS IS THAT TED BERNSTEIN ANNOUNCES HE IS THERE WITH SPALLIN

AS THE TRUSTEE / PR OF THE SHIRLEY BERNSTEIN ESTATE AND YET JUDGE COLIN KNOWS THIS IS THE ESTATE HE HIMSELF AS JUDGE CLOSED ILLEGALLY IN JAN. 2013 ON FRAUDED DOCUMENTS BY TESCHER SPALLINA AND MORAN FILED BY SIMON WHILE DECEASED AND YET JUDGE COLIN NEVER ASKS TED BERNSTEIN WHEN HE BECAME TRUSTEE OR PR AND IF HE WAS WHY HE SIMPLY DIDN'T MOVE TO CLOSE THE ESTATE HIMSELF AND INSTEAD HAS PERMITTED HIS ATTORNEYS TESCHER SPALLINA TO CLOSE HIS MOTHER'S ESTATE FRAUDULENTLY USING HIS DECEASED FATHER TO DO SO, ALL LEADING TO JUDGE COLIN BEING FORCED TO REOPEN SHIRLEY BERNSTEIN'S ESTATE DUE TO THE FRAUDULENT CLOSURE BY TED AS FIDUCIARY, ALONG WITH HIS RETAINED COUNSEL TESCHER AND SPALLINA.

26. AS JUDGE PHILLIPS CLEARLY SHOULD HAVE DISCERNED FROM THE RECORD, INSTEAD OF JUDGE COLIN ASKING ANY OF THESE QUESTIONS OF TED BERNSTEIN IN SEPT. 2013, HE CONTINUES TO ALLOW THE FRAUDULENTLY ACTING ATTORNEYS TESCHER SPALLINA TO CONTINUE TO ACT FOR MANY MORE MONTHS UNTIL JAN. OF 2014 AND THEN GIVES FURTHER TIME FOR THE TESCHER SPALLINA FIRM TO "PREP" THEIR FILES BY GIVING THEM MONTHS TO TURN FILES OVER WHEN IN FACT ALL FILES SHOULD HAVE BEEN IMPOUNDED AS OF THE MAY 2013 EMERGENCY MOTION FILING WHICH IS WHAT ANY PROPER COURT WOULD BE DOING AT THIS TIME AND CERTAINLY AFTER THE SEPTEMBER 13, 2013 HEARING WHERE TED, TESCHER, SPALLINA AND OTHERS WERE INFORMED BY JUDGE COLIN THAT HE HAD ENOUGH EVIDENCE AT THAT TIME TO READ THEM ALL THEIR MIRANDA RIGHTS FOR TWO SEPARATE AND DISTINCT FRAUDS ON THE COURT HE DISCOVERED THAT DAY.
27. THIS IS NOT JUST AN AVERAGE FRAUD AND FRAUD ON THE COURT CASE AND JUDGE PHILLIPS HAD ACTUAL KNOWLEDGE OF THIS WHEN HE ILLEGALLY SCHEDULED THE TRIAL IN THE CASE THAT WAS NOT NOTICED FOR THE CONFERENCE ON SEPT. 15, 2015.

28. THIS IS A CASE THAT BEGAN IN PART IN SEPT. 2012 WITH TED BERNSTEIN ALLEGING POSSIBLE MURDER OF HIS FATHER SIMON BERNSTEIN AND HOSPITAL PERSONNEL BLOCKING PETITIONER OUT OF THE ICU PRIOR TO HIS PASSING WHERE IT WAS ALLEGED MY FATHER SIMON BERNSTEIN HAD BEEN POISONED AND WHERE TED BERNSTEIN GOES ON TO CLAIM HE HAS LAWYERS TO DEAL WITH THE SHERIFF'S AND AUTHORITIES AND IS ASKING FOR AN AUTOPSY AND THE BODY OF SIMON BERNSTEIN IS CLAIMED TO BE IN MIAMI, FL WHILE I DISCOVERED ALL OF SIMON BERNSTEIN'S COMPUTER FILES WERE "WIPE CLEAN" ON THE NIGHT OF HIS PASSING.

29. THIS THEN TURNS INTO A SCENARIO WHERE TED BERNSTEIN'S ATTORNEYS TESCHER AND SPALLINA ARE NOT TURNING OVER DOCUMENTS FOR MONTHS AND IN SOME CASES YEARS ONLY TO COME TO FIND OUT THAT TESCHER AND SPALLINA USED FRAUDULENT DOCUMENTS IN THE CASE TO CLOSE SHIRLEY BERNSTEIN'S ESTATE BEFORE JUDGE COLIN USING SIMON AS IF HE WAS ALIVE WHEN TED BERNSTEIN IS LATER PURPORTING TO BE THE FIDUCIARY OF THE CLOSED ESTATE OF HIS MOTHER TO LATER FIND OUT NOT ONLY WERE FRAUDULENT DOCUMENTS USED BUT KIMBERLY MORAN WHO WAS CONSPICUOUSLY ABSENT FROM THE VALIDITY TRIAL AND SHOULD HAVE BEEN A NECESSARY WITNESS DEMANDED TO ATTEND BY JUDGE PHILLIPS LATER ADMITS TO ACTUALLY FORGING SOME OF THE DOCUMENTS BY PLACING FALSE SIGNATURES ON DOCUMENTS AFTER TRACING PRIOR SIGNATURES AND THUS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN FORENSIC EXPERTS WERE NECESSARY FOR THE TRIAL AND TED BERNSTEIN AS TRUSTEE SHOULD HAVE ARRANGED FOR THIS YET TED BERNSTEIN WAS NOT A PROPER TRUSTEE BY THE LANGUAGE OF THE DOCUMENTS AND IS INVOLVED IN THE FRAUDS THEMSELVES AND THUS SHOULD HAVE BEEN REMOVED WITH ALL PARTIES WHO WERE INVOLVED IN THE MULTIPLE FRAUDS ON THE COURT AND BENEFICIARIES.

30. YET AS JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN, THERE ARE MISSING TRUSTS AND ORIGINAL DOCUMENTS FROM THE ILLINOIS FEDERAL LITIGATION, AND THEN “OTHER” ORIGINALS IN THE OPPENHEIMER AND SHIRLEY CASES MAGICALLY POPPING UP IN THE POSSESSION OF TED’S ATTORNEY ALAN ROSE YEARS LATER WHICH IS WHY ALAN ROSE HAD TO BE DISQUALIFIED NOW AS A NECESSARY MATERIAL FACT WITNESS FOR TRIAL (ALAN ROSE IS ALSO ALREADY A SERVED COUNTER DEFENDANT IN THE COUNTER COMPLAINT FILED IN THE SHIRLEY TRUST CASE) AND SHOULD HAVE BEEN A WITNESS FOR TRIAL BUT ONLY AFTER PROPER PRE-TRIAL PROCEDURES IN THIS COMPLEX LITIGATION WHERE DEPOSITIONS AND DISCOVERY WERE COMPLETED PROPERLY BEFORE TRIAL.

31. JUDGE PHILLIPS ACTUALLY KNEW AND SHOULD HAVE KNOWN THAT THE “OTHER” “ORIGINALS” WERE RELEVANT BOTH FROM CHAIN OF CUSTODY OF THE EVIDENCE BUT ALSO FOR COMPARISON PURPOSES THAT ANY EXPERT WOULD WISH TO REVIEW WHEN BLATANT IRREGULARITIES ARE CLEAR TO THE NAKED HUMAN EYE OF THE ORDINARY PERSON AND THUS JUDGE PHILLIPS KNEW WHEN HE WAS ILLEGALLY SCHEDULING THIS TRIAL FOR ONE DAY ONLY IN A CASE NOT NOTICED FOR THE CONFERENCE THAT HE HAD IN FACT ENTIRELY PRE-DETERMINED AND PRE-JUDGED THE ACTUAL TRIAL ITSELF AND IN FACT IS FOUND “DOODLING” DURING THE TRIAL WHILE THE ONLY WITNESS TO VERIFY AND VALIDATE DOCUMENTS IS ROBERT SPALLINA WHO WAS PLED GUILTY OF INSIDER TRADING AND BREACH OF FIDUCIARY DUTIES IN AN ALLEGED UNRELATED CASE BY THE US SECURITIES AND EXCHANGE COMMISSION IN THE MONTHS PRIOR TO TRIAL AND WHO HAD ADMITTED TO ALTERING THE SHIRLEY TRUST TO THE PALM BEACH SHERIFF’S AND EVEN ADMITTED AT TRIAL TO USING THE MAILS TO MAIL THE FRAUDULENT SHIRLEY TRUST DOCUMENT THAT HE CREATED AND YET ELIOT BERNSTEIN WAS LEFT AS A PRO SE LITIGANT WHO SHOULD HAVE HAD TRUST FUNDS TO FUND COUNSEL FOR HIMSELF AND MINOR CHILDREN BUT INSTEAD LEFT WITHOUT



AN ATTORNEY WHERE EVEN THE PR OF THE SIMON BERNSTEIN ESTATE BRIAN O'CONNELL AND JOY FOGLIETTA ABANDONED THEIR INVOLVEMENT IN THE TRIAL LAST MINUTE AND DID NOT APPEAR DESPITE HAVING RAISED DEFENSES THAT TED BERNSTEIN IS NOT A VALID TRUSTEE AND BEING FURTHER INTERTWINED WITH ALAN ROSE AS NECESSARY WITNESSES IN THE CUSTODY POSSESSION AND CONTROL OF OPERATIVE ORIGINAL DOCUMENTS AND OTHER RECORDS.

32. JUDGE PHILLIPS ACTUALLY KNEW THAT HE TOOK NO STEPS TO FOLLOW THE PRE-TRIAL RULES OF 1.200 AND DENIED DUE PROCESS BY NOT PERMITTING ELIOT BERNSTEIN TO BE HEARD ON OUTSTANDING DISCOVERY, NEED FOR DEPOSITIONS, NEED FOR EXPERT WITNESSES AND OTHER WITNESSES TO THE OPERATIVE DOCUMENTS THEMSELVES LIKE TRACI KRATISH AND THE OTHER WITNESSES TO THE ALLEGED EXECUTION OF THESE DOCUMENTS WHICH CLEARLY WOULD HAVE TAKEN THE TRIAL PAST ONE DAY AS THERE WAS NOT EVEN SUFFICIENT TIME FOR THE BARE MINIMUM WITNESSES CALLED AND THAT DOES NOT EVEN CONTEMPLATE THAT THE ESTATE OF SIMON BERNSTEIN SHOULD HAVE HAD UNCONFLICTED COUNSEL AND REPRESENTATION AT THE TRIAL BUT INSTEAD WAS UNREPRESENTED.

33. TRACI KRATISH HAD ALREADY GIVEN STATEMENTS TO THE PALM BEACH COUNTY SHERIFF'S WHICH CONTRADICTS ONE OF THE OPPENHEIMER DOCUMENTS MAGICALLY FOUND BY TED BERNSTEIN'S COUNSEL ALAN ROSE WHO MUST BE DISQUALIFIED AS A NECESSARY WITNESS AND THUS JUDGE PHILLIPS KNEW ONE DAY WOULD NEVER SUFFICE FOR THESE TWO ADDITIONAL WITNESSES AND SHOULD HAVE ALLOWED OTHER TIME FOR MORE WITNESSES SUCH AS THOSE SHOWING THE GOVERNOR'S OFFICE HAD FOUND SIMON BERNSTEIN'S WILL IMPROPERLY EXECUTED AND OTHERS SUCH AS WILLIAM STANSBURY WHO WAS FAMILIAR WITH SHIRLEY AND SIMON BERNSTEIN.

34. JUDGE PHILLIPS KNEW AND SHOULD HAVE KNOWN THE MISSING DISCOVERY AND BUSINESS RECORDS NOT PRODUCED WERE RELEVANT TO CLAIMS OF UNDUE INFLUENCE AGAINST SIMON

BERNSTEIN AND THE OVERALL PICTURE OF THE ALLEGED ESTATE PLANNING BY TESCHER AND SPALLINA AND AGAIN JUDGE PHILLIPS KNEW IT WAS IMPROPER TO FIRST SCHEDULE THIS TRIAL IN THIS MANNER AND THEN PROCEED TO HOLD SUCH TRIAL UNDER THESE CIRCUMSTANCES INCLUDING THAT HE WAS ACTING BEYOND AND OUTSIDE HIS AUTHORITY AND IN THE CLEAR ABSENCE OF JURISDICTION BEING SOMEONE WHO MANDATORILY HAD TO BE DISQUALIFIED BEFORE THE TRIAL COMMENCED.

35. JUDGE PHILLIPS KNEW HE WAS ACTING PREJUDICIALLY AND IMPROPER FURTHER FOR ALL THE REASONS SET FORTH IN THE NEW LEGALLY SUFFICIENT MOTION TO DISQUALIFY POST TRIAL WHICH IS INCORPORATED BY REFERENCE AND ATTACHED HERETO. SEE, DISQUALIFICATION POST TRIAL<sup>3</sup>.

36. JUDGE PHILLIPS FURTHER KNOWS IT WAS IMPROPER TO DENY A CONTINUANCE FOR ATTORNEY CANDICE SCHWAGER TO BE ADMITTED PRO HAC VICE TO REPRESENT THE INTERESTS OF MY MINOR CHILDREN AND MY INTERESTS TO THE EXTENT NOT CONFLICTED AND THAT ATTORNEY SCHWAGER SOUGHT A VOLUNTARY CONTINUANCE FROM ALAN ROSE WHO SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS IN ANY EVENT AND JUDGE PHILLIPS FURTHER ACTUALLY KNOWS HE INTENTIONALLY MISSTATED THE LAW TO MYSELF AS A PRO SE PARTY ON THE DAY OF THE ILLEGALLY SCHEDULED TRIAL OF DEC. 15, 2015 BY DECLARING MY MOTION FOR CONTINUANCE TO HAVE COUNSEL SCHWAGER ADMITTED PRO HAC VICE AS UNTIMELY WHEN THE LAW ALLOWS FOR THE MOTION TO EVEN BE MADE ORALLY AT TRIAL AND INSTEAD WAS FILED WITH THE COURT IN WRITING BEFORE THE ILLEGAL TRIAL COMMENCED.

37. JUDGE PHILLIPS FURTHER KNOWS UNDER THE CIRCUMSTANCES AND THE COMPLEXITY OF THE CASE AND THE EXISTENCE OF OTHER ‘ORIGINALS’ AND PROVEN FRAUD ON DOCUMENTS DEPOSITED INTO

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<sup>3</sup> December 28, 2015 - 2nd Disqualification Motion Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

THE COURT INCLUDING ACTUAL FORGERY OF SIGNATURES ON THE DOCUMENTS AND THE NEED FOR FORENSIC EXAMINATION THAT THE TESTIMONY OF A BARE WITNESS BEING ONE WHO ADMITTED TO COMMITTING FRAUD UPON THE COURT AND FURTHER VALIDATING THE SIGNATURE OF THE NOTARY WHO ALSO ADMITTED TO FRAUD IN THIS ACTUAL CASE WAS LEGALLY INSUFFICIENT AS A WHOLE TO DETERMINE OR DECLARE THE VALIDITY OF ANY OF THE DOCUMENTS AND INSTRUMENTS HEREIN.

38. JUDGE PHILLIPS FURTHER KNOWS THAT DURING THE TRIAL HE DENIED ELIOT BERNSTEIN PROPER TIME TO INSPECT ANY OF THE EVIDENCE AND EXHIBITS BEING OFFERED AND TO OBJECT THERETO AND WHILE "DOODLING" DURING THE SPALLINA TESTIMONY SOUGHT TO LATER REMOVE CANDICE BERNSTEIN WHO HAD BEEN SERVED IN THE CASE AND WAS ASSISTING ME PRO SE DURING THE TRIAL AS MY WIFE AND LEGAL GUARDIAN OF OUR THREE MINOR CHILDREN AND FURTHER DENIED AN OPPORTUNITY TO EVEN REVIEW THE IMPROPER PROPOSED ORDER HANDED TO JUDGE PHILLIPS AT THE CLOSING OF THE TRIAL BY ALAN ROSE WHO SHOULD HAVE BEEN AND SHOULD BE DISQUALIFIED AS A NECESSARY AND MATERIAL FACT WITNESS.

39. FOR ALL THE REASONS HEREIN THE TRIAL ORDER AND JUDGMENT OF DEC. 16, 2015 MUST BE VACATED AND DECLARED VOID AND A LEGAL NULLITY WHILE JUDGE PHILLIPS MUST MANDATORILY DISQUALIFY AND THE CASE RESET FOR FRAUD AND EVIDENCE AND DOCUMENTS IMPOUNDED FOR PROPER AUTHORITIES TO INVESTIGATE AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

WHEREFORE, IT IS RESPECTFULLY PRAYED FOR AN ORDER DECLARING THE TRIAL JUDGEMENT AND ORDER INVALID AND VOID AS A LEGAL NULLITY, VACATING SUCH ORDER AND JUDGE PHILLIPS DISQUALIFYING HIMSELF FROM FURTHER PROCEEDINGS HEREIN AND FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE JUST AND PROPER.

Dated: December 31, 2015

/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 31st day of December, 2015.

By: /s/ Eliot Ivan Bernstein  
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**EXHIBIT 1 - ATTACHED JUDGEMENT/ORDER OF DEC. 16, 2015**



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

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**FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT**

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's  
*ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II* dated September 24,  
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P1 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

*The evidence shows*

*ELIOT BERNSTEIN*

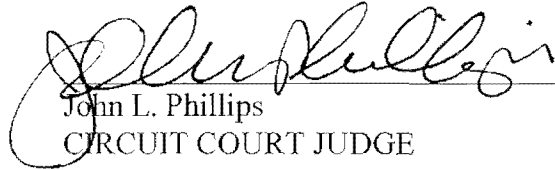
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6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.

  
John L. Phillips  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of

D.B., Ja. B. and Jo. B, Minors

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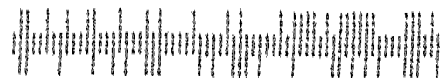
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JOHN L. PHILLIPS  
CIRCUIT JUDGE  
NORTH COUNTY COURTHOUSE  
3188 PGA BOULEVARD  
PALM BEACH GARDENS, FL 33410



Eliot I. Bernstein  
2753 N.W. 34th Street  
Boca Raton, FL 33434





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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008  
AS AMENDED  
Plaintiff

v.  
ALEXANDRA BERNSTEIN; ET AL.  
Defendants

FILED  
2015

**ORDER CONFIRMING DENIAL OF DISQUALIFICATION MOTION**

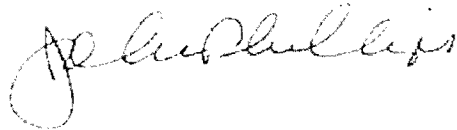
This matter came before the Court at the close of trial December 15, 2015, when defendant Elliott Bernstein orally moved for recusal of the undersigned. The Court adjourned for 5 minutes to allow Mr. Bernstein to put his motion into written form. Mr. Bernstein then presented the "Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John L Phillips", and "Notice of Correction to Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Circuit Judge John Phillips", both dated December 4, 2015. These documents had previously been presented to the Court seeking disqualification of the undersigned (see Docket Entries 94 and 98) and were denied as legally insufficient by Order entered December 8, 2015 (Docket Entry 98).

In an abundance of caution, on December 15, 2015, the undersigned entered a handwritten Order denying this new presentation of the already-ruled-upon request for disqualification. Whereupon, it is **ORDERED AND ADJUDGED:**



1. The handwritten Order dated December 15, 2015, denying defendant Elliott Bernstein's previously-ruled-upon requests for disqualification, described above, is hereby **CONFIRMED**.
2. The above-described requests for disqualification are legally insufficient, and are properly **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 16th day of December, 2015.



Circuit Judge

**Copies furnished to:**

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Pamela Beth Simon 303 E. Wacker Drive, Suite 2725, Chicago IL, 60601  
Jill Iantoni 2101 Magnolia Lane Highland Park IL, 60035

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008,  
AS AMENDED,

PROBATE DIVISION

CASE NO.: 502014CP003698XXXXSB

PLAINTIFF,

V.

ALEXANDRA BERNSTEIN; ET AL.

DEFENDANTS.

*Disqualification Motion is DENIED as legally insufficient - already ruled upon in Order of 12-8-15*

Other Applicable Related Cases this Disqualification of Circuit Judge John L. Phillips Should

Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case
- OLD CASE # 502014CA014637XXXXMB

*DE #98 - identical to motion filed by defendant on 12-4-2015 at DE's #94 & #98*

*DONE & ORDERED [Signature] 12-15-15*

**VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS**

COMES NOW Eliot Bernstein (“Eliot” or “Petitioner”) and files under information and belief this Verified Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips, pursuant to Fla R. Admin P. 2.330 and section 38.10, Florida Statutes, for the following grounds and reasons:

**Rule 2.330 (a) Application. This rule applies only to county and circuit judges in all matters in all divisions of court.**

**EXHIBIT 2 - NOTICE FOR CASE MANAGEMENT CONFERENCE**

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

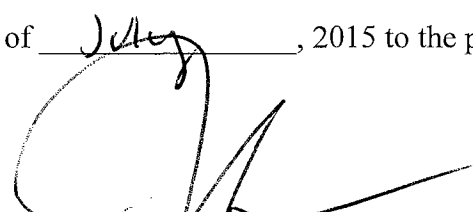
NOTICE OF HEARING

TO: ALL PARTIES ON CERTIFICATE OF SERVICE ATTACHED

YOU ARE HEREBY NOTIFIED that the undersigned will call up for hearing before the Honorable JOHN PHILLIPS, Judge of the above court, in the Judge's chambers in the Palm Beach North County Courthouse, 3188 PGA Blvd, Courtroom 3, Palm Beach Gardens, FL 33410 on **September 15, 2015 at 9:30 AM (one hour set aside):**

CASE MANAGEMENT CONFERENCE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service or U.S. Postal Service on the 31<sup>st</sup> day of July, 2015 to the parties on the attached Service List.

  
BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY N. CRISPIN  
Florida Bar No: 037495  
JOIELLE A. FOGLIETTA  
Florida Bar No: 094238  
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Telephone: 561-832-5900 Facsimile: 561-833-4209  
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secondary e-mail: [slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

## SERVICE LIST

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<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p>	<p>Shendell &amp; Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a> <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a> Kenneth S. Pollock, Esq. <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a> <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>  Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34<sup>th</sup> St. Boca Raton, FL 33434 <a href="http://iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>		

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

PROBATE DIVISION IH  
CASE NO. 502014CP0003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008  
AS AMENDED

Plaintiff

v.

ALEXANDRA BERNSTEIN; ET AL.

**ORDER DENYING VERIFIED SWORN EMERGENCY PETITION AND  
AFFIDVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF JUDGE  
JOHN L. PHILLIPS**

**THIS CAUSE** came before the Court on Eliot Bernstein's Verified Sworn Emergency Petition and Affidavit for Immediate Mandatory Disqualification of Judge John L. Phillips.

**ORDERED AND ADJUDGED** that Eliot Bernstein's Verified Sworn Emergency Petition and Affidavit for Immediate mandatory Disqualification of Judge John L. Phillips is **DENIED** as legally insufficient.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 4th day of January, 2016.

502014CP0003698XXXXNB 01/04/2016  
John L. Phillips Circuit Judge

JOHN L PHILLIPS  
Circuit Judge

**Copies furnished to:**

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Brian M. O'Connell Esq. [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
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Jill Iantoni [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

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

Defendants.

---

**SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A  
GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF  
ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS**

Successor Trustee, Ted S. Bernstein (the "Trustee"), moves the Court (i) to appoint a guardian ad litem to represent the interest of the children of Eliot Bernstein, D.B., Ja.B. and Jo.B.; (ii) to impose a gag order preventing Eliot from harassing and intimidating the retained or appointed fiduciaries (including any newly-appointed Guardian ad Litem), as well as all professionals and the Court; and (iii) for an order striking all of Eliot's filings in this case for lack of standing, and states:

1. Plaintiff, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, seeks the appointment of a guardian ad litem to protect the interests of Eliot Bernstein's three children. By its ruling at the trial held on December 15th, the Court upheld the 2012 Will and Trust of Simon L. Bernstein and the 2008 Will and Trust of Shirley Bernstein. As a result of upholding these documents, the Court has determined that Eliot Bernstein, individually, is not a beneficiary of either Simon's or Shirley's Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon's and Shirley's Trusts, in amounts to be determined by further proceedings. Eliot lacks standing to continue his individual involvement in this case.

2. Based upon the events which have transpired and the pleadings and other papers filed by Eliot in this case, including statements in his Omnibus Petition to the Florida Supreme Court and his latest Motion to Disqualify this Court, the Trustee does not believe that Eliot is capable of adequately representing the interests of his children or willing to enable the Trustee to carry out Simon's and Shirley's wishes to benefit their grandchildren. Indeed, since the trial and the resulting Final Judgment, Eliot has increased his attacks on this Court and these proceedings.

3. Eliot shows no interest in seeing his parents' trusts and estates administered in an economic and efficient process to maximize the distribution among their grandchildren. Instead, he is on a never-ending crusade against injustice and corruption among judges, lawyers, fiduciaries, and others, including the Florida Supreme Court and the Florida Bar. In a recent filing, a *Motion for Rehearing En Banc* (Ex. A) of the dismissal of his "Petition for All Writs,"<sup>1</sup> he wrote:

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<sup>1</sup> The Petition for All Writs sought prohibition against Judge Colin (who already recused himself in May) and an extraordinary writ to stop a routine, court-approved sale of Trust property. The sale would have closed March 31, 2015 but for Eliot's interference, and these delays will have cost the Trust far in excess of \$150,000 by the time of the eventual closing.



That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father . . . The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, *including multiple Frauds on the Court and Fraud by the Court itself* . . .

. . . many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights, his inheritancy and more.<sup>2</sup>

4. Further, because of Eliot's penchant to attack and try to exert pressure on fiduciaries, counsel and others who oppose his wishes, the Trustee believes it is necessary to enter an Order prohibiting Eliot and anyone acting in concert with Eliot from harassing the fiduciaries, counsel, and others, including any newly appointed Guardian ad Litem, and from disseminating or publishing by any manner or on any website any information about these matters. This internet cyber-bullying or cyber-terrorism has been ongoing for more than two years. (Composite Ex. C)

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<sup>2</sup> These thought are similar to thoughts he expressed on an internet website, praising a "heroic" lawyer who is crusading "to whistle blow on the corruption of the Florida Courts and its members that she has witnessed firsthand committed by attorneys at law, guardians and the judges involved in her mother's guardianship in what can only be called an elder eugenics program designed to at once kill the victims entrapped and simultaneously deplete virtually their entire net worth from the family and covert it to the court appointed guardians and attorneys at law, while providing the courts with funding as well." (Ex. B)

Eliot ties that to his parents' trusts: "I have witnessed firsthand this same racket in the Florida Probate Courts as my family's estate and inheritance have been desecrated and robbed by Florida Attorneys at Law, . . . with the help of two Florida Probate Judges, David French and Martin Colin."

5. Eliot appears more interested in ruining lives and reputations by cyber-warfare than in seeing these proceedings come to a conclusion. Eliot has exhibited a pattern of irrational behavior, demonstrated by threats of criminal prosecution and slanderous statements made in an attempt to exert pressure on the fiduciaries. Eliot's behavior has reached such deplorable levels that he continues to malign and disparage all of the fiduciaries – counsel, the independent Successor PR of Simon's Estate, and everyone else who stands in his way – personally and professionally. Eliot disseminates inflammatory and defamatory information over the internet without any regard for the negative impact such information may have.

6. Two recent examples of Eliot's wasteful conduct already have costs the beneficiaries significant real dollars. Eliot opposed the sale of his parents' primary residence, which was on the market nearly four years before a serious offer was made. The all-cash, "as-is" offer was set to close on March 31st. Eliot persuaded Judge Colin to delay the sale – at significant expense to the Trust – so he could challenge the sale price as inadequate. After a six-week delay, Eliot presented no witnesses and no evidence, and the sale was approved in a final order. Eliot did not appeal the order, but filed his All Writs Petition to the Florida Supreme Court. The sale has yet to close due to Eliot's filings – including a Motion for Rehearing En Banc and a Notice of Appeal to the Florida Supreme Court. This already has cost the Trust far more than \$100,000 of the value it would have realized in March. Similarly, after claiming his father's 2012 testamentary documents were the product of mental incapacity, undue influence or fraud, at trial Eliot produced no witnesses or testimony to corroborate those baseless accusations. He did not even testify himself on any of the issues he raised. The Trust incurred substantial legal fees and costs addressing Eliot's fantastical claims.

7. Eliot will never stop until a court stops him. Now is the time for such drastic measures, while there are still some assets left for his children and the other grandchildren to receive as distributions. In light of the Final Judgment dated December 16, 2015, upholding Simon's 2012 documents, Eliot is not a beneficiary of the Shirley Trust or the Simon Trust. As such, he lacks standing to participate as an individual. All of his individual filings should be stricken with prejudice. His filings in his capacity as guardian of his children should be conditionally stricken, without prejudice to the Guardian ad Litem seeking leave of court to pursue such claims and issues as the Guardian deems to be in the best interests of Eliot's children.

8. Finally, the Court should order Eliot Bernstein and others acting in concert with him to remove all internet postings about the judges, lawyers, fiduciaries and others involved in these matter, and preclude any further public or widespread dissemination of information about these proceedings. The Court should be aware that Simon's grandchildren are all starting their lives, and the "garbage" Eliot puts on the internet will be following along with these innocent grandchildren for the rest of their lives. As the fiduciary responsible to act in the best interests of the grandchildren, the Trustee requests that the Court enter a confidentiality or "gag" order to protect their interest.

WHEREFORE, the Trustee respectfully suggests that this Court: (i) appoint a Guardian Ad Litem for Eliot's three children;(ii) enter a confidentiality or "gag order" to protect the integrity of these proceedings and to safeguard the ability of fiduciaries, including a Guardian Ad Litem, to act independently and in the best interests of the beneficiaries; (iii) strike and/or dismiss all of Eliot's filings in this case as described above for lack of standing; and (iv) grant such other relief as the Court deems appropriate.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 4th day of January, 2016.

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Attorneys for Ted S. Bernstein

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

## SERVICE LIST

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and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Eric Bernstein, Michael Bernstein

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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.: 4D15-3849  
L.T. No.: 502011CP00653XXXXSB  
502014CA014637XXXXMB  
502014CP002815XXXXSB  
502014CP003698XXXXSB  
502015CP001162XXXXNB  
502015CP002717XXXXNB

ELIOT BERNSTEIN

v. ESTATE OF SIMON BERNSTEIN

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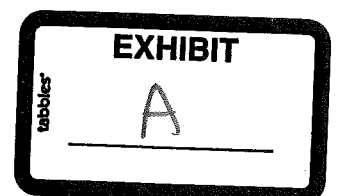
Appellant / Petitioner(s)

Appellee / Respondent(s)

**Motion for Rehearing En Banc**

Eliot I. Bernstein, Petitioner-Appellant herein, respectfully shows this Court as follows:

1. I am the Petitioner Pro Se and file this Motion for a Rehearing En Banc of this Court's determination and dismissal of a prior petition for All Writs further seeking a Stay and Injunctive relief originally filed at the Florida Supreme Court on June 10, 2015, and re-filed on June 30, 2015 to conform with page requirements.
2. While acting pro se, I nonetheless express a belief that this case and issues are of exceptional importance under Florida Rules of Appellate Procedure 9.331.
3. The motion is further timely within Florida Rules of Appellate Procedure 9.330.
4. This Court originally issued a Decision on Nov. 30, 2015 Dismissing the All Writs Petition as "Moot" but in the caption of the Decision it only referenced the Writ of Prohibition making it unclear if the other portions of Petitioner's All Writs were Dismissed as well as



“moot” as Petitioner was seeking Mandamus relief against Florida Judge Martin Colin and other relief such as a Stay and Injunctive relief.

5. Petitioner initiated a procedural phone call to the 4th DCA on or about Nov. 30, 2015 the same day of the Decision to determine the procedure for such a Clarification and originally was told by the Clerk Staff from the 4th DCA the Dismissal applied to the entire petition.
6. Very shortly thereafter, in order to be clear on this Court’s ruling, Petitioner made a subsequent call on that same day of Nov. 30, 2015 speaking to the same 4th DCA Clerk Staff to again seek procedural guidance on how to clarify this ruling and the 4th DCA Clerk stated “they told me” the Dismissal applied to all parts of the Petition referring to the original Decision of Nov. 30, 2015 which Denied the Writ of Prohibition as “Moot” and referenced Oct. 15, 2015 as the filing date of the Petition which was filed June 30, 2015 at the Florida Supreme Court.
7. The 4th DCA Clerk clarified that this filing date was the date the All Writs Petition was Transferred by the Florida Supreme Court.
8. Within 15 minutes to a half hour or less on Nov. 30, 2015, I received an Amended copy of this Decision which now referenced the filing date of July 1, 2015 and Denying the entire Petition as “moot”.

**This is a Case of Exceptional Importance**

9. The Petition for All Writs brought up for the Florida Supreme Court the appropriateness of even ruling on the Petition for All Writs based upon a warned Conflict of Interest stemming from the following Petitioned in the All Writs:

“Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House<sup>1</sup>, the White House Counsel’s Office, the US Attorney General’s Office, investigations to the SEC<sup>2</sup>, FBI, and various State Attorney Generals, and actions with the USPTO, and other legal actions, including RICO and ANTITRUST civil litigation and criminal complaints several Florida Supreme Court Justices, The Florida Bar, several New York Supreme Court Justices, the New York Supreme Court Disciplinary Agencies 1<sup>st</sup> & 2<sup>nd</sup>, several large law firms and lawyers, political figures at the highest levels in both Florida and New York and others and this may cause any review of the following matters by any member of The Florida Bar, a subsidiary of the Florida Supreme Court, with any title in the organization, to prejudice the rights of Eliot Bernstein and his family and will be construed as a denial of due process that obstructs justice.”

10. This Conflicts of Interest section went on to further expressly name the following:

Defendants in the RICO and other actions include:

- “STATE OF FLORIDA,
- OFFICE OF THE STATE COURTS ADMINISTRATOR, FLORIDA,
- **FLORIDA SUPREME COURT,**

---

1

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20I.pdf>

2

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>



- Jorge Labarga, in his official and individual capacities, [this lawsuit prior to his unbelievable rise to Chief Justice of the Florida Supreme Court after the Bush v. Gore election where he aided in the failure to recount the People's vote when he was a civil circuit judge and for his effort to derail Eliot's legal rights in the first lawsuit involving Eliot and others stolen Intellectual Properties that has led to this mess filed before his court. Proskauer v. Iviewit, Case #CASE NO. CA 01-04671 AB.]
- Charles T. Wells, in his official and individual capacities,
- Harry Lee Anstead, in his official and individual capacities,
  - R. Fred Lewis, in his official and individual capacities,
  - Peggy A. Quince, in his official and individual capacities,
  - Kenneth B. Bell, in his official and individual capacities,
  - THOMAS HALL, ESQ. in his official and individual capacities,
- **THE FLORIDA BAR,**
  - JOHN ANTHONY BOGGS, ESQ. in his official and individual capacities,
  - KELLY OVERSTREET JOHNSON, ESQ. in her official and individual capacities,
  - LORRAINE CHRISTINE HOFFMAN, ESQ. in her official and individual capacities,
  - ERIC TURNER, ESQ. in his official and individual capacities,
  - KENNETH MARVIN, ESQ. in his official and individual capacities,

- JOY A. BARTMON, ESQ. in her official and individual capacities,
  - JERALD BEER, ESQ. in his official and individual capacities,
  - BROAD & CASSEL, and, all of its Partners, Associates and Of Counsel, in their professional and individual capacities,
  - JAMES J. WHEELER, ESQ. in his professional and individual capacities,
- DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION – FLORIDA,”

11. A simple review of the cited resource locator in the All Writs Petition at

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

would show any reviewing body or jurist that the underlying frauds at issue having been reported to the White House, White House Counsel’s Office, US Attorney General’s Office and various Federal Agencies such as the FBI implicate an ongoing Fraud upon the United States itself being fraud at the USPTO.

12. Even without reviewing the information at this resource locator, the plain text at the All Writs Petition further showed that the frauds had now elevated into Estate and Trust frauds within the State of Florida and the possible murder of Simon Bernstein and further implicating members of the Florida Supreme Court and Florida Bar as follows:

“That the Florida judicial system has not only failed Bernstein twice in protecting his properties, life and liberty but it has played a significant role in the alleged criminal acts committed against Petitioner, his family and now perhaps has led to the death of his father, as alleged by Petitioner’s brother Ted as a possible “murder.” The recent criminal acts committed by Florida Bar attorneys and fiduciaries of the estates and trusts of Simon and Shirley Bernstein. These estate and trust crimes part of a fraudulent scheme and an attempt to rob and preclude Petitioner from inheritance, through Post Mortem crimes committed

after the passing of his mother and father Shirley and Simon Bernstein through sophisticated complex legal frauds, including multiple Frauds on the Court and Fraud by the Court itself, with irrefutable evidence of criminal acts by lawyers and law firms and now new allegations that Judges are involved on the attempt to fix and silence the crimes of other members of the Florida Bar and others.

That in the original instance of fraud that occurred against Petitioner and his family in the Courts, many of the Florida Supreme Court Justices named herein may recall that Bernstein in early 2000 began pursuing members of the Florida Bar from a case that began with Jorge Labarga and the international law firm Proskauer Rose intimately involved in thefts of technologies valued as “The Holy Grail” and “Priceless” by leading engineers and when Judge LaBarga was a circuit court judge in Palm Beach County and the complaints against the lawyers and judges involved made their way all the way up to the Supreme Court and why many of the Florida Supreme Court Justices are named in all ongoing actions, including the instant matters involving the fraud on the court of Judge Martin Colin and Judge David French, where yet again we find members of the Florida Bar, two Florida judges and several more Florida attorneys at law involved in the criminal acts described herein and again using the Florida Courts to directly deprive Petitioner and his family of their rights and further retaliate against Petitioner to directly attempt to stop his pursuit of his Intellectual Property rights, his inheritancy and more.

These matters are brought expressly to the forefront of this case so matters of conflicts of interest may be properly adjudicated even in the hearing of the instant petitions for writs and other relief and for consideration as to whether the entirety of these matters should be transferred to a jurisdiction outside the State of Florida and other proper relief. “ See, Petition for All Writs.

13. The case is thus of not only exceptional importance but statewide importance as not only implicating related ongoing frauds upon the United States but the fundamental Due Process issue of whether the Florida Courts themselves can be an appropriate forum for the Petitioner given the current Florida Supreme Court Judge Jorge Labarga’s involvement in the underlying frauds along with substantial members of the Florida Bar including Jerald Beer of the Ciklin, O’Connell law firm now in a case where possible murder has been alleged.
14. Thus the case should be heard En Banc as exceptional importance is shown.
15. Clearly neither the Florida Supreme Court nor this Court of the 4th DCA addressed the exceptional important issue of whether the fundamental due process can be served with the

Conflicts of Interest referenced in the petition and thus this part of the Petition was clearly overlooked and / or misapprehended.

16. Clearly the exceptional importance of the statewide due process conflict of interest issues are not moot and these matters were overlooked or misapprehended.

**Other Issues Overlooked, Misapprehended and Not Moot**

17. The Petition for All Writs further brought up mandamus against Judge Martin Colin to issue a Disqualification as a necessary and material fact witness and void all of his orders therein where clear fraud upon the Court has occurred and Judge Colin himself may be part of the machinery of the Court involved in the fraud.

18. While not stated in this Court's Decision, it was argued by Alan M. Rose on behalf of Ted Bernstein to this Court that due to Judge Colin's "recusal" which came within 24 hours of denying the mandatory Disqualification as a necessary and material fact witness rendered the Writ "moot".

19. However, this again must have been overlooked and misapprehended.

20. Judge Colin's sudden "recusal" does not change and did not change his status as a material fact witness in underlying fraud in his court which, quite interestingly, expressly involves Ted Bernstein who Alan Rose is representing.

21. Judge Colin remains a material fact witness and thus, this part of the Petition for All Writs was clearly not moot and mandamus should issue immediately so proper Disqualification Orders can be issued.

22. Further, the Petition brought up for review Judge Colin's "steering" and "poisoning" of the "Transfer" of the Case to the North Branch acts which were and are alleged to have been

beyond and outside his jurisdiction as one who mandatorily had to be disqualified under Florida law.

23. Once it is properly determined that Judge Colin should be mandatorily disqualified and subject to mandamus, all of these wrongful acts of Transfer without jurisdiction are clearly presently relevant to the case and must have been overlooked and or misapprehended by this Court and clearly were not and are not moot.
24. Further, the Petition for All Writs brought up for review under mandamus that Judge Colin's Orders issued as having been what should have been a Disqualified material fact witness at least as of Jan. 3, 2013 or by latest May of 2013 based upon when clear indisputable fraud had to have been discovered in his Court, that such Orders must be Voided.
25. In fact, the property referenced by Alan Rose to be sold was part of an illegal Order of Judge Colin grounded in fraud as a material fact witness and prohibiting this sale clearly is not moot and must have been overlooked and misapprehended.
26. This Court must have overlooked or misapprehended this part of the Petition as all of these Orders since either Jan. 3, 2013 or at least May 6, 2013 forward must now be Voided and clearly these Orders are presently impacting the Case and thus are not moot.
27. Still further, the Petitions sought specified Stay and injunctive relief none of which was or is moot and thus this Court must have overlooked and or misapprehended this part of the Petition as well.
28. Clearly the Petition for All Writs has substantial case law authority which should have been relied upon if the Petition had not been overlooked and / or misapprehended and Petitioner simply refers this Court back to the All Writs Petition for said authorities to stay in conformity of the rules preventing re-argument.

**WHEREFORE**, Petitioner respectfully prays for an Order granting En Banc rehearing relief and further issuing mandamus against Judge Colin as a material and fact witness, voiding of all Orders of Judge Colin since at least Jan. 3, 2013 or May 2013 to the present and further determination as to the impropriety of the interference in the orderly Transfer of this case to the North Branch thus transferring the case to a randomly selected independent neutral Judge unless the conflict of interest issues raised by any hearing within the State of Florida determine transfer outside the State and further that this Court should provide affirmative review of said Conflicts of interest in any further Order or Decision herein or alternatively certify the conflicts of interest and due process issue to the Florida Supreme Court as an exceptional issue of statewide and novel importance.

Dated: December 15, 2015

/s/Eliot Ivan Bernstein

**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 15th day of December, 2015.

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[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

By: /s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein

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# Scanned Retina – A Resource for the People!

For the adults in the room!

## Eliot Ivan Bernstein: I have witnessed firsthand the injustice of Judge Michael Genden in his court: Retaliation against Barbara Stone!

Posted on [August 8, 2015](#)

On Aug 8, 2015, at 7:24 AM, Eliot Ivan Bernstein <[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)> wrote:

Judicial Qualifications Commission Members:

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John G. (Jay) White, III, Esq.

Michael L. Schneider, Executive Director

Michael L. Schneider, General Counsel

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[contact@floridajqc.com](mailto:contact@floridajqc.com)

Dear Hon. Kerry I. Evander, VICE-CH

My name is Eliot Ivan Bernstein and I

Michael Genden and witnessed firstha

which danger is confirmed by medical

who has taken the heroic path as an att

committed by attorneys at law, guardi

designed to at once kill the victims ent

guardians and attorneys at law, while j

was transformed from a vibrant health

who has been taken in for emergency lifesaving procedures due to the neglect she has suffered since imprisonment in the guardianship.

In attempting to expose this corrupt guardianship and those involved Barbara has done everything required under law and in response and retaliation her

due process rights were removed and she was portrayed as a criminal and in fact criminally arrested by Judge Genden's bizarre orders for her efforts to

protect her mother. She and her mother have been denied due process and the right to counsel and I witnessed in Federal Court before Magistrate Judge

Hunt in Florida an attorney, Deborah Rochlin, Esq. state on the stand under oath that Judge Michael Genden had issued threats against her in Ex Parte

communications that if she continued to represent the Stone family she would targeted for disciplinary actions and more, which caused her in fear of losing

her livelihood to immediately withdraw from representing the Stones. However, in heroic fashion and duty bound to report the misconduct of attorneys at

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who has reviewed the Barbara Stone complaint attached herein against Judge on against Barbara who is desperately trying to save her mother's life and in attorney at law with an unblemished career through her eventual retirement n of the Florida Courts and its members that she has witnessed firsthand her's guardianship in what can only be called an elder eugenics program tually their entire net worth from the family and covert it to the court appointed ell. Helen Stone went into a guardianship for financial protection and quickly wheelchair with a feeding tube in now an induced medical guardianship and

law and judges under Florida Rules of Professional Conduct, Ms. Rochlin did just that by signing a sworn affidavit stating that she was contacted by Judge Genden and a one Roy Lustig, Esq. and extorted and threatened. For this heroic act and following her duty to report misconduct, Judge Genden filed a bar complaint against Ms. Rochlin.

In Federal Court, it was exposed that Roy Lustig, Esq. has a pattern and practice of Fraud on the Court that was exposed by the Third DCA in a case involving Leo's Liquor and yet despite the courts recommendation for State Bar Sanctions and more, it appears Mr. Lustig walked protected by the State Bar of Florida and no action was taken despite his fraud on the court being proven by the court. In the hearing before Magistrate Judge Hunt however, Lustig made statements that appeared to claim that Barbara Stone, Esq. was not a lawyer and that she was some kind of fraud and this swayed and biased the opinion of Magistrate Judge Hunt so much so that he made his own efforts to discover if she were a lawyer and then in an opinion to Judge Zolch stated Barbara was a liar and not forthright with the Court. However, due to lack of diligence it appears that no one had checked her married name and thus both Judge Hunt and Lustig then had mud on the face. To resolve this problem it appears that despite Barbara having been a retired attorney at law with a blemish free career, the Florida Supreme Court through the aegis of its subsidiary The Florida Bar instantly moved to DISBAR Barbara Stone, Esq. on trumped up charges relating to her efforts to free her mother from the concentration camp she is in.

I have witnessed firsthand this same racket in the Florida Probate Courts as my family's estate and inheritance have been desecrated and robbed by Florida Attorneys at Law, including but not limited to, Robert L. Spallina, Esq., Donald R. Tescher, Esq. and Alan B. Rose, Esq. all with the help of two Florida Probate Judges, David French and Martin Colin. Attorneys Tescher and Spallina through their law firm Tescher & Spallina, PA have admitted to fraud on the court and fraud on the beneficiaries and have also admitted to submitting to the courts fraudulently notarized and forged signatures for six parties, including for my deceased father POST MORTEM and yet they have been allowed to continue to practice before the courts and the Florida Bar despite being fully aware of these crimes has done NOTHING to any of the attorneys involved, in fact, allowing Spallina to merely surrender his license without discipline despite his admitted felony criminal acts against my family, including three minor children who have been harmed by their actions. My brother on the day my father died alleged that he was murdered by poisoning and started a criminal complaint and autopsy that have also been mishandled once it was apparent that the person accused, his girlfriend was most likely innocent if he were murdered and now due to the financial crimes and fraud committed by the Attorneys at Law the potential accomplices to any murder may in fact be members of the Florida Bar who may have had a hand in any foul play due to the fact that they are the ones who have committed felony criminal acts and financial crimes against the estates and trusts beneficiaries for their own pecuniary gains. After a year a heavy metal test was finally performed and the results came back with 3 heavy metals elevated to reportable levels, including but not limited to, Arsenic and Cadmium. The attorney and judge self-regulating system of the Florida Bar and Judicial Qualifications Commission (which have no authority or jurisdiction to interfere in criminal complaints against their members) have become a joke and actually appear to be attorney protection agencies to protect the crimes being committed through the use of the courts by their members and steering and interfering with *criminal charges made against members to Police and Sheriff agencies to derail the criminal investigations.* Ms. Stone has also filed criminal charges against Michael Genden for his threats and extortion made upon her counsel and yet not a single law enforcement agency will investigate her criminal complaint filed in accordance with Florida Statutes. For Shame on our corrupted legal system that appears to start at the top and perverse the entire body of law in Florida and any lawyer standing up to this is instantly Witch hunted and Disbarred, effectively destroying their lives or forcing them to complicity in fear of their extorters.

My case is currently before the Supreme Court of Florida and can be found @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20>  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20>

The crimes in these Probate cases have also caused multiple other actions to be filed both state and federally at great expense to the victims all due to criminal misconduct by Attorneys at Law and Judges. In fact, arrest has now been made of the Legal Assistant and Notary Public for Tescher & Spallina PA and similar arrest and investigation of the Attorneys at Law and Judges are underway but it appears that these may have been stymied, delayed and potentially derailed by interference in the criminal investigation by Judge Colin, which is currently under investigation as well.

The cases are as follows:

Florida Supreme Court CASE NUMBER: SC15-1077

Judge Coates Cases

[if !supportLists]1. [endif]Case ID: 502015CP002717XXXXNB

Judge Martin Colin Cases

Estate and Trust Cases, Simon, Shirley and Children

[if !supportLists]1. [endif]Case # 502012CP004391XXXXSB – Simon Bernstein Estate

[if !supportLists]2. [endif]Case # 502011CP000653XXXXSB – Shirley Bernstein Estate

[if !supportLists]3. [endif]Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

[if !supportLists]4. [endif]Case # 502014CP003698XXXXSB – Shirley Trust Construction

[if !supportLists]5. [endif]Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE #

[if !supportLists]6. [endif]Case # TBD – Creditor Claim – Eliot v. Estate of Simon

[if !supportLists]7. [endif]Case # 13-cv-03643 – Federal Lawsuit in the US District Court of Eastern Illinois, before the Hon. Judge Amy St. Eve., now before Honorable Judge Robert Blakey.

Judge David E. French Cases

[if !supportLists]1. [endif]Case # 2012CP004391 IX – Simon Bernstein Estate

All of the family estate problems may also be linked to another series of crimes still being pursued committed against both my father and myself involving Intellectual Property Thefts committed by our attorneys at law from Proskauer Rose, LLP and Foley & Lardner LLP for IP valued in the billions to trillions and which led my filing a RICO and ANTITRUST civil lawsuit that was subsequently related a New York Supreme Court Attorney Disciplinary Department Whistleblower Lawsuit of Christine C. Anderson, Esq. This lawsuit will shortly be petitioned to be reopened due to the alleged new RICO violations in the Florida Probate Courts, including new predicate acts of, Alleged Murder of Simon Bernstein, Fraud, Forgery, theft of estate and trust assets and more, all crimes again primarily committed by attorneys at law. My car has had a bomb put in it and for visual graphics of the car bombing that blew up three cars next to it in Del Ray Beach, FL see [www.iviewit.tv](http://www.iviewit.tv) homepage. My RICO case and the cases legally related by Hon Federal Judge Shira Scheindlin are as follows:

Cases @ New York Second Circuit

[if !supportLists]1. [endif]File USCA Case Number 10-5303 = P. Stephen Lamont Appeal Docket No.

Case 08-4873-cv United States Court of Appeals for the Second Circuit Docket – Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al. – TRILLION DOLLAR LAWSUIT

[if !supportLists]2. [endif]Capogrosso v New York State Commission on Judicial Conduct, et al.

[if !supportLists]3. [endif]Esposito v The State of New York, et al.

[if !supportLists]4. [endif]McKeown v The State of New York, et al.

Related Cases @ US District Court – Southern District NY

[if !supportLists]5. [endif]07cv09599 Anderson v The State of New York, et al. – WHISTLEBLOWER LAWSUIT which other cases have been marked legally “related” to by Fed. Judge Shira A. Scheindlin

[if !supportLists]6. [endif]07cv11196 Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al.

[if !supportLists]7. [endif]07cv11612 Esposito v The State of New York, et al.,

[if !supportLists]8. [endif]08cv00526 Capogrosso v New York State Commission on Judicial Conduct, et al.,

[if !supportLists]9. [endif]08cv02391 McKeown v The State of New York, et al.,

[if !supportLists]10. [endif]08cv03305 Carvel v The State of New York, et al., and,

[if !supportLists]11. [endif]08cv4438 Suzanne McCormick v The State of New York, et al.

[if !supportLists]12. [endif]08 cv 6368 John L. Petrec-Tolino v. The State of New York

Sought Relation but not

[if !supportLists]13. [endif]08cv02852 Galison v The State of New York, et al.,

[if !supportLists]14. [endif]08cv4053 Gizella Weisshaus v The State of New York, et al.

[if !supportLists]15. [endif]06cv05169 McNamara v The State of New York, et al

RICO AND ANTITRUST LAWSUIT

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080509%20FINAL%20AMENDED%20COMPLAINT%20A>

The Florida Courts have been infected by criminals and it appears a top down takeover. Since you are at the top of the regulatory agency that is responsible for protecting the citizens of Florida from rogue and dangerous criminals disguised as Attorneys at Law and Judges I anticipate your immediate response to both Barbara and my own cases, seeking full investigation by the State Bar and JQC and joining the necessary State and Federal Criminal authorities as you are duty bound to do when members of your cartel are alleged by citizens to have committed felony acts and used the Courts as their vehicle to commit crimes. Recently, large amounts of Press have exposed the guardianship abuses running rampant in Florida and similar to the home foreclosure fraud in Florida, the crimes are being committed by “attorneys at law” and further aided and abetted by “judges” all members of an organization headed by you and where nothing is being done by your agency to take any action other than to protect the accused and aid and abet in the evasion of their criminal prosecutions.

Thank you,

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

Iviewit Holdings, Inc. – DL (yes, two identically named)

Iviewit Holdings, Inc. – FL

Iviewit Technologies, Inc. – DL

Uviewit Holdings, Inc. – DL

Uview.com, Inc. – DL

Iviewit.com, Inc. – FL

Iviewit.com, Inc. – DL

I.C., Inc. – FL

Iviewit.com LLC – DL

Iviewit LLC – DL

Iviewit Corporation – FL

Iviewit, Inc. – FL

Iviewit, Inc. – DL

Iviewit Corporation

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<http://iviewit.tv/inventor/index.htm>

<http://iviewit.tv/iviewit2>

<http://www.facebook.com/#!/iviewit>

<http://www.youtube.com/user/eliotbernstein?feature=nhum>

in loving memory and sad post mortem attorney corruption story

<http://iviewit.tv/ShirleyBernstein>

<http://iviewit.tv/SimonBernstein>

<http://iviewit.tv/ThisisBullshit>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video courtesy of NY Senate, my fav part at end

[http://www.youtube.com/watch?v=7oHKs\\_crYIs](http://www.youtube.com/watch?v=7oHKs_crYIs)

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video Handheld Camera View, my favorite version at the very end

<http://youtu.be/3Q9MzqZv4lw>

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=6BIK73p4Ueo>

and finally latest blog

<http://iviewit.tv/iviewit2/?p=187>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #1

<http://youtu.be/i1Ao1BYvyoQ>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #2

<http://youtu.be/OaXys6blmFI>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #3

<http://youtu.be/9R1PNnJVVGU>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #4

<http://youtu.be/rUHCZFkro08>

Eliot Bernstein Iviewit Inventor Television Interview Dick Woelfle Network 125

<http://youtu.be/WEgSXJFqrhQ>

Other Websites I like:

<http://proskauersucks.com>

<http://exposecorruptcourts.blogspot.com>

<http://deniedpatent.blogspot.com>

<http://www.judgewatch.org/index.html>

<http://www.parentadvocates.org>

<http://www.newyorkcourtcorruption.blogspot.com>

<http://cuomotarp.blogspot.com>

<http://www.disbarthefloridabar.com>

<http://www.constitutionalguardian.com>

<http://www.americans4legalreform.com>

<http://www.attorneysabovethelaw.com>

<http://www.VoteForGreg.us> Greg Fischer

<http://www.facebook.com/pages/Vote-For-Greg/111952178833067>

[www.justice4every1.com](http://www.justice4every1.com)

[www.schwagerfirm.com](http://www.schwagerfirm.com)

[www.eldermurderabuseandexploitation.blogspot.com](http://www.eldermurderabuseandexploitation.blogspot.com)

<https://mccormickestatefraud.wordpress.com>

<http://www.nationallibertyalliance.org>

[www.AAAPG.net](http://www.AAAPG.net)

[www.corruptny.com](http://www.corruptny.com)

[www.corruptWA.com](http://www.corruptWA.com)

[www.killingseniors.com](http://www.killingseniors.com)

[www.guardianpredators.com](http://www.guardianpredators.com)

[www.guardianshipexposed.com](http://www.guardianshipexposed.com)

<http://www.hangthebankers.com>

[www.ddaweb.org](http://www.ddaweb.org)

<http://tedbernsteinreport.blogspot.com>

—

“We the people are the rightful master of both congress and the courts – not to overthrow the Constitution, but to overthrow the men who pervert the Constitution.” – Abraham Lincoln

“Whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force.” — Thomas Jefferson, The Kentucky Resolutions of 1798

“If a law is unjust, a man is not only right to disobey it, he is obligated to do so.” Thomas Jefferson

“Each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, these ripples build a current that can sweep down the mightiest walls of oppression and resistance.” – Robert F. Kennedy

“Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!” – Patrick Henry

“Dick: The first thing we do, let’s kill all the lawyers.” The Shakespearean Solution, Sam The Butcher, Henry The Sixth, Part 2 Act 4, scene 2, 71–78

“Gatthew 5:5 Blessed are the Geek, for they will inherit the earth.” Eliot Bernstein

I live by the saying from Ellen G. White:

“The greatest want of the world is the want of men, –men who will not be bought or sold; men who in their inmost souls are

true and honest, men who do not fear to call sin by its right name; men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall.” -Education, p. 57(1903)

If you are one of these people, nice to be your friend ~ Eliot

<image001.jpg>

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**From:** barbara stone [mailto:[bstone575@gmail.com](mailto:bstone575@gmail.com)]

**Sent:** Friday, August 7, 2015 11:16 AM

**To:** [evanderk@flcourts.org](mailto:evanderk@flcourts.org)

**Cc:** Adam Walser; Michael Miller; Joan Chrissos; [cfrank@miamiherald.com](mailto:cfrank@miamiherald.com); [cmarbin@miamiherald.com](mailto:cmarbin@miamiherald.com); [helpmehoward@wsvn.com](mailto:helpmehoward@wsvn.com); [mmarques@miamiherald.com](mailto:mmarques@miamiherald.com); [clue@wsvn.co](mailto:clue@wsvn.co); [leonardgreene@nypost.com](mailto:leonardgreene@nypost.com); [martin.baron@washpost.com](mailto:martin.baron@washpost.com); John CMG-WestPalm Pacenti; [swestwood@washingtosexaminer.com](mailto:swestwood@washingtosexaminer.com); [tips@nationalenquirer.com](mailto:tips@nationalenquirer.com); [john.emshwiller@wsj.com](mailto:john.emshwiller@wsj.com); [gary.fields@wsj.com](mailto:gary.fields@wsj.com); [ashby.jones@wsj.com](mailto:ashby.jones@wsj.com); Bob Norman; [scoop@huffingtonpost.com](mailto:scoop@huffingtonpost.com); [chamby@publicintegrity.org](mailto:chamby@publicintegrity.org); [wkroustan@sunsentinel.com](mailto:wkroustan@sunsentinel.com); [raolmeda@tribune.com](mailto:raolmeda@tribune.com); 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**Subject:** Re: Response and Additional Emergency Notice of alleged crimes and corruption

Please see the attached and below in follow up

**TO: JUDGE EVANDER**

001910

**RE: RETALIATION AGAINST BARBARA STONE FOR WHISTLEBLOWING ON GUARDIANSHIP ABUSE IN THE STATE OF FLORIDA AND REPORTING THE CRIMES OF MICHAEL GENDEN AND THE FLORIDA BAR FROM: BARBARA STONE**

**DATE: AUGUST 7, 2012**

**CC: MEDIA, LEGISLATORS AND OTHER INTERESTED PARTIES**

Dear Judge Evander:

I am in receipt of the retaliatory disbarment against me for my reporting alleged criminal misconduct and wrongdoing of attorneys and judges as mandated by the Florida Bar rules. I am also in receipt of the retaliatory notice of disbarment that was filed of record in my Federal lawsuit against Michael Genden which was improper, an abuse of power and for apparently for the purpose of further prejudicing my case.

**I had expected you would investigate the crimes alleged against Michael Genden who is alleged to be engaged in heinous crimes of extortion, exploitation, holding my mother hostage and in grave danger instead of retaliating against me for exposing crimes as a mandated reporter under the Florida Bar Rules of Professional Conduct.**

It would seem that Honorable Judges would not want their profession to be tainted by judges who use the courts to engage in **alleged criminal racketeering activity and financial fraud on the order of a PONZI SCAM involving guardianship abuse.** As you are aware the State of Florida and Governor Rick Scott are trying to reform this widely reported predatory crime that runs rampant in the legal and judicial system in the State of Florida Courts whereby Elderly adults are being abused and financially devastated through the misuse of the Court system by rogue and dangerous Attorneys at Law and Judges. This dirty "secret" of guardian abuse and exploitation is so rampant that one legislator referred to these predators as "cockroaches."

I brought my mother to "guardianship court" to protect her and Michael Genden and Roy Lustig and predator "guardians" masterminded a Machiavellian scam to steal my mother, strip her rights, drug and abuse her until she is incoherent and extort her assets. These predators then rabidly escalate, retaliate and attack me to silence me from exposing this diabolical racket and **to divert, avoid, evade, dodge, obstruct, block, impede, thwart, cover up the criminal response to their alleged crimes by attacking their accuser.**

**I should be lauded for exposing the vile practice of terrorizing vulnerable adults in predator guardianships instead of attacked by vicious retaliation by judges no less.**

It is hardly "judicial" for the State of Florida to maintain a practice through its "probate/guardian" courts of slowly murdering vulnerable elderly adults by isolating them, depriving them of food, drugging them mercilessly until they are incoherent, removing them from their family so these crimes can be committed in secret, warehousing them in deplorable nursing homes and then retaliating against anyone trying to expose the crimes, including outstanding and long serving respectable members of the Florida Bar such as myself.

Please read the information attached herein. **These news stories and personal stories tell a tale of fraud and crimes and cover up in guardianship and probate courts so horrific that it is impossible to fathom. We are in a crises -reform cannot be instituted soon enough.** Steven King the master of macabre could not even contemplate the Machiavellian horrors devised by attorneys Roy Lustig and Steven Hertz (the husband of guardian Jacqueline Hertz) and others of their ilk who have **masterminded this guardianship probate racketeering scheme of theft** for years to the point where the problem has spread like wildfire and is endemic. One of the best exposes is reported by Marti Oakley, expert on guardian abuse in this YouTube that must be heard:

[https://ppig.files.wordpress.com/2014/05/rense\\_oakley\\_062911.mp3](https://ppig.files.wordpress.com/2014/05/rense_oakley_062911.mp3)

**The 3<sup>rd</sup> DCA exposed Roy Lustig's fraud and corruption in the case of Leo's Gulf Liquors v. Lakhani No. 3D00-130, 802 So. 2d 337 (2001) where he was found guilty of fraud on the court, repeatedly lying under oath and perjury. Yet due to the failure of that Court to refer him to the State Attorney and the Florida Bar as reported by the Sun Sentinel, the Florida Bar did not take disciplinary action against him, in fact they have colluded with him in retaliation against me yet Lustig who engaged in misconduct so brazen that although courts rarely issue such rulings against an attorney, they found Lustig's conduct so abhorrent they issued a scathing opinion against him.**

Due to the lack of prosecution by the Florida Bar or criminal authorities, he is unafraid of retribution and has now perfected his fraud on and in the court to terrorize and extort elderly adults. Lustig deliberately perjured a guardian report and fabricated pleadings in my case denying the life threatening condition of my mother thereby repeatedly placing my mother in grave danger all while Judge Genden aided and abetted and refused to take judicial action, instead retaliating against me and destroying my life to shut down my efforts to expose what is now fast becoming public knowledge.

Thus my mother, a once vital, healthy self-sufficient woman in need of only a short term financial guardianship was corralled into this vicious medically induced guardianship and now languishes in a disgusting nursing home, diapered, drugged, isolated, her stomach cut open to shove a feeding tube (a criminal battery) into her without need and she has almost died repeatedly. My mother has not eaten food or water in almost 2 years. These are hate crimes, crimes of ISIS terrorists posing as attorneys and judges and guardians. To remove and isolate an elderly woman from her daughter in the remaining years of her life is an act of malice and cruelty by someone devoid of morals. It is certainly not the act of a judge.

Jacqueline Hertz, now recently deceased was a master of this depraved human trafficking racket orchestrated in conjunction with Florida Bar members acting as Judges and Lawyers who are all involved in the feeding frenzy to rob family estates statewide.

When I reported and exposed alleged criminal acts to the Florida State Bar, the Judicial Conduct Commission and state and federal authorities, Genden in an monumental abuse of power, removed not only my access to the Court, but revamped the filing system to secret away the court documents from the public in violation of the Constitution to attempt to cover up the crimes of the probate Court and the Court appointed Guardians and Attorneys at Law.

My whistleblower complaint filed with the Supreme Court exposes this charade of justice and the incompetent system of having lawyers oversee the discipline of other lawyers and judges instead of having them independently investigated and criminally prosecuted. This self-regulating system is inherently conflicted and unconscionable and must be reformed by the use of independent investigatory agencies.

The cover up and whitewashing of violations of canons, ethics and crimes has exploded because there is no accountability and discipline. Christine Anderson, Esq. another whistleblower attorney in New York who was an insider in the disciplinary system attempted to expose the widespread corruption of the failed and criminal disciplinary system and she like myself was grossly retaliated against. Joanne Denison, Ken Ditkowsky and Lanre Amu exposed the corruption in Illinois and were suspended or disbarred. Other attorney whistleblowers across the country including Teddy Moore and Cole Stuart have been retaliatory disbarred or suspended for exposing the crimes of other lawyers and judges, their only crimes.

Wilfredo Ferrer, the Miami USDA said in an interview with Steven Kroft on 60 minutes that Miami is the most corrupt city in the country. Is this how the State of Florida wants to be identified?

1. Stripping an elderly adult of their Constitutional and civil rights, denying their due process, forcing them into medically induced guardianship, terrorizing and abusing them and extorting their assets and property while family members futilely try to free them, off their rights and stealing and extorting their family assets?
2. Protecting and covering up alleged crimes by so called "attorneys" and "judges" who operate a racketeering enterprise rife with corruption and fraud?. My mother confided to me on a recorded line that she was in fear of her life –that strange "aides" and other unknown persons from barely legitimate "care agencies" hired by Hertz and Lapidés were coming into her home every day, stealing her food, her money and drugging her until she was incoherent. These substandard agencies were used by these predators, Hertz and Lapidés to deprive my mother of quality care so her assets could be diverted to Hertz, Lapidés and Lustig.
3. Retaliating against many witnesses who saw and reported my mother's drugging, abuse, the deprivation of food and other heinous crimes? Michael Genden denied my mother the right to counsel to keep the racket under wraps and further denied me the right to independent counsel and to file Pro Se virtually stripping my rights to due process in his racketeering enterprise. Another Attorney at Law, Debra Rochlin exposed in an affidavit that Michael Genden threatened her to force her to cease representing my mother and myself or he would file a bar complaint against her. She was so fearful that she withdraw as counsel in fear of her livelihood, leaving her exposed to vicious retaliation and leaving my mother defenseless. Despite her withdrawal, Genden then viciously filed a Florida Bar Complaint against her in efforts to destroy her life as he has done mine and my mothers' and any party exposing his malice.
4. Enabling and covering up for a judge who is engaged in terrorist crimes against a vulnerable elderly woman and her daughter in a court that has descended into a terrorist enterprise?
5. Abetting a judge who isolates an elderly woman from her daughter and keeps her caged in a lock down unit where she is denied all visitors so she can be abused and extorted in secrecy? Please refer to the fraudulent invoices of these predators set forth in link on the enclosures.
6. Abetting a judge who issues orders that are a product of fraud, perjury and fabrication in order to defraud an elderly woman?
7. Abetting a judge who engages in extortion, threats, retaliation and knowingly and intentionally endangers the life of an elderly adult?
8. Abusing the Federal and appellate courts in the State of Florida that are presided over by Florida Bar members to cover up



and shield Michael Genden issuing brazenly irrational and retaliatory rulings that have no semblance of legitimacy. This is obvious in the “ruling” by Judge Kathleen Williams (apparently a “hand-picked” judge as she is familiarly referred to as “Kathy” by Genden and Lustig) wherein she stated in an order issued June 2, 2014 that even if Ms. Stone raised sufficient concerns about the danger to her mother, **she did not know how removing the guardians would alleviate that concern.**

There is not even a semblance of due process in any of my matters where emergency petitions are ignored, and judges are hand selected. The lack of due process is so open that an order was issued by one judge “hand-selecting” another conspiratorial judge to “preside” over the retaliatory “disbarment” of me, a retired attorney in direct violation of the rules that mandate blind assignment.

**It should be obvious that in none of my lawsuits, appeals or other legal actions, THERE HAS NEVER BEEN AN EVIDENCIARY HEARING NOR HAS MICHAEL GENDEN EVER RESPONDED TO ANY OF THE ALLEGATIONS. Instead, there is a rush to deny my due process, obstruct my justice, and aid and abet Michael Genden to enable him to avoid accountability for his alleged criminal acts and violation of judicial canons and ethics.**

What is apparent is that the Courts, the Prosecutors, the Judges, the Attorneys at Law involved are all working together to protect and cover up alleged crimes by so called “attorneys” and “judges” that operate a racketeering enterprise rife with corruption and fraud. Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community and the courts who fail to provide accountability and are tainting the legal process.

Judicial misconduct is running unchecked in all courts across the State of Florida, particularly in the very courts where families require the most protection—probate/guardian, family court, bankruptcy and foreclosure. Families are being destroyed by the very courts who should serve justice. Judges as in the case of my retaliatory disbarment are hand selected to silence reports of crime and misconduct. Lawyers and judges have fiduciary duties to insure the integrity of the judiciary and the legal system. A task force is urgently needed to address this tsunami of corruption/human trafficking.

Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community. The Federal and appellate courts who fail to provide accountability are subverting and perverting the legal process.

I came to Court to protect my mother. Instead we have been embroiled in a nightmarish vicious racket of criminal acts so depraved, they transcend comprehension.

This will request that Michael Genden be removed from the bench and an immediate independent investigation of these alleged criminal acts be commenced. Again, I provide you with the guardian playbook by which these crimes are committed and a request to return ethics, legitimacy and justice to the judiciary.

Sincerely,

Barbara Stone

[Bstone575@gmail.com](mailto:Bstone575@gmail.com)

244 Fifth Avenue - B 296

New York, NY 10001

Enclosures - Guardian Playbook

Fraudulent self- conjured “bills” of Lustig, Hertz, Lapidés and others who devise crimes, sue Helen Stone’s daughter and use Helen Stone’s assets to pay for their crimes by illegal, conspiratory order of Michael Genden.

[www.jviewit.tv/Barbara/CombinedBills.pdf](http://www.jviewit.tv/Barbara/CombinedBills.pdf)

articles about predatory guardians, judges and attorneys and their criminal activities

Cc: Miami Herald, Wall Street Journal, Miami New Times, New York Times, NY Post, Washington Post and other Media, legislators and other interested parties

On Fri, Aug 7, 2015 at 9:23 AM, barbara stone <[bstone575@gmail.com](mailto:bstone575@gmail.com)> wrote:

Please see attached in response to further retaliation.

**TO: JUDGE EVANDER**

**RE: RETALIATION AGAINST BARBARA STONE FOR WHISTLEBLOWING ON GUARDIANSHIP ABUSE IN THE STATE OF FLORIDA AND REPORTING THE CRIMES OF MICHAEL GENDEN AND THE FLORIDA BAR**

**FROM: BARBARA STONE**

**DATE: AUGUST 7, 2012**

**CC: MEDIA, LEGISLATORS AND OTHER INTERESTED PARTIES**

001913

Dear Judge Evander:

I am in receipt of the retaliatory disbarment against me for my reporting alleged criminal misconduct and wrongdoing of attorneys and judges as mandated by the Florida Bar rules. I am also in receipt of the retaliatory notice of disbarment that was filed of record in my Federal lawsuit against Michael Genden which was improper, an abuse of power and for apparently for the purpose of further prejudicing my case.

**I had expected you would investigate the crimes alleged against Michael Genden who is alleged to be engaged in heinous crimes of extortion, exploitation, holding my mother hostage and in grave danger instead of retaliating against me for exposing crimes as a mandated reporter under the Florida Bar Rules of Professional Conduct.**

It would seem that Honorable Judges would not want their profession to be tainted by judges who use the courts to engage in **alleged criminal racketeering activity and financial fraud on the order of a PONZI SCAM involving guardianship abuse**. As you are aware the State of Florida and Governor Rick Scott are trying to reform this widely reported predatory crime that runs rampant in the legal and judicial system in the State of Florida Courts whereby Elderly adults are being abused and financially devastated through the misuse of the Court system by rogue and dangerous Attorneys at Law and Judges. This dirty "secret" of guardian abuse and exploitation is so rampant that one legislator referred to these predators as "cockroaches."

I brought my mother to "guardianship court" to protect her and Michael Genden and Roy Lustig and predator "guardians" masterminded a Machiavellian scam to steal my mother, strip her rights, drug and abuse her until she is incoherent and extort her assets. These predators then rabidly escalate, retaliate and attack me to silence me from exposing this diabolical racket and to **divert, avoid, evade, dodge, obstruct, block, impede, thwart, cover up the criminal response to their alleged crimes by attacking their accuser.**

**I should be lauded for exposing the vile practice of terrorizing vulnerable adults in predator guardianships instead of attacked by vicious retaliation by judges no less.**

It is hardly "judicial" for the State of Florida to maintain a practice through its

"probate/guardian" courts of slowly murdering vulnerable elderly adults by isolating them, depriving them of food, drugging them mercilessly until they are incoherent, removing them from their family so these crimes can be committed in secret, warehousing them in deplorable nursing homes and then retaliating against anyone trying to expose the crimes, including outstanding and long serving respectable members of the Florida Bar such as myself.

Please read the information attached herein. **These news stories and personal stories tell a tale of fraud and crimes and cover up in guardianship and probate courts so horrific that it is impossible to fathom. We are in a crises -reform cannot be instituted soon enough.** Steven King the master of macabre could not even contemplate the Machiavellian horrors devised by attorneys Roy Lustig and Steven Hertz (the husband of guardian Jacqueline Hertz) and others of their ilk who have **masterminded this guardianship probate racketeering scheme of theft** for years to the point where the problem has spread like wildfire and is endemic. One of the best exposes is reported by Marti Oakley, expert on guardian abuse in this YouTube that must be heard:

[https://ppjg\\_files.wordpress.com/2014/05/reuse\\_oakley\\_062911.mp3](https://ppjg_files.wordpress.com/2014/05/reuse_oakley_062911.mp3)

**The 3<sup>rd</sup> DCA exposed Roy Lustig's fraud and corruption in the case of Leo's Gulf Liquors v. Lakhani No. 3D00-130, 802 So. 2d 337 (2001) where he was found guilty of fraud on the court, repeatedly lying under oath and perjury. Yet due to the failure of that Court to refer him to the State Attorney and the Florida Bar as reported by the Sun Sentinel, the Florida Bar did not take disciplinary action against him, in fact they have colluded with him in retaliation against me yet Lustig who engaged in misconduct so brazen that although courts rarely issue such rulings against an attorney, they found Lustig's conduct so abhorrent they issued a scathing opinion against him.** Due to the lack of prosecution by the Florida Bar or criminal authorities, he is unafraid of retribution and has now perfected his fraud on and in the court to terrorize and extort elderly adults. Lustig deliberately perjured a guardian report and fabricated pleadings in my case denying the life threatening condition of my mother thereby repeatedly placing my mother in grave danger all while Judge Genden aided and abetted and refused to take judicial action, instead retaliating against me and destroying my life to shut down my efforts to expose what is now fast becoming public knowledge.

Thus my mother, a once vital, healthy self-sufficient woman in need of only a short term financial guardianship was corralled into this vicious medically induced guardianship and now languishes in a disgusting nursing home, diapered, drugged, isolated, her stomach cut open to shove a feeding tube (a criminal battery) into her without need and she has almost died repeatedly. My mother has not eaten food or water in almost 2 years. These are hate crimes, crimes of ISIS terrorists posing as attorneys and judges and guardians. To remove and isolate an elderly woman from her daughter in the remaining years of her life is an act of malice and cruelty by someone devoid of morals. It is certainly not the act of a judge. Jacqueline Hertz, now recently deceased was a master of this depraved human trafficking racket orchestrated in conjunction with Florida Bar members acting as Judges and Lawyers who are all involved in the feeding frenzy to rob family estates statewide.

When I reported and exposed alleged criminal acts to the Florida State Bar, the Judicial Conduct Commission and state and federal authorities, Genden in an monumental abuse of power, removed not only my access to the Court, but revamped the filing system to secret away the court

documents from the public in violation of the Constitution to attempt to cover up the crimes of the probate Court and the Court appointed Guardians and Attorneys at Law.

My whistleblower complaint filed with the Supreme Court exposes this charade of justice and the incompetent system of having lawyers oversee the discipline of other lawyers and judges instead of having them independently investigated and criminally prosecuted. This self-regulating system is inherently conflicted and unconscionable and must be reformed by the use of independent investigatory agencies.

The cover up and whitewashing of violations of canons, ethics and crimes has exploded because there is no accountability and discipline.

Christine Anderson, Esq. another whistleblower attorney in New York who was an insider in the disciplinary system attempted to expose the widespread corruption of the failed and criminal disciplinary system and she like myself was grossly retaliated against. Joanne Denison, Ken Ditekowsky and Lanre Amu exposed the corruption in Illinois and were suspended or disbarred. Other attorney whistleblowers across the country including Teddy Moore and Cole Stuart have been retaliatory disbarred or suspended for exposing the crimes of other lawyers and judges, their only crimes.

Wilfredo Ferrer, the Miami USDA said in an interview with Steven Kroft on 60 minutes that Miami is the most corrupt city in the country. Is this how the State of Florida wants to be identified?

1. Stripping an elderly adult of their Constitutional and civil rights, denying their due process, forcing them into medically induced guardianship, terrorizing and abusing them and extorting their assets and property while family members futilely try to free them, off their rights and stealing and extorting their family assets?
2. Protecting and covering up alleged crimes by so called "attorneys" and "judges" who operate a racketeering enterprise rife with corruption and fraud?. My mother confided to me on a recorded line that she was in fear of her life –that strange "aides" and other unknown persons from barely legitimate "care agencies" hired by Hertz and Lapidés were coming into her home every day, stealing her food, her money and drugging her until she was incoherent. These substandard agencies were used by these predators, Hertz and Lapidés to deprive my mother of quality care so her assets could be diverted to Hertz, Lapidés and Lustig.

3. Retaliating against many witnesses who saw and reported my mother's drugging, abuse, the deprivation of food and other heinous crimes?

Michael Genden denied my mother the right to counsel to keep the racket under wraps and further denied me the right to independent counsel and to file Pro Se virtually stripping my rights to due process in his racketeering enterprise. Another Attorney at Law, Debra Rochlin exposed in an affidavit that Michael Genden threatened her to force her to cease representing my mother and myself or he would file a bar complaint against her. She was so fearful that she withdraw as counsel in fear of her livelihood, leaving her exposed to vicious retaliation and leaving my mother defenseless. Despite her withdrawal, Genden then viciously filed a Florida Bar Complaint against her in efforts to destroy her life as he has done mine and my mothers' and any party exposing his malice.

4. Enabling and covering up for a judge who is engaged in terrorist crimes against a vulnerable elderly woman and her daughter in a court that has descended into a terrorist enterprise?

5. Abetting a judge who isolates an elderly woman from her daughter and keeps her caged in a lock down unit where she is denied all visitors so she can be abused and extorted in secrecy? Please refer to the fraudulent invoices of these predators set forth in link on the enclosures.

6. Abetting a judge who issues orders that are a product of fraud, perjury and fabrication in order to defraud an elderly woman?

7. Abetting a judge who engages in extortion, threats, retaliation and knowingly and intentionally endangers the life of an elderly adult?

8. Abusing the Federal and appellate courts in the State of Florida that are presided over by Florida Bar members to cover up and shield Michael Genden issuing brazenly irrational and retaliatory rulings that have no semblance of legitimacy. This is obvious in the "ruling" by Judge Kathleen Williams (apparently a "hand-picked" judge as she is familiarly referred to as "Kathy" by Genden and Lustig) wherein she stated in an order issued June 2, 2014 that even if Ms. Stone raised sufficient concerns about the danger to her mother, she did not know how removing the guardians would alleviate that concern.

There is not even a semblance of due process in any of my matters where emergency petitions are ignored, and judges are hand selected. The lack of due process is so open that an order was issued by one judge "hand-selecting" another conspiratorial judge to "preside" over the retaliatory "disbarment" of me, a retired attorney in direct violation of the rules that mandate blind assignment.

**It should be obvious that in none of my lawsuits, appeals or other legal actions, THERE HAS NEVER BEEN AN EVIDENCIARY HEARING NOR HAS MICHAEL GENDEN EVER RESPONDED TO ANY OF THE ALLEGATIONS. Instead, there is a rush to deny my due process, obstruct my justice, and aid and abet Michael Genden to enable him to avoid accountability for his alleged criminal acts and violation of judicial canons and ethics.**

What is apparent is that the Courts, the Prosecutors, the Judges, the Attorneys at Law involved are all working together to protect and cover up alleged crimes by so called "attorneys" and "judges" that operate a racketeering enterprise rife with corruption and fraud. Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community and the courts who fail to provide accountability and are tainting the legal process.

Judicial misconduct is running unchecked in all courts across the State of Florida, particularly in the very courts where families require the most protection—probate/guardian, family court, bankruptcy and foreclosure. Families are being destroyed by the very courts who should serve justice. Judges as in the case of my retaliatory disbarment are hand selected to silence reports of crime and misconduct. Lawyers and judges have fiduciary duties to insure the integrity of the judiciary and the legal system. A task force is urgently needed to address this tsunami of corruption/human trafficking.

Judges who commit crimes should be investigated and removed from the bench, not protected by the judicial community. The Federal and appellate courts who fail to provide accountability are subverting and perverting the legal process.

I came to Court to protect my mother. Instead we have been embroiled in a nightmarish vicious racket of criminal acts so depraved, they transcend comprehension.

This will request that Michael Genden be removed from the bench and an immediate independent investigation of these alleged criminal acts be commenced. Again, I provide you with the guardian playbook by which these crimes are committed and a request to return ethics, legitimacy and justice to the judiciary.

Sincerely,

Barbara Stone

[Bstone575@gmail.com](mailto:Bstone575@gmail.com)

244 Fifth Avenue - B 296

New York, NY 10001

Enclosures - Guardian Playbook

Fraudulent self- conjured "bills" of Lustig, Hertz, Lapides and others who devise crimes, sue Helen Stone's daughter and use Helen Stone's assets to pay for their crimes by illegal, conspiratory order of Michael Genden.

[www.iviewit.tv/Barbara/Combined Bills.pdf](http://www.iviewit.tv/Barbara/Combined Bills.pdf)

articles about predatory guardians, judges and attorneys and their criminal activities

Cc: Miami Herald, Wall Street Journal, Miami New Times, New York Times, NY Post, Washington Post and other Media, legislators and other interested parties

-

Barbara Stone

[305 684 2547](tel:3056842547)

[bstone575@gmail.com](mailto:bstone575@gmail.com)

On Thu, Aug 6, 2015 at 2:37 PM, barbara stone <[bstone575@gmail.com](mailto:bstone575@gmail.com)> wrote:

Attached is an emergency notice of extortion, life endangering crimes and other misuse of office by a "judge" under color of law.

The life of an elderly adult is in grave danger. This seeks his urgent removal and response

Barbara Stone

[305 684 2547](tel:3056842547)

[bstone575@gmail.com](mailto:bstone575@gmail.com)

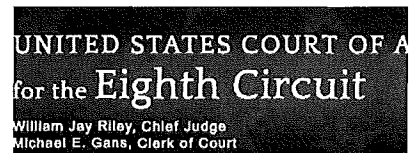


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Date: Fri, Feb 22, 2013 at 1:43 AM Subject:  
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Illegally Wiretapped, Says Insider " &  
"Governor Andrew Cuomo Asked to Shut Down  
With 2 comments

Law Firm Admits Violated Law - Regarding -  
Murder of Chairman of Iviewit Simon  
Bernstein?  
Begin forwarded message: From: "Elliot Ivan  
Bernstein" <[iviewit7@gmail.com](mailto:iviewit7@gmail.com)> To:  
"Undisclosed List" <[iviewit@gmail.com](mailto:iviewit@gmail.com)>  
Subject: Murder of Chairman of Iviewit Simon  
Bernstein? Attorneys Robert Spallina & Donald  
In "Constitution"



PUBLIC NOTICE: CRIMINAL  
CHARGES/COMMERCIAL LIENS - Corrupt  
Judges

**About arniersner**

As an American I advocate a republic form of government, self-reliance, and adherence to the basic philosophy of the founding fathers and the founding documents, I ONLY respect those who respect and "HONOR" their honor. No exceptions!

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**Scanned Retina – A Resource for the People!**

*The Twenty Ten Theme. Blog at WordPress.com.*

# Florida Probate Fraud, Forgery and Corruption; Simon Bernstein Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger.

Florida Probate Court    Florida Estate Case    Alan Rose    7020 Lions Head Lane Boca Raton  
 Docket Northern Illinois Case    Simon Bernstein Trust Heritage Jackson National District Court  
 Shirley Bernstein Estate Docket    Simon Bernstein Estate Docket    7020 Lions Head Lane Boca Raton    Shirley Bernstein  
 Simon Bernstein    Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case    Judge David E. French  
 Robert Spallina    Mark Manceri    Donald Tescher    Tescher and Spallina Law Firm    Mark Manceri  
 Petition to Freeze Estate Assets    Estate Fraud Docket    Insurance Proceed Scheme    Donald Tescher  
 Robert Spallina    Ted and Deborah Bernstein    Life Insurance Concepts Boca    Ted Bernstein Fraud

Tuesday, December 8, 2015

Florida Judge, Judge L. Phillips RULES to not disqualify himself? WOW, is that Lawful? Ethical? What is Judge Phillips up to, I mean its been many years right and Ted Bernstein and his Cronies have run off with the money, forged documents and yet all are NOT in Jail and NOTHING happens in the Case.

Yet Judge JOHN L PHILLIPS wants to continue being the Judge in all these cases? Why? He is not doing anything to move them forward and sure seems to be aiding and abetting criminals. Umm and the OBVIOUS is, it is NOT legal for Judge Philips to rule on his disqualification. A higher Judge has to do that, been there many times. So what is the not so honorable Judge John Philips up to? Hmmm..

Here is Eliot Bernstein's motion to Disqualify Florida Circuit Judge, Click Below to Read  
<https://drive.google.com/file/d/0Bzn2NurXrSkiTVMyMmlwSFpzS1U/view?usp=sharing>

Here is Florida Judge, Judge John Philips ruling on his own disqualification. Gee YEP he ruled to keep himself as judge of a case that has been deliberately, maliciously, unethically, unconstitutionally and illegally stalled for years. All the while the Bad Guys sell off assets and move on with their life, and the Bad Guy attorneys continue to violate the constitutional rights of other clients in Florida. All while Bad Judges, such as Judge Colin and Judge Philips look the other way to aid and abet them.

Click below for this short QUICK, corrupt, SMACKDOWN Denial  
<https://drive.google.com/file/d/0Bzn2NurXrSkiT191S2cybUJuVmM/view?usp=sharing>



# the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger

Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate D
Shirley Bernstein	Simon Bernstein	Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French Robert S
Mark Manceri	Donald Tescher	Tescher and Spallina Law Firm Mark Manceri	Petition to Freeze Estate Assets Estate Fraud Docket Insurance
Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca Ted Bernstein Fraud

Saturday, January 11, 2014

**Investigative Blogger Crystal Cox THINKS it is time to File a Lien against ALL the Judges involved in the massive fraud on the courts, property theft, forgery, and constitutional rights violating case of the Shirley Bernstein Estate and Simon Bernstein Estate going on now in the Florida Probate Courts and involving Judge Martin Colin, Judge David French, Judge Charles E. Burton, Judge David Crow and possible the Sheriff of Palm County Florida.**

Let's take a look at your rights to PUT a lien on a Judge or Sheriff.

Information on filing a lien against a bond of a Judge.

I believe state officers are required by statute or by the head of any state department to secure and give a fidelity bond, a bond that ensures their actions.

It is my understanding that if you feel a Judge is corrupt or is not upholding the law or your constitutional rights, you Can You File A Lien Against His Bond On File In Order To Force Him To Do His JOB.

If a judge wants to play "god" in the courtroom, and totally ignore the rules of law and your constitutional rights. I believe you can file a lien upon his bond in order to force him into complying with the law. As it sure seems the Judge and Sheriff are neglecting their duties and neglecting their court.

If a Judge is "railroading" you, clearly acting outside of the laws of the United States and the State of Florida, then it is my understanding that you certainly can file a lien against this judge for his total ignoring of law and violating your rights of due process and constitutional rights.

It is my understand that a judge and a Sheriff cannot work in their job if they cant get bonded.

So why NOT file your Proof of Corruption AND the UnEthical, UnConstitutional, and UnLawful actions of the Judges in this case as a LIEN against their BOND?

Tips, Information and Laws on How to File a Lien against a Judges Surety Bond in Florida

It is my understanding that when you file a lien against a public servant the lien holder/ins company does an investigation, thus they must see proof as to the validity of the lien. In the Simon Bernstein and Shirley Bernstein Estate we see clear evidence of fraud, forgery and attorneys seem to be conspiring with Judges, or so it looks that way from what I have read.

We see clearly that these attorneys and Ted Bernstein conspired with or are connected to Kimberley Moran of Tescher and Spallina law firm to have it look as if Simon Bernstein signed documents, and had them notarized at Tescher & Spallina Law Firm with Kimberley Moran AFTER HE DIED.

This evidence is clear, it is on court dockets, in hearing transcripts, on Governor complaints and rulings, on sheriff reports and yet Judge Martin Colin and other Judges in this case seem to be protecting estate and probate law firm Tescher & Spallina and Boca Raton Insurance Company Life Insurance Concepts, Ted Bernstein.

001919

Ted Bernstein



Life Insurance Concep

Ted Bernstein, Tescher a

- Florida Estate Forge DOCKET

Donald Tescher on Left

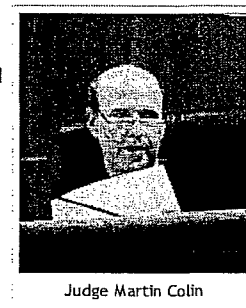


Ted Bernstein, Tescher a

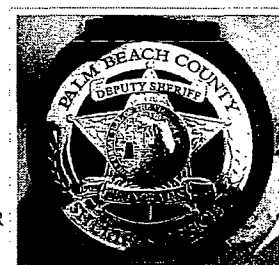
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Judge Martin Colin



Palm County Florida Sheriff





Ted Bernstein

This is all connected to the multi-Billion dollar legal action of the iViewit technology case and I myself believe that these judges are favoring what looks to be corrupt lawyers and they may possibly be getting a kick back as there is plenty of money to be had in this case, as we have previously seen from the iViewit case naming all of this same parties and worth 100's of BILLIONS. I believe the Judges involved in the Simon Bernstein and Shirley Bernstein Estate forgery and fraud case have violated title 42 USC code. I also believe they have ALL violated 28 U.S.C. § 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and have violated human and civil rights of the victims of this case.

A GUIDE TO CIVIL RIGHTS LIABILITY UNDER 42 U.S.C. § 1983: AN OVERVIEW OF SUPREME COURT AND ELEVENTH CIRCUIT PRECEDENT

http://www.constitution.org/brief/forsythe\_42-1983.htm

Section 1983 Litigation to help you understand the laws regarding this issue.

http://www.fjc.gov/public/pdf.nsf/lookup/Sect1983.pdf/\$file/Sect1983.pdf

If Judge Martin Colin appointed Ted Bernstein executor of the Simon Bernstein state after he knew of clear forgery and fraud on the courts and crimes against the true heirs of the Simon Bernstein, and Shirley Bernstein Estate, is Judge Martin Colin liable for the financial damage and hardship that his rulings outside of law and the constitutional rights of those in his court?

Did Judge Martin Colin require a probate bond in this case where millions are at stake and there is massive fraud, estate assets sold off and stolen?

Do laws in the State of Florida require the executor of an estate to provide a probate bond to the courts? Probate bonds will guarantee that executors of the estate will not alter or damage the estate. Did Judge Martin Collin require a probate bonds in this case?

Did Tescher & Spallina provide a probate bond? This is a rather large estate and assets over a million dollars each have already been SOLD off, by what looks like the fraudulent activity of Ted Bernstein conspiring with Donald Tescher and Rober Spallina of Tescher & Spallina.

Are there any laws or ways to uphold the estate and probate law in Florida when someone dies and their own attorneys and estranged offspring loot their estate?

Also in this there was a condo already sold for over a million that may have undersold for a million, this involved a buyer named Wesley Voorheis, who I believe made a deal of some kind to get the property for at least a million less then it was worth, by way of some shady dealings with Life Insurance Concepts and Ted Bernstein, just how I see it.

Note: I am a REAL ESTATE Forensics EXPERT, I do not claim to know fully Florida Law. However, this property SOLD via Old Republic National Title Insurance Company, and had Title Insurance insuring that it was SOLD by the property own and there sure seems to be some fraudulent actions here in my opinion, here is my report and opinion on the Shirley Bernstein Condo Sale.

https://docs.google.com/document/d/1hjawnPI4EXpNOL8oZ33Pmpirngh3073da5\_i0iVIQtw/edit

It appears to me that Gregory Gefen of Signature ALL REGENCY TITLE COMPANY, Signature Title Group Knowingly allowed Ted Bernstein to steal a 1.6 million dollar property, just how I see it.

So Is Wesley Voorheis a Proxy for Ted Bernstein?

http://tedbernsteinreport.blogspot.com/2013/08/do-we-have-banking-and-mortgage-fraud.html

Did Wesley Voorheis of move this asset out of the country for Tescher and Spallina, Ted Bernstein or ?

G. Wesley Veorheis seems to be the same Wesley Veorheis Chairman of Hudbay Minerals Inc., Director at Granite Real Estate Inc., Managing Director of VC & Co. Incorporated and a Partner of Voorheis & Co. LLP, which act as strategic advisors to institutional and other shareholders. Prior to the establishment of Voorheis & Co. LLP in 1995, Wesley Voorheis was a partner in a major Toronto law firm. Wesley Public Company Directorships (Past 5 years): MI Developments Inc. (June 2011 to present), Coventree Inc. (2008 to 2012), easyhome Ltd. (2010 to 2011), Hollinger Inc. (2006 to 2008), Sun Times Media Group, Inc. (2007 to 2008).

http://www.forbes.com/profile/g-voorheis/

http://www.concernedeconomical.com/about\_VC\_Co.html

How is G. Wesley Voorheis connected to Tescher and Spallina, Ted Bernstein, Greg Gefen or any other players of the Shirley Bernstein, Simon Bernstein fraud and forgery estate and probate case out of Palm County Florida?



Judge David French



Ted Bernstein, Bernstein Family Foundation

Office. Want t  
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Jackson Natio  
Mark Manceri, FI  
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Kimberly Moran (  
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Mark Manceri aK  
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on the Courts  
Judge David E. F  
Manceri, Tesc  
Sheriff's Reports  
Bernstein Estz  
Petition to Rele:  
Fraud, Forgery, E  
Tescher and S

► 2013 (31)



I fully believe, in my opinion that the above sale involved mortgage fraud, title insurance fraud and banking fraud at least. It also seems that the Bank of Montreal is somehow connected to all this, in what sure seems to me to be white collar crime.

How in the world did what seems to be a Canadian Resident, Wesley Voorheis, get a single Family Fannie Mae loan on a condo of this value in FLORIDA? Is this a primary resident? Is this Fannie Mae FRAUD? Surely Fannie Mae, Wesley Voorheis, BMO Harris Bank N.A., and Steve Paraggua know about the fraud and forgery in connection with all of this.

Here is the Mortgage Document I am commenting on;  
<https://docs.google.com/file/d/0Bzn2NurXrSkiQjlmSmRoNXJBdHc/edit>

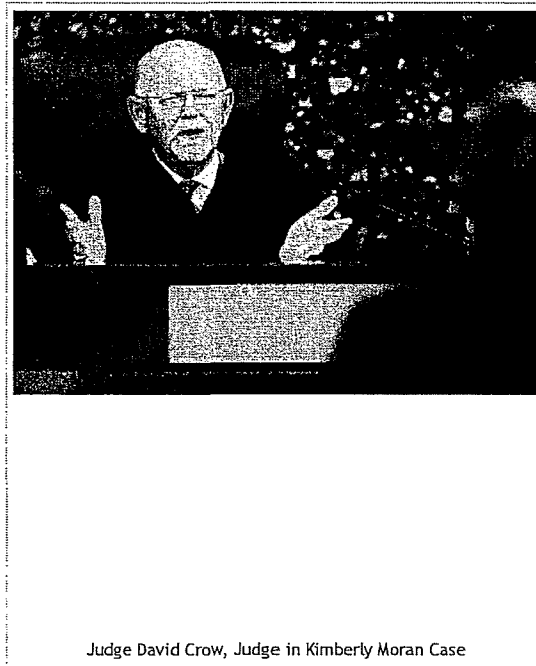
I personally believe that Ted Bernstein of Life Insurance Concepts did some deal to hide this asset from the rightful heirs, either with Wesley Voorhei knowing or not knowingly conspiring, just my opinion.

A bit more on this Condo Sale

<http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html>

Note: Look at this Insurance company also questioning issues of these Estates, yet the Judges involved are "playing dumb". There is so many layers to all this, meanwhile the victims of all this, in this moment are children and are the heirs of the estate, in which Tescher and Spallina seem to have VIOLATED the wishes of their now deceased clients.

the Heritage Union Life Insurance case  
<https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRms/edit>



So can the True and Correct lawful heirs of the Simon Bernstein, and Shirley Bernstein Estate file a lien against the Judges and Sheriff involved, as there are some pretty hefty price tags on these assets adn I believe these judges now have some liability.

Folks, pay attention to this case as many of your parents, grandparents move to Florida, many of you in Florida over a lifetime; you work your whole life, pay your attorneys to carry out your wishes and the commit forgery having documents signed by you AFTER YOU DIE, and Florida Judges such as Judge Charles E. Burton, Judge David Crow and estate and probate Judges such as Judge Martin Colin and Judge David French, as well as the Sheriff of Palm County Florida should be liable for any action that violated the constitutional rights of the victims of this case or did not uphold the oath of their office.

It looks to me, in my Opinion, as if these Judges and the Sheriff violated 28 U.S.C. § 455, the Due Process Clause of the Fourteenth Amendment to the Constitution, The Code of Conduct for United States Judges, and 28 U.S.C. 455.

And I think that Victims of these Judges should file a Lien against their Bond.

No comments:

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# the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger



Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate D
Shirley Bernstein	Simon Bernstein	Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French Robert S
Mark Manceri	Donald Tescher	Tescher and Spallina Law Firm Mark Manceri	Petition to Freeze Estate Assets Estate Fraud Docket Insurance
Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca Ted Bernstein Fraud

Friday, February 21, 2014

## Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he favors and having conflicts of interest. Judge Martin Colin should have walked away from the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case long Ago.

""The self-proclaimed adopted son of the late mob boss John Gotti, Kasman didn't like the way the Gambino crime family treated him after the Dapper Don died in prison in 2002. So the 51-year-old Boca Raton man strapped on an FBI wire and spilled information that in February helped the feds build criminal cases against 62 reputed New York mobsters.

Now Kasman has his sights set on a much less notorious target: Palm Beach County Family Court Judge Martin Colin.

Using court decisions that grew out of a long-running legal battle among Colin and his wife and her ex-husband, Kasman is on a tear to have the judge thrown out of office and get longtime Democratic power broker and attorney Henry Handler disbarred...

When the Judicial Qualifications Commission, which disciplines judges, meets in mid-July, it will consider claims from Kasman and at least two other men that the judge dished out favors to attorneys who represented his wife in her divorce. Similar allegations have been raised in a strange and tortuous legal battle that went all the way to the Florida Supreme Court. The Florida Department of Law Enforcement has investigated as well.

Colin and attorneys embroiled in the quagmire dismiss allegations that a conspiracy was afoot to tip the scales of justice against Kasman or anyone else."

Source and Full Article  
<http://jaablog.jaablaw.com/2008/07/01/things-getting-rougher-for-judge-colin.aspx>

"During the protracted divorce that chewed through at least five judges, Lewis Kasman accused one of them - Palm Beach County Circuit Judge Martin Colin - of failing to reveal his ties to the firm. Weiss Handler briefly represented Colin's wife in her divorce from a previous husband. While Colin had been ordered by the Fourth District Court of Appeal to tell litigants who came before him about his wife's connection to the firm, he didn't tell Lewis Kasman."

Source and Full Document  
<http://joebrunoonthemob.wordpress.com/tag/palm-beach-county-circuit-judge-martin-colin/>

### Why is Judge Martin Colin of Boca Raton Florida still presiding over the Simon Bernstein Estate Case and the Shirley Bernstein Estate Case?

Judge Martin Colin knows of fraud, forgery, possible murder and claimed he "should" read the attorneys involved their Miranda Rights but still no one has a criminal investigation and on top of that Judge Martin Colin is letting these attorneys still have a say in these estates knowing full well that have committed crimes.

Judge Martin Colin knows that officers of his court, attorneys, and law firms have committed crimes yet he lets them have a say in who gets to be the personal representative in these estates. And seems to be planning to use some "Hat Trick Method", a law it seems he made up, in order to pick this powerful position over these estate matters.

Judge Martin Colin knows full well that these guys have acted illegally, so why would he still give them power in this case.

Judge Martin Colin knows that John J. Pankauski has massive conflicts of interest yet lets this lawyer have a say in these matters, knowing full well that John J. Pankauski is violating attorney client privilege, has misled Eliot Bernstein to get personal information, strategy in the case, and proprietary information in this case to then use against Eliot Bernstein acting as counsel

Ted Bernstein



Life Insurance Concep

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- Florida Estate Forg DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher a

- Florida Estate Forg DOCKET

#### Blog Archive

- ▼ 2014 (125)
  - June (32)
  - May (15)
  - April (2)
  - March (19)
  - ▼ February (35)
    - Is Google Really 1 Conduct a Fra
    - Welcome Back, F Investigation I

6/4/2014 the Ted Bernstein Report by Investigative Blogger Crystal L. Cox Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he fa... to the opposition.

Judge Martin Colin knows that John J. Pankauski SHOULD not even be allowed in the court room on this, so why is Judge Martin Colin letting all this still go on?

Why is Judge Martin Colin letting a clearly conflicted John J. Pankauski of Pankauski Law Firm get to pick a possible PR in this matter? Is this Legal? I say it is not LEGAL, as far as I see it and certainly there is no law that conflicts checks, due diligence and judicial duty in estate cases is about putting NAMES IN A HAT. This is ludicrous at best.

All of these crimes CLEARLY happened in Judge Martin Colin's court, yet he does not report the crimes, seems to do nothing to bring justice to these rogue and lawless lawyers and now Judge Martin Colin is a material witness to all this, and still does nothing and refuses to remove himself from these proceedings, WHY?

#### Who PROTECTS Judge Martin Colin to act completely outside of the Law?

The above articles seems to be saying that Judge Martin Colin is connected to the mob, abuses his judicial power to favor attorneys he likes, and blatantly ignores conflicts of interest.

Its the Law that Judge Martin Colin must reclude himself if he has a conflict, yet Judge Martin Colin refuses to remove himself and also rules on this matter himself, which is not lawful I have seen this in many courts, and the superior Judge rules on this motion, NOT the Judge who the litigant is asking to be removed. This is not LAWFUL.

#### HERE is a Bit on Judicial Laws and Judicial Disqualification

"According to, Judicial Disqualification: An Analysis of Federal Law, Second Edition, Charles Gardner Geyh, Associate Dean of Research, John F. Kimberling Professor of Law, Indiana University Maurer School of Law, a Federal Judicial Center Publication;

"For centuries, impartiality has been a defining feature of the Anglo-American judge's role in the administration of justice.

The reason is clear: in a constitutional order grounded in the rule of law, it is imperative that judges make decisions according to law, unclouded by personal bias or conflicts of interest.

Accordingly, upon ascending the bench, every federal judge takes an oath to "faithfully and impartially discharge and perform all the duties" of judicial office; and the Due Process Clause of the Fourteenth Amendment to the United States Constitution has been construed to guarantee litigants the right to a "neutral and detached," or impartial, judge.

Moreover, in a democratic republic in which the legitimacy of government depends on the consent and approval of the governed, public confidence in the administration of justice is indispensable.

It is not enough that judges be impartial; the public must perceive them to be so.

The Code of Conduct for United States Judges therefore admonishes judges to "act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" and to "avoid impropriety and the appearance of impropriety in all activities"

"When the impartiality of a judge is in doubt, the appropriate remedy is to disqualify that judge from hearing further proceedings in the matter.

In Caperton v. A.T. Massey Coal Co., a case concerning disqualification of a state supreme court justice, the U.S. Supreme Court reaffirmed that litigants have a due process right to an impartial judge, and that under circumstances in which judicial bias was probable, due process required disqualification. The Court noted, however, that disqualification rules may be and often are more rigorous than the Due Process Clause requires.

So it is with disqualification requirements for federal judges, which require disqualification when a judge's impartiality "might reasonably be questioned."

#### Disqualification Under 28 U.S.C. § 455

##### A. Overview

1. The text of § 455 The primary source of disqualification law in the federal judicial system is 28 U.S.C. § 455. It provides, in its entirety, as follows:

§ 455. Disqualification of justice, judge or magistrate judge

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Alan Rose Esq.,  
Pankauski Law  
Chicago Insuranc  
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Ted Bernstein

► January (22)

► 2013 (31)

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household. 10 Judicial Disqualification: An Analysis of Federal Law

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the

securities.

(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate judge, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate judge, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

Sections (a) and (b) occupy the core of § 455 and should be read together. The two sections divide the universe of disqualification into two halves: the general, catch-all category of § 455(a), which requires disqualification from any proceeding in which a judge's "impartiality might reasonably be questioned"; and a list of more specific grounds for disqualification in § (b).

The remainder of § 455 is directed at implementing §§ (a) and (b):

- Section (c) admonishes judges to keep abreast of their financial interests to ensure that they know when to disqualify themselves under § 455(b)(4).
- Section (d) defines terms employed in §§ (a) and (b).
- Section (e) provides parties with a limited opportunity to waive disqualification otherwise required by the catch-all § (a)—typically where the judge is poised to disqualify himself or herself *sua sponte*—but does not permit the parties to waive disqualification required by the more specific provisions of § (b).
- Section (f) provides a limited opportunity for judges to avoid the need to disqualify themselves for financial interest under § (b)(4) through divestiture.

## 2. Interpretive ground rules

### a. Interpreting § 455(a) in relation to § 455(b)

As embodied in § 455, §§ (a) and (b) are conceptually separate.

Section (a) compels disqualification for the appearance of partiality, while § (b) "also" compels disqualification for bias, financial interest, and other specific grounds. In contrast, the Model Code of Judicial Conduct—after which § 455 was originally modeled—and the current Code of Conduct for United States Judges unify the two halves conceptually by characterizing the specific grounds for disqualification as a nonexclusive subset of circumstances in which a judge's impartiality might reasonably be questioned.

For the most part, this may be a distinction without a difference—disqualification is required if the specific or general provisions are triggered, regardless of whether the specific provisions are characterized as a subset of or separate from the general.

On the other hand, by conceptualizing them separately, § 455 can require disqualification under specific circumstances enumerated in § (b) that might not reasonably be characterized as calling a judge's impartiality into question under § (a). For example, § (b)(4) requires judges to disqualify themselves for financial interest "however small," which necessarily includes an interest so small that it could not reasonably call the judge's impartiality into question.

Any circumstance in which a judge's impartiality might reasonably be questioned under § (a) requires disqualification, even if the circumstance is not enumerated in § 455(b).

At the same time, when § 455(b) identifies a particular situation requiring disqualification, it will tend to control any § 455

(a) analysis with respect to that specific situation. For example, §455(b)(5) requires disqualification when one of the parties is within the third degree of relationship to the judge. Consequently, a fourth-degree relationship to a party does not by itself create an appearance of partiality requiring disqualification under § 455(a)—although disqualification under § 455(a) might still be appropriate if, for example, the judge's personal relationship with the fourth-degree relative was so close as to call the judge's impartiality into question. As the Supreme Court explained, "[s]ection 455(b)(5), which addresses the matter of relationship specifically, ends the disability at the thirddegree of relationship, and that should obviously govern for purposes of § 455(a) as well."

The 1974 amendments to § 455, however, shifted the balance by requiring disqualification whenever a judge's impartiality "might" reasonably be questioned, and the legislative history made clear that in revising the statute, Congress sought to end the "duty to sit".

6/4/2014 the Ted Bernstein Report by Investigative Blogger Crystal L. Cox Judge Martin Colin has a history of protecting the bad guys protecting attorneys that he fa...

“When Congress amended § 455(a), it made clear that judges should apply an objective standard in determining whether to disqualify. A judge contemplating disqualification under § 455(a), then, should not ask whether he or she believes he or she is capable of impartially presiding over the case.

Rather, the question is whether a judge’s impartiality might be questioned from the perspective of a reasonable person, and every circuit has adopted some version of the “reasonable person” standard to answer this question.

In the context of denying a motion for his disqualification from *Cheney v. United States District Court for the District of Columbia*, Justice Scalia noted that this reasonable person is aware “of all the surrounding facts and circumstances.” The Second Circuit has characterized the reasonable person as an “objective, disinterested observer” who is privy to full knowledge of the surrounding circumstances.”


...  
“The question has sometimes arisen as to whether the standard for disqualification differs in a bench trial where the judge’s role is even more pivotal than in a jury trial. In *Alexander v. Primerica Holdings, Inc.*, the court of appeals said: “We cannot overlook the fact that this is a non-jury case, and that [the judge] will be deciding each and every substantive issue at trial . . . . When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced”

Pursuant to 28 U.S.C. 455, and upon examination of the record, I, Personally believe that Judge Martin Colin is NOT impartial and is violating the constitutional and lawful rights of the victims in this case.”

<http://www.law.cornell.edu/uscode/text/28/455>

Judge Martin Colin SHOULD NOT, as a matter of law and the duties of his Judicial Office, be RULING on a Motion to NOT exclude HIMSELF. This is unethical, unconstitutional and sure seems to me to be illegal.

Posted by Crystal L. Cox at 8:45 AM

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Comment as: Google Account ▼

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001927

# the Ted Bernstein Report by Investigative Blogger Crystal L.

written upon information, knowledge and belief of Crystal L. Cox, Investigative Blogger

Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court	Shirley Bernstein Estate Docket	Simon Bernstein Estate D
Shirley Bernstein	Simon Bernstein	Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French
Mark Manceri	Donald Tescher	Tescher and Spallina Law Firm	Mark Manceri
Donald Tescher	Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca
			Ted Bernstein Fraud
			Petition to Freeze Estate Assets
			Estate Fraud Docket
			Insurance

Wednesday, May 14, 2014

## John Pankauski ~ John J. Pankauski - Pankauski Law Firm PLLC

WOW are you KIDDING. Undo Influence Expert? Really?

Invalid or Void.. ? Hmm.. Why is Johnny Boy Protecting Ted Bernstein to commit Estate Fraud? or is He.. Hmmm.. Undo Influence is SERIOUSLY Abundant in the Simon and Shirley Bernstein Estate's..

Read this WHOLE Blog and WOW, then will you hire this GUY?

Undue Influence | Pankauski Law Firm | Undue I...



0:00 / 1:17

Posted by Crystal L. Cox at 11:11 PM

+1 Recommend this on Google

No comments:

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Note: Only a member of this blog may post a comment.

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Comment as: Google Account

Publish

Preview



Ted Bernstein



Life Insurance Concep

Ted Bernstein, Tescher a

- Florida Estate Forge DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher a

- Florida Estate Forge DOCKET

### Blog Archive

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  - ▼ May (15)

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Does Jackson Na ALLOW People

Why can't Ted Br that his paren

The Lasalle Natic Robert Spallin:

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# Ted Bernstein Insurance Scam

Written Upon Knowledge and Belief of Crystal L. Cox

Monday, March 30, 2015

7020 Lions Head Lane Boca Raton. Real Estate Buyers have a Legal Right to have FULL DISCLOSURE. Buyer Be AWARE.

Why Does Alan Rose Want to HIDE the TRUTH from the Buyers of this Property?

Why Does Judge Martin Colin Think it is ok to HIDE the Truth From Real Estate Consumers?

It is NOT ok for a Real Estate Broker, a Seller or a JUDGE to HIDE Known Facts about a Real Estate Transaction from a Real Estate Consumer. PERIOD.

Assets seem to have been stolen long ago. The property has been left to be run down. The courts simply do nothing to protect this asset and now a buyer is to get in the middle of a mess? I have been a real estate broker, owner of my own company for 15 year and a Real Estate Advocate for Real Estate Buyers. I would not go anywhere near this property until the estate is REALLY Legally Settled. Check out the transcript below as attorney Alan Rose whines and cries to PREVENT disclosure to the Real Estate Consumer.

Judge Martin Colin has no LEGAL Reason, as a matter of LAW to withhold to a real estate buyer that the property is in litigation, this is a violation of the BUYERS Rights, and again the LAW PERIOD.

John Poletto, a real estate broker in Florida seems to have no issue with hiding know facts from buyers. The law is that latent defects, lawsuits, and anything that can harm a buye MUST be disclosed so why is the Florida Courts allowing this cover up that will cause BUYERS massive headache, stress and legal liability.

<https://drive.google.com/file/d/0Bzn2NurXrSkiVUFCVZKb1YtWnM/view?usp=sharing>

I am a Broker, a Real Estate Advocate, a Real Estate Whistleblower and I have owned my own real estate company for over 15 years. Check out the Transcript below as you see a JUDGE, and several attorneys seem to conspire to aid and abet a real estate sale and NOT disclose to BUYERS that they may spend years in litigation down the road after they have fixed up a place that Ted Bernstein let run down as a BAD PR for the property.

It is NOT ok for a JUDGE to want to hide this litigation from BUYERS. It is not lawful nor morally ethically for Judge Martin Colin to NOT want BUYERS to know when this affects their VERY life, the life of their children and their quality of life in EVERY WAY.

SHAME SHAME on this JUDGE.

Really, Look Below, this document clearly shows this JUDGE ranting about YOU, the Real Estate Consumer NOT having a right to know what the Real Estate Seller and the Real Estate Broker KNOW and by law have to disclose. WOW.

THURSDAY, MARCH 26, 2015  
 Thursday, March 26, 2015  
 South County Courthouse  
 Courtroom 8  
 Delray Beach, Florida 33444  
 1:03 p.m. - 2:10 p.m.

Stenographically Reported By:  
 April Y. Segui, RPR, FPR  
 Registered Professional Reporter  
 Florida Professional Reporter

WWW.USLEGALSUPPORT.COM  
 561-835-0220

---

2

1 APPEARANCES:  
 2 On behalf of the Plaintiff:



E-mail: [Arose@mrachek-law.com](mailto:Arose@mrachek-law.com) 6  
ALAN B. ROSE, ESQUIRE

#### Other Research Links


<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121002%20PETITION%20FOR%20ADMINISTRATION%20SIMON.pdf>

<http://tedbernsteinreport.blogspot.com>

Read the Entire Blog, Go to the bottom of the page and click older posts OR use search in upper left to search the Blog for what you want.

If you need information to protect you as a Real Estate Buyer of 7020 Lions Head Lane Boca Raton, email me at [SavvyBroker@yahoo.com](mailto:SavvyBroker@yahoo.com)

Posted by Crystal L. Cox at 5:20 PM No comments:

 Recommend this on Google

Saturday, January 4, 2014

## Ted Bernstein of Life Insurance Concepts, Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher and Florida Notary Kimberly Moran Florida Insurance Scam and Estate Fraud, Forgery Case, overseeing Judge is Judge Martin H. Colin.

### "Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm involved in Forgery and Estate Fraud

Kimberly Moran Florida Notary Public, Tescher and Spallina Law Firm ( Robert Spallina and Donald Tescher ), Ted Bernstein of Life Insurance Concepts and the Bernstein Family Foundation are involved in Estate Fraud, Insurance Schemes, Fraud on the Courts, Forgery, Possible Murder and other illegal and unethical behavior. The Judge in the Case is Judge Martin H. Colin.

Kimberly Moran Florida Notary Public of Tescher and Spallina Law Firm, Robert Spallina, Donald Tescher, Ted Bernstein of Life Insurance Concepts sure seems to have a lot of explaining to do, check out the forgery, fraud on the courts, flat out lies and for some reason none of these folks are in jail. The Judge in the Case is Judge Martin H. Colin, we will be watching to see if he follows through with those Miranda Rights and to see if Kimberly Moran, who is already confirmed to have committed forgery, sees any jail time and how this Notary at a law firm got such a high priced criminal attorney?

Take a look at the details of this Florida Estate Fraud, Forgery, Real Estate Fraud, Child Endangerment, Fraud on the Courts and Possible Murder Case is playing out.

Kimberly Moran, Florida Notary Public involved in Fraud, Forgery, Estate Fraud ..  
Motion to Freeze Assets in Shirley Bernstein Estate

<https://docs.google.com/file/d/0Bzn2NurXrSkia3dyOGs4MnowODg/edit>



ARREST has been made in the Estate of Shirley for FRAUDULENT NOTARIZATIONS and admitted FORGERIES of five documents in our names and one in our father's name, which was FORGED POST MORTEM for him by Donald and Roberts Legal Assistant and Notary Public, Kimberly Moran.

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Kimberly Moran State of Florida Notary Suspension

[http://www.flgov.com/wp-content/uploads/orders/2013/13\\_291\\_moran.pdf](http://www.flgov.com/wp-content/uploads/orders/2013/13_291_moran.pdf)

Court Petition Naming Kimberly Moran, Florida Notary Public <http://www.docstoc.com/docs/160162877/Ted-Bernstein-Petition>

RESPONSE TO TED and DONALD LETTERS RE EMERGENCY DISTRIBUTIONS FOR THREE MINOR CHILDREN AND MORE

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Additional Respondents Added

001930

<https://docs.google.com/file/d/0Bzn2NurXrSkicnFEtI5Zktlc00/edit>

**More information on this Estate Fraud, Forgery, Fraud on the Courts Case**

<http://tedbernsteinreport.blogspot.com/>

<http://tedbernsteinreport.blogspot.com/2013/12/does-ted-bernstein-not-understand-truth.html>

Insurance Schemes and Fraud on the Court, Ted Bernstein

[http://www.docstoc.com/docs/document-preview.aspx?doc\\_id=165105099&key=undefined&pass=undefined](http://www.docstoc.com/docs/document-preview.aspx?doc_id=165105099&key=undefined&pass=undefined)

**"NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"**

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the Iviewit Companies, the Iviewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

Source and Full Document

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

Hearing Transcript where Judge Martin H. Colin clearly knows of fraud on the courts, and has yet to actually follow through with the threatened reading of the Miranda rights.

<https://docs.google.com/file/d/0Bzn2NurXrSkia3NzaDd1NG45aUk/edit>

Lawsuit filed against Ted Bernstein

<https://docs.google.com/file/d/0Bzn2NurXrSkiWnBNVUtJUEFJRms/edit>

<http://tedbernsteinreport.blogspot.com/2013/08/ted-bernstein-life-insurance-concepts.html> "

Source of Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, Florida Notary Kimbe Moran and Judge Martin H. Colin post.

<http://ireport.cnn.com/docs/DOC-1072355>



Donald Tescher on the Far Right

Check out the Documents in this Florida Estate Case. The overseeing judge is Judge Martin H. Colin who "almost" read the attorneys their Miranda Rights. We have forgery, fraud, dead people signing documents, possible murder, sibling rivalry and all the makings of a Law and Order mini series. Read these document, and decide for yourself who is committir fraud, who is lying, who is telling the truth, who is abiding the law and take a deep look as to whether you want to buy insurance from Ted Bernstein of Life Insurance Concepts, or your Estate "Handled" by what sure looks to me to be crooks who will do as they please after you die, regardless of your wishes.



Donald Tescher in the Middle

More Robert Spallina and Donald Tescher, Tescher and Spallina Law Firm, Ted Bernstein of Life Insurance Concepts, Greg Geffen Attorney Signature Title, and Florida Notary Kimbe Moran seem to be involved in a massive Florida Insurance Scam and Estate Fraud Case, overseeing judge is Judge Martin H. Colin. research links

<http://tedbernsteinreport.blogspot.com/2013/12/response-to-ted-and-donald-letters-re.html>

Petition to Freeze Bernstein Assets

<https://drive.google.com/file/d/0Bzn2NurXrSkiTzBGbkd5TXI4MEU/edit?usp=sharing>

Motion to Remove Personal Representative

<https://drive.google.com/file/d/0Bzn2NurXrSkiNFdEOWo3ZnhHMEU/edit?usp=sharing>

Response to Florida Governor in Kimberly Moran Notary Fraud, Forgery Case

<https://drive.google.com/file/d/0Bzn2NurXrSkiOVFPR0I0YIUQUFU/edit?usp=sharing>

Forgery, Fraud on the Courts, Sanctions

<https://drive.google.com/file/d/0Bzn2NurXrSkiRDZGYjVlVnVoQm8/edit?usp=sharing>

Kimberly Moran Notary Fraud, Forgery Case. Kimberly Moran of Tescher and Spallina Law Firm response on Notary Fraud whereby she forged the signature of a deceased man to enr her bosses Robert Spallina and Donald Tescher and DENY the true, moral and legal wishes of those whose Estate Robert Spallina and Donald Tescher were handling the affairs and as of.

<https://drive.google.com/file/d/0Bzn2NurXrSkiTmd6Q2VnRVpDdWM/edit?usp=sharing>

Notary Public Comparison of Signatures and Dates, Evidence in Kimberly Moran Notary of Tescher and Spallina Law Firm Fraud, Forgery Case

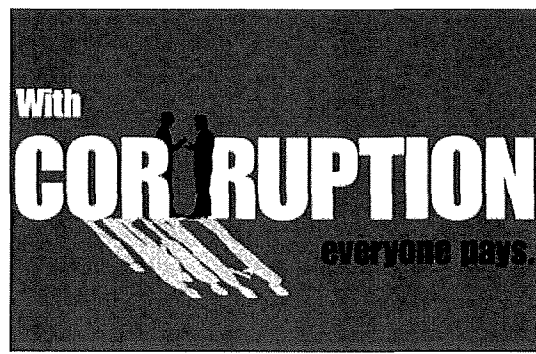
<https://drive.google.com/file/d/0Bzn2NurXrSkiU2FsT0hfVEhocWM/edit?usp=sharing>

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS, ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA, (BOTH PERSONALLY & PROFESSIONALLY); DONALD R. TESCHI (BOTH PERSONALLY & PROFESSIONALLY); THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH PERSONAL & PROFESSIONALLY); Emergency Hearing Judge Martin Colin Court.

<https://drive.google.com/file/d/0Bzn2NurXrSki3TZWNeczNxaE0/edit?usp=sharing>

Jackson Response to Bernstein Trust Requests

<https://drive.google.com/file/d/0Bzn2NurXrSkiWlpdmNoQ21YcmM/edit?usp=sharing>




In March of 2012 Donald Tescher was awarded by the " MITZVAH SOCIETY" for allegedly being a "CARING ESTATE PLANNING PROFESSIONALS".

Yet it is clear from the court documents above, that Donald Tescher and TESCHER & SPALLINA, P.A will do as they please after you die, regardless of what your TRUE wishes are and regardless of how much you pay him, or to what lengths, efforts and legal means you go to prepare your ESTATE to be handled per your wishes.

001932

And it sure seems that the JUDGES in Florida will assist Tescher and Spallina, even if they are involved in clear fraud, forgery and acting outside of the law and the wishes their clients estate plans.

Posted by Crystal L. Cox at 7:46 PM No comments:

 Recommend this on Google


Friday, September 27, 2013

## For More Information On Ted Bernstein Being Sued, and More Court Filings Against Ted Bernstein..

Check out the Ted Bernstein Report by Investigative Blogger Crystal L. Cox

<http://tedbernsteinreport.blogspot.com>

Posted by Crystal L. Cox at 4:27 PM No comments:

 Recommend this on Google

Tuesday, July 30, 2013

## Sheri Goldman; Investigative Blogger Crystal Cox Alleges that Ted Bernstein, the man in the news video w the person financing Sheri Goldman to be a building where no other medical professionals were.

Investigative Blogger Crystal Cox Alleges that Ted Bernstein is behind the Botox scheme, used her services and KNEW full well that she was not a nurse. Investigative Blogger Cryst: Cox Alleges that Ted Bernstein this is in connection with other insurance and high finance scams in which Ted Bernstein of Boca Raton Florida may be involved int.

"Boca woman arrested after police say she offered botox, told people she was a nurse

"BOCA RATON, Fla. - The Florida Department of Health's Investigative Services Unit- West Palm Beach, announced that their joint investigation with the City of Boca Raton Police Department and the Florida Department of Corrections has led to the arrest of Sheri Goldman for the unlicensed practice of a health care profession, which is a third degree felony punishable by up to five years in jail.

Goldman was also arrested for violation of probation based on a previous arrest for unlicensed activity in Palm Beach County.

The joint operation was conducted after the City of Boca Raton Police Department received an anonymous complaint that Sheri Goldman was offering Botox injections and claiming be a nurse.

Authorities say Goldman is not licensed to perform any health care profession within the state of Florida.

After a joint undercover operation with the listed agencies at Goldman's place of business, Beauty & Balance, she claimed to be an "OR nurse." In addition, a search of the website [www.groupon.com](http://www.groupon.com) revealed she was posing as a "surgical nurse" according to investigators.

DOH has several resources to combat unlicensed activity: Consumers are encouraged to use DOH's Web site [www.flhealthsource.com](http://www.flhealthsource.com) where they can view the license information o their health care practitioner.

Source of Post and Full Article [http://www.wptv.com/dpp/news/region\\_s\\_palm\\_beach\\_county/boca\\_raton/boca-woman-arrested-after-police-say-she-offered-botox-and-told-people-she-was-a-nurse#ixzz2aZYFulYt](http://www.wptv.com/dpp/news/region_s_palm_beach_county/boca_raton/boca-woman-arrested-after-police-say-she-offered-botox-and-told-people-she-was-a-nurse#ixzz2aZYFulYt)

**Research More Regarding the Unethical, possibly ILLEGAL actions of Boca Raton Florida's Life Insurance Concepts owned by Ted Bernstein.**

MOTION TO REMOVE PERSONAL REPRESENTATIVES

<https://docs.google.com/file/d/0Bzn2NurXrSkiT0t8ZGhKemNzc1E/edit>


### "NOTICE OF MOTION TO RE-OPEN BASED ON FRAUD ON THE COURT"

"That Case No. 502012CA013933XXXX, Stansbury v. Ted Bernstein et al. is a lawsuit with a claim against the estate, where RICO Defendant Greenberg Traurig acts as counsel to Plaintiff's brother Theodore. However, after Plaintiff points out to his brother and Spallina that Greenberg Traurig is conflicted with assets of the estates, including but not limited to the approximate 30% interests held in the Iviewit Companies, the Iviewit Intellectual Properties and this RICO lawsuit, Greenberg Traurig suddenly withdraws as counsel in the matter, months after the lawsuit was instituted"

Source and Full Document

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstron%20of%20Justice165555%20WITH%20EXHIBITS.pdf>

Posted by CrystalCox at 4:08 PM No comments:

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7020 Lions Head Lane Boca Raton. Real Estate Buyer...

► 2014 (1)

► 2013 (2)

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# 7020 Lions Head Lane Boca Raton Florida - Buyer Do your Diligence

Written by Real Estate Whistleblower and Real Estate Consumer Advocate, Investigative Blogger Crystal Cox.

Monday, April 20, 2015

## Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company; Insurance Fraud, Forged Documents, Murder Allegations, No Policy and Millions Paid.

**Note:** All Cases on this property INVOLVE property located at 7020 Lions Head Lane Boca Ratonl, Florida, 2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432, and **880 Berkley St. Boca Raton**. These properties are tied up in multi-millions in litigation and they don't want potential buyers to know. Do your homework folks. As a, what seems to be corrupt, lawless or just ignorant Florida Probate Judge is ordering that you, the REAL Estate Buyer NOT be told (DISCLOSED) as to what will inevitably affect your life.

The **Ocean Blvd property was SOLD**, I believe through a fraudulent residential loan. As it is clearly and investment property and the buyer does not even live in the country. I believe the buyer is friends with Ted Bernstein or associates, and is connected to the lender and others acting in Civil Conspiracy regarding buying this property with little mney down, a low interest residential loan out of Illinois and then profiting tax free acting as if it's a primary resident instead of an investment property.



Meanwhile in **Judge Colin's Court in Palm County Florida** there is massive crimes and cover up and Judge Martin Colin seems to want to sweep it all under the rug and get it out of the Illinois courts where Justice may be served.

Judge Martin Colin seems to be involved in a Probate Attorney Protection racket, and the victims are children and other innocent citizens. Meanwhile years go by and properties are run down, stolen, sold. .. money disappears, jewelry gone, and so much admitted fraud and forgery AND Judge Martin Colin DOES nothing.

Ted Bernstein pays for an attorney with Estate money and seems to pay for his own life, while other heirs have no attorney, no rights and some are minors. Judge Martin Colin has clearly broken the law and violated constitutional rights and seems to believe he is so connected (probably to Labarga and others from his Prosecutor job) that he will never face prison or any kind of justice. I say he is wrong and that one day someone will bring Judge Martin Colin to Justice.

Here is the Illinois Docket

<http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.docket.html>

Answer to Complaint

<http://ia601902.us.archive.org/6/items/gov.uscourts.ilnd.283534/gov.uscourts.ilnd.283534.17.0.pdf>

**Heritage Union Life Insurance Company, Jackson National** will pay YOU millions and all you have to do is say oh ya my dad had a police for 2 million and the pay with NO Policy, simply to get out of a litigation. WOW?? oh and there is murder allegations and a Heavy Metal Toxin autopsy report. So I guess one can commit murder, then say hey Heritage Union Life Insurance Company, Jackson Life Insurance, I had a policy on that guy, now pay me 2 million and they say ok. Sounds LEGIT.

WOW ... Folks.. WTF comes to mind.

### More on the Illinois case

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131104%20Ted%20Pam%20Lisa%20Jill%20Answer%20to%20Complaint%20Jackson%20Heritage%20Northern%20District%20Illinois%20Simon%20v%20Heritage%20Jackson%20Insurance.pdf>

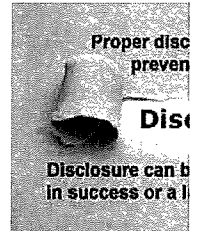
<http://www.iviewit.tv/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20LOW.pdf>

<http://tedbernsteinreport.blogspot.com/search?q=District+of+Illinois>

Why does Judge Martin Colin Protect Tescher and Spallina in CLEAR and Blatant Insurance Fraud, Forgery, and cover ups. And allow them ALL to keep creating victims? There is no policy? Yet millions was paid?? Why is Spallina not investigated by Heritage Life, Jackson National or the the LAW in any Way?

001935

Disclose



DISCLOSURE is LAW



Attorney Robert Spallina, protected by Judge Martin Colin ( in my opinion) tried to collect 2 million in life insurance. The alleged policy holder with NO POLICY, looks to have been murdered. So why is Jackson National Insurance Company NOT investigating this matter?

Here is the Letter Robert Spallina, Florida Probate attorney sent to try and collect the millions.

"Dear Sir or Madam: Enclosed is the Claimant's Statement for the above referenced policy. together with an original Death Certificate for the insured, Simon Bernstein, .

We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust June 1. 1995, which is the trust listed as beneficiary of the above referenced policy.

We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post.

We are unable to locate a copy of the original insurance policy.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely

ROBERT L SPALLINA"

Heritage Claim Form, Spallina Alleged Fraud

<https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWaDF6SEU/edit>

## District of Illinois Federal Case regarding insurance of deceased owner of 7020 Lions Head Lane

Folks do you want to put time, money, blood sweat and tears into making a family home, only to have it taken back by the true heirs once there real is clear and legal title in a way that a dead guy does not sign trust documents.

Buy at your own Risk. Below is a Link to more on the Illinois Case involving this Property ( the Simon Bernstein Estate)

<http://tedbernsteinreport.blogspot.com/2015/04/illinois-master.html>



Regency Title dba US Title of Florida and Old Republic National Title Insurance Company seems to be involved in Florida Real Estate probate fraud. As we see that the Shirley Bernstein estate condo was SOLD and they guaranteed a clear title through Greg Gefen Florida attorney who seems to have several title companies. Regency Title dba US Title of Florida and Old Republic National Title Insurance Company is liable for the millions in property that they allowed the wrong owner to sell.

<http://judgemartincolin.blogspot.ie/2015/04/gregory-s-gefen-john-poletto-judge.html>

## Simon Bernstein Estate Case; Florida Probate Court; Judge Martin Colin; 7020 Lions Head Lane

Click Below for Linked Docket of Simon Bernstein Estate Case

<https://docs.google.com/file/d/0Bzn2NurXrSkIS0NMblNaNUk2MXc/edit>

## 7020 Lions Head Lane Boca Raton; Judge Martin Colin has BANNED Real Estate Disclosure.

Judge Martin Colin has banned Eliot Bernstein from DISCLOSING to Real Estate Buyers, as a matter of law, that 7020 Lions Head Lane, Boca Raton Florida is involved in several multi-million dollar legal actions.

When the buyers find out in the future and sue, Eliot Bernstein or his children will be financially liable, he is abiding by the law and blocked by Judge



Martin Colin.

Click the Link Below for More

<http://tedbernsteinreport.blogspot.com/2015/04/florida-lis-pendens-7020-lions-head.html>

## **Shirley Bernstein Estate Probate Case connected to the Simon Bernstein Estate Case, both will affect what happens to 7020 Lions Head Lane. Don't Believe Me, do your DUE Diligence, Trust NO One. This is YOUR LIFE.**

Click Below for More on the Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin (ya know the JUDGE who is order NON-Disclosure)

<http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html>

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### **Motion to Remove Ted Bernstein as PR**

<https://docs.google.com/file/d/0Bzn2NurXSkINFdEOWo3ZnhHMEU/edit>

<https://docs.google.com/file/d/0Bzn2NurXSkIT0tBZGhKemNzc1E/edit>

### **Florida Probate Attorney Donald Tescher (Protected by Judge Martin Colin), Excerpt from deposition testimony.**

<https://docs.google.com/file/d/0Bzn2NurXSkINDFNWi1sTHBPVzA/edit>

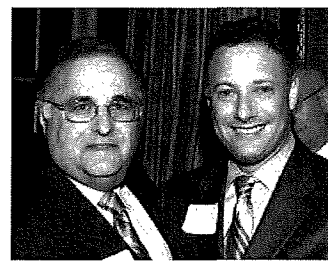
## **The Lasalle National Trust and C/O Robert Spallina Mystery**

"Bates #JCK001262, is a letter regarding the filing of a claim dated October 09, 2012, sent from HERITAGE to SPALLINA with SPALLINA addressed as "LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW" address "4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431" and the Letter starts "Dear Trustee."

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20TRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf>

"LaSalle National Trust, N.A." seems to basically be a national holding company, via big title companies and banks and simply a way to convey property, assets, holdings and real estate. Thing is what instrument gave Spallina the right to be the Trustee in the Simon Bernstein estate in this regard?

What was Robert Spallina really up to, using this huge company name and having documents sent to him directly? Or wanting to collect on the Heritage Union Life Insurance Company / Jackson National Life Insurance Company Policy, or lack of policy?



Seems to me that "LaSalle National Trust, N.A.", the real one, has a major claim against Tescher and Spallina unless Robert Spallina was acting with their authority???

"SPALLINA acting as both the TRUSTEE of "LaSalle National Trust, N.A." and as Trustee of the Lost or Suppressed Trust, HERITAGE would have to legally pay him as either the Primary or the Contingent Beneficiary in his fraudulent Legal and Fiduciary roles. "

Page 13

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140112%20FINAL%20SIGNED%20PRINTED%20MOTION%20TO%20TRIKE%20AMENDED%20COMPLAINT%20ECFCOPY.pdf>

To document search the above page, click on Control F, then type in Lasalle, to read all the places it is mentioned in the above document.

Eliot Bernstein Disclosure; Heritage Union Life Insurance; Jackson National Life Insurance

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20131022%20Rule%2026%20Disclosure%20Eliot%20Jackson%20National%20Lawsuit.pdf>

Chicago Title Land Trust Company is successor trustee to the listed bank land trustees, as seen here,

<http://www.ctlandtrust.com/#!successorships-h-l/ctsk>

If Robert Spallina claimed to speak for LaSalle National Trust then is this connect to Chicago Title Company, and perhaps real estate shady dealings involving Greg Geffen in Florida? Hmmmm....

Chicago Title is a pretty big deal in Title Insurance. I have owned my own real estate company for 14 years, and well um.. how is Spallina trying to pull off that he is successor trustee or whatever mumbo jumbo he was trying to pull off?

Did Robert Spallina real say he was speaking for Lasalle? really? Employee fund, real estate, SEC, how in the world is Spallina speaking for Lasalle? call me Confused.

#### More Research

<http://tedbernsteinreport.blogspot.com/2014/02/why-is-heritage-union-life-insurance.html>

<http://tedbernsteininsurancescam.blogspot.com/2014/01/ted-bernstein-of-life-insurance.html>

<http://www.docstoc.com/docs/160196536/Ted-Bernstein-Life-Insurance-Concepts-Boca-Raton>

<http://tedbernsteinreport.blogspot.com/2014/02/wow-fraud-sure-seems-to-be-piling-up-is.html>

<http://tedbernsteinreport.blogspot.com/2014/01/robert-spallina-consent-and-joinder-to.html>

[http://robertspallina.blogspot.com/2014/02/is-adam-simon-liar-liar-pants-on-fire\\_6.html](http://robertspallina.blogspot.com/2014/02/is-adam-simon-liar-liar-pants-on-fire_6.html)

Sheriff Report, Spallina

<https://docs.google.com/file/d/0Bzn2NurXrSkITThFWTg4S2plamM/edit>

Palm Beach County Sheriff Office Supplemental Report

<https://docs.google.com/file/d/0Bzn2NurXrSkINHFZMmhJWjzdk0/edit>

Heritage Claim Form, Spallina Fraud

<https://docs.google.com/file/d/0Bzn2NurXrSkia0RmS3lWADF6SEU/edit>

Fraud on the Courts, Tescher Spallina and Ted Bernstein

<https://docs.google.com/file/d/0Bzn2NurXrSkIRDZGYjVnVoQm8/edit>

## **Judge Martin Collin DENIAL Of Emergency Petition to Freeze ASSETS; Now the assets are stolen,sold cheap or just gone.**

Judge Martin Collin SHOULD have froze assets until there was clear title, he did NOT.

Here is the DENIAL TO Freeze assets

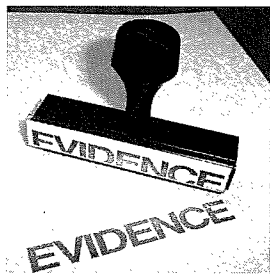
<https://docs.google.com/file/d/0Bzn2NurXrSkIN0RIUWEzM2RWNVU/edit>

One of those assests is 7020 Lions Head Lane Boca Raton

Judge Martin Collin never did Freeze assets and it's been near 2 years now. So the assets have illegally been sold off, stole, moved, damaged and ALL because Florida Probate Judge, Judge Martin Collin is protecting Elite Florida Probate attorneys.

Here is the Petition to Freeze Assets

<https://docs.google.com/file/d/0Bzn2NurXrSkITzBGbkdSTX4MEU/edit>



**2494 S Ocean Blvd, Apt C5, Boca Raton, FL 33432**

More on Litigation involving the above property.

"SPALLINA STATED THAT TED BERNSTEIN IS THE TRUSTEE FOR SHIRLEY' S TRUST .

HE SAID THAT A CONDO THAT "WAS SOLD FOR \$1, 400, 000 AND THAT MONEY  
WENT INTO THE TRUST. "

And lot's more on the supplemental Sheriff's Report Below

<https://docs.google.com/file/d/0Bzn2NurXrSkiNHFZMmhJWjJzdk0/edit>

**Buyer:** Wesley G. Voorheis  
333 Bay Street #910  
Toronto Ontario, M5h 2R2 Canada

**Mortgage**  
<https://docs.google.com/file/d/0Bzn2NurXrSkiQjImSmRoNXJBdHc/edit>

**Closer:** Steve Paraggua  
Rolling Meadows Illinois

BMO Harris Bank N.A.  
Rolling Meadows Illinois

Florida Single Family Fannie Mae / Freddie Mac instrument  
Lenders Address is Scottsdale, Arizona

Ok so we have a mortgage broker, banker out of Illinois, a lender out of Arizona, a property in Florida and a buyer in Ontario Canada. And we have a single family residential loan?? REALLY ??

I, Real Estate Expert and advocate Crystal L. Cox say that there is mortgage fraud involved in the sale of the above property, as well as no clear titles, SOLD by someone who had no legal right to sell, has title insurance fraud, RESPA violations and much more.

It says second home, so maybe its legit. But hmm now it's a million more? I say that Broker John Poletto and Ted Bernstein are in on a million dollar scam with the lender and the buyer to dupe the real and true, legal heirs.

What if a buyer knew that they were buying a property from someone who did not have the legal right to sell, and they got a loan like this? Hmm.. all kinds of trouble I'd say.

I know Florida law is different, however, I have never seen a title agent sign on a loan document such as this. Did Title Agent, Florida Attorney Greg Gefen get kickback from this mortgage? On the title insurance? Did Ted Bernstein? Hmm..

**Shirley Bernstein Estate Case, Florida Probate Case in the Court of Judge Martin Colin**  
<http://tedbernsteinreport.blogspot.com/2015/04/shirley-bernstein-estate-case-master.html>



[To research more on the Eliot Bernstein, iViewit RICO](#)

<https://www.facebook.com/iviewit/posts/133089426862083>

<http://federalricolawsuit.blogspot.com/2010/01/judiciary-committee-reviews-iviewit.html>

**001939**

iViewit RICO Crime Chart  
<http://iviewit.tv/CompanyDocs/RICO%20CRIME%20CHARTS.pdf>

<http://iviewit.tv/wordpress/>

<http://www.iviewit.tv/>

Full RICO Filing  
<http://investigativeblogger.blogspot.com/2014/03/district-of-nevada-rico-and.html>


iViewit Supreme Court Case  
<http://www.iviewit.tv/supreme%20court/index.htm>

iViewit SEC Complaint  
<http://iviewit.tv/wordpress/?p=288>

iViewit Motion to ReHear

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20130512%20FINAL%20Motion%20to%20Rehear%20and%20Reopen%20Obstruction%20of%20Justice16555%20WIT%20EXHIBITS.pdf>

Posted by Crystal L. Cox at 11:19 AM No comments:

 Recommend this on Google

Friday, April 17, 2015

## **Gregory S. Gefen, John Poletto, Judge Martin Colin, Ted Bernstein and more seem to be involved in massive real estate fraud, forgery and cover up.**

" **Real Estate Forensics Report / Fraud Analysis:** Shirley Bernstein Condo Sale

**Real Estate Warranty Deed Transaction Date:** April 18th 2013

**Prepared by:** Gregory S. Gefen, PA

File Number U13-412

**Recorded:** 05/06/2013

Palm Beach County, Florida

AMT 1,600,000

Doc Stamp 11,200

Pages 1029 - 1031;

The Following report is my Professional Opinion and advice based on 13 years as a Real Estate Broker Owner, and Currently owning a Real Estate Consulting and Real Estate Forensics Firm. This report is written upon the knowledge and information of Crystal L. Cox, Broker.

### **Notes on Trustee Affidavit**

Regarding Warranty Deed prepared by Gregory S. Geffen, PA, File Number: U13-412

This recorded document now seems to be the only recorded documents regarding Ted Bernstein having Seller or Grantor rights in this matter. Before this closing, there appears to be no legal record, as a matter of law in which proves Ted Bernstein of having legal rights to sell subject property.

It appears to me that this real estate transaction is fraudulent, and that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have a liability to the buyer in this transaction and to the true and correct heirs of the Shirley Bernstein Estate.

I would tell the Title Company to show you the legal documentation they have that gave them the legal right to allow Ted Bernstein to sell this Condo, to sign as the Seller, Grantor of said Property?

**It is my understanding that the Shirley Bernstein Trust Agreement does not state that Ted Bernstein is the executor.** Or at least I see no proof provided in the closing documents in which the title company filed in the closing of this 1.6 Million dollar sale, that would give Ted Bernstein a legal right to be the "Grantor" of said property.

**What documentation did the title company have that gave them the legal right to let Ted Bernstein sell this real estate?** What documentation did the title company have that justified providing a title insurance policy on a 1.6 Million dollar real estate sale, that insured to the buyer, that Ted Bernstein was the legal Grantor / Seller in this sale?

**Ted Bernstein swore that the trust had not been revoked or terminated And that the the vesting Deed was**

**001940**

**recorded that provides the trustee with the full power of sale and that the subject transaction will not violate the trust.** Yet there is no court documents, no judicial ruling that provides legal proof that Ted Bernstein is the person that gets to speak on behalf of the Shirley Bernstein estate.

There seems to have been no probate nor judicial order appointing Ted Bernstein as executor, successor of the Shirley Bernstein estate. So why would this title company guarantee title with no legal documents proving such and allow a \$1.6 million dollar real estate transaction and provide title policy on said property?

As a real estate broker, I would not let Ted Bernstein sign a listing on this property, as there is no documentation that he has Sellers rights and this would be a violation of law.

**Ted Bernstein Had no legal right to act as Seller in this deed transfer.** This title company provided title insurance in this matter and is liable to the Shirley Bernstein estate, as well as no liable to the buyer in this matter and the cost of this property being deed back to the rightful owner, as far as I see this case.

**This seems to be a matter of property theft.** All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company **guaranteed clear title in this real estate transaction via title insurance policy**, and I would demand to see the settlement statement and all related documents, especially any document that was used as legal proof that Ted Bernstein was the SELLER, legally in this transaction. I do not see such a legal document in the recorded documentations for the sale of the subject property.

Ted Bernstein, under penalty and perjury swore the document to be true. The fact is that is simply a "pinky swear", that is one man swearing that he owns a 1.6 million dollar property. There is no court document, no estate documents and no proof, of any kind that Ted Bernstein in fact has a legal right to convey title to this property, as far as I can see.

The Notary ONLY verified that it was indeed Ted Bernstein and that he showed proper ID, a Notary is not a lawyer, nor a court clerk. The title company needs to prove via a court recorded document that Ted Bernstein had a legal right to sell said property.

This is the reason to use a title company to close a LEGAL real estate transaction. The title company insures the title, researches recorded documents and PROVES who has rights to convey property.

Anyone can sign any document and swear that what the document says is true. The Notary swears that it is that person and not that the person is telling the truth, or has a legal document of FACT. Nor does the notary provide any kind of legal recorded proof that this person is entitled to swear to this information as a matter of law. A Notary simply verifies the identity of the person who signs the document.

All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company sold an insurance policy with this real estate transaction insuring that the title was clear to sell to said buyer, when in fact Ted Bernstein did not have a legal right to sell this property, as far as the documentation provide shows.

Ted Bernstein is NOT the true and correct, proper "Grantor" named in the warranty documents.

Ted Bernstein could have just as easily signed an affidavit swearing that he was the seller of the White House, and a Notary would have verified the document, only to the extent that it was indeed a man named Ted Bernstein, whom had the proper identification to prove his identity. And this has NOTHING to do with proof of title rights.

A signed affidavit from someone claiming rights to sell the White House, as in this example, would not give the person the legal right to do so, nor does it in the case of this real estate transaction.

**This is a fraudulent real estate transaction, in my expert opinion.** The question then becomes did the title company get kick back on this deal? Was the title company promised future deals with these powerful men Ted Bernstein and **George Wesley Thomas Voorheis**?

It is a title companies job, BEFORE issuing a title insurance policy, to make sure that the title is clear and is able to be Sold. Said property seems to be in major legal dispute and is part of an estate in litigation, of which Ted Bernstein is NOT the Trustee, as appointed by a court of law.

This title company took a man's word that he owned a 1.6 Million dollar property, and let said man sell this property, without legal ownership. Upon my knowledge and belief, this title company has massive liability over this issue.

**Notes on the Shirley Bernstein Trust Agreement pages provided in  
the closing documents of said property.**

This document has no clear sign of being true and correct. As a real estate Broker, I would not take this as proof that Ted Bernstein had a right to be a SELLER aKa Grantor of this property.

This is simply a document that may or may not have been actually signed by Shirley Bernstein. The correct and lawful procedure in these matters, in my expert opinion is the subject property to have gone through probate, and have a court appointed executor or trustee of the estate.

The legal process is not simply for someone who wants to be an heir to swear they are and then a Title Company allows

this person to sell millions of dollars of real estate they CLEARLY have no proof of owning.

In order for me to prove title and allow a person to act as Seller, I would have to see the probate documents, and the court rulings that granted Ted Bernstein the power to be the executor of the estate, have legal rights to the deed, and execute the sale of the subject property.

There seems to be no court document that gives Ted Bernstein the LEGAL right to sell subject property, there is only a man saying he has the right and a title company issuing title insurance on a multi-million dollar property insuring the title on said property.

In my experience, professional title companies go to the courthouse records for proof of liens, judgements, deed rights, estate issues and they do NOT simply take a sworn statement from a man who swears he is the legal Seller and give this man the absolute rights to millions of dollars of property of which he clearly has no probate, court stamped, judicial documents to prove this is true.

#### **Notes on the warranty deed dated the 18th day of April, 2013**

This appears to be fraudulent as there is no court document in which appoints Ted Bernstein as Successor of the Shirley Bernstein Trust. There does not seem to be any LEGAL documents that prove that Ted Bernstein has rights to the subject property as Successor, Executor, Trustee, Seller or Grantor.

Here we see a **Ted Bernstein who himself claims to be a "Successor Trustee", acting as Grantor selling subject property to Grantee G. Wesley Veorheis, a Canadian Resident, and there seems to be something amiss in this transaction.**

There appears to be fraud in this transaction and I advise the true and correct heirs of the Shirley Bernstein estate to file legal action against All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, against the Corporate Company and the individuals involved in the sale, who may have been involved in kickback schemes or other anti-trust and civil conspiracy violations in this real estate transaction.

From what I can determine, and in my expert opinion, **Ted Bernstein is not the legal "Grantor"** and therefore has no legal right to convey title to said property.

**All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company have no legal right to have provide an insurance policy that guaranteed this title.**

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally prove that All Regency Title dba US Title of Florida had a LEGAL right to allow Ted Bernstein to act as Grantor or Seller of Subject Property.

I see no proof, whatsoever that Ted Bernstein is the rightful Grantor, and therefore this transactions appears to be fraudulent.

Just because there is a Notary and witnesses who signed the Warranty Deed, does not in any way legally give this title company right to provide title insurance through their title insurance provider Old Republic National Title Insurance Company, with corporate offices in Minneapolis, MN.

Again, a Notary stamp is not a COURT STAMP, nor a Judicial Ruling.

#### **Regarding the "Certificate of Approval"**

This document appears to be directly from the Condo Association. I have not read the bylaws of the Aragon Condominium Association, however, in my professional opinion, there may be some fraud between **Ted Bernstein and the Aragon Condominium Association president James McGee.**

The association in most cases can approve membership, and may be able to exclude certain people, however the association seems to be providing certification to further DUPE the title company, by claiming they have the power to **give Ted Bernstein approval to convey title for Wesley George T. Voorheis to acquire.**

Did the association have court documents that proved that Ted Bernstein had a right to convey title? If not then it is my opinion that the Aragon Condominium Association and that James McGee personally are also liable for what looks to be a real estate heist to me.

#### **Regarding Non Identity Affidavit**

This documented is suspected to be a fraudulent tax document. As Ted Bernstein has no proof that he is the court appointed Trustee in this matter and has no legal right to certify that he owes no estate tax in this matter.

Ted Bernstein may be committing fraud against the U.S. government in possibly illegally conveying title to a property he has no legal right to and at the same time claiming **himself tax exempt for this millions of dollars in alleged inheritance.**

I recommend that the true and correct heirs notify the Florida and U.S. Tax Authorities on this issue. As there may be a

great deal of estate tax due on this matter, and Ted Bernstein has no legal proof that he can speak on behalf of the Shirley Bernstein estate.

Based on my experience it is a standard of practice in real estate regarding estate issues, for the property to go through probate, have a court appointed trustee and proceed through the courts and **NOT through a sworn affidavit by a dreamy eyed family member wishing to receive millions of tax free dollars.**

If any potential heir or for that matter any person off the street can sign a document to swear they have rights to property, with no recorded deed or court order, well then this is a serious matter that the Department of Justice and Attorney General need to look into, as this title company may have done this before and thereby created many victims in this scheme. It is not lawful to let anyone claiming they have title right to sell other people's property.

It is the PURPOSE of purchasing the Title Insurance Policy, which I assume the Shirley Bernstein Estate paid for, that this policy guarantees to the buyer that Ted Bernstein has the right to sell the property and that all liens, judgments, tax issues on said property have been taken care of and cleared by a court of law.

If not then the Title Insurance company and policy provided has a serious liability not only to the buyer but to the actually true and correct heirs of the Shirley Bernstein estate, whomever the courts deem that to legally be.

As a professional real estate service provider, be it a title company or a real estate brokerage, we are taught to make absolute SURE that a Seller has a legal right to sell a property. This is mostly done by a true and correct, court filed warranty deed in the name of the SELLER aKa Grantor, with the names of the people who will be signing a listing agreement with a real estate brokerage or closing documents with a local title company.

It is not standard of practice, ethical nor lawful to use the closing process and title insurance policy of a local title company in place of a legal, court documented estate and probate proceedings, as a matter of law.

In my experience Sellers aKa Grantors do not sell properties by swearing to an affidavit that they have a right to sell. This would make it so that anyone who wanted to be an heir, or anyone of the street for that matter, could simply go to a notary and sign a document swearing they have a right to sell, and without title in their name sell millions of dollars in property.

It is my professional opinion that this title company is liable to the true heirs of the Shirley Bernstein estate and possibly even interest, punitive damage, and criminal charges.

It is my experience that in an Estate settlement, the Estate is settled in full before property is Sold, another words there would be probate and estate process as a matter of law. And if Ted Bernstein has proper legal documentation then he would have a deed in his name, and from that deed he would then be the Grantor.

See In Barnhart v. Hovde, 490 So.2d 1271 (Fla. 5th DCA) for reference on this matter., review denied 510 So.2d 543 (Fla. 1986), Hovde was named trustee for the beneficiaries, who were her stepchildren. Hovde sold a trust asset (an apartment complex) without obtaining a court order to do so in violation of Fla. Stat. 737.403(2). Hovde had conflicting interests with the beneficiaries of the trust, and the sale of asset resulted in benefit to the trustee and a detriment to the beneficiaries. Id. The Trustee had interests which definitely conflicted with those of the other beneficiaries, which resulted in a benefit to the trustee and a detriment to the other beneficiaries, and the Court found that Hovde violated the terms of the trust and applicable state statutes. Id.

Again an affidavit is not a legal document proving title rights. **This affidavit is a man claiming under penalty and perjury that he has legal rights to be the Grantor of said property**, however this is not a legally binding document in which I, as a Real Estate Broker would accept as proof of entitlement to act as Seller or Grantor.

It is not a Power of Attorney, it is not a legally filed Warranty Deed in Ted Bernstein's name, nor is it a court order ruling that Ted Bernstein is the true and correct, LEGAL Seller, Owner, Grantor of said property.

This document appears to be a Ted Bernstein claiming that he has the rights to be the Seller, Grantor and is the Successor Trustee, Executor of the Shirley Bernstein estate and that with this claim he promises to **NOT hold All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company liable for any legal actions, legal fees in the future, or any other future liability.**

Ted Bernstein does not seem to be the LEGAL Seller / Grantor of said property and therefore cannot be in a legal agreement releasing All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of liability regarding the matters of the Shirley Bernstein estate.

### **Conclusion**

In my expert opinion, the title company in this case, All Regency Title dba US Title of Florida, has made a grave error in allowing Ted Bernstein to sell the subject property with the documents provided to them.

And it is my professional opinion that All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, needs to file notice of insurance claim, fraud and massive liability in this matter as soon as possible.

As a Real Estate Broker owning my own firm, I would not let Ted Bernstein have listed this property for sale, nor would I have allowed any agent working for me to do so. As there is no court documented proof that Ted Bernstein has a legal right to sell said property and I would not put my liability insurance provider nor my company at that risk.

**001943**

A title company has even a greater risk in guaranteeing title, and is therefore liable to the heirs of the Shirley Bernstein Trust.

No reputable real estate company SHOULD take this property as a listing, due to the inability to prove who has property authority and rights of Grantor / Seller.

It is my opinion that Ted Bernstein has used **All Regency Title dba US Title of Florida** to circumvent the legal process and thereby gaining title to Shirley Bernstein's property.

Ted Bernstein went straight for the paycheck, and skipped the step of gaining legal title to the property first. Therefore avoiding estate tax, capital gains, and the process of fighting the legal heirs of the Shirley Bernstein Trust in order to obtain money from the sale of the subject property.

It is my opinion that the true and proper legal heirs of the Shirley Bernstein estate should use all legal means necessary regarding All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company, in order to make this right.

**Florida Laws: FL Statutes - Title XLII Estates and Trusts Section 736.0101 Short title. seem to have been violated in this transaction.**

As a Real Estate Broker owner experienced in all manner of real estate for over 13 years, including estate, trust tax issues, and all related matters, I strongly advise the true legal heirs of the Shirley Bernstein estate to contact a Florida lawyer and sue All Regency Title dba US Title of Florida and Old Republic National Title Insurance Company of Minneapolis.

**Corporate Headquarters:  
Old Republic National Title Insurance Company  
400 Second Avenue South  
Minneapolis, MN 55401  
(612) 371-1111**

I, Crystal L. Cox am fully qualified to give this real estate opinion and forensics analysis. I am not a lawyer. I am a fully qualified real estate advisor and forensics expert. I am FULLY qualified to provide expert witness and expert opinion in the Shirley Bernstein estate on all related matters discussed herein, real estate matters.

Written By

**Crystal L. Cox**

Real Estate Broker Owner  
Real Estate Forensics Expert  
Expert Witness Real Estate  
Real Estate Fraud Expert  
Real Estate Consultant"

Source; **April 18th 2013 Real Estate Forensics Report by Broker Crystal Cox; Original Report**  
[https://docs.google.com/document/d/1hjawnPI4EXpN0L8oZ33Pmpimgh3073da5\\_i0iVIQtw/edit](https://docs.google.com/document/d/1hjawnPI4EXpN0L8oZ33Pmpimgh3073da5_i0iVIQtw/edit)

### **About the Title Company who closed this sale**


**Gregory S Gefen** is president and managing member of **Signature Title Group, LLC** and personally oversees all closings.

Greg has been admitted to the Florida Bar since 1991 and is a member of the Real Property, Probate and Trust Section.

Greg has been a member and agent of several of South Florida's largest title underwriter, since founding his law firm, **Gregory S. Gefen, PA**, in 1995 [www.gefenlaw.com](http://www.gefenlaw.com).

He resides in Boca Raton

Posted by Crystal L. Cox at 10:05 AM No comments:

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# Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss Florida Probate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox, Blogger.

Alan Rose	7020 Lions Head Lane Boca Raton	Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court
Shirley Bernstein Estate Docket	Simon Bernstein Estate Docket	7020 Lions Head Lane Boca Raton	Shirley Bernstein
Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French	Robert Spallina	Mark Manceri
Tescher and Spallina Law Firm	Mark Manceri	Petition to Freeze Estate Assets	Estate Fraud Docket
Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca	Ted Bernstein Fraud
		Insurance Proceed Scheme	Donald Tescher

Thursday, June 4, 2015

I Allege that this Web Stat is the Condo Buyer in the Shirley Bernstein Estate. I also allege that Ted Bernstein, Alan Rose, and other conspired with this buyer to get a rock bottom deal on this condo under illegal and unethical circumstance.

### Visitor Analysis & System Spec

Referring URL:	(No referring link)		
Host Name:		Browser:	IE 11.0
IP Address:	67.71.41.251 — [Label IP Address]	Operating System:	Win7
Location:	Toronto, Ontario, Canada	Resolution:	1366x768
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Multiple visits spread over more than one day		
		ISP:	Bell Canada

To Read this WHOLE BLOC posts on the bottom right page. Don't let this Florida Insurance FRAUD and Forg YOU.

### Posts

- Alan B. Rose of Page Mr Fitzgerald & Rose Li...
- Eliot Bernstein iViewit I Interview Dick Wo...
- Alexandra aka Monica in Bernstein
- Alan B. Rose is MADD as he ain't goin...
- Hey Lindsay, you may w the ol' digital...
- Alan B. Rose of Page Mr Fitzgerald & Rose Ge...
- UNITED STATES DISTRICT SOUTHERN DISTRICT OF
- You know that Mark Twi "Truth is stranger...
- John Pankauski, Pankau Alan B. Rose, ...
- Who does Alan B. Rose c Mrachek, Fitzgerald ...
- Don Sanders, Jackson N seems to have m...
- Oh and you Spineless, C Lawless, Free Spee...
- Burke, Warren, Mackay i Taking a Look
- Alan B. Rose of Page Mr Fitzgerald & Rose se...
- Folks, Alan Rose is a MA Hypocrite. ...
- Alan B. Rose, Esq. seem suppressing speech...
- Eliot Bernstein and iVie
- Isn't Armonk, New York Lamont's neck of th...
- Don Sanders, assistant \ National Life ...
- Life Reassurance Corp. - Bankers Life Insu...
- Judge Amy J. St. Eve is Davis Polk & W...

### Navigation Path

Date	Time	WebPage
		(No referring link)
26 May	05:41:05	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
31 May	07:37:36	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
4 Jun	05:39:42	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html
		(No referring link)
4 Jun	05:40:53	tedbernsteinreport.blogspot.ca/2014/06/why-is-alan-rose-knowingly-willfully.html

Posted by Crystal L. Cox at 7:03 AM No comments: Recommend this on Google

## Eye on Alan Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.. in West Palm Beach, Florida.

Alan Rose has a NEW CASE. Well Let's keep an eye on this one too; Transparency

"WEST PALM BEACH, Fla. (Legal Newsline) - A prominent class action law firm is suing two firms with which it partnered on a class action lawsuit in Florida for allegedly failing to pay it a fee.

Cohen, Milstein, Sellers & Toll, PLLC filed the lawsuit in Palm Beach County Circuit Court on May 5 against Anderson + Wanca and Bock & Hatch LLC, claiming it is owed about \$280,000 in fees for joining in on the class action lawsuit. Bock & Hatch removed the case to U.S. District Court for the Southern District of Florida on May 26.

The suit claims Cohen Milstein agreed in March 2012 to to serve as the local counsel for a class action suit in which the firms were involved in Florida. The two sides came to terms on a fee agreement and also agreed that Cohen would receive 20 percent of the attorneys' fees awarded in the class action suit, the complaint says.



In October, the court awarded about \$1.4 million in attorneys fees. Cohen Milstein claims Anderson has not paid the 20 percent contingency fee made in the fee agreement.

In March, Anderson acknowledged the fee agreement, but "demanded" Cohen Milstein reduce the fee, the lawsuit said.

In addition to the \$280,000, the plaintiff is also seeking lost profit damages, plus court costs for filing the suit.

The law firm is represented by Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

U.S. District Court for the Southern District of Florida case 9:15-cv-80662"

Source


<http://www.washingtonexaminer.com/cohen-milstein-suing-fellow-class-action-firm-over-fees-from-fla.-case/article/feed/2176218>

Also Check Out

of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

<http://attorneyalanrose.blogspot.ie/>

Posted by Crystal L. Cox at 6:23 AM No comments:

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Saturday, May 30, 2015

## I am Reporting on the Simon Bernstein Estate CASE and will continue to do so. My reporting is NOT controlled by anyone but ME. Alan Rose continues to WHINE.

Alan Rose is acting suspicious, does he WANT Eliot to complain about Judge Coates? It sure looks like it. What is Alan Rose REALLY up to?

Why wine about this DRIBBLE now? There is a new judge, we shall see if the law is obeyed. Alan Rose seems to be pushing to disqualify Judge Coates, why is that?

I mean the Proskauer Rose thing is true, however if Judge Coates were to sign a Conflict of Interest Disclosure then maybe no issue, either way why in the world is Alan Rose so whiny about all this?

Sounds like Alan Rose should file a motion to disqualify himself instead of pushing Eliot Bernstein to do it.

Oh and I love that Florida Attorney Alan Rose is hanging on my every word INSTEAD of doing his JOB. Just obey the law and don't worry about the bloggers dude.

Either Coates will do a lawful, ethical, constitutional job or not?

I have never seen Alan Rose show so much knowledge about iViewit, oh and so much love for me, It kind of makes me blush actually.

Judge Coates must be a Good Guy for Alan Rose to show such disingenuous concern over possibly conflicts. Things that make you say hmmm...

Check out the eMails below. (Transparency and Accountability)



Ted Bernstein



Life Insurance Concepts

### Blog Posts

Is Google Really the Best Conduct a Fraud, ...

Welcome Back, How is t Investigation Goi...

Order for Discharge and Counsel Tesco...

Morgan Stanley Group N Tescher & Spalli...

Judge Martin Colin seen the Right Thi...

Why is Ted Bernstein NC to this Story? ...

Motion to Halt Hat Trick Believe this is ...

Hmmm.. Friend or Foe?

Cedarhurst, New York  
WOW, a full days wages  
National Empl...

Pam and Ted CUT out of  
they seem to be...

Whatch all worried about  
Fines, Judgement...

Not Getting Much Work  
ya? I sure ho...

303 East Wacker Drive S  
Chicago Illinois

STP Enterprises, Inc. - F

Jackson National Life Di  
Registere...

So Where Does Christop  
Ex Proskauer...

Carol Ann Kindred at He  
Life Insurance...

Heritage Union Life Inst  
is well awar...

So, who at Jackson Nati  
palm, all ...

So is Pamela Simon the i  
in all this?...

Jackson National Life In:  
Company has HUGE L...

oh and Don't Forget the  
CONDO and how...

More on Michael A. Well  
National Life Co...

Looks to me like Jackso  
Little SPOO...

So Funny, that Heritage  
Insurance Compa...

Heritage Union Life Inst  
is well awar...



"From: Alan Rose  
 Sent: Tuesday, May 26, 2015 11:52 AM  
 To: 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'  
 Subject: Judge Coates

Mr. Eliot Bernstein:

The estate/trust cases have been assigned to Judge Coates. One order is attached but he has all of the cases.

You already have started with the internet nonsense as to Judge Coates:

(<http://tedbersteinreport.blogspot.com>) as of mid-day Friday. Apparently, he worked at Proskauer, and we all know you labor under the belief that someone there stole trillions of dollars of intellectual property from you or your company.

If you object to his continued service, please advise the parties asap, so we can consider simply doing an agreed or joint motion/order requesting his recusal.

Please advise.

Alan B. Rose  
 Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A."

---

**From:** Alan Rose  
**Sent:** Wednesday, May 27, 2015 11:44 AM  
**To:** 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'  
**Cc:** 'John P. Morrissey'; 'O'Connell, Brian M.'; 'Foglietta, Joy A'; 'Peter J. Feaman, Esq.'  
**Subject:** RE: Judge Coates

Now that Brian has set a hearing before Judge Coates, Eliot needs to speak now if he contests the court's ability to hear this case. Silence equals acceptance and waiver of any objections in my view.

Eliot has filed at least two and probably more motions to disqualify Judge Colin, and already has started with nonsense about Judge Coates.

For the record, we have no objection to Judge Coates. But Eliot may and he needs to assert that objection or waive it. There is no point having a hearing and wasting time just to have Eliot complain that day about Judge Coates.

Also for the record, the "journalist" Eliot corresponds and communicates with, Crystal Cox, posted the following highlighted material:

Friday, May 22, 2015

Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney? WOW

Was with Proskauer Rose for 10 years and now on the iViewit SCANDAL in Florida?? Are you Kidding, WOW

Well this should be interesting, hopefully lawful !!

Bio

<http://15thcircuit.co.palm-beach.fl.us/web/judge-coates>

[http://ballotpedia.org/Howard\\_K\\_Coates](http://ballotpedia.org/Howard_K_Coates)

<http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html>

News on ..

<http://www.palmbeachpost.com/news/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njznl/>

Alan B. Rose, Mrachek, I  
 Rose, Konopka &...

Hello Marc Randazza, W  
 PARTY, Hope yo...

Alan Rose Wants the Fir  
 to Be Set Asid...

Hey Liars, Thugs, Thieve  
 Murdering, Gre...

Hey Alan B. Rose, Mrach  
 Rose, Konop...

Judge Martin Colin has a  
 protecting the...

I keep waiting for Judge  
 punish, o...

Watch hiding FROM Bo

Hey Flushing New York .  
 Raymond or possib...

Objection to Motion to  
 Personal Repres...

Objection to Motion to  
 Personal Repres...

I am getting me some "t  
 that somethin...

Why is Heritage Union L  
 Company Filin...

"Criminal Action throug  
 Simulated Legal Pr...

Letter to Judge Martin r  
 Opposition to Ted...

What is Going on with J  
 about not ...

Motion for Appointment  
 Administrator...

Ted Petition for Appoin  
 Successor Personal...

Alan Rose Esq., John J.  
 Pankauski Law F...

Chicago Insurance and C  
 Litigation Law Fi...

Morgan Stanley Group, I  
 and Tescher & ...

Wow, the Fraud Sure Se  
 Piling Up. Is Ted ...

Full Docket Of Heritage  
 Insurance Case ...

Heritage Lawsuit Illinois  
 Response Regar...

Reported as a Murder, y  
 checked is medic...

"The Document in Ques  
 the Inheritance ...

Looks like the Tescher &  
 Bernstein F...

Ted Bernstein, Tescher and Spi

- Florida Estate Forgery, I  
 DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spi

Judge Coates was at Proskauer between 1991 and 2000; I believe those are some of the years Proskauer represented iViewit and possibly during the times that Eliot sued that firm. Eliot has alleged that during these years is when Proskauer stole his patents. It was an unpleasant lawsuit for the firm I'm sure, and no doubt Eliot made it as unpleasant as possible for the partners of "Porksour Rose". Eliot lost his claim in federal court back in 2008 and I believe owes the firm a sanction award imposed by Judge Scheindlin, but he has not given up on that firm and continues to mention it in recent filings.


The point here is that Eliot must advise the parties of his position and the PR needs to get this resolved before there a number of hearings.

Also, you have set too many issues for one 30 minute hearing, particularly when it would be the Judge's first involvement in the case, in my opinion.

Alan B. Rose, Esq."



Posted by Crystal L. Cox at 9:09 AM No comments:

 Recommend this on Google

## Has Alan Rose gone ROUND the BEND? Alan Rose is already whining to a new Judge about my blogs reporting on this case? WOW

Calm Down Alan Rose, the Law Speaks for itself. Obey the Law, tell the TRUTH, the whole Truth and nothing but, and don't worry about those reporting on this high profile never ending Florida Estate Case which is a MASSIVE public concern.

Murder Allegations and millions paid in insurance, heirs waiting years for money while Ted Bernstein sells homes and let's them run down, Ted Bernstein getting an estate paid attorney and no one else, forged documents, documents signed by dead guys to close estates, and much MORE. This case is VERY important as so many go to Florida for their retirement, yet the attorneys in this case did NOT carry out the wishes of the Deceased. So why move to Florida if Probate Court will not carry out your wishes?

How in the world has all this been allowed to go on for years in Florida Probate court? Meanwhile Eliot Bernstein's family is starved out, kids lose their school and they are constantly harassed by Alan Rose attorney (paid by the estate in which is bullying the other heirs it seems) and others in the case. All this in a simple estate, that should have easily been settled years ago.

Now Alan Rose is WHINING to the New Judge about my blogs, again claiming my blogs are Eliot's and they are MY BLOGS, controlled by me.

Check this whiny Dribbble out; GROW UP ALAN ROSE  
<https://docs.google.com/file/d/0Bzn2NurXrSkiNzZxRGtVb01MTzA/edit>



**NO WHINING**



- Florida Estate Forgery, f DOCKET

Blog Archive

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    - Eye on Alan Rose of A Fitzgerald, Rose, K
  - May (22)
  - April (63)
  - March (8)
  - February (7)
  - January (8)
- 2014 (248)
- 2013 (31)

**Marie Chandler**

**Subject:** PW: Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698  
XXXXMBU

**Attachments:** ABR to Judge Coates 05-29-15 re Bernstein Matters.pdf

**From:** Marie Chandler  
**Sent:** Friday, May 29, 2015 4:39 PM  
**To:** (Redacted)  
**Cc:** Alan Rose  
**Subject:** Case Nos. 502011CP000653, 502012CP004391, 502015CP00162, 502014CP003698 XXXXMBU

Dear Ms. Phillips:

Pursuant to your permission given to Mr. Rose, attached please find correspondence from Mr. Rose to Judge Coates.

cc: All parties on all service lists attached to letter.

Marie B. Chandler  
 Assistant to L. Louis Mrachek and Alan B. Rose  
 Email: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
 Direct: (561) 472-2417



Posted by Crystal L. Cox at 8:59 AM No comments:

Recommend this on Google

Friday, May 22, 2015

## Was Howard Coates REALLY picked Randomly as a Judge in this Case? REALLY? Seriously? A former Proskauer Rose attorney?WOW

Was with Proskauer Rose for 10 years and now on the iViewit SCANDAL in Florida?? Are you Kidding, WOW

Well this should be interesting, hopefully lawful !!

Bio

<http://15thcircuit.co.palm-beach.fl.us/web/judge-coates>

[http://ballotpedia.org/Howard\\_K.\\_Coates](http://ballotpedia.org/Howard_K._Coates)

<http://www.avvo.com/attorneys/33401-fl-howard-coates-1273629.html>

News on ..

<http://www.palmbeachpost.com/news/news/crime-law/scott-picks-three-for-palm-beach-county-judgeships/njZNL/>

Posted by Crystal L. Cox at 12:57 PM No comments:

Recommend this on Google

**YAY Judge Colin Recused himself. Good Thing, as he has fumbled around for years. We shall HOPE that a New Judge is MORE Lawful and Ethical.**

To Download

<https://drive.google.com/file/d/0Bzn2NurXrSkidVdIWENfTFZoaG8/view?usp=sharing>

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

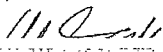
CASE NO: 502012CP004391XXXXSB  
PROBATE DIVISION: IY

THE ESTATE OF  
SIMON L. BERNSTEIN,  
Deceased.


ORDER OF RECUSAL

SUA SPONTE, This Court hereby recuses itself in connection with the above styled case. In that this Court has discussed this case and related cases with the other two Judges in South County, it is requested that the Clerk not reassign this case to a South County Court Judge, but to randomly do so to another Probate Judge in North County.

DONE and ORDERED in chambers, at Delray Beach, Palm Beach County, Florida, this 19<sup>th</sup> day of May, 2015.



Posted by Crystal L. Cox at 12:03 PM No comments:

 Recommend this on Google

Thursday, May 21, 2015

so Ted Bernstein Never Called the Sheriff and reported a murder? never contacted a corner? and he did not report that Robert Spallina was acting as .. hmmm Check it Out

<https://drive.google.com/file/d/0Bzn2NurXrSkivGt5bVlwcE9vQ00/view?usp=sharing>

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- 15

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE  
INSURANCE TRUST DTD 6/21/95,

Plaintiff,

v.

Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE  
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE  
COMPANY,


Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE  
INSURANCE TRUST DTD 6/21/95

Counter-Defendant

Posted by Crystal L. Cox at 10:59 AM No comments:

 Recommend this on Google

Tuesday, May 19, 2015

Wells Fargo AGAIN ?


<http://tedbernsteinreport.blogspot.com/>

Visitor Analysis & System Spec

Search Referral: www.google.com/ (Keywords Unavailable)  
 Host Name: bp06aloxdc-out.wellsfargo.com      Browser: IE 8.0  
 IP Address: 159.45.71.14 — [Label IP Address]      Operating System: Win7  
 Location: Saint Louis, Missouri, United States      Resolution: 1600x900  
 Returning Visits: 1      Javascript: Enabled  
 Visit Length: Not Applicable      ISP: Wells Fargo & Company

Navigation Path

Date	Time	WebPage
		www.google.com/ (Keywords Unavailable)
19 May	06:28:41	tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 6:52 AM No comments:  Recommend this on Google

Friday, May 15, 2015

### Petition to Remove Judge Martin Colin from the Simon and Shirley Bernstein Estate Cases in Florida. Judge Martin Colin has let massive crimes occur in his court and has seriously caused irreparable harm to the victims in this case.

Click Below to Read or Download this Court Filing  
<https://docs.google.com/file/d/0Bzn2NurXrSkiRlp6bTUyVnZZYmc/edit>

Judge Martin Colin has let this Fraud, Forgery, Alleged Murder Case go on and on for years. He must, as a matter of law be removed. Judge Martin Colin has serious conflicts of interest in this case.

Filing # 27319445 E-Filed 05/14/2015 05:23:02 PM


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

TED BERNSTEIN, AS TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED,	PROBATE DIVISION CASE NO.: 502014CP003698XXXXSB
--	--

PLAINTIFF,  
 V.  
 ALEXANDRA BERNSTEIN; ET AL.  
 DEFENDANTS.

Other Applicable Related Cases this Disqualification of Judge Martin Colin Should Apply to:

- Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- Case # 502011CP009633XXXXSB – Shirley Bernstein Estate
- Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- Case # 502014CP003698XXXXSB – Shirley Trust Construction
- Case# 502015CP001162XXXXSB – Elliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB

Posted by Crystal L. Cox at 5:13 AM No comments:  Recommend this on Google

Wednesday, May 13, 2015

### Heritage Union Life Insurance Company is well aware of what is going on in the Simon Bernstein Case. So is Heritage Union part of the fraud? If not then why have they, themselves not joined in to SUE Tescher & Spallina and to cry out fraud on the courts, insurance fraud and possible murder?

Letter To Mark Sarlitto ~ Senior Vice President and General Counsel of Heritage Union Life Insurance Company / WiltonRe and Chris Stroup ~ Chairman of the Board of Directors and Chief Executive Officer.



"From: Eliot Ivan Bernstein [mailto:iviewit@gmail.com]

Sent: Wednesday, May 21, 2014 6:19 AM

To: **Mark Sarlitto** ~ Senior Vice President and General Counsel @ Heritage Union Life / WiltonRe (msarlitto@wiltonre.com); **Chris Stroup** ~ Chairman of the Board of Directors and Chief Executive Officer @ Heritage Union Life / WiltonRe (cstroup@wiltonre.com)

Subject: URGENT RE INSURANCE FRAUD -

**Policy Number: 1009208 on the life of SIMON L. BERNSTEIN**

Dear Mr. Stroup and Mr. Sarlitto @ Heritage Union Life / Wilton RE,

I am writing regarding the Life Insurance Policy on my father, Simon L. Bernstein (deceased), Policy No. 1009208. It has come to my attention through a Federal Court case titled "Simon Bernstein Irrevocable Insurance Trust Dtd 612111995, et. al. v. Heritage Union Life Insurance Company, et. al," Case No.13 cv 3643 in the US District Court Northern District of Illinois that a claim was filed with Heritage by a one **Robert Spallina, Esq. of the law firm Tescher & Spallina PA**, acting as the Trustee for an **alleged lost trust** named "**The Simon Bernstein 1995 Irrevocable Insurance Trust**" claimed to be the Contingent Beneficiary, however **no executed copies of the Trust exist as of this date.**

Further, **Mr. Spallina represented that he has never seen nor been in possession of the lost trust**, yet he filed a claim with Heritage Union acting as the Trustee **of that lost trust he never saw or possessed.**

Further, from production documents in the Federal Case it was also learned that Spallina additionally **represented himself to the carrier as the Trustee of the alleged Primary Beneficiary of the Policy, a one LaSalle National Trust, N.A.**, of which he also is not.

The claim was **DENIED due to the inability to show a proper beneficiary and produce a legal valid trust document as beneficiary.**

Legally, a **valid executed trust instrument must be present at death for a trust to be paid any benefits and in the case of a lost beneficiary at death Florida law is clear that the benefit should be paid to the Estate of the insured.**

**Mr. Spallina and his partner Donald Tescher, Esq.** have **recently resigned** as Personal Representatives/Executors, Trustees and Counsel to the Estate and Trusts of Simon Bernstein, after **admittedly altering Trust documents** in my parents Estates and Trusts to illegally change beneficiaries and whose **Notary Public and Legal Assistant, a one Kimberly Moran has been arrested and convicted of Fraud** and admitted to six counts of FORGERY of estate documents, including a **POST MORTEM FORGERY** of my deceased father's name in efforts to alter the beneficiaries of my deceased mother's estate.

They also **used my deceased father to act as Personal Representative/Executor** after he was deceased and consummated a fraud **on the Florida Probate Court under Judge Martin Colin.**

**After the claim was rightfully denied by Heritage**, certain of Simon's children who were **wholly disinherited in the Estate** plan by both Simon and his deceased spouse Shirley, Theodore Stuart Bernstein and Pamela Simon, **filed a Breach of Contract lawsuit against Heritage Union** and in this action **Theodore suddenly now claimed he was the Trustee of the lost trust and not Spallina.**

Theodore Bernstein it has been learned from a Palm Beach County Sheriff investigation report, attached herein, is **alleged to have taken already improper distributions of assets in his alleged fiduciary capacities, AGAINST THE ADVICE OF COUNSEL.**

You will note that in Jackson National's initial opposition to the lawsuit on behalf of Heritage, **Jackson also claimed that Theodore had NO LEGAL STANDING to the file the lawsuit in the first place** and was advised by counsel of such, which appears a **correct legal analysis.**

Due to these alleged **FRAUDULENT ACTIVITIES** that took place in the filing of the life insurance claim, I have contacted the Jacksonville, IL Police department and spoke with **Detective Scott Erthal** who opened **Case No. 2014000865.**

Detective Erthal then contacted me and told me **he had spoken to Carol Ann Kindred at Heritage Union and that they would be conducting the initial FRAUD investigation internally.**

I was surprised when I got the attached letter from C.A. Kindred, which attempts to inform me that **Heritage is not investigating the alleged FRAUDULENT claim** filed with the company, most surprising is **why she did not direct her letter to Detective Erthal** and instead contacted me to inform me that Heritage was **refusing to conduct an investigation.**


**C.A. Kindred also stated that the Federal Court would be handling the Fraud issues and obviously Federal Courts do not conduct criminal investigations or insurance investigations.**

As you may know, **life insurance carriers are legally required to attempt to find the true and proper beneficiary of an**

**insurance contract upon death and in this instance no effort has been made** to either contact LaSalle National Trust, N.A. to join the Federal lawsuit by the life insurance carrier or any other party and attempts are being made to pay an alleged contingent beneficiary (the lost trust, which is **not listed with the carrier as the contingent beneficiary** according to their records) without first **paying the Primary Beneficiary, a truly bizarre case.**

The Life Insurance contract has also not been produced and it appears Heritage and their Successors and their reinsurers **have all lost the contract that the Breach of Contract lawsuit was filed on**, making an almost **surreal lawsuit where neither the alleged Plaintiff, the lost trust is legally nonexistent and the contract the breach is based upon also does not exist.**

In efforts to secure the contract I am asking that you check your files for Heritage and see if you can locate one. It also has come to my attention that no one has notified the Primary Beneficiary or made any efforts to this date to make contact with them, LaSalle National Trust, N.A., which is now owned by:

Chicago Title Land Trust Company  
10 South LaSalle Street, Suite 2750  
Chicago, Illinois 60603  
Tel:  312.223.2195

As hearings in the Federal Case are proceeding quickly, your prompt attention to these matters is required and please inform me of your work with the Jacksonville PD so that I may know if this matter has to be investigated **by Federal Authorities at this time for the initial alleged Fraudulent claim made to Heritage Union that Heritage and its successors refuse to investigate internally.**

I have contacted your offices as it appears that the Heritage Union Life Insurance Company website was taken down and refers now **to Wilton RE as the successor.**

Attorney for **Jackson National Life in the Federal case, Alexander Marks, Esq.** has told the Federal Court Judge, Amy St. Eve, that Heritage et al. while being discharged from the Federal lawsuit would be willing to help the parties in any way and **this refusal to investigate is directly opposite this claim** and if further problems stand in the way I will be forced to seek leave to have all parties **reinstated in the Federal action instantly, including now Wilton RE.**

Finally, from reviewing the production materials in the lawsuit, it appears that certain **carrier files may have been tampered with by an insider**, who Plaintiffs have claimed was willing to pay an insurance claim **without any proper beneficiary documentation and we are also looking to find who this party is.**

Thank you for your cooperation in these matters and please feel free to contact me with any questions or further information.  
Eliot

Eliot I. Bernstein"


#### Attached the Letter were These Two Documents

<https://drive.google.com/file/d/0Bzn2NurXrSkialISQ0U1RVpqdVk/edit?usp=sharing>

<https://drive.google.com/file/d/0Bzn2NurXrSkiNkNTVzV1S1NZTEk/edit?usp=sharing>

So Heritage Union Life Insurance Company is very aware of what is going on in this case. What will they do, if anything, is yet a mystery.

Posted by Crystal L. Cox at 11:54 AM No comments:

 Recommend this on Google

## Hey did one of you bad guys hide your money at Lloyds Banking Group Plc

#### Visitor Analysis & System Spec


Search Referral:	www.google.co.uk/ (Keywords Unavailable)		
Host Name:		Browser:	IE 8.0
IP Address:	141.92.129.44 — [Label IP Address]	Operating System:	WinXP
Location:	United Kingdom	Resolution:	1680x1050
Returning Visits:	0	Javascript:	Enabled
Visit Length:	2 mins 32 secs	ISP:	Lloyds Banking Group Plc

#### Navigation Path

Date	Time	WebPage
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- 13 May 08:05:19 [www.google.co.uk/ \(Keywords Unavailable\)  
tedbernsteinreport.blogspot.co.uk/2014/02/alan-rose-wants-first-amendment-to-be.html](http://www.google.co.uk/ (Keywords Unavailable) tedbernsteinreport.blogspot.co.uk/2014/02/alan-rose-wants-first-amendment-to-be.html)
- 13 May 08:07:51 [www.google.co.uk/ \(Keywords Unavailable\)  
tedbernsteinreport.blogspot.co.uk/2015/04/judge-martin-colin-ordered-alan-rose.html](http://www.google.co.uk/ (Keywords Unavailable) tedbernsteinreport.blogspot.co.uk/2015/04/judge-martin-colin-ordered-alan-rose.html)

Posted by Crystal L. Cox at 8:13 AM No comments:

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# Florida Probate Fraud, Forgery and Corruption; Simon Berns' Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Cox Blogger.

Alan Rose	7020 Lions Head Lane Boca Raton	Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court
Shirley Bernstein Estate Docket	Simon Bernstein Estate Docket	7020 Lions Head Lane Boca Raton	Shirley Bernstein Simon Bernstein
Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French	Robert Spallina	Mark Manceri Donald Tesch
Tescher and Spallina Law Firm	Mark Manceri	Petition to Freeze Estate Assets	Estate Fraud Docket Insurance Proceed Scheme Donald Tescher
Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca	Ted Bernstein Fraud

Monday, September 14, 2015

## oh and you do know that Blogging is a Constitutionally Protected Activity RIGHT?

Do you need me to list cases to assist you in this? Besides my MAJOR, Landslide one of a kind court of appeals win, there are tons of courts that flat out state that blogging is a constitutionally protected activity.. just a factoid.

So here we go, more whining from the Ted Bernstein camp. Why? The TRUTH really would be easier. Simply DO THE RIGHT THING and OBEY the LAW.

oh and for the 10 millionth time, Eliot Bernstein DOES not control any of my blogs, never has and never will. I have a constitutionally protected right to report on this case.

Posted by Crystal L. Cox at 8:30 PM No comments:

Recommend this on Google

## Hey Alan

Don't forget when tattling on me for reporting on this story, there are tons of blogs you missed such as

<http://attorneyalanrose.blogspot.com/>

Updates to ALL coming soon

<http://donaldtescher.blogspot.com/>

<http://robertspallina.blogspot.com/>

<http://judgemartincolin.blogspot.com/>

oh and hundreds of other blogs on this and connected cases exposing corruption in the Florida Probate Courts, Family Court, Police Investigations, Intellectual Property and patent lawyers and lot's more documents of undeniable PROOF. Should an honest court ever actually take a look.

Posted by Crystal L. Cox at 8:24 PM No comments:

Recommend this on Google

Saturday, September 12, 2015

**POOR Baby Ted Bernstein is going to Use his Legal Power ?? to STOP the First Amendment? Or is it use legal remedies to huff and puff? So funny Ted Bernstein costs the "estate" millions and is now trying to avoid jail it sure seems and is whining of 100,000? What? Check out this whiny DRIBBLE.**

To Read this WHOLE BLOG, posts on the bottom right, r page. Don't let this Florida I Insurance FRAUD and Forge YOU.

Posts

Alan B. Rose of Page Mracl & Rose LI...

Eliot Bernstein Iviewit Inve Dick Wo...

Alexandra aka Monica inte Bernstein

Alan B. Rose is MADD as a l he ain't goin...

Hey Lindsay, you may want of' digital...

Alan B. Rose of Page Mracl & Rose Ge...

UNITED STATES DISTRICT CC SOUTHERN DISTRICT OF ...

You know that Mark Twain is stranger...

John Pankauski, Pankauski Alan B. Rose, ...

Who does Alan B. Rose of F Fitzgerald ...

Don Sanders, Jackson Natit seems to have m...

Oh and you Spineless, Cow Lawless, Free Spee...

Burke, Warren, Mackay & S Taking a Look

Alan B. Rose of Page Mracl & Rose se...

Folks, Alan Rose is a MASSI Hypocrite. ...

Alan B. Rose, Esq. seems si suppressing speech...

Eliot Bernstein and iViewit Isn't Armonk, New York Ste neck of th...

Don Sanders, assistant VP - National Life ...

Life Reassurance Corp. - C: Life Insu...

Judge Amy J. St. Eve is for Polk & W...

Cedarhurst, New York



My clattering rambling RANT is in BLUE.

"From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
Sent: Friday, September 11, 2015 1:12 PM

...

Subject: Online defamation

...

"The 3rd anniversary of Dad's death is approaching and I feel obligated, as his son and your brother, to reach out to you on behalf of myself and the other professionals working for Dad's trusts and estates. "

Yes Sad isn't it Ted, that you have disgraced and dishonored your father so badly, and you have harmed his grand children, seemingly forged his signature and tied up millions of his money and your mom's money and greedily did what ever you pleased while your siblings suffered. And you feel a sense of morbid "OBLIGATION" now? What a Crock of Shit.

There were NO professionals working on your Dad's Trust, It seems to me that there were crooks, forgers, liars, thieves and those who massively dishonored your Dad's wishes, oh and broke the law.

" On numerous occasions and in many different ways, I have requested that you remove all of the blogs and websites in which you are slandering and defaming me, my family, my businesses and the judges and other professionals providing service to the trusts and estates of mom and dad; but so far you have refused. "

Does Eliot have things written online about you? Hmmm I can't seem to find them. I can't seem to find any websites or blogs that Eliot has about whiny baby Ted at all. And WOW crying about blogs defaming JUDGES?? What? Judges are public officials and COLIN umm he broke the law Ted for you, well not really you but to protect Tescher and Spallina for YOU. So it will all come out in a non-corrupt court one day, just keep on sitting there doing NOTHING to make things right and ENSURE your prison sentence COMING SOON, as far as I see it.

Slandering YOUR Business? Are you Kidding? Anyone who reads my news blogs that have nothing to do with Eliot, oh except he is a party to the case, well if they can read the actual DOCUMENTS then they can see you have broke the law, and looks to me personally that you were involved in your Dad's death or covering it up for whoever was.

So where is this slander of you, your family, your business? Oh and your business really? What business is that? the illegal Botox business? or the insurance business? whatever you actually do with that one?

"I also have asked you to cease publishing information about, and interfering in, the sale of our parents' home; but so far you have refused. "

Where has Eliot published anything about you? You mean documents of his case? or do you mean my blogs, that are published and COMPLETELY controlled by me, Crystal Cox, personally, as is my First Amendment right.

"To date, your actions have cost the Trust more than \$100,000 of net sales proceeds for this property alone. "

Is this a joke? Your actions have cost around a million in attorney fees right? to keep up your LIES, right? And you have sold off condos and personal property with NO money to the actual heirs, right? And you have used up, stolen or somehow hidden millions, or so it seems from the documents I have read over YEARS. And now your whining over \$100,000? WOW Alan Rose or even the Broker John Poletto got more then that right?

"As you know better than anyone, whether or not Dad adequately provided for us during his lifetime, Dad's final wishes were to leave his assets equally to his grandchildren, 3 of whom are your children. Your disappointment about this and your resulting actions are helping to ensure that most of his assets will be squandered in administrative costs and professional fees. Over the past three years, in my role as a fiduciary attempting to carry out Mom and Dad's final wishes, I have tolerated an incredible amount of abuse from you. "

Just so there is no error here to who ever you are spewing this bullshit to. YOU are the one who has hurt the grandkids and you have NOT carried out ANY final wishes. You are the abuser and NOT the VICTIM. You appear to be delusional, must be all that botox and the ???

"We hardly know one another, having virtually no contact over the past 30 years. Since our Dad died, you have made unfounded accusations about me that appear to be part of a playbook repeated by you over the past 20 years to intimidate and bully those who do not agree with you. Your motivation for slandering and defaming innocent people online is malicious and serves no purpose to the efficient administration of the trusts and estates. "

Slandering and Defaming "innocent" people? Really? Have you even read the thousands of documents of proof of the iViewit case, or even this estate case? Your CAUGHT Ted. Who ever you worked for or with at Proskauer, you are ALL caught. It is now only a matter of time before an honest court steps up to indict you ALL.

No Playbook, just Rules of Procedure and the LAW, oh and some pretty good reporting of course.

WOW, a full days wages fo  
National Empl...

Pam and Ted CUT out of th  
they seem to be...

Whatch all worried about?  
Judgement...

Not Getting Much Work Doi  
ya? I sure ho...

303 East Wacker Drive Suit  
Chicago Illinois

STP Enterprises, Inc. - Pan

Jackson National Life Distr  
Registere...

So Where Does Christopher  
Ex Proskauer...

Carol Ann Kindred at Herit.  
Insurance...

Heritage Union Life Insur  
is well awar...

So, who at Jackson Nation  
palms, all ...

So is Pamela Simon the rea  
all this?...

Jackson National Life insur  
has HUGE L...

oh and Don't Forget the BU  
CONDO and how...

More on Michael A. Wells, .  
National Life Co...

Looks to me like Jackson N  
Little SPOO...

So Funny, that Heritage Ur  
Insurance Compa...

Heritage Union Life Insur  
is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best W  
a Fraud, ...

Welcome Back, How is that  
Investigation Got...

Order for Discharge and W  
Counsel Tesc...

Morgan Stanley Group New  
Tescher & Spalli...

Judge Martin Colin seems t  
the Right Thi...

Why is Ted Bernstein NOT  
this Story? ...

Motion to Halt Hat Trick. C  
Believe this is ...

Hmmm.. Friend or Foe?

Alan B. Rose, Mrachek, Fit  
Konopka &...

Hello Marc Randazza, Welc  
PARTY, Hope yo...

"You endlessly level accusations against people without providing proof for what you claim. "

WHAT? Have you NOT read THOUSANDS, literally thousands of documents of proof in this and other cases connected in any way to Eliot Bernstein?

"Mom and Dad chose Tescher and Spallina to draft their documents and to act as their trusted fiduciaries upon their deaths."

YEP and Tescher and Spallina chose to go against their wishes, hook up with you and sign their name after they died and try and run off with millions. Can you say Aid and Abet?

"Members of that firm admittedly acted illegally and with poor judgment. I am sure Mom and Dad would not be pleased to learn what occurred. But their wrongdoing, which has been investigated by the proper agencies and will be addressed in a prudent manner, does not justify your continued and disruptive actions."

It doesn't? Well you helped them do those illegal acts Ted? You are the one who had poor judgement and broke the law right? Did you not work with them?

And here you are saying they admitted to the crimes, yet you want blogs talking about the crimes to stop publishing what you allege to be slander and defamation?

"Moreover, none of the people or professional firms who now provide service or act as fiduciaries, including myself, played any role in the creation of these documents. Despite these realities, you have made allegations for 3 years now, about all of us, ranging from murder, explosions and illegal Botox funding. Every allegation you have made remains only that, allegations and accusations made by you and Crystal Cox, your partner. No proof, no charges, no investigations. Nothing but carefully constructed blogs designed to trick unknowing readers.

I am not out to TRICK anyone. If these "unknowing readers" come to my blog, they can read the documents of the case and think for themselves. Read your depositions, read the police report and you claiming there was a murder then changing your story, they can KNOW as they read all of your words, and all of the documented proof that I give them and THINK for themselves. There is no requirement to believe me. I always insist that the reader have a BRAIN.

"Every single matter you are involved in results in you claiming fraud, car bombings, theft, ethical violations, professional misconduct, judicial misconduct, law suits, threats - and ultimately, online defamation of your opponents. None of these matters are related yet you use the same tactics each and every time."

Umm hey DUMBASS, there was a car bombing. Do you even give a shit that your family had someone try and murder them? hmm I guess not, why would you?

opponent?? defamation?? you mean the criminals who robbed him and his family?

"You represent yourself as an attorney, although you are not a lawyer and have no legal background or training whatsoever. Representing yourself, without competent legal counsel, you play without rules and eviscerate the boundaries and rules which counselors and judges must follow. "

Being pro se is a THING, dumb dumb. And Eliot is VERY good at it. Read the legal documents or have someone read them to you, ya um seems to be doing a very good job in the face of MASSIVE EVIL, and not just your face.

"You sued Florida Supreme Court justices, New York Supreme Court justices and dozens of companies and individuals. In New York, Judge Schiendlin has enjoined you from filing additional claims based upon your belief that your trillion-dollar technology has been stolen through a conspiracy involving courts, judges, lawyers and major tech companies, and entered sanctions against you.

"You have also litigated unsuccessfully in other states, including Nevada. Your behavior in the Palm Beach county courts is remarkably similar. You are a vexatious litigant. This appears to be a crucial part of your method."

Ummmm WHAT? Did Eliot litigate in Nevada? I have not seen

You signed a contract with Mom and Dad more than 10 years ago agreeing that you would never sue any member of your family. As a planner dealing in this area for the past 30 years, I have never heard of any other similar agreement between a child and his parents.

All of us understand that the death of Mom and Dad has been emotionally devastating for you and economically destabilizing. Your sisters and I understand the special challenges and circumstances you face and as a result, we have been extremely tolerant."

Tolerant? You have been made to obey the law and you have hated it, you have done all you can to be EVIL and have not been TOLERANT in any way"

- Alan Rose Wants the First / Be Set Asid...
- Hey Liars, Thugs, Thieves, Murdering, Gre...
- Hey Alan B. Rose, Mrachek Rose, Konop...
- Judge Martin Colin has a hi protecting the...
- I keep waiting for Judge M punish, o...
- Whatch hiding FROM Boys?
- Hey Flushing New York .. i or possib...
- Objection to Motion to Wit Personal Repres...
- Objection to Motion to Wit Personal Repres...
- I am getting me some "bad that somethin...
- Why is Heritage Union Life Company Filin...
- "Criminal Action through u: Simulated Legal Pr...
- Letter to Judge Martin Coli Opposition to Ted...
- What is Going on with Jane about not ...
- Motion for Appointment of Administrator...
- Ted Petition for Appointme Successor Personal...
- Alan Rose Esq., John J. Pa Pankauski Law F...
- Chicago Insurance and Cor Litigation Law Fi...
- Morgan Stanley Group, Tec and Tescher & ...
- Wow, the Fraud Sure Seem Up. Is Ted ...
- Full Docket Of Heritage Un Insurance Case ...
- Heritage Lawsuit Illinois, R Response Regar...
- Reported as a Murder, yet checked is medic...
- "The Document in Questio Inheritance ...
- Looks like the Tescher & S Bernstein F...

Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fr DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spallin

- Florida Estate Forgery, Fr DOCKET

Blog Archive

▼ 2015(124)

"But history is repeating itself and you have turned this into an abusive tirade against your family. After 3 years of baseless accusations about fraud, frauds and fraud on the courts, enough is enough. "

Baseless, Really? You hypocrite, you just admitted above that there was fraud, illegal activity and poor judgement and now it's all baseless? What a Dumb Ass.

"The online defamation and slandering is simply no longer an acceptable way for you to cope."

Not about COPING Teddy, it is about reporting on corruption in the Probate court in FLORIDA. Actually documents and information, REPORTING and not a way to "cope".

"I am not suggesting that you stop your campaign to prove what you believe - that is your prerogative. I am, however, pleading with you to immediately stop the defamation and the slander about me and the other innocent professionals. "

What? Eliot cannot stop something he is not doing and Eliot is not my partner, and has no access or control over my blogs in ANY way. And there are no "innocent professionals", they know who broke the law and have not upheld their oath of honor, ethics and to the constitution. THEY have violated their professional standards and they are being exposed, period.

".. Please remove these sites from the Internet and instruct your partner, Crystal Cox, to do the same. If you do not immediately remove these sites and my name from them, you are leaving me with no other choice but to pursue all available legal remedies. "

Eliot has NOT ever controlled my blogs, nor will he ever. And the TRUTH about you and these not so professional professionals will remain online, eternally, no matter what, so there is that.

Eliot is not MY PARTNER, he is one of thousands of victims of corruption I report on my thousands of blogs. So what is this huff and puff legal remedy you are going to do to Eliot about my blogs? Well I guess we shall wait and see.

Ted

Posted by Crystal L. Cox at 8:40 PM No comments:

Recommend this on Google

Friday, September 11, 2015

**John Poletto, YOU are LIABLE for what Ted Bernstein and Alan Rose talked you into doing. YOU know what is LAW and what is NOT. Tell the TRUTH now and maybe avoid going to jail with them.**

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-98-219-94-233.hsd1.fl.comcast.net	Browser/OS:	Safari iPad/ iOS
IP Address:	98.219.94.233 -- [Label IP Address]	Mobile Device:	Apple iPad
Location:	Boca Raton, Florida, United States	Resolution:	768x 1024
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
5 Sep	08:16:42	tedbernsteinreport.blogspot.com/2014/07/john-poletto-and-mark-nestler-ted.html

Posted by Crystal L. Cox at 11:25 PM No comments:

Recommend this on Google


- ▼ September(8)
  - oh and you do know the Constitution...
  - Hey Alan
  - POOR Baby Ted Bernstein Use his Legal ...
  - John Poletto, YOU are I what Ted Bernstein...
  - Hello Pam, so ya ready TRUTH, the whol...
  - Oppenheimer iViewit - wait to see what h...
  - Mcknight Dallas Real Es this, what's ...
  - Hello John Pankauski, \ party of all...
- ▶ August(3)
- ▶ July(1)
- ▶ June(4)
- ▶ May(22)
- ▶ April(63)
- ▶ March(8)
- ▶ February(7)
- ▶ January(8)
- ▶ 2014(248)
- ▶ 2013(31)

Hello Pam, so ya ready to tell the TRUTH, the whole Truth and nothing but the TRUTH about Ted and Alan Rose or go to the BIG HOUSE with em?

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-73-22-164-177.hsd1.il.comcast.net	Browser:	Chrome 45.0
IP Address:	73.22.164.177 -- [Label IP Address]	Operating System:	Win8 .1
Location:	Northbrook, Illinois, United States	Resolution:	1920 x1080
Returning Visits:	0	Javascript:	Enabled
Visit Length:	41 seconds	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
		https://www.google.com/ (Keywords Unavailable)
5 Sep	20:09:52	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html
5 Sep	20:10:22	investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 (Exit Link)
		https://www.google.com/ (Keywords Unavailable)
5 Sep	20:10:33	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html


Posted by Crystal L. Cox at 11:19 PM No comments:  Recommend this on Google

Oppenheimer iViewit - Gee can't wait to see what happens.. oh ya the TRUTH coming soon to a court near you.

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	c-50-186-203-60.hsd1.fl.comcast.net	Browser:	Chrome 44.0
IP Address:	50.186.203.60 -- [Label IP Address]	Operating System:	Win10
Location:	Boca Raton, Florida, United States	Resolution:	1600 x1200
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Multiple visits spread over more than one day	ISP:	Comcast Cable

Navigation Path

Date	Time	WebPage
		https://www.google.com/ (Keywords Unavailable)
25 Aug	12:28:57	tedbernsteinreport.blogspot.com/
		https://www.facebook.com/
25 Aug	12:29:38	tedbernsteinreport.blogspot.com/
		nortonsafe.search.ask.com -- oppenheimer iviewit
6 Sep	11:48:08	tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html
		tedbernsteinreport.blogspot.com/2014/07/what-really-happened-in-sudden-death-of.html
6 Sep	11:48:11	tedbernsteinreport.blogspot.com/
		https://www.google.com/ (Keywords Unavailable)
8 Sep	09:04:00	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html
8 Sep	09:04:15	investing.businessweek.com/research/stocks/private/snapshot.asp?privcapId=30771400 (Exit Link)
		https://www.google.com/ (Keywords Unavailable)
8 Sep	09:04:26	tedbernsteinreport.blogspot.com/2014/06/stp-enterprises-inc-pamela-simon.html

Posted by Crystal L. Cox at 11:14 PM No comments:  Recommend this on Google



**Mcknight Dallas Real Estate - who is this, what's up?**

Visitor Analysis & System Spec			
Search Referral:	www.google.com/ (#1) (Keywords Unavailable)		
Host Name:	208_86_164_214.marketscout.com	Browser:	IE 11.0
IP Address:	208.86.164.214 — [Label IP Address]	Operating System:	Win7
Location:	Dallas, Texas, United States	Resolution:	1366 x768
Returning Visits:	0	Javascript:	Enabled
Visit Length:	Not Applicable	ISP:	Mcknight Dallas Real Estate, Lp

**Navigation Path**

Date	Time	WebPage
		www.google.com/ (#1) (Keywords Unavailable)
11 Sep	15:02:39	tedbernsteinreport.blogspot.com/

Posted by Crystal L. Cox at 11:07 PM No comments: Recommend this on Google

**Hello John Pankauski, YOU are still a party of all this. Maybe it's time to come clean on what you know about Ted Bernstein and Alan Rose. The TRUTH will come out in the right court, an honest court one day.**

Visitor Analysis & System Spec			
Search Referral:	https://www.google.com/ (Keywords Unavailable)		
Host Name:	cpe-24-164-135-152.nyc.res.rr.com	Browser:	Safari 8.0
IP Address:	24.164.135.152 — [Label IP Address]	Operating System:	OS X
Location:	New York, United States	Resolution:	1600 x900
Returning Visits:	0	Javascript:	Enabled
Visit Length:	35 mins 36 secs	ISP:	Time Warner Cable

**Navigation Path**

Date	Time	WebPage
		https://www.google.com/ (Keywords Unavailable)
11 Sep	22:21:22	tedbernsteinreport.blogspot.com/2014_05_01_archive.html
		https://www.google.com/ (Keywords Unavailable)
11 Sep	22:49:25	tedbernsteinreport.blogspot.com/
		tedbernsteinreport.blogspot.com/
11 Sep	22:50:08	tedbernsteinreport.blogspot.com/2014/06/john-pankauski-pankauski-law-firm-alan.html
		https://www.google.com/ (Keywords Unavailable)
11 Sep	22:50:31	tedbernsteinreport.blogspot.com/
		tedbernsteinreport.blogspot.com/
11 Sep	22:50:57	tedbernsteinreport.blogspot.com/2014/02/alan-rose-esq-john-j-pankauski.html
		https://www.google.com/ (Keywords Unavailable)
11 Sep	22:51:22	tedbernsteinreport.blogspot.com/
		https://www.google.com/ (Keywords Unavailable)
11 Sep	22:56:58	tedbernsteinreport.blogspot.com/2014/06/so-what-perp-do-we-have-at-proskauer.html

Posted by Crystal L. Cox at 11:04 PM No comments: Recommend this on Google

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

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**NOTICE OF HEARING**  
*Uniform Motion Calendar*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, January 14, 2016

**TIME:** 8:30 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A  
GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT  
BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS**

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that he made a good-faith attempt to resolve this matter with counsel prior to scheduling this hearing, but was unable to do so.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 4th day of January, 2016.

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

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

**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (<a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O’Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O’Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

NOTICE OF HEARING  
*Uniform Motion Calendar*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, January 7, 2016

**TIME:** 8:30 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO SEAL TRIAL TRANSCRIPT AND RECORD,  
AND CHANGE THE STYLE OF THE CASE TO PROTECT PRIVACY**

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that he made a good-faith attempt to resolve this matter with counsel prior to scheduling this hearing, but was unable to do so.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 5th day of January, 2016.

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

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



**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: Eliot I. Bernstein (<a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a>)</p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

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### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tandè oubyen pale, rele 711.**

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Plaintiff(s)

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

Related Cases:

502011CP00653XXXXSB  
502014CA014637XXXXMB  
502014CP002815XXXXSB  
502015CP001162XXXXNB  
502015CP002717XXXXNB

v.

**NOTICE OF APPEAL**

ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

ELIOT BERNSTEIN

v. ESTATE OF SIMON BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

**NOTICE OF APPEAL**

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th ) District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in the Probate Division dated Dec. 8, 2015 denying a Petition for Mandatory Disqualification of Judge John L. Phillips filed Dec. 4, 2015 together with a Notice of Correction on same date and further Denying said Petition as legally insufficient and hereby appeals from each and every part of said Order.

Dated: January 5, 2016  
/s/Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 January, 2016.

By: /s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS**

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Brian M. O'Connell, Esq.	Counter Defendant

<p>Joielle A. Foglietta, Esq.        Ciklin Lubitz Martens &amp; O'Connell        515 N. Flagler Dr., 20th Floor        West Palm Beach, FL 33401        561-832-5900-Telephone        561-833-4209 - Facsimile        Email: boconnell@ciklinlubitz.com;        ifoglietta@ciklinlubitz.com;        service@ciklinlubitz.com;        slobdell@ciklinliibitz.com</p>	<p>John J. Pankauski, Esq.        Pankauski Law Firm PLLC        120 South Olive Avenue        7th Floor        West Palm Beach, FL 33401        courtfilings@pankauskilawfirm.com        john@pankauskilawfirm.com</p>
<p>Counter Defendant        Mark R. Manceri, Esq., and        Mark R. Manceri, P.A.,        2929 East Commercial Boulevard        Suite 702        Fort Lauderdale, FL 33308        mrmlaw@comcast.net</p>	<p>Counter Defendant        Donald Tescher, Esq.,        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein        880 Berkeley        Boca Raton, FL 33487        tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant        TESCHER &amp; SPALLINA, P.A..        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein        Life Insurance Concepts, Inc.        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487        tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant        Alan B. Rose, Esq.        PAGE, MRACHEK, FITZGERALD, ROSE,        KONOPKA, THOMAS &amp; WEISS, P.A.        505 South Flagler Drive, Suite 600        West Palm Beach, Florida 33401        561-355-6991        arose@pm-law.com        arose@mrachek-law.com</p>
<p>Pamela Beth Simon        950 N. Michigan Avenue        Apartment 2603        Chicago, IL 60611        psimon@stpcorp.com</p>	<p>Counter Defendant        L. Louis Mrachek, Esq.        PAGE, MRACHEK, FITZGERALD, ROSE,        KONOPKA, THOMAS &amp; WEISS, P.A.        505 South Flagler Drive, Suite 600        West Palm Beach, Florida 33401        561-355-6991        lmrachek@mrachek-law.com</p>
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<p>James Dimon        Chairman of the Board and Chief Executive Officer        JP Morgan Chase &amp; CO.        270 Park Ave. New York, NY 10017-2070        Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson        President &amp; Chief Executive Officer        Wilmington Trust Company        1100 North Market Street        Wilmington, DE 19890-0001        nwolfson@wilmingtontrust.com</p>
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<p>Charles D. Rubin        Managing Partner        Gutter Chaves Josepher Rubin Forman Fleisher Miller        PA        Boca Corporate Center        2101 NW Corporate Blvd., Suite 107        Boca Raton, FL 33431-7343        crubin@floridatx.com</p>	<p>Ralph S. Janvey        Krage &amp; Janvey, L.L.P.        Federal Court Appointed Receiver        Stanford Financial Group        2100 Ross Ave, Dallas, TX 75201        rjanvey@kjllp.com</p>
<p>Kimberly Moran        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles        Life Insurance Concepts        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487        lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin        CBIZ MHM, LLC        1675 N Military Trail        Fifth Floor        Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC        General Counsel        6480 Rockside Woods Blvd. South        Suite 330        Cleveland, OH 44131        ATTN: General Counsel        generalcounsel@cbiz.com        (216)447-9000</p>

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<p>Byrd F. "Biff" Marshall, Jr. President &amp; Managing Director Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq. Gunster, Yoakley &amp; Stewart, P.A. 777 South Flagler Drive, Suite 500 East West Palm Beach, FL 33401 Telephone: (561) 650-0545 Facsimile: (561) 655-5677 E-Mail Designations: slessne@gunster.com jhoppel@gunster.com eservice@gunster.com</p>
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<p>Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com</p>	<p>Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561</p>

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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERSTEIN TRUST  
TRUST AGREEMENT DATED  
MAY 20, 2008 AS AMENDED  
Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.  
Defendant(s).

---

**ORDER DENYING PETITIONER'S VERIFIED SWORN EMERGENCY PETITION  
AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF  
CIRCUIT JUDGE JOHN L. PHILLIPS**

THIS MATTER came before the Court in chambers, upon Petitioner's VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS (DE #94), and his NOTICE OF CORRECTION filed December 4, 2015, (DE # 96), alleged to apply to other applicable related cases:

2012CP004391 –Simon Bernstein Estate

2011CP000653 – Shirley Bernstein Estate

2014CP002815 – Oppenheimer v. Bernstein Minor Children

2015CP001162- Eliot Bernstein v. Trustee Simon Trust Case

Old Case -2014CA014637.



The Court has reviewed same and upon consideration it is

**ORDERED and ADJUDGED** that the Petition for Disqualification, and the Notice of Correction as set forth above, are **DENIED** as legally insufficient..

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 8th day of December, 2015.



JOHN L PHILLIPS  
Circuit Judge

**Copies furnished to:**

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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERSTEIN TRUST  
TRUST AGREEMENT DATED  
MAY 20, 2008 AS AMENDED  
Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.  
Defendant(s).

---

**ORDER DENYING PETITIONER'S VERIFIED SWORN EMERGENCY PETITION  
AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF  
CIRCUIT JUDGE JOHN L. PHILLIPS**

THIS MATTER came before the Court in chambers, upon Petitioner's VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L PHILLIPS (DE #94), and his NOTICE OF CORRECTION filed December 4, 2015, (DE # 96), alleged to apply to other applicable related cases:

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2011CP000653 – Shirley Bernstein Estate

2014CP002815 – Oppenheimer v. Bernstein Minor Children

2015CP001162- Eliot Bernstein v. Trustee Simon Trust Case

Old Case -2014CA014637.

The Court has reviewed same and upon consideration it is

**ORDERED and ADJUDGED** that the Petition for Disqualification, and the Notice of Correction as set forth above, are **DENIED** as legally insufficient..

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 8th day of December, 2015.



JOHN L PHILLIPS  
Circuit Judge

**Copies furnished to:**

ALAN B ROSE ESQ. [arose@nragej-law.com](mailto:arose@nragej-law.com)  
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IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR Palm Beach COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or In the Interest Of  
vs.  
Teschler & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698XX

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

**Notice to Applicant:** If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. Income tax return.)  
Are you Married?  Yes No Does your Spouse Work?... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other  
I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor Patent</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknown</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>na</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one: I  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties owed

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 20 14.  
09/30/1963 c6956008  
Date of Birth Driver's License or ID Number

[Signature]  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-245-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

[Signature]



Kelly Gold Frank  
COMMISSION # FF000732  
EXP. RES: MAR. 25, 2017  
WWW.AARONNOTARY.com

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.**

**THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.,

Defendants.

---

**PLAINTIFF'S MOTION TO SEAL TRIAL TRANSCRIPT AND RECORD,  
AND CHANGE THE STYLE OF THE CASE TO PROTECT PRIVACY**

Plaintiff, Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, submits this Motion to seal the trial transcript and to change the style of the case to protect the privacy interests of the grandchildren who are beneficiaries of the Trust, and states:

1. On December 15, 2015 this Court held a one-day trial in the above styled matter.
2. The key witness at the trial was Robert Spallina, formerly trusts and estates counsel for Simon and Shirley Bernstein, and formerly counsel for the fiduciary in this case. The only other witness was Ted S. Bernstein, the Trustee in this case.
3. The primary Respondent, and the only one who participated in this case, was Eliot Bernstein. Eliot has a history of publishing on the internet court papers, motions, orders, transcripts and other materials and editorial about this case. The Trustee already has moved for entry of a confidentiality order, and now seeks a supplementary order sealing the trial transcript or limiting its use, dissemination or publication, particularly its publication on the internet by Eliot Bernstein.

4. The undersigned has learned that William Stansbury, who is suing the Estate of Simon Bernstein in a related matter but is otherwise a stranger to this case,<sup>1</sup> has ordered the trial transcript for the matter at hand (the "Trial Transcript").

5. The Trustee is concerned that Mr. Stansbury may share the Trial Transcript with Defendant Eliot Bernstein, who would be expected to publish the Trial Transcript on the internet and otherwise publicize and/or criticize what has occurred in this matter.<sup>2</sup> The Trustee believes that such publication potentially is harmful to the administration of this Trust; to the pursuit of potential claims by the fiduciaries against responsible third parties; and to the privacy and confidentiality interests of the minor grandchildren and young adult grandchildren who are the sole beneficiaries of this Trust. The Trustee has requested that Stansbury agree to hold off sharing the transcript until this matter can be set for hearing on normal notice, but Stansbury will not agree to anything and may moot this issue by distributing the transcript to Eliot to harm these trusts and estates for his own purposes.

6. The Trustee, because there are five minor children and several young children who have only recently achieved majority age, moves for an order sealing the Trial Transcript or, in the alternative, restricting the internet publication or dissemination of the Trial Transcript. While generally "both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right of access to court proceedings and records," this Court has the

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<sup>1</sup> Stansbury is the sole plaintiff in Case No. 502102CA013933XXXXMB, in which his remaining claims are against the Estate of Simon L. Bernstein.

<sup>2</sup> Plaintiff's anticipation of the publication of this event is well founded. Eliot Bernstein has, on multiple occasions criticized the proceedings at hand and published numerous parts of these proceedings in an attempt to harm the fiduciaries and undermine the integrity of these proceedings.

discretion to seal the Trial Transcript if it determines that a minor child has been adversely affected by the litigation and that continued publicity would in all likelihood be "highly detrimental" to that child. *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988). *See also: Florida Freedom Newspapers, Inc. v. Sirmons*, 508 So. 2d 462, 463-64 (Fla. 1st DCA 1987) (information related to the welfare of children is a sufficiently compelling to justify closing the proceedings.).

7. In this case, the minor grandchildren of Simon Bernstein as well as the young adult grandchildren of Simon Bernstein were listed as defendants even though none of them participated in this case. By its Final Judgment, this Court determined that the grandchildren were the beneficiaries of the Trust. The details and facts of this case, including publicizing information concerning the size of their inheritances and the circumstances of their grandparents' estate planning, if publicized by the widespread dissemination of the trial transcript, could potentially be highly detrimental to the minor children and also interfere with the Trustee's efforts to properly administer the Trust, including pursuing claims against third parties.

8. In addition, the Trustee was required to individually name all of the potential beneficiaries of Simon and Shirley Bernstein, including all of their adult children and their ten grandchildren, a number of whom are minors and the rest of whom are young adults just now starting their college or professional lives. In light of the Final Judgment, which likely will be appealed by Eliot, the Trustee seeks an order altering the style of the case to reflect the following:



TED BERNSTEIN, as Trustee of the Shirley Bernstein  
Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

v.

CHILDREN AND GRANDCHILDREN OF  
SIMON L. BERNSTEIN,

Defendants.

The Trustee recognizes that this is an unusual request, but believes the granting of this relief is in the best interests of the beneficiaries of the Trust.

WHEREFORE, Plaintiff respectfully request that this Court order that the Trial Transcript be sealed or, alternatively, enter an appropriate order limiting the internet publication or dissemination of it; enter an Order re-styling the case to further protect the privacy of the grandchildren; and grant such other relief as this Court deems appropriate. At a minimum, Plaintiff requests that the Court enter a temporary order limiting the transcript use until the matter can be set for further hearing.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 5th day of January, 2016.

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THOMAS & WEISS, P.A.  
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Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBLJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

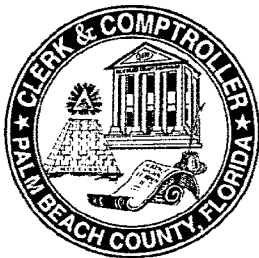
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children, and as natural guardian for J.I. a  
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As to this Motion ONLY:  
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Counsel for William Stansbury



OFFICE OF THE  
CLERK OF THE CIRCUIT COURT  
Fifteenth Judicial Circuit - Palm Beach County  
Circuit Civil Division- P.O. Box 4667- West Palm Beach, Fl 33402-4238

**SHARON R. BOCK**  
Clerk & Comptroller  
Palm Beach County

Date: January 6, 2016

To: ELIOT IVAN BERNSTEIN  
2753 NW 34<sup>TH</sup> STREET  
BOCA RATON, FL 33434

RE: 2014CP003698

Please be advised, the attached document has been docketed and filed with the 4<sup>TH</sup> DCA, however, it has not been recorded, as it does not comply with RJA 2.520.

Please resubmit an *Amended Notice of Appeal* pursuant to RJA 2.520 for docketing and recording. Please leave a 3" X 3" blank space in the upper right hand corner of first page of document for recording purposes.

**FILED**  
JAN 06 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

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

Probate Division  
Case No.: 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

**ELIOT I. BERNSTEIN'S OPPOSITION  
TO IMPROPER HEARING CALLED  
UP BY TRUSTEE TED BERNSTEIN  
AND COUNSEL ALAN ROSE**

v.

ALEXANDRA BERNSTEIN; et al.,

Defendants.

---

**COMES NOW** Eliot I. Bernstein, being duly sworn who hereby deposes and says under oath and penalties of perjury in filing this Opposition to an improper hearing called up by Trustee Ted Bernstein and Alan Rose and says as follows:

1. I file this opposition to the improperly noticed Hearing filed by Florida licensed attorney Alan Rose on behalf of the alleged Trustee Ted Bernstein and move to Strike the Hearing from the Calendar and move that attorney Rose be sanctioned accordingly.
2. Attorney Alan Rose and alleged Trustee Ted Bernstein had actual knowledge of my filing of a Notice of Unavailability throughout the month of January and have now called up their second Motion for a Hearing disregarding said Notice and in this instance not even providing 2 days Notice while failing to call the motion or Notice an Emergency. See,

<http://iviewit.tv/Simon%20and%20Shirley%20I%20state/20151223%20Notice%20of%20Unavailability%20Eliot%20Bernstein%2036989%20case%20ECF%20STAMPED%20COPY.pdf>

3. The motion should be struck from the Calendar or at minimum rescheduled.

4. These actions are even more egregious as the Notice for the Hearing on Jan. 7, 2016 was not even filed by Alan Rose until after regular business hours on Jan. 5th, 2016 being filed after 5 pm despite the fact that Alan Rose and Ted Bernstein were both on a phone Conference Call / Meeting earlier in the day which included my attorney Candice Schwager of Texas who is seeking Pro Hac Vice admission and previously sought a continuance of the alleged validity Trial of Dec. 15, 2015, yet Alan Rose at no time mentioned any issue of emergency nature involving minor children to attorney Schwager either before, during or after this phone Meeting just yesterday.
5. Attorney Alan Rose not only never contacted my attorney Candice Schwager who he was on the phone with just yesterday, Jan. 5, 2016, but he also never contacted me in the scheduling of this matter.
6. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.
7. This is nothing but more of the same "sharp practices" and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
8. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the "grandchildren" to Shirley and

Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.

9. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20CF%20Filing%20Stamped%20Copy.pdf>

and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20SIGNED%20Phillips%20Trial%20Stay%20CF%20STAMPED%20COPY.pdf>

10. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

11. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf> ) to seek his voluntary withdrawal

of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

12. There was minimal if virtually any naming of the “grandchildren” and/or “minor children” in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
13. As attorney Schwager pointed out in her letter, “Thus, it truly appears that your motion is more of a “smoke-screen” and “sharp practices” which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.”
14. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein’s business partner / former business partner Robert Spallina’s testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.
15. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”



16. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
17. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
18. Minor children ultimately have to grow up and learn the laws of civil societies.
19. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown ***nothing specific of a compelling nature*** with respect to the minor children and this motion should be struck from the Calendar and denied.
20. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor children’s prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to Fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

21. The SEC Consent Orders<sup>1</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.
22. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset."
23. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

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<sup>1</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

24. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>
25. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.
26. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child’s name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children’s behalf either.
27. Nothing else more than that should happen here.
28. Alan Rose and Ted Bernstein’s desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, “In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations case.<sup>8</sup>The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property.”
29. “This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these

proceedings.” District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

30. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
31. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>2</sup> and See Motion on St. Andrew’s School<sup>3</sup>,
32. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>4</sup> and was further moved to mandatory disqualify Dec.28, 2015<sup>5</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

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<sup>2</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>3</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

<sup>4</sup> December 04, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>5</sup> Dec 28, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips and striking the improperly Noticed Hearing of Alan Rose and Ted Bernstein from the calendar, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 06, 2016

/s/Eliot Ivan Bernstein

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 6th day of January, 2016.

By: /s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS**

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<p>Theodore Stuart Bernstein  880 Berkeley  Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant  TESCHER &amp; SPALLINA, P.A..  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein  Life Insurance Concepts, Inc.  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant  Alan B. Rose, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE,  KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  561-355-6991  <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p>
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

Probate Division  
Case No.: 502014CP003698XXXXSB

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

**ELIOT I. BERNSTEIN'S OPPOSITION  
TO IMPROPER HEARING CALLED  
UP BY TRUSTEE TED BERNSTEIN  
AND COUNSEL ALAN ROSE**

v.

ALEXANDRA BERNSTEIN; et al.,

Defendants.

---

**COMES NOW** Eliot I. Bernstein, being duly sworn who hereby deposes and says under oath and penalties of perjury in filing this Opposition to an improper hearing called up by Trustee Ted Bernstein and Alan Rose and says as follows:

1. I file this opposition to the improperly noticed Hearing filed by Florida licensed attorney Alan Rose on behalf of the alleged Trustee Ted Bernstein and move to Strike the Hearing from the Calendar and move that attorney Rose be sanctioned accordingly.
2. Attorney Alan Rose and alleged Trustee Ted Bernstein had actual knowledge of my filing of a Notice of Unavailability throughout the month of January and have now called up their second Motion for a Hearing disregarding said Notice and in this instance not even providing 2 days Notice while failing to call the motion or Notice an Emergency. See,

<http://iviewit.tv/Simon%20and%20Shirley%20I%20state/20151223%20Notice%20of%20Unavailability%20Eliot%20Bernstein%2036989%20case%20ECF%20STAMPED%20COPY.pdf>

3. The motion should be struck from the Calendar or at minimum rescheduled.

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5. Attorney Alan Rose not only never contacted my attorney Candice Schwager who he was on the phone with just yesterday, Jan. 5, 2016, but he also never contacted me in the scheduling of this matter.
6. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.
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8. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the "grandchildren" to Shirley and

Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.

9. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20CF%20Filing%20Stamped%20Copy.pdf>

and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20SIGNED%20Phillips%20Trial%20Stay%20CF%20STAMPED%20COPY.pdf>

10. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

11. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf> ) to seek his voluntary withdrawal

of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

12. There was minimal if virtually any naming of the “grandchildren” and/or “minor children” in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
13. As attorney Schwager pointed out in her letter, “Thus, it truly appears that your motion is more of a “smoke-screen” and “sharp practices” which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.”
14. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein’s business partner / former business partner Robert Spallina’s testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.
15. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”

16. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
17. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
18. Minor children ultimately have to grow up and learn the laws of civil societies.
19. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown ***nothing specific of a compelling nature*** with respect to the minor children and this motion should be struck from the Calendar and denied.
20. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor children’s prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to Fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

21. The SEC Consent Orders<sup>1</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.
22. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset."
23. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

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<sup>1</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

24. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>
25. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.
26. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child’s name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children’s behalf either.
27. Nothing else more than that should happen here.
28. Alan Rose and Ted Bernstein’s desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, “In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations case.<sup>8</sup>The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property.”
29. “This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these



proceedings.” District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

30. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
31. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>2</sup> and See Motion on St. Andrew’s School<sup>3</sup>,
32. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>4</sup> and was further moved to mandatory disqualify Dec.28, 2015<sup>5</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

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<sup>2</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>3</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

<sup>4</sup> December 04, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>5</sup> Dec 28, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips and striking the improperly Noticed Hearing of Alan Rose and Ted Bernstein from the calendar, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 06, 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 6th day of January, 2016.

By: /s/ Eliot Ivan Bernstein

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**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D <u>12/16/2015</u>	CASE STYLE <u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV <u>2014CP003698 IH</u>	PLTF/PET/ <u>TED BERNSTEIN</u>
JUDGE <u>JOHN L PHILLIPS</u>	DEFT/RESP/ <u>ALEXANDRA BERNSTEIN</u>
HEARING DATE <u>12/15/2015</u>	HRG TYPE <u>FINAL JUDGMENT</u>
CHARGE <u>N/A</u>	COURT CLERK <u>ANGELA BUDD</u>
	<input checked="" type="checkbox"/> Clerk not present at trial

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RET'D
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERNSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

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Manager Approval	Print	_____	sign	_____	date
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Destruction Witnessed by	Print	_____	sign	_____	date





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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

TED BERNSTEIN, AS TRUSTEE  
OF SHIRLEY BERNSTEIN TRUST  
AGREEMENT DATED MAY 20, 2008  
AS AMENDED

Plaintiff

v.

ALEXANDRA BERNSTEIN; ET AL.

Defendants

---

**ORDER DENYING ELIOT BERNSTEIN'S MOTION FOR NEW TRIAL**

**THIS MATTER** came before the Court, in chambers, upon Eliot Bernstein's Motion for New Trial (Docket entry #113) filed with the Clerk of Court December 31, 2015. Upon review, it is hereby

**ORDERED and ADJUDGED** as follows:

Eliot Bernstein's Motion for New Trial is hereby **DENIED**.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida, this 7th day of January, 2016.



JOHN L. PHILLIPS  
Circuit Judge

**Copies furnished to:**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**CERTIFICATE OF SERVICE**

I CERTIFY that a true copy of *Order on Trustee's Motion to Seal Transcript and Record, and Change the Style of the Case to Protect Privacy* entered January 7, 2016, was served this 7th day of January, 2016, on all parties listed on attached Service List by  Email Electronic Transmission.

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Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBLJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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(561) 245-8644 - Facsimile  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
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C.F., Minors; and Max Friedstein  
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Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

As to this Certificate ONLY:  
Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3695 West Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
(561) 734-5552 - Telephone  
(561) 734-5554 - Facsimile  
Email: [service@feamanlaw.com](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

v.

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

---

**ORDER ON TRUSTEE'S MOTION TO SEAL TRANSCRIPT AND RECORD, AND  
CHANGE THE STYLE OF THE CASE TO PROTECT PRIVACY**

THIS CAUSE came on to be heard before this Honorable Court on January 7, 2016, upon  
Trustee's Motion to Seal Transcript and Record, and Change the Style of the Case to Protect  
Privacy, and the Court having reviewed the file, heard argument of counsel and being otherwise  
duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

1. Trustee's Motion to Seal Transcript and Record, and Change the Style of the Case to Protect Privacy is hereby ~~GRANTED~~ DENIED, without prejudice.

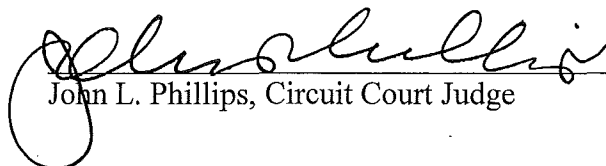
2. The Trustee has withdrawn, without prejudice, the remainder of the Motion.

---

---

---

DONE and ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida on this 7 day of January, 2016.

  
John L. Phillips, Circuit Court Judge

Copies to:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esquire**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**

Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**

**Joielle A. Foglietta, Esquire**

Ciklin, Lubitz, Martens & O'Connell

515 North Flagler Drive, 20<sup>th</sup> Floor

West Palm Beach, Florida 33401

Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)

[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)

[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)

[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**

Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

**Peter M. Feaman, Esquire**

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Blvd., #9

Boynton Beach, FL 33436

Email: [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

[service@feamanlaw.com](mailto:service@feamanlaw.com)

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

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CHANGE THE STYLE OF THE CASE TO PROTECT PRIVACY**

THIS CAUSE came on to be heard before this Honorable Court on January 7, 2016, upon  
Trustee's Motion to Seal Transcript and Record, and Change the Style of the Case to Protect  
Privacy, and the Court having reviewed the file, heard argument of counsel and being otherwise  
duly advised in the premises, it is hereby

ORDERED and ADJUDGED that:

FILED  
16 JAN -7 PM 3:31  
SHARON P. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH



1. Trustee's Motion to Seal Transcript and Record, and Change the Style of the Case to Protect Privacy is hereby ~~GRANTED~~ DENIED, without prejudice.

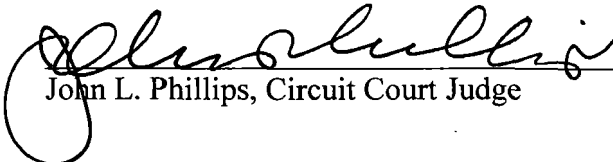
2. The Trustee has withdrawn, without prejudice, the remainder of the Motion.

---

---

---

DONE and ORDERED in Chambers, in West Palm Beach, Palm Beach County, Florida on this 7 day of January, 2016.

  
John L. Phillips, Circuit Court Judge

Copies to:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
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505 South Flagler Drive, Suite 600  
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**John P. Morrissey, Esquire**  
330 Clematis Street, Suite 213  
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Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
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Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

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Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esquire**  
Ciklin, Lubitz, Martens & O'Connell  
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West Palm Beach, Florida 33401  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

**Peter M. Feaman, Esquire**  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
Boynton Beach, FL 33436  
Email: [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
[service@feamanlaw.com](mailto:service@feamanlaw.com)

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

January 08, 2016

CASE NO.: 4D16-0064

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE. ET AL.

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that the Notice of Appeal filed in the Circuit Court is treated as a Petition for Writ of Prohibition. Petitioner shall file a petition and appendix in compliance with Florida Rule of Appellate Procedure 9.100 within twenty (20) days from the date of this order.

Served:

cc: Lorin Louis Mrachek  
Gary R. Shendell  
Kenneth S. Pollock  
Peter Marshall Feaman  
Kimberly Moran  
Charles D. Rubin  
Jill Iantoni  
Pamela Beth Simon  
James Dimon  
Neil Wolfson  
Lindsay Baxley  
Joseph M. Leccese  
Brian Moynihan

Brian M. O'Connell  
Steven A. Lessne  
John Pankauski  
Donald R. Tescher  
Hunt Worth  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
Dennis McNamara  
William McCabe  
Stp Enterprises, Inc.  
Cbiz Mhm, Llc  
Heritage Union Life Ins.  
Co.

Mark R. Manceri  
John P. Morrissey  
Alan Benjamin Rose  
Joielle A. Foglietta  
Albert Gortz  
Lisa Friedstein  
Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin  
Ralph S. Janvey  
T & S Registered Agents,  
Llc  
David Lanciotti  
Clerk Palm Beach

al

**FILED**

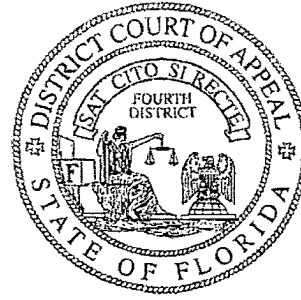
**JAN 08 2016**

**SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION**

002027

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



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

**FILED** January 08, 2016

**JAN 08 2016**

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

CASE NO.: 4D16-0064  
L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE. ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

The \$300.00 filing fee or affidavit of indigency in conformance with sections 57.081 and 57.085, Florida Statutes, did not accompany the petition as required in Florida Rule of Appellate Procedure 9.100(b). The filing fee is due and payable at the time of filing REGARDLESS OF WHETHER THE PETITION IS SUBSEQUENTLY VOLUNTARILY DISMISSED OR ADVERSELY DISMISSED.

ORDERED sua sponte that the \$300.00 filing fee or affidavit of indigency in conformance with section 57.081 and 57.085, Florida Statutes, must be filed in this Court within ten (10) days from the date of the entry of this order. Failure to comply within the time prescribed will result in dismissal of this cause and may result in the court sanctioning of any party, or the party's attorney, who has not paid the filing fee. **The attorney filing the petition has a duty** to tender the filing fee to the appellate court when the petition is initiated. See *In Re Payment of Filing Fees*, 744 So. 2d 1025 (Fla. 4th DCA 1997). Failure of the attorney to pay will result in referral to the Department of Financial Services for collection.

**\*\*NOTE:** No extensions of time will be entertained. Once the fee is paid, it is not refundable. Except for dismissal, this court will take no action in this appeal until this filing fee is paid or until an affidavit of indigency is filed and indigency status is granted.

Served:

cc: Lorin Louis Mrachek  
Gary R. Shendell  
Kenneth S. Pollock  
Peter Marshall Feaman  
Kimberly Moran  
Charles D. Rubin  
Jill Iantoni  
Pamela Beth Simon  
James Dimon  
Neil Wolfson  
Lindsay Baxley  
Joseph M. Leccese  
Brian Moynihan

Brian M. O'Connell  
Steven A. Lessne  
John Pankauski  
Donald R. Tescher  
Hunt Worth  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
Dennis McNamara  
William McCabe  
Stp Enterprises, Inc.  
Cbiz Mhm, Llc  
Heritage Union Life Ins.  
Co.

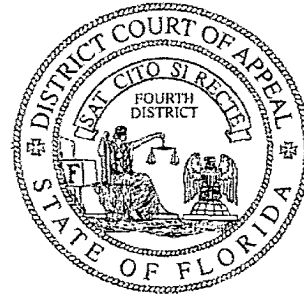
Mark R. Manceri  
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Alan Benjamin Rose  
Joielle A. Foglietta  
Albert Gortz  
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Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin  
Ralph S. Janvey  
T & S Registered Agents,  
Llc  
David Lanciotti  
Clerk Palm Beach

al

*Lonnn Weissblum*

---

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Friday, January 08, 2016 12:43 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-0064

-----Original Message-----

From: [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
Sent: Friday, January 08, 2016 11:14 AM  
To: COC\_DM-eappeals  
Subject: Pleading Accepted On Case: 16-0064

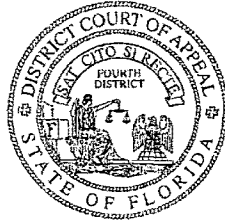
Your Determination of Indigent Status on case 16-0064 has been accepted and is now on the docket.

DCA Case No: 16-0064  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE. ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**

**JAN 08 2016**

**SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION**



Fourth District Court of Appeal  
1525 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33401  
(561) 242-2000

**FILED**  
JAN 08 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**ACKNOWLEDGMENT OF NEW CASE**

DATE: January 08, 2016

STYLE: ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE.  
ET AL.

**4DCA#: 16-0064**

The Fourth District Court of Appeal has received the Petition for Writ of Prohibition reflecting a filing date of January 6, 2016.

The county of origin is Palm Beach.

The lower tribunal case number provided is 2014CP003698XXXXNB.

The filing fee is due.

The Fourth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER and a physical address.

**ELECTRONIC FILING IS MANDATORY FOR ALL ATTORNEYS. Please visit [edca.4dca.org](http://edca.4dca.org) to register for eDCA, the court's electronic filing system.**

**ATTORNEYS WHO HAVE NOT REGISTERED FOR eDCA WILL NOT RECEIVE FURTHER PAPER DOCUMENTS FROM THE COURT**

cc:	Lorin Louis Mrachek	Brian M. O'Connell	Mark R. Manceri
	Gary R. Shendell	Steven A. Lessne	John P. Morrissey
	Kenneth S. Pollock	John Pankauski	Alan Benjamin Rose
	Peter Marshall Feaman	Donald R. Tescher	Joielle A. Foglietta
	Kimberly Moran	Hunt Worth	Albert Gortz
	Charles D. Rubin	Eliot Ivan Bernstein	Lisa Friedstein
	Jill Iantoni	Theodore Stuart Bernstein	Theodore Stuart Bernstein



**Markisen, Catherine R**

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**Sent:** Friday, January 08, 2016 11:14 AM  
**To:** COC\_DM-eappeals  
**Subject:** Pleading Accepted On Case: 16-0064

Your Notice of Appeal Filed on case 16-0064 has been accepted and is now on the docket.

DCA Case No: 16-0064  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE. ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**  
**JAN 08 2016**  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

v.

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

Defendants.

---

Probate Division

Case.: 502014CP003698XXXXNB

Judge John Phillips

**Response in Opposition  
Motions for Guardian & Gag  
Order filed by Alan M. Rose**

**RESPONSE IN OPPOSITION MOTIONS FOR GUARDIAN & GAG FILED BY ALAN B. ROSE**

COMES NOW, PRO SE, Eliot Ivan Bernstein (“Eliot”) or (“Petitioner”) as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children Beneficiaries of the Shirley Bernstein Trust and hereby files this and in support thereof states, on information and belief, as follows:

1. I oppose the motion by Alan M. Rose to appoint a Guardian for my children and oppose his motion for any “gag” order and since an Evidentiary Hearing and Testimony are both necessary with respect to the factual pleadings by Alan Rose and such evidence and testimony including my own testimony on both matters which would last well beyond 30 minutes alone it is inappropriate and improper process to achieve anything at the Uniform Motion Calendar Hearing on Jan. 14, 2016 beyond Scheduling of Compliance for outstanding Discovery and Production, depositions and then an evidentiary hearing and a proper Case Management Conference for this “Complex” case.
2. This, however, naturally raises the issue of first scheduling the hearings on the motions to remove Ted Bernstein as Trustee for not being qualified under the language of the trusts, for misconduct in fiduciary capacity, for waste and fraud upon the estate and other matters wherein even this very response by myself in this filing has been delayed by Representations by Creditor William Stansbury that his Florida Licensed Attorney Peter Feaman would be filing yesterday with the Court and Alan Rose a request to delay any hearing on these motions until a Status Conference / Case Management Conference for the Orderly scheduling of further hearings wherein Peter Feaman already notified this Court on Sept. 15, 2015 at the Case Management Conference that removal of Ted Bernstein as Trustee should be the first order of business instead of a validity trial with Ted Bernstein as Trustee, but whereupon this Court improperly moved to Schedule Trial in Shirley Bernstein’s Trust case as Alan Rose misled the Court to believe that all cases were called up, which was untrue, where Shirley’s

Trust case was Not Notified for the Case Management Conference<sup>1</sup> requested by the current PR of Simon's Estate being Mr. Brian O'Connell and Joy Foglietta of the Ciklin Lubitz Martens & O'Connell firm who filed the Notice to bring the matter up for the Case Management Conference on Sept. 15, 2015 in the first instance.

3. Thus, both alleged Creditor William Stansbury and Florida Licensed Attorney Peter Feaman are both Necessary Witnesses in relation to the Integrity of these proceedings and the good faith efforts I have undertaken to uncover fraud upon the Court and in the Court which is directly relevant to resolution of any sham claim by attorney Alan Rose or Steven Lessne regarding guardianship, both being Florida licensed attorneys who have directly Misled this Court in many ways including but not limited to falsely citing language from other Court orders such as Southern District of New York Judge Shira Scheindlin, or Alan Rose falsely claiming during the alleged validity trial that there has been no prior Order for Production of all Original Records by Tescher and Spallina when in fact this was part of the Discharge Order of Judge Colin to the extent any such Order of Judge Colin remains valid. See, Order of Colin on Production<sup>2</sup>.
4. Specifically, Alan Rose, a Served Counter Defendant in this very action has knowingly misquoted an Order of SDNY Judge Shira Scheindlin by falsely portraying a Proskauer Rose proposed language in an Order as an actual Order, quote, finding of Hon. Judge Scheindlin

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<sup>1</sup> Case Management Notice of Hearing for Only Simon Bernstein Estate Case  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%202015%202015%200930am%20Case%20Management.pdf>

<sup>2</sup>February 18, 2014 Colin Order Regarding Turning Over ALL Records to Curator  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

herself and while this conduct recently occurred in matters before the 4th DCA<sup>3</sup>, this evidence is representative of the sharp practices that Alan Rose and Ted Bernstein have employed to avoid full and fair hearings, obstruct due process, and obscure actual truth seeking processes acting in conflict of interest and more while simultaneously not only denying proper funds for myself to obtain proper counsel for my minor children and myself but further denied retained Texas attorney Candice Schwager documents to review for her to further an application to be admitted pro hac vice after having opportunity to scope potential conflicts of interest between myself and minor children.

5. Alan Rose falsely stated to this Court at the Case Management Conference<sup>4</sup> that no hearings were held prior for guardianship hearings but yet Alan Rose had only a year earlier been denied<sup>5</sup> by Judge Colin who claimed Eliot and Candice did not need Guardians for their children.
6. Thus, attorney Alan Rose's conduct himself in these proceedings has relevance to his sham motion for guardianship since his own conduct has caused waste and harm to beneficiaries and delayed and obstructed the fact finding and truth seeking processes of this court and thus right there alone are 3 Witnesses in addition to myself that should be part of any Evidentiary hearing relating to appointment of a Guardianship and thus arriving at a Schedule would be the most that can happen on Jan. 14, 2016, or at least should be the most that can happen on this date.

---

<sup>3</sup> December 17, 2015 Sur Reply Showing Alan Rose Misquoting Federal Judge Shira Scheindlin Order <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151217%204th%20DCA%20Rose%20Ted%20Su%20r%20Reply%20Dec%2016%202015.pdf>

<sup>4</sup> September 15, 2015 Case Management Hearing Transcript Scheduled In Simon Estate ONLY, Page 28 Line 7-16  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Tra%20nscript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>5</sup> August 14, 2014 Order DENYING GUARDIAN  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

7. In fact, Florida licensed attorney Peter Feaman has directly prepared pleadings and correspondence showing myself as being the only sibling in these cases to expose fraud and forgery and other proper matters in these cases and eligible to be a Successor. See, below.
8. See filings by Peter Feaman on behalf of alleged Creditor William Stansbury relevant to the sham filing for Guardianship by Alan Rose on behalf of Ted Bernstein.
  - a. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140217%20Stansbury%20Response%20in%20Opposition.pdf> Page 4-6 (C)
  - b. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522%20JOINDER%20IN%20PETITION%20FILED%20BY%20ELIOT%20IVAN%20BERNSTEIN%20FOR%20REMOVAL%20OF%20TRUSTEE%20AND%20FOR%20TRUST%20ACCOUNTING.pdf>
  - c. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140627%20Response%20in%20Opposition%20to%20the%20Appointment%20of%20Ted%20Bernstein%20as%20Successor%20PR%20etc%20filed%20by%20Feaman%20Stansbury.pdf>
9. Then of course is the letter by Florida Licensed attorney Peter Feaman from August of 2014, nearly 17 months ago claiming PR Brian O'Connell had an absolute "duty" to file to Remove Ted Bernstein in showing failure to provide Accountings, waste of Trust assets and other matters, yet no action taken by PR O'Connell and no present follow-up by Peter Feaman although as indicated I have been delayed in this very filing by Representations of William Stansbury that Peter Feaman would be filing with the Court relative to these matters including holding hearings off until a Status or Case Management Conference but has yet to do that either, although it was represented it would be filed Tuesday, Jan., 12, 2016 further knowing I had filed for Unavailability with this Court which was served upon Alan Rose and

further filed in my last opposition to the Gag order that I was under medication and needing medical care. See,

- a. August 29, 2014 Letter from Attorney at Law Peter Feaman, Esq. to Personal Representative Attorney Brian O'Connell re Conflicts and more of Ted and Alan Rose.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

- b. December 16, 2014, Letter from Attorney Peter Feaman to PR and Attorney Brian O'Connell Letter re O'Connell's Absolute Duty to Remove Ted –

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20>

- c. [Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf](http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf)

- d. September 19, 2014 Attorney Peter Feaman to PR Attorney Brian O'Connell re Assets of Estates -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf>

10. William Stansbury is further a necessary Witness as he has information relating to an ongoing Federal investigation of Ted Bernstein by the US Dept. of Labor in relation to Ted Bernstein's fiduciary actions as Plan Administrator / Trustee involving Arbitrage International an asset of the Estate and Trusts where it is likely that further financial harm to beneficiaries including my minor children has occurred according to William Stansbury and yet Alan Rose and Ted Bernstein have not only failed to Disclose these matters to the Court

and parties but further failed to disclose these matters in an alleged Meeting involving Bernstein Holdings and Bernstein Family Investments where Ted Bernstein and Alan Rose .

11. It is unknown why neither Creditor William Stansbury or his Florida licensed attorney Peter Feaman has yet to bring this information to the Court further making them necessary witnesses while it is further noted that just last week Alan Rose improperly scheduled a Hearing without contacting me although being on the phone that same morning with my retained attorney Candice Schwager of Texas seeking pro hac vice admission yet never mentioned the hearing and yet Rose later claimed in an email on Jan. 7, 2016 that an agreement he made with Attorney Peter Feaman to appear on short notice further justified his filing thus playing a “circus” / “charade” game of having Stansbury/Feaman in some parts of the cases but then not having them in on others all the while claiming that Ted Bernstein should be removed.

12. Further that the Estate itself by and through Brian O’Connell and Joy Foglietta has failed to account or provide Documents and Records despite prior Court Ordered Production<sup>6</sup> upon the former PR’s, Tescher and Spallina, after their removal after admissions to fraudulently altering and creating a fraudulent Shirley Trust that Alan Rose misleads this Court about there being no such Court Order during an alleged Validity Trial<sup>7</sup> and having multiple cross examination questions sustained as a result of such misstatement to the Court where it appears that in **contempt of such order** for Tescher & Spallina to Produce and turn over all Originals and files, Alan Rose, alleged Fiduciary and Trustee Ted Bernstein, Brian

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<sup>6</sup> February 18, 2014 Court Ordered Production of ALL Records of Tescher and Spallina to Curator <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>7</sup> December 15, 2015 Validity Hearing Transcript - Transcript Page 123 Lines 10-18 & Page 124 3-7 and Pages 124 Line 17 to 125 Line 17. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>



O'Connell and Joy Foglietta and potentially others have left "Original" documents and files instead in the Custody of Tescher & Spallina where Spallina has now admitted to fraud upon beneficiaries and their counsel, mail fraud, fraud upon the Court in the filings his office prepared and other crimes and misconduct during the alleged "validity" trial before Your Honor where the PRs O'Connell & Foglietta are *wholly and conspicuously absent from the "Validity trial"* (despite having pleaded to the Court in the Shirley Trust Construction case that Ted was NOT A VALID TRUSTEE<sup>8</sup> in the SIMON TRUST, which would have materially affected the outcome of such hearing on the Simon Trust case and Ted's ability to argue the validity in the first place) among many other "*missing Witnesses*" at the alleged validity Trial such as Traci Kratish, Notaries Diana Banks, Kimberly Moran (charged with Felony fraudulent notarization and admitted Forgery of documents in these matters) and Lindsay Baxkey and Donald Tescher and an unknown signatory witnesses, leaving the Estate of Simon Bernstein *without counsel* despite the fact that one of the First Orders of Business PRs O'Connell and Foglietta should have sought at the Case Management Conference held Sept. 15, 2015 which was Held and Noticed only in the Estate of Simon Bernstein is a Compliance Order to obtain all the "Originals" and files/documents from Tescher & Spallina so proper Discovery and Production could occur to prove validity but instead results in an improperly schedule Trial in Shirley's Trust case which was not Noticed for Sept. 15, 2015 as required in the procedural rules of the Court.

13. Thus, Brian O'Connell and Joy Foglietta should further be called as Necessary Witnesses in relation to the integrity of proceedings and were further factual Witnesses in relation to

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<sup>8</sup> February 17, 2015 Answer Affirmative Defenses Filed by PR Attorney Brian O'Connell stating Ted is NOT A VALID TRUSTEE under the terms of the Trust.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

missing documents, missing production, missing business records and intertwined in conduct with Alan Rose in sudden emerging “original” documents from the St. Andrew’s Home allegedly for the Oppenheimer matters and other dispositive Estate and Trust documents yet Creditor William Stansbury had previously stated that his Florida licensed attorney Peter Feaman suggested that a Meeting at his Office and or Brian O’Connell’s Office and inviting the Palm Beach County Sheriff’s for Criminal investigation and prosecution of Ted Bernstein in relation to the missing Tangible Personal Property (“TTP”) should occur, thus intertwining all of the various parties as witnesses in relation to any Guardianship hearing and necessity.

14. Licensed attorney Peter Feaman and his client alleged Creditor William Stansbury further being Witnesses as both claimed to have observed Donald Tescher at the Courthouse after the validity trial yet was not produced by Alan Rose suggesting Tescher’s presence was under Alan Rose’s control and yet because this Court had impermissibly prejudiced and “pre-judged” the validity trial by improperly limiting it to one day ordered in the wrong case without addressing discovery and dispositive motions there was no timing remaining for further necessary witnesses and thus the validity trial should be vacated.
15. While I understand it was filed in a different case number, Steven Lessne is intertwined with Rose on numerous issues including not only the sudden emergence of “original” documents in the Oppenheimer case but further the sharp practices conduct wherein Lessne has ***directly mislead this Court*** by an almost identical sharp practice of Alan Rose where Southern District of New York Judge Hon. Shira Scheindlin is again knowingly misquoted wherein Lessne claims Judge Scheindlin issued some nationwide injunction against me again misquoting language “proposed” by Proskauer Rose where in actuality the language Judge Scheindlin determined in the Order was as follows: “IV. CONCLUSION For the foregoing

reasons, a monetary sanction in the amount of \$3,500 is hereby imposed on Bernstein as is the injunctive sanction described above. The money is to be paid to the Clerk of the Court, Southern District of New York, forthwith. If Bernstein ignores the monetary sanction, defendants may obtain an enforceable judgment in the amount of \$3,500. If Bernstein continues to file motions in this case, he may be subject to additional monetary sanctions. The Clerk of the Court is directed to close the motion for sanctions (Docket Entry # 145).

Dated: 14 New York, New York August 29, 2013 Opposition at 13. 7<sup>9</sup>“

16. Thus, the only injunctive limitation determined by SDNY Judge Scheindlin is that if I file motions “*in this case*”, being the SDNY case, I “*may be subject to additional monetary sanctions*”, thus showing Lessne himself directly misleading this Court as a Florida licensed attorney.
17. The Court should note that Lessne left his firm Gray Robinson and took with him the Bernstein / Oppenheimer case as he transitioned to Alan Rose’s prior law firm Gunster.
18. To the extent any Order of Judge Colin remains valid, he has already ruled upon motions by Alan Rose and Ted Bernstein on Guardianship and the related matters and DENIED those matters. See below Orders Colin in Rose Denial Guardian Shirley Trust Construction stating no Guardian necessary and Oppenheimer denial of same, This renewed attempt on virtually the same grounds constitutes further harassment and a 2<sup>nd</sup> bite at apple hoping for a better outcome than with Judge Colin.

- a. Oppenheimer Denial

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141107%20Omnibus%20Order%20Colin%20Oppenheimer%20Case.pdf>

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<sup>9</sup>August 29, 2013 Order the Most Honorable Shira A. Scheindlin  
<http://www.iviewit.tv/20130829%20Scheidlin%20Order%20Sanctioning%20Bernstein.pdf>

b. Rose Trust Construction Denial

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

c. Order Denying Contempt Against Eliot -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20Order%20on%20Motion%20to%20Hold%20Eliot%20Bernstein%20in%20Contempt%20DENIED.pdf>

19. There has been no “construction” hearing scheduled much less any full and fair hearing after proper discovery and depositions.

20. Moreover, alleged Creditor William Stansbury’s attorney has previously written to Rose directly regarding Rose’s conflicts of interest and other matters of testimony relevant at any hearing as follows:

a. August 08, 2014 Feaman Letters to Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140808%20Response%20to%20Motion%20for%20Contempt%20-%20Exhibit%20Feaman%20Letter%20to%20Alan%20Re%20St%20Andrews%20Tuition.pdf>

b. Pleading filed by PR Attorney Brian O’Connell in Shirley Trust – Ted NOT A VALID TRUSTEE IN SIMON -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

- c. January 16, 2015 Nevada District Court Ruling - Crystal Cox ruling Eliot and Crystal not associated -

<http://iviewit.tv/Simon%20and%20Shirley%20I:state/20150116%20Cox%20Bernstein%20Nevada%20RICO%20Order%20Denying%20Motions%20for%20Summary%20Judgement.pdf>

21. I re-plead and re-allege the following in further opposition to any continued improper attempts at a gag order which should be denied and stricken but certainly would require an adversarial evidentiary hearing first not part of the Uniform Motion Calendar Hearing of Jan. 14, 2016 and certainly not in 10 minutes.
22. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.
23. This is nothing but more of the same "sharp practices" and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
24. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the "grandchildren" to Shirley and Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.

25. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,

a. December 12, 2015 Attorney Candice Schwager Pro Hac Vice Letter to Court

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20FCF%20Filing%20Stamped%20Copy.pdf>  
f

and

b. December 15, 2015 Phillips Trial Stay

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20SIGNED%20Phillips%20Trial%20Stay%20FCF%20STAMPED%20COPY.pdf>

26. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

27. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf>) to seek his voluntary withdrawal of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

28. There was minimal if virtually any naming of the “grandchildren” and/or “minor children” in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
29. As attorney Schwager pointed out in her letter, “Thus, it truly appears that your motion is more of a “smoke-screen” and “sharp practices” which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.”
30. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein’s business partner / former business partner Robert Spallina’s testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.
31. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”

32. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
33. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
34. Minor children ultimately have to grow up and learn the laws of civil societies.
35. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown *nothing specific of a compelling nature* with respect to the minor children and this motion should be struck from the Calendar and denied.
36. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor children’s prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to Fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.



37. The SEC Consent Orders<sup>10</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.
38. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset."
39. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

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<sup>10</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

40. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>
41. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.
42. However in the December 15, 2015 Hearing Spallina testifying to the validity of documents he already admitted in the hearing to having fraudulently altered and disseminated via mail, states to Your Honor that he had **NOT** pled guilty to either felony or misdemeanor criminal conduct and yet the Consent Order signed by Spallina directly contradicts his testimony before this Court and this Court should take Judicial Notice and report such misconduct.
43. That SPALLINA perjured his testimony and further misled this court as he did plead guilty of criminal misconduct and the SEC Consent signed by SPALLINA states, ,
- “2. Defendant [Robert Spallina] has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”
44. Yet, in a December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-17<sup>11</sup>;

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<sup>11</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT

14. . . . . THE COURT: You can answer the question, which  
15. . . . is, did you plead to a felony?  
16. . . . . MR. BERNSTEIN: Sorry, sir.  
17. . . . . THE WITNESS: I have not.

45. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

46. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child's name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children's behalf either.

47. Nothing else more than that should happen here.

48. Alan Rose and Ted Bernstein's desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, “In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations

case.<sup>8</sup> The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property.”

49. “This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these proceedings.” District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

50. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.

51. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>12</sup> and See Motion on St. Andrew’s School<sup>13</sup>,

52. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>14</sup> and was further

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<sup>12</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freezc%20Estates%20Orginal%20Large.pdf>

<sup>13</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

<sup>14</sup> December 04, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

moved to mandatory disqualify Dec.28, 2015<sup>15</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips, striking or alternatively Continuing the motions of Ted Bernstein and Alan Rose until after a properly scheduled, noticed and held Case Management Conference for a “complex” case, proper Discovery, depositions and proper evidentiary hearings held first, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 13, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

### **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 13th day of January, 2016.

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

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<sup>15</sup> Dec 28, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

**SERVICE LIST**

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	<p>Pamela Simon</p>	<p><b>Counter Defendant</b></p>

	<p>President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>	<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b> L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 lmrachek@mrachek-law.com</p>	<p><b>Counter Defendant</b> Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p><b>Counter Defendant</b> Kimberly Moran Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>
<p><b>Counter Defendant</b> Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>	<p><b>Counter Defendant</b> Estate of Simon Bernstein Personal Representative Brian M. O'Connell, Partner Ciklin Lubitz Martens &amp; O'Connell 515 N Flagler Drive 20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com jfoglietta@ciklinlubitz.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

v.

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

Defendants.

Probate Division

Case.: 502014CP003698XXXXNB

Judge John Phillips

**Response in Opposition  
Motions for Guardian & Gag  
Order filed by Alan M. Rose**

**RESPONSE IN OPPOSITION MOTIONS FOR GUARDIAN & GAG FILED BY ALAN B. ROSE**



COMES NOW, PRO SE, Eliot Ivan Bernstein (“Eliot”) or (“Petitioner”) as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children Beneficiaries of the Shirley Bernstein Trust and hereby files this and in support thereof states, on information and belief, as follows:

1. I oppose the motion by Alan M. Rose to appoint a Guardian for my children and oppose his motion for any “gag” order and since an Evidentiary Hearing and Testimony are both necessary with respect to the factual pleadings by Alan Rose and such evidence and testimony including my own testimony on both matters which would last well beyond 30 minutes alone it is inappropriate and improper process to achieve anything at the Uniform Motion Calendar Hearing on Jan. 14, 2016 beyond Scheduling of Compliance for outstanding Discovery and Production, depositions and then an evidentiary hearing and a proper Case Management Conference for this “Complex” case.
2. This, however, naturally raises the issue of first scheduling the hearings on the motions to remove Ted Bernstein as Trustee for not being qualified under the language of the trusts, for misconduct in fiduciary capacity, for waste and fraud upon the estate and other matters wherein even this very response by myself in this filing has been delayed by Representations by Creditor William Stansbury that his Florida Licensed Attorney Peter Feaman would be filing yesterday with the Court and Alan Rose a request to delay any hearing on these motions until a Status Conference / Case Management Conference for the Orderly scheduling of further hearings wherein Peter Feaman already notified this Court on Sept. 15, 2015 at the Case Management Conference that removal of Ted Bernstein as Trustee should be the first order of business instead of a validity trial with Ted Bernstein as Trustee, but whereupon this Court improperly moved to Schedule Trial in Shirley Bernstein’s Trust case as Alan Rose misled the Court to believe that all cases were called up, which was untrue, where Shirley’s

Trust case was Not Notified for the Case Management Conference<sup>1</sup> requested by the current PR of Simon's Estate being Mr. Brian O'Connell and Joy Foglietta of the Ciklin Lubitz Martens & O'Connell firm who filed the Notice to bring the matter up for the Case Management Conference on Sept. 15, 2015 in the first instance.

3. Thus, both alleged Creditor William Stansbury and Florida Licensed Attorney Peter Feaman are both Necessary Witnesses in relation to the Integrity of these proceedings and the good faith efforts I have undertaken to uncover fraud upon the Court and in the Court which is directly relevant to resolution of any sham claim by attorney Alan Rose or Steven Lessne regarding guardianship, both being Florida licensed attorneys who have directly Misled this Court in many ways including but not limited to falsely citing language from other Court orders such as Southern District of New York Judge Shira Scheindlin, or Alan Rose falsely claiming during the alleged validity trial that there has been no prior Order for Production of all Original Records by Tescher and Spallina when in fact this was part of the Discharge Order of Judge Colin to the extent any such Order of Judge Colin remains valid. See, Order of Colin on Production<sup>2</sup>.
4. Specifically, Alan Rose, a Served Counter Defendant in this very action has knowingly misquoted an Order of SDNY Judge Shira Scheindlin by falsely portraying a Proskauer Rose proposed language in an Order as an actual Order, quote, finding of Hon. Judge Scheindlin

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<sup>1</sup> Case Management Notice of Hearing for Only Simon Bernstein Estate Case  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%202015%202015%200930am%20Case%20Management.pdf>

<sup>2</sup>February 18, 2014 Colin Order Regarding Turning Over ALL Records to Curator  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

herself and while this conduct recently occurred in matters before the 4th DCA<sup>3</sup>, this evidence is representative of the sharp practices that Alan Rose and Ted Bernstein have employed to avoid full and fair hearings, obstruct due process, and obscure actual truth seeking processes acting in conflict of interest and more while simultaneously not only denying proper funds for myself to obtain proper counsel for my minor children and myself but further denied retained Texas attorney Candice Schwager documents to review for her to further an application to be admitted pro hac vice after having opportunity to scope potential conflicts of interest between myself and minor children.

5. Alan Rose falsely stated to this Court at the Case Management Conference<sup>4</sup> that no hearings were held prior for guardianship hearings but yet Alan Rose had only a year earlier been denied<sup>5</sup> by Judge Colin who claimed Eliot and Candice did not need Guardians for their children.
6. Thus, attorney Alan Rose's conduct himself in these proceedings has relevance to his sham motion for guardianship since his own conduct has caused waste and harm to beneficiaries and delayed and obstructed the fact finding and truth seeking processes of this court and thus right there alone are 3 Witnesses in addition to myself that should be part of any Evidentiary hearing relating to appointment of a Guardianship and thus arriving at a Schedule would be the most that can happen on Jan. 14, 2016, or at least should be the most that can happen on this date.

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<sup>3</sup> December 17, 2015 Sur Reply Showing Alan Rose Misquoting Federal Judge Shira Scheindlin Order <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151217%204th%20DCA%20Rose%20Ted%20Su%20Reply%20Dec%2016%202015.pdf>

<sup>4</sup> September 15, 2015 Case Management Hearing Transcript Scheduled In Simon Estate ONLY, Page 28 Line 7-16  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>5</sup> August 14, 2014 Order DENYING GUARDIAN  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

7. In fact, Florida licensed attorney Peter Feaman has directly prepared pleadings and correspondence showing myself as being the only sibling in these cases to expose fraud and forgery and other proper matters in these cases and eligible to be a Successor. See, below.
8. See filings by Peter Feaman on behalf of alleged Creditor William Stansbury relevant to the sham filing for Guardianship by Alan Rose on behalf of Ted Bernstein.
  - a. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140217%20Stansbury%20Response%20in%20Opposition.pdf> Page 4-6 (C)
  - b. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522%20JOINDER%20IN%20PETITION%20FILED%20BY%20ELIOT%20IVAN%20BERNSTEIN%20FOR%20REMOVAL%20OF%20TRUSTEE%20AND%20FOR%20TRUST%20ACCOUNTING.pdf>
  - c. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140627%20Response%20in%20Opposition%20to%20the%20Appointment%20of%20Ted%20Bernstein%20as%20Successor%20PR%20etc%20filed%20by%20Feaman%20Stansbury.pdf>
9. Then of course is the letter by Florida Licensed attorney Peter Feaman from August of 2014, nearly 17 months ago claiming PR Brian O'Connell had an absolute "duty" to file to Remove Ted Bernstein in showing failure to provide Accountings, waste of Trust assets and other matters, yet no action taken by PR O'Connell and no present follow-up by Peter Feaman although as indicated I have been delayed in this very filing by Representations of William Stansbury that Peter Feaman would be filing with the Court relative to these matters including holding hearings off until a Status or Case Management Conference but has yet to do that either, although it was represented it would be filed Tuesday, Jan., 12, 2016 further knowing I had filed for Unavailability with this Court which was served upon Alan Rose and

further filed in my last opposition to the Gag order that I was under medication and needing medical care. See,

- a. August 29, 2014 Letter from Attorney at Law Peter Feaman, Esq. to Personal Representative Attorney Brian O'Connell re Conflicts and more of Ted and Alan Rose.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

- b. December 16, 2014, Letter from Attorney Peter Feaman to PR and Attorney Brian O'Connell Letter re O'Connell's Absolute Duty to Remove Ted –

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20>

- c. [Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf](http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf)

- d. September 19, 2014 Attorney Peter Feaman to PR Attorney Brian O'Connell re Assets of Estates -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf>

10. William Stansbury is further a necessary Witness as he has information relating to an ongoing Federal investigation of Ted Bernstein by the US Dept. of Labor in relation to Ted Bernstein's fiduciary actions as Plan Administrator / Trustee involving Arbitrage International an asset of the Estate and Trusts where it is likely that further financial harm to beneficiaries including my minor children has occurred according to William Stansbury and yet Alan Rose and Ted Bernstein have not only failed to Disclose these matters to the Court

and parties but further failed to disclose these matters in an alleged Meeting involving Bernstein Holdings and Bernstein Family Investments where Ted Bernstein and Alan Rose .

11. It is unknown why neither Creditor William Stansbury or his Florida licensed attorney Peter Feaman has yet to bring this information to the Court further making them necessary witnesses while it is further noted that just last week Alan Rose improperly scheduled a Hearing without contacting me although being on the phone that same morning with my retained attorney Candice Schwager of Texas seeking pro hac vice admission yet never mentioned the hearing and yet Rose later claimed in an email on Jan. 7, 2016 that an agreement he made with Attorney Peter Feaman to appear on short notice further justified his filing thus playing a “circus” / “charade” game of having Stansbury/Feaman in some parts of the cases but then not having them in on others all the while claiming that Ted Bernstein should be removed.

12. Further that the Estate itself by and through Brian O’Connell and Joy Foglietta has failed to account or provide Documents and Records despite prior Court Ordered Production<sup>6</sup> upon the former PR’s, Tescher and Spallina, after their removal after admissions to fraudulently altering and creating a fraudulent Shirley Trust that Alan Rose misleads this Court about there being no such Court Order during an alleged Validity Trial<sup>7</sup> and having multiple cross examination questions sustained as a result of such misstatement to the Court where it appears that in **contempt of such order** for Tescher & Spallina to Produce and turn over all Originals and files, Alan Rose, alleged Fiduciary and Trustee Ted Bernstein, Brian

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<sup>6</sup> February 18, 2014 Court Ordered Production of ALL Records of Tescher and Spallina to Curator <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>7</sup> December 15, 2015 Validity Hearing Transcript - Transcript Page 123 Lines 10-18 & Page 124 3-7 and Pages 124 Line 17 to 125 Line 17. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

O'Connell and Joy Foglietta and potentially others have left "Original" documents and files instead in the Custody of Tescher & Spallina where Spallina has now admitted to fraud upon beneficiaries and their counsel, mail fraud, fraud upon the Court in the filings his office prepared and other crimes and misconduct during the alleged "validity" trial before Your Honor where the PRs O'Connell & Foglietta are *wholly and conspicuously absent from the "Validity trial"* (despite having pleaded to the Court in the Shirley Trust Construction case that Ted was NOT A VALID TRUSTEE<sup>8</sup> in the SIMON TRUST, which would have materially affected the outcome of such hearing on the Simon Trust case and Ted's ability to argue the validity in the first place) among many other "*missing Witnesses*" at the alleged validity Trial such as Traci Kratish, Notaries Diana Banks, Kimberly Moran (charged with Felony fraudulent notarization and admitted Forgery of documents in these matters) and Lindsay Baxkey and Donald Tescher and an unknown signatory witnesses, leaving the Estate of Simon Bernstein *without counsel* despite the fact that one of the First Orders of Business PRs O'Connell and Foglietta should have sought at the Case Management Conference held Sept. 15, 2015 which was Held and Noticed only in the Estate of Simon Bernstein is a Compliance Order to obtain all the "Originals" and files/documents from Tescher & Spallina so proper Discovery and Production could occur to prove validity but instead results in an improperly schedule Trial in Shirley's Trust case which was not Noticed for Sept. 15, 2015 as required in the procedural rules of the Court.

13. Thus, Brian O'Connell and Joy Foglietta should further be called as Necessary Witnesses in relation to the integrity of proceedings and were further factual Witnesses in relation to

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<sup>8</sup> February 17, 2015 Answer Affirmative Defenses Filed by PR Attorney Brian O'Connell stating Ted is NOT A VALID TRUSTEE under the terms of the Trust.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

missing documents, missing production, missing business records and intertwined in conduct with Alan Rose in sudden emerging “original” documents from the St. Andrew’s Home allegedly for the Oppenheimer matters and other dispositive Estate and Trust documents yet Creditor William Stansbury had previously stated that his Florida licensed attorney Peter Feaman suggested that a Meeting at his Office and or Brian O’Connell’s Office and inviting the Palm Beach County Sheriff’s for Criminal investigation and prosecution of Ted Bernstein in relation to the missing Tangible Personal Property (“TTP”) should occur, thus intertwining all of the various parties as witnesses in relation to any Guardianship hearing and necessity.

14. Licensed attorney Peter Feaman and his client alleged Creditor William Stansbury further being Witnesses as both claimed to have observed Donald Tescher at the Courthouse after the validity trial yet was not produced by Alan Rose suggesting Tescher’s presence was under Alan Rose’s control and yet because this Court had impermissibly prejudiced and “pre-judged” the validity trial by improperly limiting it to one day ordered in the wrong case without addressing discovery and dispositive motions there was no timing remaining for further necessary witnesses and thus the validity trial should be vacated.
15. While I understand it was filed in a different case number, Steven Lessne is intertwined with Rose on numerous issues including not only the sudden emergence of “original” documents in the Oppenheimer case but further the sharp practices conduct wherein Lessne has ***directly mislead this Court*** by an almost identical sharp practice of Alan Rose where Southern District of New York Judge Hon. Shira Scheindlin is again knowingly misquoted wherein Lessne claims Judge Scheindlin issued some nationwide injunction against me again misquoting language “proposed” by Proskauer Rose where in actuality the language Judge Scheindlin determined in the Order was as follows: “IV. CONCLUSION For the foregoing



reasons, a monetary sanction in the amount of \$3,500 is hereby imposed on Bernstein as is the injunctive sanction described above. The money is to be paid to the Clerk of the Court, Southern District of New York, forthwith. If Bernstein ignores the monetary sanction, defendants may obtain an enforceable judgment in the amount of \$3,500. If Bernstein continues to file motions in this case, he may be subject to additional monetary sanctions. The Clerk of the Court is directed to close the motion for sanctions (Docket Entry # 145).

Dated: 14 New York, New York August 29, 2013 Opposition at 13. 7<sup>9</sup>“

16. Thus, the only injunctive limitation determined by SDNY Judge Scheindlin is that if I file motions “*in this case*”, being the SDNY case, I “*may be subject to additional monetary sanctions*”, thus showing Lessne himself directly misleading this Court as a Florida licensed attorney.
17. The Court should note that Lessne left his firm Gray Robinson and took with him the Bernstein / Oppenheimer case as he transitioned to Alan Rose’s prior law firm Gunster.
18. To the extent any Order of Judge Colin remains valid, he has already ruled upon motions by Alan Rose and Ted Bernstein on Guardianship and the related matters and DENIED those matters. See below Orders Colin in Rose Denial Guardian Shirley Trust Construction stating no Guardian necessary and Oppenheimer denial of same, This renewed attempt on virtually the same grounds constitutes further harassment and a 2<sup>nd</sup> bite at apple hoping for a better outcome than with Judge Colin.

- a. Oppenheimer Denial

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141107%20Omnibus%20Order%20Colin%20Oppenheimer%20Case.pdf>

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<sup>9</sup>August 29, 2013 Order the Most Honorable Shira A. Scheindlin  
<http://www.iviewit.tv/20130829%20Scheidlin%20Order%20Sanctioning%20Bernstein.pdf>

b. Rose Trust Construction Denial

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

c. Order Denying Contempt Against Eliot -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20Order%20on%20Motion%20to%20Hold%20Eliot%20Bernstein%20in%20Contempt%20DENIED.pdf>

19. There has been no “construction” hearing scheduled much less any full and fair hearing after proper discovery and depositions.

20. Moreover, alleged Creditor William Stansbury’s attorney has previously written to Rose directly regarding Rose’s conflicts of interest and other matters of testimony relevant at any hearing as follows:

a. August 08, 2014 Feaman Letters to Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140808%20Response%20to%20Motion%20for%20Contempt%20-%20Exhibit%20Feaman%20Letter%20to%20Alan%20Re%20St%20Andrews%20Tuition.pdf>

b. Pleading filed by PR Attorney Brian O’Connell in Shirley Trust – Ted NOT A VALID TRUSTEE IN SIMON -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

- c. January 16, 2015 Nevada District Court Ruling - Crystal Cox ruling Eliot and Crystal not associated -

<http://iviewit.tv/Simon%20and%20Shirley%20I:state/20150116%20Cox%20Bernstein%20Nevada%20RICO%20Order%20Denying%20Motions%20for%20Summary%20Judgement.pdf>

21. I re-plead and re-allege the following in further opposition to any continued improper attempts at a gag order which should be denied and stricken but certainly would require an adversarial evidentiary hearing first not part of the Uniform Motion Calendar Hearing of Jan. 14, 2016 and certainly not in 10 minutes.
22. I have already had to reschedule medical/dental related appointments due to Alan Rose's actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.
23. This is nothing but more of the same "sharp practices" and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
24. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the "grandchildren" to Shirley and Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.

25. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,

a. December 12, 2015 Attorney Candice Schwager Pro Hac Vice Letter to Court

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20FCF%20Filing%20Stamped%20Copy.pdf>

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and

b. December 15, 2015 Phillips Trial Stay

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20SIGNIED%20Phillips%20Trial%20Stay%20FCF%20STAMPED%20COPY.pdf>

26. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

27. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf> ) to seek his voluntary withdrawal

of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

28. There was minimal if virtually any naming of the “grandchildren” and/or “minor children” in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
29. As attorney Schwager pointed out in her letter, “Thus, it truly appears that your motion is more of a “smoke-screen” and “sharp practices” which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.”
30. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein’s business partner / former business partner Robert Spallina’s testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.
31. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”

32. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
33. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
34. Minor children ultimately have to grow up and learn the laws of civil societies.
35. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown *nothing specific of a compelling nature* with respect to the minor children and this motion should be struck from the Calendar and denied.
36. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor children’s prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to Fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

37. The SEC Consent Orders<sup>10</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.
38. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset."
39. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

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<sup>10</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

40. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>
41. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.
42. However in the December 15, 2015 Hearing Spallina testifying to the validity of documents he already admitted in the hearing to having fraudulently altered and disseminated via mail, states to Your Honor that he had **NOT** pled guilty to either felony or misdemeanor criminal conduct and yet the Consent Order signed by Spallina directly contradicts his testimony before this Court and this Court should take Judicial Notice and report such misconduct.
43. That SPALLINA perjured his testimony and further misled this court as he did plead guilty of criminal misconduct and the SEC Consent signed by SPALLINA states, ,
- “2. Defendant [Robert Spallina] has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”
44. Yet, in a December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-17<sup>11</sup>;

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<sup>11</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT



14. . . . . THE COURT: You can answer the question, which  
15. . . . . is, did you plead to a felony?  
16. . . . . MR. BERNSTEIN: Sorry, sir.  
17. . . . . THE WITNESS: I have not.

45. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

46. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child's name instead of spelling it out such as “J.B.”, “D.B”, etc. Where none of the parents of the minor children have objected on their children's behalf either.

47. Nothing else more than that should happen here.

48. Alan Rose and Ted Bernstein's desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, “In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations

case.<sup>8</sup> The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property.”

49. “This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these proceedings.” District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>
50. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
51. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>12</sup> and See Motion on St. Andrew’s School<sup>13</sup>,
52. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>14</sup> and was further

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<sup>12</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freezc%20Estates%20Orginal%20Large.pdf>

<sup>13</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

<sup>14</sup> December 04, 2015 Disqualification of Judge Phillips <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

moved to mandatory disqualify Dec.28, 2015<sup>15</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips, striking or alternatively Continuing the motions of Ted Bernstein and Alan Rose until after a properly scheduled, noticed and held Case Management Conference for a “complex” case, proper Discovery, depositions and proper evidentiary hearings held first, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 13, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

### **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 13th day of January, 2016.

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

---

<sup>15</sup> Dec 28, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

**SERVICE LIST**

<p><b>COUNTER DEFENDANT</b>          Robert L. Spallina, Esq.,          Tescher &amp; Spallina, P.A.          Wells Fargo Plaza          925 South Federal Hwy Suite          500          Boca Raton, Florida 33432          rspallina@tescherspallina.com          kmoran@tescherspallina.com  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a></p>	<p><b>COUNTER DEFENDANT</b>          Ted Bernstein, Individually          880 Berkeley          Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p><b>COUNTER DEFENDANT</b>          John J. Pankauski, Esq.          Pankauski Law Firm PLLC          120 South Olive Avenue          7th Floor          West Palm Beach, FL 33401</p>
<p><b>COUNTER DEFENDANT</b>          Donald Tescher, Esq.,          Tescher &amp; Spallina, P.A.          Wells Fargo Plaza          925 South Federal Hwy Suite          500          Boca Raton, Florida 33432          dtescher@tescherspallina.com  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a>          kmoran@tescherspallina.com</p>	<p><b>COUNTER DEFENDANT</b>          Ted Bernstein          Life Insurance Concepts et al.          950 Peninsula Corporate Circle          Suite 3010          Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p><b>COUNTER DEFENDANT</b>          Pankauski Law Firm PLLC          120 South Olive Avenue          7th Floor          West Palm Beach, FL 33401  <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a>  <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>
<p><b>COUNTER DEFENDANT</b>          Donald Tescher, Esq.,          Tescher &amp; Spallina, P.A.          Wells Fargo Plaza          925 South Federal Hwy Suite          500          Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a>  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a>  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>	<p><b>COUNTER DEFENDANT &amp; COUNSEL TO TED BERNSTEIN SERVED</b>          Alan B. Rose, Esq.          PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.          505 South Flagler Drive, Suite 600          West Palm Beach, Florida 33401  <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>          and  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p>	<p><b>Counter Defendant</b>          TESCHER &amp; SPALLINA, P.A.          Wells Fargo Plaza          925 South Federal Hwy Suite          500          Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a>  <a href="mailto:ddustin@tescherspallina.com">ddustin@tescherspallina.com</a>  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>
	<p>Pamela Simon</p>	<p><b>Counter Defendant</b></p>

	<p>President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>	<p>Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b> L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 lmrachek@mrachek-law.com</p>	<p><b>Counter Defendant</b> Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p><b>Counter Defendant</b> Kimberly Moran Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>
<p><b>Counter Defendant</b> Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>	<p><b>Counter Defendant</b> Estate of Simon Bernstein Personal Representative Brian M. O'Connell, Partner Ciklin Lubitz Martens &amp; O'Connell 515 N Flagler Drive 20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com jfoglietta@ciklinlubitz.com</p>	<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>
<p>Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

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**NOTICE OF EVIDENTIARY HEARING**

*Specially Set Evidentiary Hearing- One Hour Reserved*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, February 25, 2016

**TIME:** 3:15 p.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A  
GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT  
BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS**

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 14<sup>th</sup> day of January, 2016.

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

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

## SERVICE LIST

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: <a href="mailto:Eliot.I.Bernstein@iviewit.tv">Eliot I. Bernstein (iviewit@iviewit.tv)</a></p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediateamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tandè oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

**Objections to Proposed Order of Alan  
Rose / Ted Bernstein**

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

Defendants.

---

**OBJECTIONS TO PROPOSED ORDER OF ALAN B. ROSE AND TED BERNSTEIN "ORDER  
DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY  
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE APPOINTMENT OF  
A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT" AND PROPOSED ALTERNATIVE  
ORDER FOR HEARING HELD JANUARY 14, 2016**

1. That Florida licensed attorney Alan Rose on behalf of Ted Bernstein mislead this Court on Sept. 15, 2015<sup>1</sup> including whether all four cases had been properly Noticed<sup>2</sup> and where due to this misinformation at the case management conference a Trial was improperly set in Shirley Bernstein's Trust case in violation of Florida Civil Rules of Procedure 1.200<sup>3</sup> and in violation of due process while the PRs of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta stood silent despite their office having sent the Notice for the Case Management Conference in the first instance,

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.

That Florida licensed attorney Alan Rose requested January 14, 2016 at 12:17pm<sup>4</sup> that Eliot Bernstein submit comments to a proposed Order from a January 14, 2016 hearing by 3pm that same day or else he would file with the Court as an unopposed Order and Eliot replied and 3:30pm<sup>5</sup> on January that he would try to get his changes to him timely on January 15th, 2016 to submit to the Court together with his proposed Order (Eliot did not know at the time that Rose was supposed to give him five days under the rules);

2. Mr. Rose in violation of ADMINISTRATIVE ORDER 5.204-5/09<sup>6</sup> then ignored said received email indicating that Eliot would send comments and a proposed order to him the next day and instead sent a letter to Judge Phillips with his proposed Order only to the Court on January 14,

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<sup>1</sup> Sept 15, 2015 Hearing Transcript

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>2</sup> August 03, 2015 Notice of Hearing Status Conference for Simon Bernstein Estate Case Only

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%2015%202015%20930am%20Case%20Management.pdf>

<sup>3</sup>Florida Rules of Civil Procedure 1.200

[http://phonl.com/fl\\_law/rules/frcp/frcp1200.htm](http://phonl.com/fl_law/rules/frcp/frcp1200.htm)

<sup>4</sup> January 14, 2016 Email Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%2012.12pm%20Alan%20Rose%20Proposed%20Order%20Email.pdf>

<sup>5</sup> January 14, 2016 Eliot Email to Rose with Dr. Report

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%203.30pm%20Eliot%20response%20to%20Rose%20re%20Order.pdf>

<sup>6</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

2016 at 4:15pm<sup>7</sup> without waiting for Eliot's comments and proposed order and this too in violation of Administrative Order 5.204-5/09<sup>8</sup> and further asked for an immediate ruling that day from Judge Phillips, knowing there are five days for my response and proposed order to be sent to him before seeking relief with the court as if unopposed with no counter order. This further evidences Mr. Rose's continued Sharp Practices and violation and contempt of the court decorum, efforts to obstruct due process and tortiously interfere with the fair administration of justice;

3. Florida licensed attorney Alan Rose on behalf of Ted Bernstein having further misled this Court about the status of the case and the time necessary for a proper validity Trial at the September 15, 2015 case management conference and left no time for a proper trial for the 10 witnesses called by the Trustee or for Eliot to properly cross examine witnesses available that day leaving Eliot and this Court with insufficient time for a proper trial / hearing which was improperly held without proper pre-trial procedures to determine outstanding discovery and requests for production and proper witnesses.
4. That the January 14, 2016 hearing for standing was also improperly scheduled at a UMC hearing by Alan Rose, despite needing an evidentiary hearing as requested by Eliot at the hearing to give testimony and have any witnesses present but which Eliot was denied opportunity for such by this Court;
5. Where Judge Phillips asked Eliot at the January 14, 2016 hearing what statute gave him standing as a named Beneficiary in the Shirley Trust document that Phillips has Ordered to be valid and when Eliot, a Pro Se litigant, did not know off the top of his head the Florida Statute giving

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<sup>7</sup> January 14, 2016 4:15 pm Alan Rose Letter to Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%204.06pm%20ExParte%20Letter%20to%20Judge%20Phillips%20Alan%20Rose%20Proposed%20Order.pdf>

<sup>8</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

named beneficiaries standing in a Trust case where they are named, Judge Phillips, who is supposed to know the statutes himself improperly ruled against Eliot's standing for this sole reason of his lack of knowing the statute at the hearing and based solely on the claims of Alan Rose and not on the merits after proper hearing with testimony from both sides or giving Eliot a chance to find the correct statute to preserve his standing. Judge Phillips, then quite rudely told Eliot if he did not like it to get a lawyer despite the fact that a prior motion for a Continuance of the validity trial itself was filed timely before Trial so that Texas attorney Candice Schwager could get admitted pro hac vice yet attorney Alan Rose denied Candice Schwager any such courtesy even though it was to benefit the minor children and Alan Rose has further denied Candice Schwager access to document production to further her review of the case while this Court improperly stated the motion for continuance was untimely when the statute permits it to be made even at the time of trial and where it was filed in writing before the trial.

6. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
7. That for instance in the Shirley Trust case addressed herein, Eliot and his two sisters are the beneficiaries of Shirley's Trust at the time it become irrevocable with a defined class of beneficiaries in stone upon her death, as stated in the trust;

ARTICLE II. AFTER MY DEATH - E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me.

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 [emphasis added]**. Any assets allocated under this Subparagraph 11.D. to my children (**as that term is defined under this Trust [emphasis added]**), 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 11.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 11.E. below.

and

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.

#### ARTICLE III. GENERAL - E1 - 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 [Emphasis Added],**

That the trust language is clear that Ted and Pamela and their lineal descendants, at the time of Shirley's death were not beneficiaries and Eliot and his two sisters Lisa and Jill are. Further, the Court should note that Ted is considered predeceased for ALL PURPOSES OF DISPOSITIONS of the Shirley Trust, which would disqualify him as a Trustee to make dispositions, including holding hearings for construction and validity or making any disbursements and thus further reason to strike the Validity Hearing on December 15, 2015 as a Sham Hearing conducted by a deceased person under the trust.

8. Similarly, at Judge Phillips' validity hearing Order on December 16, 2016, Eliot was never shown a copy of beforehand or had chance to submit comments and a counter order to Rose was also issued in violation of ADMINISTRATIVE ORDER 5.204-5/09\*<sup>9</sup>, the order issued contains rulings on issues that were not Noticed to be Heard, not Scheduled for the Trial and in fact not heard at the hearing at all, no testimony or anything from either party on the ruled on items as evidenced in the transcript and thus the December 16, 2015 Order should further be stricken as an improper Void Order and for other far more serious reasons further defined herein. That the Rose Proposed Order for the January 14, 2016 hearing feeds off the December 16, 2016 Order and for this reason the December 16, 2016 Order and the Proposed Order should be stricken.

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<sup>9</sup> Administrative Order Regarding Preparation of Order - ADMINISTRATIVE ORDER 5.204-5/09\*

9. That Eliot further stated to the Court that the hearing was improperly scheduled by Rose when he knew Eliot had filed in December a Notice of Unavailability for the month of January and further learned that he was under medical care and prescription medications<sup>10</sup> making him medically unfit during the time of the January 14, 2016 hearing and again, using sharp practice unbecoming of an Attorney at Law, Rose scheduled the hearing and would not withdraw it despite knowing Eliot was not well and was still seeking to have counsel admitted to protect the children.
10. Eliot stated on the record that he was medically unfit and on heavy medications for any hearing that day and yet Judge Phillips ignored the request to postpone and schedule a proper evidentiary hearing to determine standing and rushed to rule without even having proper testimony on any of the items in Rose's Proposed Order.
11. That having declared in a September 15, 2015 hearing "love"<sup>11</sup> for Judge Colin and pre-judging that he would not question Colin's actions that have been called into question and alleged as Fraud by the Court and that he would not find that Colin did something wrong, wholly prejudiced Eliot's position and denies him fundamental due process rights.
12. Having further reviewed the Record of the Cases having determined that an outstanding Order by Judge Colin for Production<sup>12</sup> against prior fiduciaries Tescher & Spallina was never performed or complied with fundamentally prejudicing a proper validity Trial. In fact it was learned at the December 15, 2015 trial that NONE of the Original Dispositive Documents were available for inspection at the hearing and that Trustee Ted Bernstein claimed under oath he had

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<sup>10</sup> Dr. Ronik Seecharan Letter  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20Seecharan%20Letter%20Regarding%20procedure.pdf>

<sup>11</sup> September 15, 2015 Hearing Transcript Page 27 Lines 14-25 and Page 28 Lines 1-6  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>12</sup> February 18, 2014 Order to Turn Over ALL records of Tescher and Spallina to Curator  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>



never seen the original trust he operates under nor took any steps to validate the documents in light of the fact that his prior counsel SPALLINA had admittedly fraudulently created a Shirley Trust document at the December 15, 2015 hearing he testified at as to the validity of the documents he admitted fraud in creating and then sent the fraudulent trust via mail to Attorney at Law Christine Yates representing Eliot's minor children and finally it was learned at the hearing that Tescher and Spallina had violated the Colin Court Order to turn over their records in entirety and still possessed Original dispositive documents;

13. That the totality of the related cases should have determined this case to be a "complex" case and the case management conference should have been conducted properly as such, again such deprivation of rights severely prejudiced the outcome;
14. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
15. That missing necessary witnesses and missing discovery were existent at the time of the validity trial including but not limited to witnesses Notary Publics who signed documents, Kimberly Moran and Lindsay Baxley (where Governor Rick Scott's Notary Public Division has already prosecuted in conjunction with the Palm Beach County Sheriff Moran for fraudulent notarization in these matters and Lindsay Baxley aka Lindsay Giles was also found to have improperly notarized a Will and Amended Trust of Simon) and Witnesses to the Execution of the alleged documents, Traci Kratish, Esq., Diana Banks, Rachel Walker and a John Doe signor, as well as, other witnesses William Stansbury and Donald Tescher, Esq. thus necessitating a new Trial after proper pre-trial proceedings are completed and a Case-Management Conference for a "complex" case is held before a non-conflicted and non-adverse judge;

16. That the circumstances of Judge Colin's handling of the case and specifically, including but not limited to, hearings held on Sept. 13, 2013<sup>13</sup> whereupon alleged Trustee Ted Bernstein appeared on the record claiming his fiduciary status as fiduciary for the Estate at a time he had not yet been appointed, a year after Simon's death at the time of the hearing, yet remaining silent as to various Frauds upon the Court admitted by his counsel, including an April 9, 2012 Petition for Discharge<sup>14</sup> claiming all beneficiaries had properly waived their interests and rights and Simon was in possession of them on that date. Ted Bernstein having known this to be false, as he did not complete his own Waiver until August 01, 2012 and therefore knew this statement that Simon had the completed Waivers in April 2012 to be false and further fraudulent actions involving the fiduciaries Tescher and Spallina who were acting as Simon's counsel at the time of the alleged signing and Ted's counsel when it was finally delivered to the Court as if Simon were delivering it alive Post Mortem months after his death while still acting as PR.
17. For clarification of this complex Post Mortem scheme, it should be noted that when Simon died, Ted was NOT appointed Successor PR by the Court while he maintained to the family on the day Simon died that he was acting as PR and acted as such and yet Ted was not appointed by Colin and issued Letters until October 13, 2013 after the hearing September 13, 2013 hearing that Colin threatened to read him Miranda's, leading to a series of bad rulings of Colin's that were designed to protect rather than have prosecuted those officers of his court involved in these frauds on the Court and the Beneficiaries. Yet, Ted's counsel Tescher and Spallina never filed for Letters for Ted when Simon died and instead they (Ted and his counsel Tescher and Spallina)

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<sup>13</sup> September 13, 2013 Colin Hearing - Mirand Warnings and more  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

<sup>14</sup> April 09, 2012 Alleged Simon Full Discharge Waiver Deposited by him with the Court after he passed away.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Petition%20for%20Discharge%20Full%20Waiver%20Shirley%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024.pdf>

all choose to use Simon as PR for months after he died to file fraudulently filed documents and in some instance forged and fraudulently notarized for Simon Post Mortem, all these criminal acts committed as part of a complex legal scam to create the appearance that Simon closed his wife's estate properly before he died and made changes to Beneficiaries and Fiduciaries and documents prior to his own death.

18. Ted introduced his friends Tescher and Spallina to his father to do estate planning so as that Ted could get business in return from them.
19. Spallina and Tescher, Ted's close business associates that he retained as his counsel to represent him as Personal Representative and Trustee and Ted Bernstein further sat idly by as he learned that his mother's estate was closed by his deceased father acting as PR at a time after his death and while Ted was claiming he was the PR (prior to Letters issued in October 2013) through a series of fraudulent acts of his counsel Spallina and Tescher and the totality of the circumstances indicating Judge Colin is a necessary and material fact witness as Eliot Bernstein attempted to inform this Court on July 30, 2015 and Sept. 15, 2015 and at Trial Dec. 15th, 2015 and further by opposition herein;
20. That Judge Colin having issued prior Orders denying Ted Bernstein's motions to deny Eliot's Standings and that Eliot Bernstein has standing in all cases before this Court until proper hearings and trial determine otherwise;
21. Eliot Bernstein was sued individually in this action and Eliot has filed a counter complaint that also gives him individual standing. Eliot is also the alleged Trustee of his children's trusts, trusts that to this day he still has not been given a copy of. Eliot is also a beneficiary of the Simon Estate, the Shirley Bernstein Trust and the Shirley Bernstein Estate. Eliot also is alleged to be a beneficiary of Simon's Trust, as Simon's 2012 Amended Trust, allegedly done days before his

death, was improperly constructed, leaving Eliot still a beneficiary. Eliot is an interested party individually in all cases.

22. That a continuance should have been granted for Eliot Bernstein for all hearings to determine if his minor children's counsel Candice Schwager could be admitted pro hac vice or otherwise be afforded additional time to retain counsel of his choosing as the minor children have not been represented at any hearings, despite Rose's own contention that the children need independent counsel and where the Court should demand deposit of adequate funds from the Trusts or from the parties responsible for the need for counsel, Tescher and Spallina, into a proper account for no less than \$100,000.00 for immediate retention of counsel for the minors, thereby negating any need for guardians (who would then need to get counsel and so a guardian would only add additional expenses);
23. Hampering this effort to retain counsel for the minor children is Rose and his client Ted, as alleged Successor Trustee, refusal to turn over records to counsel Schwager<sup>15</sup> acting on behalf of Eliot and his minor children whom she is retained to represent but cannot enter the cases until she is approved Pro Hac Vice, a determination she will be making after getting the necessary case files from the fiduciaries. Currently, efforts underway to provide Eliot and his children with local counsel for Schwager have proved unsuccessful and perhaps that is because Eliot has exposed Fraud on the Court and alleges Fraud by the Court and several South Florida lawyers and judges involved, leading to a blackballing effect whereby many contacted will not even return calls after learning of who is involved in the case and many are already aware and instantly refuse.

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<sup>15</sup> Rose Letter Refusing to turn over documents to Attorney at Law Candice Schwager  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

24. The refusal to turn over documents by fiduciaries including Ted Bernstein have plagued this case from the start and continue to this day and in fact are what forced Eliot to seek counsel and Court relief to get documents statutorily owed to him in the first place as he and his children were denied dispositive documents for months after the death of his father and years after the death of his mother by Ted, Spallina, Tescher and others. Production requests are still outstanding and unheard by the Court, including records of the Court in toto due to the Fraud on the Court, which requires now discovery.
25. That no construction hearings have been held on the Wills, Trusts and instruments herein and / or not fully and fairly heard to determine beneficiaries, standing, valid trustees (where the PR of Simon's Estate Brian O'Connell has asserted an affirmative defense to the complaint in the Shirley Trust Construction case that Ted is NOT A VALID trustee serving in the Simon Trust under the terms of the trust<sup>16</sup> and if true would call for a rehearing of the validity hearing entirely with a new legally proper Trustee who is valid, not conflicted and not adverse to Beneficiaries as Ted is;
26. That hearings should be held on the removal of Ted Bernstein instantly by this Court from all fiduciary capacities PRIOR TO ANY ACTIONS involving Ted proceeding further and as the referenced September 13, 2013 hearing transcript footnoted herein already shows, Judge Colin had at that time of the first hearing in September 13, 2013 enough evidence involving TWO criminal acts learned and admitted to in the hearing involving Fraud on the Court and Fraud on the Beneficiaries, to state that he had enough evidence at that moment to read Ted and his counsel Spallina, Tescher (who did not appear but was represented) and Manceri their Miranda

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<sup>16</sup> Brian O'Connell pleading Ted is NOT A VALID Trustee Under Slmon L Bernstein Amended and Restated Trust, Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

Warnings, twice, yet no action has since been taken by Colin or the Phillips Court to remedy such actions that leave Ted and his counsel with “unclean hands” and involvement in criminal activities;

27. That the present motions of Ted Bernstein and Alan Rose should be stayed indefinitely;
28. That this Court having given reason to Eliot Bernstein that he would not receive a fair trial and having not received fair trials based upon the findings herein should now for this reason and others stated in two disqualification petitions filed against Judge Phillips, voluntarily mandatorily Disqualify from these proceedings.
29. Further, Judge Phillips is also now a necessary material and fact witness to the improper Post Recusal steering of the cases by Judge Colin to his Court, first to Judge Coates, a former Proskauer Rose Partner and where Proskauer is Counter Defendant in this action and also Coates formerly was retained by Eliot’s Iviewit technology companies at the heart of the estate and trust matters, yet Coates took the cases and files and concealed in Court in this case his prior involvement with Eliot and Simon Bernstein’s companies when he was a Proskauer Partner and held a hearing where he then Sua Sponte recused himself (after getting all the court’s confidential and non published records sent to him) and then passed the cases to Judge Phillips, the alleged intended target all along of Colin’s improper Post Recusal steering as cited in the disqualification motions filed<sup>17 and 18</sup> and thus Phillips should also instantly disqualify and void

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<sup>17</sup> December 04, 2015 First Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>18</sup> December 28, 2015 Second Disqualification of Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED>

his orders as required by Judicial Canons as he will soon be subpoenaed for deposition and as a witness to relevant matters about the case steering, for his acts outside the color of law in taking this case while knowing of his witness status, if not made a defendant in any further proceedings, state and federal, for continued Fraud by the Court and aiding and abetting and more.

30. That Judge Phillips knowing he is a material and fact witness and now potential defendant of charges of Fraud By the Court in these cases has an adverse interest to Eliot, his wife and their minor children that reflect in his intent to deprive Eliot and his three minor children and lovely wife of their fundamental due process rights.
31. Phillips has threatened Eliot and his wife Candice repeatedly with contempt for nothing other than to create false record, while at the December 15, 2015 hearing an attorney at law, Spallina and an officer the court commits and admits Fraud on the Court, Fraud on the Beneficiaries, Mail Fraud and more, yet at the same hearing Phillips is too busy threatening Candice and then removing her from participating and forcing her from the bench with Eliot as the records of the hearings reflect and simultaneously doing nothing when Spallina admits criminal misconduct in the proceedings directly involving the cases before him. This adverse interest and conflict with Eliot is because Eliot has accused Phillips, Judge Colin and Judge Coates of being part of the improper Post Recusal steering by Colin and transfer of the cases by Colin (who recused 1 day after denying a disqualification motion that alleged FRAUD BY THE COURT OF COLIN). Judge Phillips rude and threatening behaviors reflected in the transcripts of the hearings appear entirely in retaliation and to suppress Eliot's rights to fair hearings and Eliot fears that he and his children have not and cannot receive due process in the Phillips court.

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[%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf](#)

32. The Proposed Order of Rose now attempts to remove Eliot's standing and his prior pleadings filed on behalf of himself and as Guardian of his minor children and remove his standing in the matters through this improper proposed Order without due process and in violation of Administrative Orders. The Order Rose has prepared for Phillips to sign does not accurately reflect the truth of the proceedings and is designed to remove Eliot's rights to his inheritancy through further denial of due process and procedure, even moving the court to attempt Gag Orders on Eliot and to suppress distribution of the December 15, 2016 hearing that exposes new frauds on the court and more.

33. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC consent Order for criminal conduct involving insider trading and admitted to new crimes under oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus mandating it be either felony or misdemeanor criminal conduct.**

34. The following information is cause for impeachment of Spallina's testimony made with "unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the



FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,  
  
“2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”<sup>19</sup>
- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>20</sup>;

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<sup>19</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>20</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

14. . . . . THE COURT: You can answer the question, which  
 15. . . . is, did you plead to a felony?  
 16. . . . . MR. BERNSTEIN: Sorry, sir.  
 17. . . . . THE WITNESS: I have not.  
 18. . . . . THE COURT: Okay. Next question.  
 19. BY MR. BERNSTEIN:  
 20. . . . Q. Have you pled guilty to a misdemeanor?  
 21. . . . A. **I have not. [emphasis added]**  
 22. . . . Q. Were you involved in a insider trading case?  
 23. . . . . MR. ROSE: Objection. Relevance.  
 24. . . . . THE COURT: Sustained. Next question.

c. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

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

16· ·Bernstein matters?  
17· ······MR. ROSE:· Objection.· Relevance.  
18· ······THE COURT:· Overruled.  
19· ······You can answer that.  
20· ······THE WITNESS:· Yes, I have.  
21· ·BY MR. BERNSTEIN:  
22· ··· Q.· ·And did you state to them that you  
23· ·fraudulently altered a Shirley trust document and then  
24· ·sent it through the mail to Christine Yates?  
25· ··· A.· ·Yes, I did.  
·1· ··· Q.· ·Have you been charged with that by the Palm  
·2· ·Beach County Sheriff yet?  
·3· ··· A.· ·No, I have not.  
·4· ··· Q.· ·Okay.· How many times were you interviewed by  
·5· ·the Palm Beach County Sheriff?  
·6· ······MR. ROSE:· Objection.· Relevance.  
·7· ······THE COURT:· Sustained.  
8· ·BY MR. BERNSTEIN:  
·9· ··· Q.· ·Did you mail a fraudulently signed document to  
10· ·Christine Yates, the attorney for Eliot Bernstein's  
11· ·minor children?  
12· ······MR. ROSE:· Objection.· Relevance.  
13· ······THE COURT:· Overruled.  
14· ······THE WITNESS:· Yes.  
15· ·BY MR. BERNSTEIN:  
16· ··· Q.· ·And when did you acknowledge that to the  
17· ·courts or anybody else?· When's the first time you came  
18· ·about and acknowledged that you had committed a fraud?  
19· ··· A.· ·**I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10· ·BY MR. BERNSTEIN:  
11· ··· Q.· ·And what was she convicted for?  
12· ··· A.· ·She had notarized the waiver releases of  
13· ·accounting that you and your siblings had previously  
14· ·provided, and we filed those with the court.

15 · · · · Q · We filed those with the court.  
16 · · · · · Your law firm submitted fraudulent documents  
17 · to the court?  
18 · · · · A · No · We filed -- we filed your original  
19 · documents with the court that were not notarized, and  
20 · the court had sent them back.  
21 · · · · Q · And then what happened?  
22 · · · · A · And then Kimberly forged the signatures and  
23 · notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

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20 · · · · · MR. BERNSTEIN: · Sure.  
21 · BY MR. BERNSTEIN:  
22 · · · · Q · You've testified here about Kimberly Moran.  
23 · · · · · Can you describe your relationship with her?  
24 · · · · A · She's been our long-time assistant in the  
25 · office.

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·1 · · · · Q · Was she convicted of felony fraudulent  
·2 · notarization in the Estate of Shirley Bernstein?  
·3 · · · · · MR. ROSE: · Objection · Relevance.  
·4 · · · · · THE COURT: · Overruled.  
·5 · · · · · You're asking if she was convicted of a felony  
·6 · · · · with respect to the Estate of Shirley Bernstein?  
·7 · · · · · You can answer the question.  
·8 · · · · · MR. BERNSTEIN: · Correct.  
·9 · · · · · THE WITNESS: · I believe she was.

- g. SPALLINA then claims that it is “standard operating procedure” for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver

(already referenced and linked herein) submitted to this Court by Spallina's law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · · · · Q · · Okay · Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · · · · A · · Yeah · That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · · · · Q · · Okay · And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · · · · A · · He does · We sent out -- he signed that, and  
·2 · we sent out the waivers to all of you.  
·3 · · · · Q · · Okay · So on April 9th of 2012, Simon signed,  
·4 · with your presence, because your signature's on the  
·5 · document, a document stating he had all the waivers in  
·6 · his possession from all of his children.  
·7 · · · · · Had you sent the waivers out yet as of  
·8 · April 9th?

· · ·

20 · BY MR. BERNSTEIN:

21 · · · · Q · · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?  
24 · · · · A · · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.

· · ·

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

·5· . . . . . Okay. So if you hadn't sent out the waivers  
·6· yet to the --  
·7· . . . A. I'm not certain when the waivers were sent  
·8· out.  
·9· . . . Q. Were they sent out after the --  
10· . . . A. I did not send them out.  
11· . . . Q. Okay. More importantly, when did you receive  
12· those? Was it before April 9th or on April 9th?  
13· . . . A. We didn't receive the first one until May.  
14· And it was your waiver that we received.  
15· . . . Q. So how did you allow Simon, as his attorney,  
16· to sign a sworn statement saying he had possession of  
17· all of the waivers in April if you didn't get mine 'til  
18· May?  
19· . . . . MR. ROSE: Objection. I think it's relevance  
20· . . . and cumulative. He's already answered.  
21· . . . . THE COURT: What's the relevance?  
22· . . . . MR. BERNSTEIN: Oh, this is very relevant.  
23· . . . . THE COURT: What is the relevance on the issue  
24· . . . that I have to rule on today?  
25· . . . . MR. BERNSTEIN: On the validity? Well, it's  
1· . . . relevant. If any of these documents are relevant,  
·2· . . . this is important if it's a fraud.  
·3· . . . . THE COURT: I'll sustain the objection.  
·4· . . . . MR. BERNSTEIN: Okay. Can I -- okay.  
·5· BY MR. BERNSTEIN:  
·6· . . . Q. When did you get -- did you get back prior to  
·7· Simon's death all the waivers from all the children?  
·8· . . . A. No, we did not.  
·9· . . . Q. So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· . . . . MR. ROSE: Objection. Relevance. Cumulative.  
15· . . . . THE COURT: Sustained.

h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as

“Not Eligible to Practice Law in Florida”<sup>21</sup> when he states in the December 15, 2015 hearing,

Page 91

7· ·BY MR. BERNSTEIN:

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

10· ··· A· ·No, I was not.

11· ··· Q· ·Oh, okay· You're just going based on your

12· ·doing the work as Simon Bernstein's attorney and Shirley

13· ·Bernstein's attorney?

14· ··· A· ·Yes.

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

16· ··· A· ·I am not practicing.

17· ··· Q· ·Can you give us the circumstances regarding

18· ·that?

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida

21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay· You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm· It wasn't

·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· ·BY MR. BERNSTEIN:

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<sup>21</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile/lut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZggSEHEE7girnxJMMNktoDIOr2qgtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile/lut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZggSEHEE7girnxJMMNktoDIOr2qgtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

23. . . . Q. Did the fraudulently altered document change  
24. the beneficiaries that were listed in Shirley's trust?  
25. . . . A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“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 [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI 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.”<sup>22</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM "), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam’s lineal descendants back into the trust would give them a chance to convert improperly %40 of the value to their families from %0.

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<sup>22</sup> Shirley Trust Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>



This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.

35. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25 · · · · Q · · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of  
2 · your mother's when?  
3 · · · · A · · I believe that was in the early 2013 or '14.  
4 · · · · Q · · Okay · And when you found out, you were the  
5 · fiduciary of Shirley's trust, allegedly?  
6 · · · · A · · I'm not sure I understand the question.  
7 · · · · Q · · When you found out that there was a fraudulent  
8 · alteration [sic] of a trust document, were you the  
9 · fiduciary in charge of Shirley's trust?  
10 · · · · A · · I was trustee, yes · I am trustee, yes.  
11 · · · · Q · · And your attorneys, Tescher and Spallina, and  
12 · their law firm are the one who committed that fraud,  
13 · correct, who altered that document?  
14 · · · · A · · That's what's been admitted to by them,  
15 · correct.  
16 · · · · Q · · Okay · So you became aware that your counsel  
17 · that you retained as trustee had committed a fraud,  
18 · correct?  
19 · · · · A · · Correct.  
20 · · · · Q · · What did you do immediately after that?  
21 · · · · A · · The same day that I found out, I contacted

22· ·counsel· I met with counsel on that very day· I met  
23· ·with counsel the next day· I met with counsel the day  
24· ·after that.

25· ···· Q· ·Which counsel?

·1· ···· A· ·Alan Rose.

···

P 209-210

24· ·BY MR. BERNSTEIN:

25· ···· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ···· A· ·Can you define original for me?

·3· ···· Q· ·The original.

·4· ···· A· ·The one that's filed in the court?

·5· ···· Q· ·Original will or the trust.

·6· ···· A· ·I've seen copies of the trusts.

·7· ···· Q· ·Have you done anything to have any of the

·8· ·documents authenticated since learning that your

·9· ·attorneys had committed fraud in altering dispositive

10· ·documents that you were in custody of?

11· ······ MR. ROSE:· Objection· Relevance.

12· ······ THE COURT:· Overruled.

13· ······ THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ···· Q· ·So you as the trustee have taken no steps to

16· ·validate these documents; is that correct?

17· ···· A· ·Correct.

36. Finally, as reported by the Palm Beach Post<sup>23</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage frauds that found judges and lawyers fraudulently conveying properties through "robo signing" aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

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<sup>23</sup> <http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt/>  
and  
<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

WHEREFORE, the proposed Order of Ted Bernstein is Objected to herein and an Alternate Order submitted.

Dated: January 19, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 19th day of January, 2016.

**/s/Eliot Ivan Bernstein**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**ALTERNATE ORDER**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee Ted Bernstein and Alan Rose's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children and other relief, and Eliot I. Bernstein having filed Opposition and appeared in Opposition. The Court, having considered the record, heard argument of counsel and the parties and having reconsidered the record and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Strike the Proposed Order of Alan B. Rose and Ted Bernstein in entirety;
2. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
3. That there was no Construction Hearing held, Noticed or Scheduled;
4. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
5. That the present motions of Ted Bernstein and Alan Rose are stayed indefinitely;
6. Judge Phillips mandatorily disqualify himself and void ALL orders for all the reasons stated in the disqualifications and for newly discovered factual admissions of fraud on the court learned at the December 15, 2015 hearing and further fraud on the court continued through perjured statements made under oath in testimony by a former officer of the court and former fiduciary constituting perjury, obstruction and more;
7. Instantly report new Admissions before this Court and perjurious statements made in the December 15, 2016 validity hearing by attorney at law, former officer of the court and former fiduciary in the Simon Bernstein Estate and Trust, Robert Spallina's admissions of his newly admitted Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and Violations of his signed SEC Consent Order for Securities Fraud and Insider Trading to all the proper authorities, including but not limited to, the Inspector General of the Courts, the Chief Judge of 15th Judicial,
8. That the new Court demand deposit of adequate funds from the Trusts or from bonding of the responsible parties for causing the need for counsel into a proper account for no less than \$100,000.00 for immediate retention of counsel of Eliot's choosing for the minor

children as they have not been represented at hearings despite their standing as alleged beneficiaries and despite the fact that the conflict arises due to the fraud on the court by the prior fiduciaries and their counsel as proven already and or provide leave to Eliot Bernstein to re-apply immediately for funds for Counsel upon a new Judge presiding.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this \_\_\_th day of January, 2016.

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HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST**

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<p><b>COUNTER DEFENDANT</b>  Donald Tescher, Esq.,  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite  500  Boca Raton, Florida 33432  dtescher@tescherspallina.com  ddustin@tescherspallina.com  kmoran@tescherspallina.com</p>	<p><b>COUNTER DEFENDANT &amp; COUNSEL TO TED BERNSTEIN SERVED</b>  Alan B. Rose, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  arose@pm-law.com  and  arose@mrachek-law.com</p>	<p><b>Counter Defendant</b>  TESCHER &amp; SPALLINA, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com  ddustin@tescherspallina.com  kmoran@tescherspallina.com</p>
	<p>Pamela Simon  President  STP Enterprises, Inc.  303 East Wacker Drive  Suite 210  Chicago IL 60601-5210  psimon@stpcorp.com</p>	<p><b>Counter Defendant</b>  Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial  Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net  mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b>  L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  lmrachek@mrachek-law.com</p>	<p><b>Counter Defendant</b>  Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin  Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  crubin@floridatx.com</p>	<p><b>Counter Defendant</b>  Kimberly Moran  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>
<p><b>Counter Defendant</b>  Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.c</p>	<p><b>Counter Defendant</b>  Estate of Simon Bernstein  Personal Representative  Brian M. O'Connell, Partner  Ciklin Lubitz Martens &amp; O'Connell  515 N Flagler Drive</p>	<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>

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Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Plaintiff(s)

v.

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB  
Related Cases:  
502011CP00653XXXXSB  
502014CA014637XXXXMB  
502014CP002815XXXXSB  
502015CP001162XXXXNB  
502015CP002717XXXXNB

**NOTICE OF APPEAL  
ORDER OF VALIDITY TRIAL**

ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

**NOTICE OF APPEAL**

---

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th ) District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in the Probate Division dated Dec. 16, 2015 purportedly transmitted via the U.S. mail arriving multiple days later in my US Postal Box by Judge Phillips or his Chambers purporting to be a Trial Order and Final Judgment under Probate law on Count II of an Amended Complaint of Ted Bernstein and Alan Rose allegedly declaring the validity and authenticity of specified Wills, Trusts and Instruments in both Shirley Bernstein and Simon Bernstein cases and illegally going

beyond the purported Trial to afford affirmative relief in favor of Ted Bernstein Not Noticed for the improperly Scheduled Trial and other relief set out therein. Eliot Bernstein hereby Appeals from each and every part of said Order and Judgment.

Dated: January 15, 2016

/s/Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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/Email; this 15th day of January, 2016.

/s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
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**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS**

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<p>Gary R. Shendell, Esq.        Kenneth S. Pollock, Esq.        Shendell &amp; Pollock, P.L.        2700 N. Military Trail,        Suite 150        Boca Raton, FL 33431        (561)241-2323 - Telephone (561)241-2330-Facsimile        Email: <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p>	<p>Counter Defendant        Robert Spallina, Esq.        Donald Tescher, Esq.        Tescher &amp; Spallina        925 South Federal Hwy., Suite 500        Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq.        Joielle A. Foglietta, Esq.        Ciklin Lubitz Martens &amp; O'Connell        515 N. Flagler Dr., 20th Floor        West Palm Beach, FL 33401        561-832-5900-Telephone        561-833-4209 - Facsimile        Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>;  <a href="mailto:ifoglietta@ciklinlubitz.com">ifoglietta@ciklinlubitz.com</a>;  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>;  <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>	<p>Counter Defendant        John J. Pankauski, Esq.        Pankauski Law Firm PLLC        120 South Olive Avenue        7th Floor        West Palm Beach, FL 33401  <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a>  <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>
<p>Counter Defendant        Mark R. Manceri, Esq., and        Mark R. Manceri, P.A.,        2929 East Commercial Boulevard        Suite 702        Fort Lauderdale, FL 33308  <a href="mailto:mrmlaw@comcast.net">mrmlaw@comcast.net</a></p>	<p>Counter Defendant        Donald Tescher, Esq.,        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein        880 Berkeley        Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant        TESCHER &amp; SPALLINA, P.A..        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein        Life Insurance Concepts, Inc.        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant        Alan B. Rose, Esq.        PAGE, MRACHEK, FITZGERALD, ROSE,        KONOPKA, THOMAS &amp; WEISS, P.A.        505 South Flagler Drive, Suite 600        West Palm Beach, Florida 33401        561-355-6991  <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p>
<p>Pamela Beth Simon        950 N. Michigan Avenue</p>	<p>Counter Defendant        L. Louis Mrachek, Esq.</p>

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<p>Jill Iantoni          2101 Magnolia Lane          Highland Park, IL 60035          jilliantoni@gmail.com</p>	<p>Counter Defendant          Pankauski Law Firm PLLC          120 South Olive Avenue          7th Floor          West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein          2142 Churchill Lane          Highland Park, IL 60035          lisa.friedstein@gmail.com          lisa@friedsteins.com</p>	<p>Dennis McNamara          Executive Vice President and General Counsel          Oppenheimer &amp; Co. Inc.          Corporate Headquarters          125 Broad Street          New York, NY 10004          800-221-5588          Dennis.mcnamara@opco.com          info@opco.com</p>
<p>Dennis G. Bedley          Chairman of the Board, Director and Chief Executive          Officer          Legacy Bank of Florida          Glades Twin Plaza          2300 Glades Road          Suite 120 West – Executive Office          Boca Raton, FL 33431          info@legacybankfl.com          DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq.          President          Oppenheimer Trust Company of Delaware          405 Silverside Road          Wilmington, DE 19809          302-792-3500          hunt.worth@opco.com</p>
<p>James Dimon          Chairman of the Board and Chief Executive Officer          JP Morgan Chase &amp; CO.          270 Park Ave. New York, NY 10017-2070          Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson          President &amp; Chief Executive Officer          Wilmington Trust Company          1100 North Market Street          Wilmington, DE 19890-0001          nwolfson@wilmingtontrust.com</p>
<p>William McCabe          Oppenheimer &amp; Co., Inc.          85 Broad St Fl 25          New York, NY 10004          William.McCabe@opco.com</p>	<p>STP Enterprises, Inc.          303 East Wacker Drive          Suite 210          Chicago IL 60601-5210          psimon@stpcorp.com</p>
<p>Charles D. Rubin          Managing Partner          Gutter Chaves Josepher Rubin Forman Fleisher Miller          PA          Boca Corporate Center          2101 NW Corporate Blvd., Suite 107          Boca Raton, FL 33431-7343</p>	<p>Ralph S. Janvey          Krage &amp; Janvey, L.L.P.          Federal Court Appointed Receiver          Stanford Financial Group          2100 Ross Ave, Dallas, TX 75201          rjanvey@kjllp.com</p>

<p>crubin@floridatx.com</p>	
<p>Kimberly Moran        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles        Life Insurance Concepts        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487        lindsay@lifeinsuranceconcepts.com</p>
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<p>Albert Gortz, Esq.        Proskauer Rose LLP        One Boca Place        2255 Glades Road        Suite 421 Atrium        Boca Raton, FL 33431-7360        agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company        A member of WiltonRe Group of Companies        187 Danbury Road        Wilton, CT 06897        cstroup@wiltonre.com</p>
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<p>Byrd F. "Biff" Marshall, Jr.        President &amp; Managing Director        Gray Robinson, PA        225 NE Mizner Blvd #500        Boca Raton, FL 33432        biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq.        Gunster, Yoakley &amp; Stewart, P.A.        777 South Flagler Drive, Suite 500 East        West Palm Beach, FL 33401        Telephone: (561) 650-0545        Facsimile: (561) 655-5677        E-Mail Designations:        slessne@gunster.com        jhoppel@gunster.com        eservice@gunster.com</p>
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<p>Joseph M. Leccese Chairman Proskauer Rose LLP Eleven Times Square New York, NY 10036 jleccese@proskauer.com</p>	<p>Brian Moynihan Chairman of the Board and Chief Executive Officer 100 N Tryon St #170, Charlotte, NC 28202 Phone:(980) 335-3561</p>
--	---

**ATTACHED TWO COPIES OF ORDER**



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

COPY

---

**FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT**

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's  
*ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II* dated September 24,  
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *EX. P2 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~


*ju*  
*ju*  
*ELIOT BERNSTEIN*  
*ju*  
*ju*  
*ju*

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.

  
John L. Phillips  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

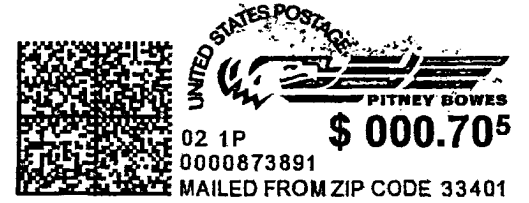
Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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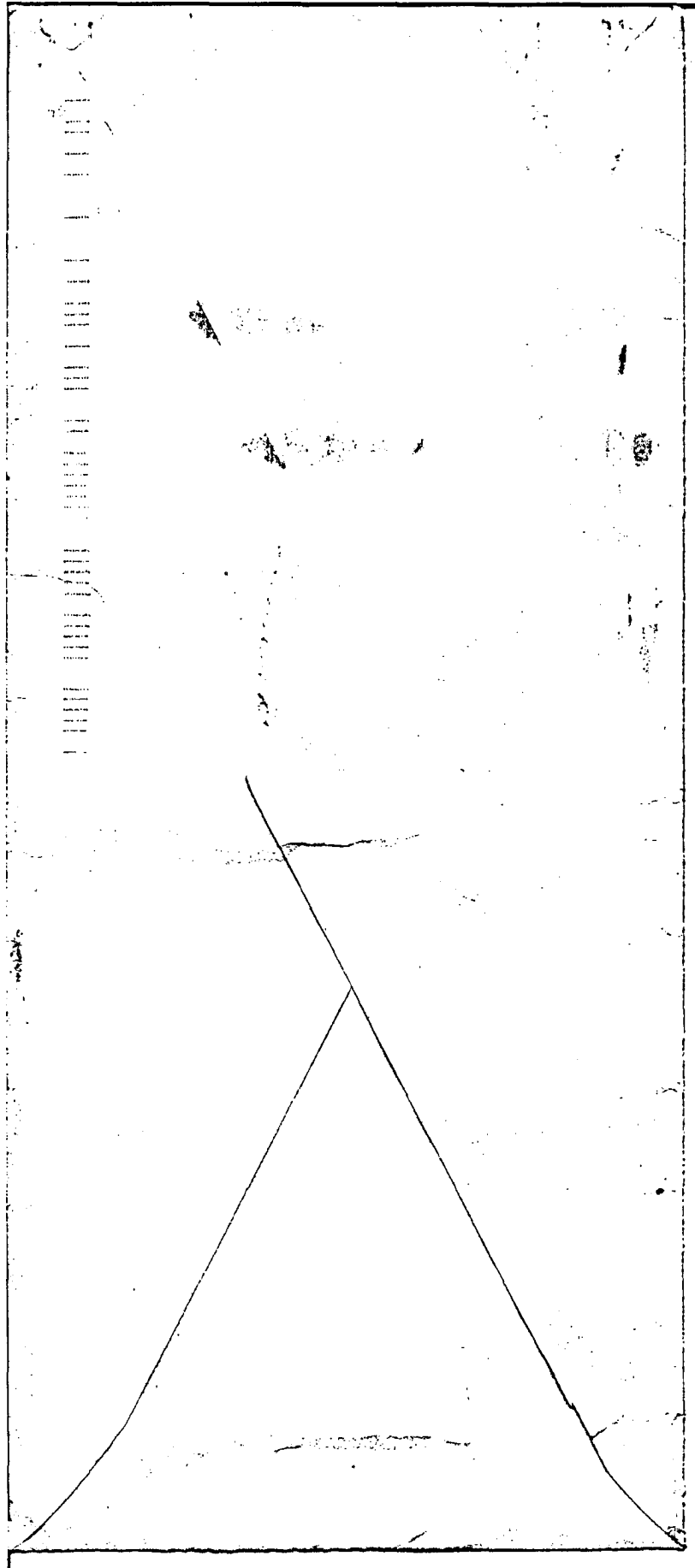
JOHN L. PHILLIPS  
CIRCUIT JUDGE  
NORTH COUNTY COURTHOUSE  
3188 PGA BOULEVARD  
PALM BEACH GARDENS, FL 33410



Eliot I. Bernstein  
2753 N.W. 34th Street  
Boca Raton, FL 33434

33434345953





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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

COPY

---

**FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT**

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having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~2~~, *EX. P1 AT TRIAL*) JB
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~2~~, *EX. P3 AT TRIAL*) JB
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~2~~, *EX. P4 AT TRIAL*) JB
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~2~~, *EX. P5 AT TRIAL*), *and* JB
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~2~~, *EX. P1 AT TRIAL*) JB

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in forging or fabricating documents. ~~Thus,~~ Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein, ~~made in the pleadings in this case or in various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

*The evidence shows*

*of ELIOT BERNSTEIN*

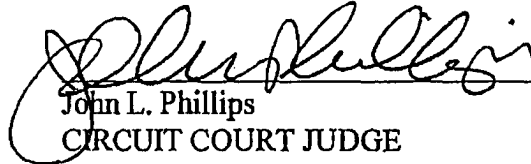
*jo*  
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*jo*  
*jo*  
*jo*

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.

  
John L. Phillips  
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
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(561) 833-0867 - Facsimile  
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\(john@imorrisseylaw.com\)](mailto:John.P.Morrissey@imorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

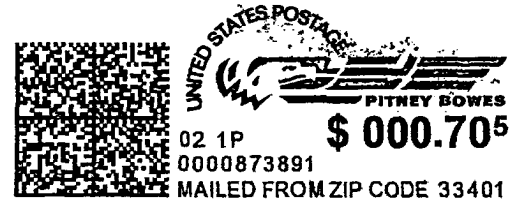
Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
Mrachek Fitzgerald Rose  
Konopka Thomas & Weiss, P.A.  
505 S Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 - Telephone  
(561) 655-5537 - Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Pamela Beth Simon  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

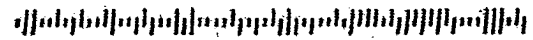
Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
561-832-5900 - Telephone  
561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

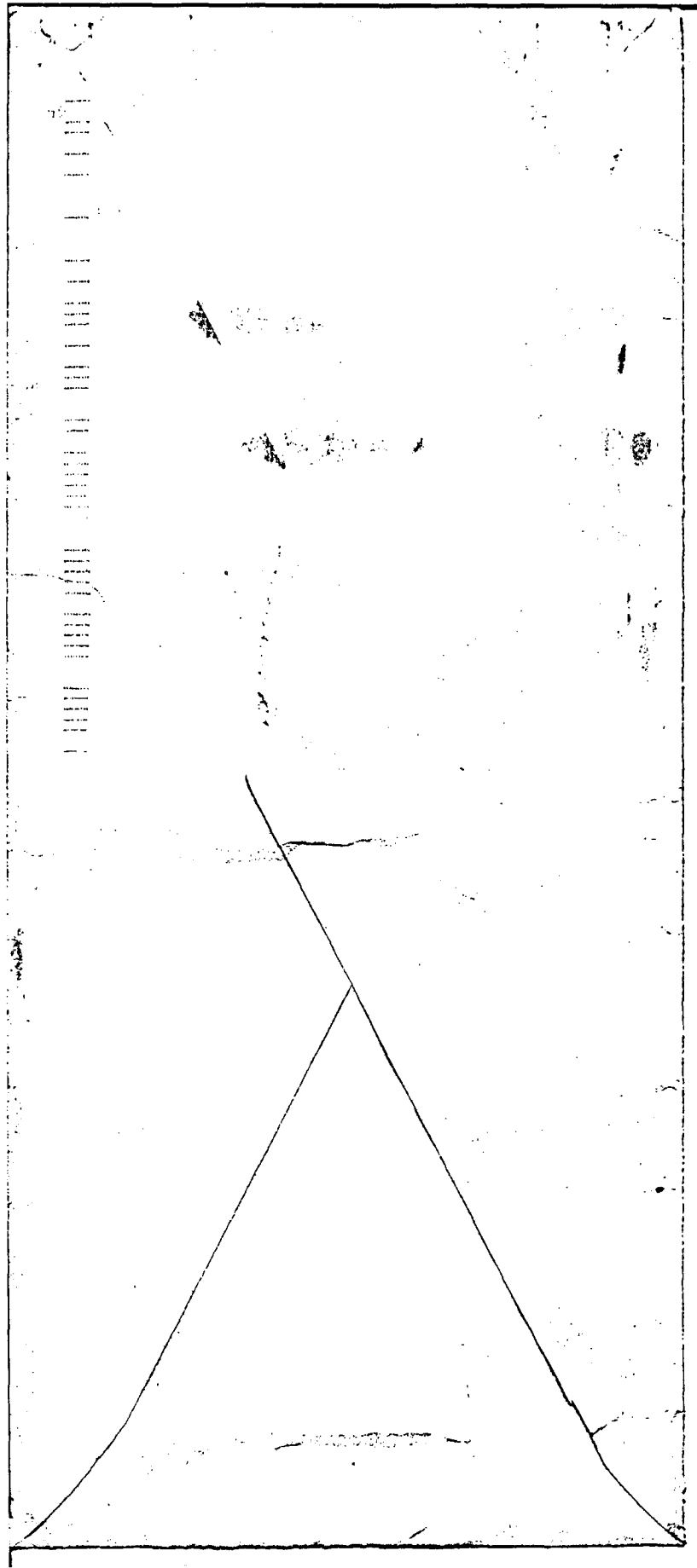
JOHN L. PHILLIPS  
CIRCUIT JUDGE  
NORTH COUNTY COURTHOUSE  
3188 PGA BOULEVARD  
PALM BEACH GARDENS, FL 33410



Eliot I. Bernstein  
2753 N.W. 34th Street  
Boca Raton, FL 33434

33434345953





IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or In the Interest Of  
vs.  
Teschler & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698X

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. income tax return.)  
Are you Married? / Yes No Does your Spouse Work? ... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Teacher</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>UNKNOWN</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "Yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one:  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I affirm that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 2014.  
09/30/1963 68926008  
Date of Birth Driver's License or ID Number

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

[Signature]  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 681-248-8258

[Signature]



Kelly Gold Frank  
COMMISSION # FF000732  
EXP. RES. MAR. 25, 2017  
WWW.AARONOTARY.COM

RECEIVED, 1/6/2016 9:14 AM, Clerk, Fourth District Court of Appeal

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 6 day of JAN, 2016.

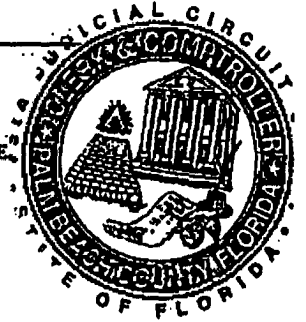
Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_





**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Thursday, January 21, 2016 12:38 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-0222

-----Original Message-----

**From:** [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
**Sent:** Thursday, January 21, 2016 11:49 AM  
**To:** COC\_DM-eappeals  
**Subject:** Pleading Accepted On Case: 16-0222

Your Determination of Indigent Status on case 16-0222 has been accepted and is now on the docket.

DCA Case No: 16-0222  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ET AL.  
LT Case No : ~~2011CP000653XXXXSB~~  
2014CP003698XXXXNB

**FILED**  
JAN 21 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Thursday, January 21, 2016 12:37 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-0222

-----Original Message-----

From: [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
Sent: Thursday, January 21, 2016 11:49 AM  
To: COC\_DM-eappeals  
Subject: Pleading Accepted On Case: 16-0222

Your Notice of Appeal Filed on case 16-0222 has been accepted and is now on the docket.

DCA Case No: 16-0222  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ET AL.  
LT Case No : ~~2011CP000653XXXXSB~~  
2014CP003698XXXXNB

**FILED**  
**JAN 21 2016**  
**SHARON R. BOCK**  
**CLERK & COMPTROLLER**  
**CIRCUIT CIVIL DIVISION**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

**NOTICE OF HEARING**  
*Uniform Motion Calendar*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for hearing the following:

**DATE:** Thursday, February 4, 2016

**TIME:** 8:30 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that he made a good-faith attempt to resolve this matter with counsel prior to scheduling this hearing, but was unable to do so.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

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

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

## SERVICE LIST

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: <a href="mailto:Eliot.I.Bernstein@iviewit.tv">Eliot I. Bernstein (iviewit@iviewit.tv)</a></p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE**  
**DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting

the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the



hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Boca Raton, FL 33434  
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(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

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**ORDER DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY  
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE  
APPOINTMENT OF A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor  
Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot  
Bernstein's Children; For A Gag Order to Protect Guardian and Others; and to Strike Eliot's  
Filings* (the "Motion"). The Court, having considered the record, heard argument of counsel and  
being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

SHARON L. TROCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

16 FEB -3 PM 2:21

FILED

1. The Motion is GRANTED in part as set forth in this Order and DEFERRED in remaining part pending an evidentiary hearing as requested by Eliot Bernstein and his wife.

2. By Final Judgment dated December 16, 2015, this Court has determined that Simon Bernstein's Will dated July 25, 2012 is valid and enforceable according to its terms. The Final Judgment is valid, binding and in full force and effect.

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.

4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

5. Having determined that Eliot Bernstein lacks individual standing, the Court next will consider whether a Guardian ad Litem should be appointed to represent the interests of the children of Eliot and Candice Bernstein, each of whom has been determined to be a beneficiary of the Shirley Bernstein Trust, and whether to enter a confidentiality order as requested by the

Trustee in the Motion. These matters will be addressed at an evidentiary hearing to be set by separate order of this Court.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 1 day of ~~January~~, 2016.

*Feb.*

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra  
Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a  
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MRACHEK  
FITZGERALD  
ROSE  
KONOPKA  
THOMAS  
& WEISS, P.A.

Judge Here was no  
objection Filed to his  
order dated 1/19/16  
DE#149

WRITER'S DIRECT DIAL NUMBER: (561) 355-6991  
WRITER'S E-MAIL ADDRESS: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

Ted Bernstein  
required  
2-1-16

January 14, 2016

VIA EMAIL

The Honorable John L. Phillips  
North County Courthouse  
3188 PGA Boulevard  
Room 1414 | Courtroom 3  
Palm Beach Gardens, FL 33410

Re: Ted Bernstein, etc., et al. v. Alexandra Bernstein, et al.  
Case Number(s): 2014CP003698XXXXNB IH

Dear Judge Phillips:

Regarding the hearing held this morning, January 14, 2015, attached is a proposed *Order Determining Eliot Bernstein Lacks Standing Individually And Striking Eliot's Filings, and Deferring Ruling on the Appointment of a Guardian Ad Litem and Other Relief Sought.*

I believe this proposed Order is consistent with the Court's ruling this morning, granting the relief sought in the Motion. I circulated a draft of the proposed Order, and received the following response from Eliot Bernstein:

Mr. Rose,

As you are and should be aware, to the extent any Order of Judge Colin is valid and remains in effect, the law of the case by Judge Colin's Orders has upheld my Standing in both Shirley and Simon and Denied your client Ted Bernstein in this regard and further that you are aware and were aware of the Outstanding Order of Production of Judge Colin that was never complied with at the time you mislead Judge Phillips' Court and moved in Shirley on Sept. 15, 2015.

For these reasons and more, I Object to the entirety of the Proposed Order and will be submitting my own Proposed Order by tomorrow, as I mentioned on the record today I am heavily medicated due to a dental problem.

The Honorable John L. Phillips  
January 14, 2016  
Page 2

Absent some Medical or other Emergency, the Date February 25 at 3:15pm does work, however, 1 hour is Insufficient, I think it should be at least one full working day and thus I object to the time being limited to one hour. Also, you are not properly serving notice to all parties, including all of the Counter Defendants.

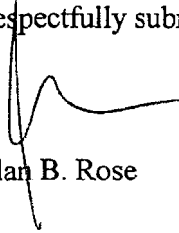
Thank you.

On behalf of my client, the Trustee, we request that you enter the enclosed form proposed Order or whatever Order Your Honor believes is consistent with your ruling today.

We also have enclosed a Notice of Evidentiary Hearing for February 25th, consistent with your ruling and the scheduling information from your judicial assistant. I advise you that Mr. Eliot Bernstein also objects to your Honor's ruling that the evidentiary hearing be scheduled for one hour.

We appreciate Your Honor's time and attention to these matters.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Alan B. Rose'. The signature is fluid and cursive, with a prominent vertical stroke on the left side.

Alan B. Rose

Enclosures

cc: All parties listed on the Service List

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

**Objections to Proposed Order of Alan  
Rose / Ted Bernstein**

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

Defendants.

---

**OBJECTIONS TO PROPOSED ORDER OF ALAN B. ROSE AND TED BERNSTEIN'S  
PROPOSED "ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING  
SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF" AND PROPOSED  
ALTERNATIVE ORDER**

1. I oppose all relief sought by Alan Rose and Ted Bernstein for all the reasons raised in the papers in opposition and all prior papers before Judge Phillips.

2. That Florida licensed attorney Alan Rose on behalf of Ted Bernstein misled this Court on Sept. 15, 2015<sup>1</sup> including whether all four cases had been properly Noticed<sup>2</sup> and where due to this misinformation at the case management conference a Trial was improperly set in Shirley Bernstein's Trust case in violation of Florida Civil Rules of Procedure 1.200<sup>3</sup> and in violation of due process while the PRs of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta stood silent despite their office having sent the Notice for the Case Management Conference in the first instance,

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.

That Florida licensed attorney Alan Rose requested January 14, 2016 at 12:17pm<sup>4</sup> that Eliot Bernstein submit comments to a proposed Order from a January 14, 2016 hearing by 3pm that same day or else he would file with the Court as an unopposed Order and Eliot replied and 3:30pm<sup>5</sup> on January that he would try to get his changes to him timely on January 15th, 2016 to submit to the Court together with his proposed Order (Eliot did not know at the time that Rose was supposed to give him five days under the rules);

3. Mr. Rose in violation of ADMINISTRATIVE ORDER 5.204-5/09<sup>6</sup> then ignored said received email indicating that Eliot would send comments and a proposed order to him the next day and instead sent a letter to Judge Phillips with his proposed Order only to the Court on January 14,

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<sup>1</sup> Sept 15, 2015 Hearing Transcript

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>2</sup> August 03, 2015 Notice of Hearing Status Conference for Simon Bernstein Estate Case Only

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%2015%202015%20930am%20Case%20Management.pdf>

<sup>3</sup>Florida Rules of Civil Procedure 1.200

[http://phonl.com/fl\\_law/rules/frcp/frcp1200.htm](http://phonl.com/fl_law/rules/frcp/frcp1200.htm)

<sup>4</sup> January 14, 2016 Email Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%2012.12pm%20Alan%20Rose%20Proposed%20Order%20Email.pdf>

<sup>5</sup> January 14, 2016 Eliot Email to Rose with Dr. Report

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%203.30pm%20Eliot%20response%20to%20Rose%20re%20Order.pdf>

<sup>6</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>



2016 at 4:15pm<sup>7</sup> without waiting for Eliot's comments and proposed order and this too in violation of Administrative Order 5.204-5/09<sup>8</sup> and further asked for an immediate ruling that day from Judge Phillips, knowing there are five days for my response and proposed order to be sent to him before seeking relief with the court as if unopposed with no counter order. This further evidences Mr. Rose's continued Sharp Practices and violation and contempt of the court decorum, efforts to obstruct due process and tortiously interfere with the fair administration of justice;

4. Florida licensed attorney Alan Rose on behalf of Ted Bernstein having further misled this Court about the status of the case and the time necessary for a proper validity Trial at the September 15, 2015 case management conference and left no time for a proper trial for the 10 witnesses called by the Trustee or for Eliot to properly cross examine witnesses available that day leaving Eliot and this Court with insufficient time for a proper trial / hearing which was improperly held without proper pre-trial procedures to determine outstanding discovery and requests for production and proper witnesses.
5. That the January 14, 2016 hearing for standing was also improperly scheduled at a UMC hearing by Alan Rose, despite needing an evidentiary hearing as requested by Eliot at the hearing to give testimony and have any witnesses present but which Eliot was denied opportunity for such by this Court;
6. Where Judge Phillips asked Eliot at the January 14, 2016 hearing what statute gave him standing as a named Beneficiary in the Shirley Trust document that Phillips has Ordered to be valid and when Eliot, a Pro Se litigant, did not know off the top of his head the Florida Statute giving

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<sup>7</sup> January 14, 2016 4:15 pm Alan Rose Letter to Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%204.06pm%20ExParte%20Letter%20to%20Judge%20Phillips%20Alan%20Rose%20Proposed%20Order.pdf>

<sup>8</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

named beneficiaries standing in a Trust case where they are named, Judge Phillips, who is supposed to know the statutes himself improperly ruled against Eliot's standing for this sole reason of his lack of knowing the statute at the hearing and based solely on the claims of Alan Rose and not on the merits after proper hearing with testimony from both sides or giving Eliot a chance to find the correct statute to preserve his standing. Judge Phillips, then quite rudely told Eliot if he did not like it to get a lawyer despite the fact that a prior motion for a Continuance of the validity trial itself was filed timely before Trial so that Texas attorney Candice Schwager could get admitted pro hac vice yet attorney Alan Rose denied Candice Schwager any such courtesy even though it was to benefit the minor children and Alan Rose has further denied Candice Schwager access to document production to further her review of the case while this Court improperly stated the motion for continuance was untimely when the statute permits it to be made even at the time of trial and where it was filed in writing before the trial.

7. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
8. That for instance in the Shirley Trust case addressed herein, Eliot and his two sisters are the beneficiaries of Shirley's Trust at the time it become irrevocable with a defined class of beneficiaries in stone upon her death, as stated in the trust;

ARTICLE II. AFTER MY DEATH - E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me.

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 [emphasis added]**. Any assets allocated under this Subparagraph 11.D. to my children (**as that term is defined under this Trust [emphasis added]**), 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 11.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 11.E. below.

and

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.

### ARTICLE III. GENERAL - E1 - 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 [Emphasis Added],**

That the trust language is clear that Ted and Pamela and their lineal descendants, at the time of Shirley's death were not beneficiaries and Eliot and his two sisters Lisa and Jill are. Further, the Court should note that Ted is considered predeceased for ALL PURPOSES OF DISPOSITIONS of the Shirley Trust, which would disqualify him as a Trustee to make dispositions, including holding hearings for construction and validity or making any disbursements and thus further reason to strike the Validity Hearing on December 15, 2015 as a Sham Hearing conducted by a deceased person under the trust.

9. Similarly, at Judge Phillips' validity hearing Order on December 16, 2016, Eliot was never shown a copy of beforehand or had chance to submit comments and a counter order to Rose was also issued in violation of ADMINISTRATIVE ORDER 5.204-5/09\*<sup>9</sup>, the order issued contains rulings on issues that were not Noticed to be Heard, not Scheduled for the Trial and in fact not heard at the hearing at all, no testimony or anything from either party on the ruled on items as evidenced in the transcript and thus the December 16, 2015 Order should further be stricken as an improper Void Order and for other far more serious reasons further defined herein. That the Rose Proposed Order for the January 14, 2016 hearing feeds off the December 16, 2016 Order and for this reason the December 16, 2016 Order and the Proposed Order should be stricken.

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<sup>9</sup> Administrative Order Regarding Preparation of Order - ADMINISTRATIVE ORDER 5.204-5/09\*

10. That Eliot further stated to the Court that the hearing was improperly scheduled by Rose when he knew Eliot had filed in December a Notice of Unavailability for the month of January and further learned that he was under medical care and prescription medications<sup>10</sup> making him medically unfit during the time of the January 14, 2016 hearing and again, using sharp practice unbecoming of an Attorney at Law, Rose scheduled the hearing and would not withdraw it despite knowing Eliot was not well and was still seeking to have counsel admitted to protect the children.
11. Eliot stated on the record that he was medically unfit and on heavy medications for any hearing that day and yet Judge Phillips ignored the request to postpone and schedule a proper evidentiary hearing to determine standing and rushed to rule without even having proper testimony on any of the items in Rose's Proposed Order.
12. That having declared in a September 15, 2015 hearing "love"<sup>11</sup> for Judge Colin and pre-judging that he would not question Colin's actions that have been called into question and alleged as Fraud by the Court and that he would not find that Colin did something wrong, wholly prejudiced Eliot's position and denies him fundamental due process rights.
13. Having further reviewed the Record of the Cases having determined that an outstanding Order by Judge Colin for Production<sup>12</sup> against prior fiduciaries Tescher & Spallina was never performed or complied with fundamentally prejudicing a proper validity Trial. In fact it was learned at the December 15, 2015 trial that NONE of the Original Dispositive Documents were available for inspection at the hearing and that Trustee Ted Bernstein claimed under oath he had

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<sup>10</sup> Dr. Ronik Seecharan Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20Seecharan%20Letter%20Regarding%20procedure.pdf>

<sup>11</sup> September 15, 2015 Hearing Transcript Page 27 Lines 14-25 and Page 28 Lines 1-6

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>12</sup> February 18, 2014 Order to Turn Over ALL records of Tescher and Spallina to Curator

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

never seen the original trust he operates under nor took any steps to validate the documents in light of the fact that his prior counsel SPALLINA had admittedly fraudulently created a Shirley Trust document at the December 15, 2015 hearing he testified at as to the validity of the documents he admitted fraud in creating and then sent the fraudulent trust via mail to Attorney at Law Christine Yates representing Eliot's minor children and finally it was learned at the hearing that Tescher and Spallina had violated the Colin Court Order to turn over their records in entirety and still possessed Original dispositive documents;

14. That the totality of the related cases should have determined this case to be a "complex" case and the case management conference should have been conducted properly as such, again such deprivation of rights severely prejudiced the outcome;
15. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
16. That missing necessary witnesses and missing discovery were existent at the time of the validity trial including but not limited to witnesses Notary Publics who signed documents, Kimberly Moran and Lindsay Baxley (where Governor Rick Scott's Notary Public Division has already prosecuted in conjunction with the Palm Beach County Sheriff Moran for fraudulent notarization in these matters and Lindsay Baxley aka Lindsay Giles was also found to have improperly notarized a Will and Amended Trust of Simon) and Witnesses to the Execution of the alleged documents, Traci Kratish, Esq., Diana Banks, Rachel Walker and a John Doe signor, as well as, other witnesses William Stansbury and Donald Tescher, Esq. thus necessitating a new Trial after proper pre-trial proceedings are completed and a Case-Management Conference for a "complex" case is held before a non-conflicted and non-adverse judge;

17. That the circumstances of Judge Colin's handling of the case and specifically, including but not limited to, hearings held on Sept. 13, 2013<sup>13</sup> whereupon alleged Trustee Ted Bernstein appeared on the record claiming his fiduciary status as fiduciary for the Estate at a time he had not yet been appointed, a year after Simon's death at the time of the hearing, yet remaining silent as to various Frauds upon the Court admitted by his counsel, including an April 9, 2012 Petition for Discharge<sup>14</sup> claiming all beneficiaries had properly waived their interests and rights and Simon was in possession of them on that date. Ted Bernstein having known this to be false, as he did not complete his own Waiver until August 01, 2012 and therefore knew this statement that Simon had the completed Waivers in April 2012 to be false and further fraudulent actions involving the fiduciaries Tescher and Spallina who were acting as Simon's counsel at the time of the alleged signing and Ted's counsel when it was finally delivered to the Court as if Simon were delivering it alive Post Mortem months after his death while still acting as PR.
18. For clarification of this complex Post Mortem scheme, it should be noted that when Simon died, Ted was NOT appointed Successor PR by the Court while he maintained to the family on the day Simon died that he was acting as PR and acted as such and yet Ted was not appointed by Colin and issued Letters until October 13, 2013 after the hearing September 13, 2013 hearing that Colin threatened to read him Miranda's, leading to a series of bad rulings of Colin's that were designed to protect rather than have prosecuted those officers of his court involved in these frauds on the Court and the Beneficiaries. Yet, Ted's counsel Tescher and Spallina never filed for Letters for Ted when Simon died and instead they (Ted and his counsel Tescher and Spallina)

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<sup>13</sup> September 13, 2013 Colin Hearing - Mirand Warnings and more  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

<sup>14</sup> April 09, 2012 Alleged Simon Full Discharge Waiver Deposited by him with the Court after he passed away.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Petition%20for%20Discharge%20Full%20Waiver%20Shirley%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024.pdf>

all choose to use Simon as PR for months after he died to file fraudulently filed documents and in some instance forged and fraudulently notarized for Simon Post Mortem, all these criminal acts committed as part of a complex legal scam to create the appearance that Simon closed his wife's estate properly before he died and made changes to Beneficiaries and Fiduciaries and documents prior to his own death.

19. Ted introduced his friends Tescher and Spallina to his father to do estate planning so as that Ted could get business in return from them.
20. Spallina and Tescher, Ted's close business associates that he retained as his counsel to represent him as Personal Representative and Trustee and Ted Bernstein further sat idly by as he learned that his mother's estate was closed by his deceased father acting as PR at a time after his death and while Ted was claiming he was the PR (prior to Letters issued in October 2013) through a series of fraudulent acts of his counsel Spallina and Tescher and the totality of the circumstances indicating Judge Colin is a necessary and material fact witness as Eliot Bernstein attempted to inform this Court on July 30, 2015 and Sept. 15, 2015 and at Trial Dec. 15th, 2015 and further by opposition herein;
21. That Judge Colin having issued prior Orders denying Ted Bernstein's motions to deny Eliot's Standings and that Eliot Bernstein has standing in all cases before this Court until proper hearings and trial determine otherwise;
22. Eliot Bernstein was sued individually in this action and Eliot has filed a counter complaint that also gives him individual standing. Eliot is also the alleged Trustee of his children's trusts, trusts that to this day he still has not been given a copy of. Eliot is also a beneficiary of the Simon Estate, the Shirley Bernstein Trust and the Shirley Bernstein Estate. Eliot also is alleged to be a beneficiary of Simon's Trust, as Simon's 2012 Amended Trust, allegedly done days before his



death, was improperly constructed, leaving Eliot still a beneficiary. Eliot is an interested party individually in all cases.

23. That a continuance should have been granted for Eliot Bernstein for all hearings to determine if his minor children's counsel Candice Schwager could be admitted pro hac vice or otherwise be afforded additional time to retain counsel of his choosing as the minor children have not been represented at any hearings, despite Rose's own contention that the children need independent counsel and where the Court should demand deposit of adequate funds from the Trusts or from the parties responsible for the need for counsel, Tescher and Spallina, into a proper account for no less than \$100,000.00 for immediate retention of counsel for the minors, thereby negating any need for guardians (who would then need to get counsel and so a guardian would only add additional expenses);
24. Hampering this effort to retain counsel for the minor children is Rose and his client Ted, as alleged Successor Trustee, refusal to turn over records to counsel Schwager<sup>15</sup> acting on behalf of Eliot and his minor children whom she is retained to represent but cannot enter the cases until she is approved Pro Hac Vice, a determination she will be making after getting the necessary case files from the fiduciaries. Currently, efforts underway to provide Eliot and his children with local counsel for Schwager have proved unsuccessful and perhaps that is because Eliot has exposed Fraud on the Court and alleges Fraud by the Court and several South Florida lawyers and judges involved, leading to a blackballing effect whereby many contacted will not even return calls after learning of who is involved in the case and many are already aware and instantly refuse.

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<sup>15</sup> Rose Letter Refusing to turn over documents to Attorney at Law Candice Schwager  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

25. The refusal to turn over documents by fiduciaries including Ted Bernstein have plagued this case from the start and continue to this day and in fact are what forced Eliot to seek counsel and Court relief to get documents statutorily owed to him in the first place as he and his children were denied dispositive documents for months after the death of his father and years after the death of his mother by Ted, Spallina, Tescher and others. Production requests are still outstanding and unheard by the Court, including records of the Court in toto due to the Fraud on the Court, which requires now discovery.
26. That no construction hearings have been held on the Wills, Trusts and instruments herein and / or not fully and fairly heard to determine beneficiaries, standing, valid trustees (where the PR of Simon's Estate Brian O'Connell has asserted an affirmative defense to the complaint in the Shirley Trust Construction case that Ted is NOT A VALID trustee serving in the Simon Trust under the terms of the trust<sup>16</sup> and if true would call for a rehearing of the validity hearing entirely with a new legally proper Trustee who is valid, not conflicted and not adverse to Beneficiaries as Ted is;
27. That hearings should be held on the removal of Ted Bernstein instantly by this Court from all fiduciary capacities PRIOR TO ANY ACTIONS involving Ted proceeding further and as the referenced September 13, 2013 hearing transcript footnoted herein already shows, Judge Colin had at that time of the first hearing in September 13, 2013 enough evidence involving TWO criminal acts learned and admitted to in the hearing involving Fraud on the Court and Fraud on the Beneficiaries, to state that he had enough evidence at that moment to read Ted and his counsel Spallina, Tescher (who did not appear but was represented) and Manceri their Miranda

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<sup>16</sup> Brian O'Connell pleading Ted is NOT A VALID Trustee Under Simon L Bernstein Amended and Restated Trust, Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

Warnings, twice, yet no action has since been taken by Colin or the Phillips Court to remedy such actions that leave Ted and his counsel with “unclean hands” and involvement in criminal activities;

28. That the present motions of Ted Bernstein and Alan Rose should be stayed indefinitely;
29. That this Court having given reason to Eliot Bernstein that he would not receive a fair trial and having not received fair trials based upon the findings herein should now for this reason and others stated in two disqualification petitions filed against Judge Phillips, voluntarily mandatorily Disqualify from these proceedings.
30. Further, Judge Phillips is also now a necessary material and fact witness to the improper Post Recusal steering of the cases by Judge Colin to his Court, first to Judge Coates, a former Proskauer Rose Partner and where Proskauer is Counter Defendant in this action and also Coates formerly was retained by Eliot’s Iviewit technology companies at the heart of the estate and trust matters, yet Coates took the cases and files and concealed in Court in this case his prior involvement with Eliot and Simon Bernstein’s companies when he was a Proskauer Partner and held a hearing where he then Sua Sponte recused himself (after getting all the court’s confidential and non published records sent to him) and then passed the cases to Judge Phillips, the alleged intended target all along of Colin’s improper Post Recusal steering as cited in the disqualification motions filed<sup>17</sup> and <sup>18</sup> and thus Phillips should also instantly disqualify and void

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<sup>17</sup> December 04, 2015 First Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>18</sup> December 28, 2015 Second Disqualification of Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED>

his orders as required by Judicial Canons as he will soon be subpoenaed for deposition and as a witness to relevant matters about the case steering, for his acts outside the color of law in taking this case while knowing of his witness status, if not made a defendant in any further proceedings, state and federal, for continued Fraud by the Court and aiding and abetting and more.

31. That Judge Phillips knowing he is a material and fact witness and now potential defendant of charges of Fraud By the Court in these cases has an adverse interest to Eliot, his wife and their minor children that reflect in his intent to deprive Eliot and his three minor children and lovely wife of their fundamental due process rights.
32. Phillips has threatened Eliot and his wife Candice repeatedly with contempt for nothing other than to create false record, while at the December 15, 2015 hearing an attorney at law, Spallina and an officer the court commits and admits Fraud on the Court, Fraud on the Beneficiaries, Mail Fraud and more, yet at the same hearing Phillips is too busy threatening Candice and then removing her from participating and forcing her from the bench with Eliot as the records of the hearings reflect and simultaneously doing nothing when Spallina admits criminal misconduct in the proceedings directly involving the cases before him. This adverse interest and conflict with Eliot is because Eliot has accused Phillips, Judge Colin and Judge Coates of being part of the improper Post Recusal steering by Colin and transfer of the cases by Colin (who recused 1 day after denying a disqualification motion that alleged **FRAUD BY THE COURT OF COLIN**). Judge Phillips rude and threatening behaviors reflected in the transcripts of the hearings appear entirely in retaliation and to suppress Eliot's rights to fair hearings and Eliot fears that he and his children have not and cannot receive due process in the Phillips court.

33. The Proposed Order of Rose now attempts to remove Eliot's standing and his prior pleadings filed on behalf of himself and as Guardian of his minor children and remove his standing in the matters through this improper proposed Order without due process and in violation of Administrative Orders. The Order Rose has prepared for Phillips to sign does not accurately reflect the truth of the proceedings and is designed to remove Eliot's rights to his inheritancy through further denial of due process and procedure, even moving the court to attempt Gag Orders on Eliot and to suppress distribution of the December 15, 2016 hearing that exposes new frauds on the court and more.

34. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC consent Order for criminal conduct involving insider trading and admitted to new crimes under oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus mandating it be either felony or misdemeanor criminal conduct.**

35. The following information is cause for impeachment of Spallina's testimony made with "unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the

FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,  
  
“2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”<sup>19</sup>
- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>20</sup>;

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<sup>19</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>20</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

14. . . . . THE COURT: You can answer the question, which  
15. . . . . is, did you plead to a felony?  
16. . . . . MR. BERNSTEIN: Sorry, sir.  
17. . . . . THE WITNESS: I have not.  
18. . . . . THE COURT: Okay. Next question.  
19. BY MR. BERNSTEIN:  
20. . . . Q. Have you pled guilty to a misdemeanor?  
21. . . . A. **I have not. [emphasis added]**  
22. . . . Q. Were you involved in a insider trading case?  
23. . . . . MR. ROSE: Objection. Relevance.  
24. . . . . THE COURT: Sustained. Next question.

c. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

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

16· ·Bernstein matters?  
17· ······MR. ROSE:· Objection.· Relevance.  
18· ······THE COURT:· Overruled.  
19· ······You can answer that.  
20· ······THE WITNESS:· Yes, I have.  
21· ·BY MR. BERNSTEIN:  
22· ··· Q.· ·And did you state to them that you  
23· ·fraudulently altered a Shirley trust document and then  
24· ·sent it through the mail to Christine Yates?  
25· ··· A.· ·Yes, I did.  
·1· ··· Q.· ·Have you been charged with that by the Palm  
·2· ·Beach County Sheriff yet?  
·3· ··· A.· ·No, I have not.  
·4· ··· Q.· ·Okay.· How many times were you interviewed by  
·5· ·the Palm Beach County Sheriff?  
·6· ······MR. ROSE:· Objection.· Relevance.  
·7· ······THE COURT:· Sustained.  
8· ·BY MR. BERNSTEIN:  
·9· ··· Q.· ·Did you mail a fraudulently signed document to  
10· ·Christine Yates, the attorney for Eliot Bernstein's  
11· ·minor children?  
12· ······MR. ROSE:· Objection.· Relevance.  
13· ······THE COURT:· Overruled.  
14· ······THE WITNESS:· Yes.  
15· ·BY MR. BERNSTEIN:  
16· ··· Q.· ·And when did you acknowledge that to the  
17· ·courts or anybody else?· When's the first time you came  
18· ·about and acknowledged that you had committed a fraud?  
19· ··· A.· ·**I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10· ·BY MR. BERNSTEIN:  
11· ··· Q.· ·And what was she convicted for?  
12· ··· A.· ·She had notarized the waiver releases of  
13· ·accounting that you and your siblings had previously  
14· ·provided, and we filed those with the court.



15. . . . Q. . We filed those with the court.  
16. . . . . Your law firm submitted fraudulent documents  
17. . to the court?  
18. . . . A. . No. We filed -- we filed your original  
19. . documents with the court that were not notarized, and  
20. . the court had sent them back.  
21. . . . Q. . And then what happened?  
22. . . . A. . And then Kimberly forged the signatures and  
23. . notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

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20. . . . . MR. BERNSTEIN: . Sure.  
21. . BY MR. BERNSTEIN:  
22. . . . Q. . You've testified here about Kimberly Moran.  
23. . . . . Can you describe your relationship with her?  
24. . . . A. . She's been our long-time assistant in the  
25. . office.

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1. . . . Q. . Was she convicted of felony fraudulent  
2. . notarization in the Estate of Shirley Bernstein?  
3. . . . . MR. ROSE: . Objection. . Relevance.  
4. . . . . THE COURT: . Overruled.  
5. . . . . You're asking if she was convicted of a felony  
6. . . . with respect to the Estate of Shirley Bernstein?  
7. . . . . You can answer the question.  
8. . . . . MR. BERNSTEIN: . Correct.  
9. . . . . THE WITNESS: . I believe she was.

- g. SPALLINA then claims that it is "standard operating procedure" for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver

(already referenced and linked herein) submitted to this Court by Spallina's law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · . . . Q. · Okay. · Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · . . . A. · Yeah. · That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · . . . Q. · Okay. · And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · . . . A. · He does. · We sent out -- he signed that, and  
·2 · we sent out the waivers to all of you.  
·3 · . . . Q. · Okay. · So on April 9th of 2012, Simon signed,  
·4 · with your presence, because your signature's on the  
·5 · document, a document stating he had all the waivers in  
·6 · his possession from all of his children.  
·7 · . . . · Had you sent the waivers out yet as of  
·8 · April 9th?

...

20 · BY MR. BERNSTEIN:

21 · . . . Q. · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?  
24 · . . . A. · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.  
·..  
·1 · . . . Q. · Was Simon in possession -- because it's a  
·2 · sworn statement of Simon saying, I have possession of  
·3 · these waivers of my children on today, April 9th,  
·4 · correct, the day you two signed that?

·5· . . . . . Okay. So if you hadn't sent out the waivers  
·6· yet to the --  
·7· . . . A. I'm not certain when the waivers were sent  
·8· out.  
·9· . . . Q. Were they sent out after the --  
10· . . . A. I did not send them out.  
11· . . . Q. Okay. More importantly, when did you receive  
12· those? Was it before April 9th or on April 9th?  
13· . . . A. We didn't receive the first one until May.  
14· And it was your waiver that we received.  
15· . . . Q. So how did you allow Simon, as his attorney,  
16· to sign a sworn statement saying he had possession of  
17· all of the waivers in April if you didn't get mine 'til  
18· May?  
19· . . . . MR. ROSE: Objection. I think it's relevance  
20· . . . and cumulative. He's already answered.  
21· . . . . THE COURT: What's the relevance?  
22· . . . . MR. BERNSTEIN: Oh, this is very relevant.  
23· . . . . THE COURT: What is the relevance on the issue  
24· . . . that I have to rule on today?  
25· . . . . MR. BERNSTEIN: On the validity? Well, it's  
1· . . . relevant. If any of these documents are relevant,  
·2· . . . this is important if it's a fraud.  
·3· . . . . THE COURT: I'll sustain the objection.  
·4· . . . . MR. BERNSTEIN: Okay. Can I -- okay.  
·5· BY MR. BERNSTEIN:  
·6· . . . Q. When did you get -- did you get back prior to  
·7· Simon's death all the waivers from all the children?  
·8· . . . A. No, we did not.  
·9· . . . Q. So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· . . . . MR. ROSE: Objection. Relevance. Cumulative.  
15· . . . . THE COURT: Sustained.

h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as

“Not Eligible to Practice Law in Florida”<sup>21</sup> when he states in the December 15, 2015 hearing,

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7· ·BY MR. BERNSTEIN:

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

10· ··· A· ·No, I was not.

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

14· ··· A· ·Yes.

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

16· ··· A· ·I am not practicing.

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

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay· You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm· It wasn't  
·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· ·BY MR. BERNSTEIN:

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<sup>21</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

23. . . . Q. Did the fraudulently altered document change  
24. the beneficiaries that were listed in Shirley's trust?  
25. . . . A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“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 [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI 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.”<sup>22</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam’s lineal descendants back into the trust would give them a chance to convert improperly %40 of the value to their families from %0.

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<sup>22</sup> Shirley Trust Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.

36. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25 · · · · Q · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of  
2 · your mother's when?  
3 · · · · A · I believe that was in the early 2013 or '14.  
4 · · · · Q · Okay · And when you found out, you were the  
5 · fiduciary of Shirley's trust, allegedly?  
6 · · · · A · I'm not sure I understand the question.  
7 · · · · Q · When you found out that there was a fraudulent  
8 · alteration [sic] of a trust document, were you the  
9 · fiduciary in charge of Shirley's trust?  
10 · · · · A · I was trustee, yes · I am trustee, yes.  
11 · · · · Q · And your attorneys, Tescher and Spallina, and  
12 · their law firm are the one who committed that fraud,  
13 · correct, who altered that document?  
14 · · · · A · That's what's been admitted to by them,  
15 · correct.  
16 · · · · Q · Okay · So you became aware that your counsel  
17 · that you retained as trustee had committed a fraud,  
18 · correct?  
19 · · · · A · Correct.  
20 · · · · Q · What did you do immediately after that?  
21 · · · · A · The same day that I found out, I contacted

22· ·counsel· I met with counsel on that very day· I met  
23· ·with counsel the next day· I met with counsel the day  
24· ·after that.

25· ···· Q· ·Which counsel?

·1· ···· A· ·Alan Rose.

···

P 209-210

24· ·BY MR. BERNSTEIN:

25· ···· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ···· A· ·Can you define original for me?

·3· ···· Q· ·The original.

·4· ···· A· ·The one that's filed in the court?

·5· ···· Q· ·Original will or the trust.

·6· ···· A· ·I've seen copies of the trusts.

·7· ···· Q· ·Have you done anything to have any of the

·8· ·documents authenticated since learning that your

·9· ·attorneys had committed fraud in altering dispositive

10· ·documents that you were in custody of?

11· ······ MR. ROSE:· Objection· Relevance.

12· ······ THE COURT:· Overruled.

13· ······ THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ···· Q· ·So you as the trustee have taken no steps to

16· ·validate these documents; is that correct?

17· ···· A· ·Correct.

37. Finally, as reported by the Palm Beach Post<sup>23</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage frauds that found judges and lawyers fraudulently conveying properties through "robosigning" aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

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<sup>23</sup> <http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt/>  
and  
<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

WHEREFORE, the proposed Order of Ted Bernstein is Objected to herein and an Alternate Order submitted.

Dated: February 9, 2016 □

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 9th day of February, 2016.

**/s/Eliot Ivan Bernstein**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;

JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;

MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

**ALTERNATE ORDER**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee Ted Bernstein and Alan Rose's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children and other relief, and Eliot I. Bernstein having filed Opposition and appeared in Opposition. The Court, having considered the record, heard argument of counsel and the parties and having reconsidered the record and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Strike the Proposed Order of Alan B. Rose and Ted Bernstein in entirety;
2. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
3. That there was no Construction Hearing held, Noticed or Scheduled;
4. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
5. That the present motions of Ted Bernstein and Alan Rose are stayed indefinitely;
6. Judge Phillips mandatorily disqualify himself and void ALL orders for all the reasons stated in the disqualifications and for newly discovered factual admissions of fraud on the court learned at the December 15, 2015 hearing and further fraud on the court continued through perjured statements made under oath in testimony by a former officer of the court and former fiduciary constituting perjury, obstruction and more;
7. Instantly report new Admissions before this Court and perjurious statements made in the December 15, 2016 validity hearing by attorney at law, former officer of the court and former fiduciary in the Simon Bernstein Estate and Trust, Robert Spallina's admissions of his newly admitted Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and Violations of his signed SEC Consent Order for Securities Fraud and Insider Trading to all the proper authorities, including but not limited to, the Inspector General of the Courts, the Chief Judge of 15th Judicial,
8. That the new Court demand deposit of adequate funds from the Trusts or from bonding of the responsible parties for causing the need for counsel into a proper account for no less than \$100,000.00 for immediate retention of counsel of Eliot's choosing for the minor

children as they have not been represented at hearings despite their standing as alleged beneficiaries and despite the fact that the conflict arises due to the fraud on the court by the prior fiduciaries and their counsel as proven already and or provide leave to Eliot Bernstein to re-apply immediately for funds for Counsel upon a new Judge presiding.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this \_\_\_th day of February, 2016.

---

HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

**Objections to Proposed Order of Alan  
Rose / Ted Bernstein**

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

Defendants.

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**OBJECTIONS TO PROPOSED ORDER OF ALAN B. ROSE AND TED BERNSTEIN'S  
PROPOSED "ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING  
SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF" AND PROPOSED  
ALTERNATIVE ORDER**

1. I oppose all relief sought by Alan Rose and Ted Bernstein for all the reasons raised in the papers in opposition and all prior papers before Judge Phillips.



2. That Florida licensed attorney Alan Rose on behalf of Ted Bernstein misled this Court on Sept. 15, 2015<sup>1</sup> including whether all four cases had been properly Noticed<sup>2</sup> and where due to this misinformation at the case management conference a Trial was improperly set in Shirley Bernstein's Trust case in violation of Florida Civil Rules of Procedure 1.200<sup>3</sup> and in violation of due process while the PRs of the Simon Bernstein Estate Brian O'Connell and Joy Foglietta stood silent despite their office having sent the Notice for the Case Management Conference in the first instance,

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.

That Florida licensed attorney Alan Rose requested January 14, 2016 at 12:17pm<sup>4</sup> that Eliot Bernstein submit comments to a proposed Order from a January 14, 2016 hearing by 3pm that same day or else he would file with the Court as an unopposed Order and Eliot replied and 3:30pm<sup>5</sup> on January that he would try to get his changes to him timely on January 15th, 2016 to submit to the Court together with his proposed Order (Eliot did not know at the time that Rose was supposed to give him five days under the rules);

3. Mr. Rose in violation of ADMINISTRATIVE ORDER 5.204-5/09<sup>6</sup> then ignored said received email indicating that Eliot would send comments and a proposed order to him the next day and instead sent a letter to Judge Phillips with his proposed Order only to the Court on January 14,

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<sup>1</sup> Sept 15, 2015 Hearing Transcript

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>2</sup> August 03, 2015 Notice of Hearing Status Conference for Simon Bernstein Estate Case Only

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150803%20Notice%20of%20Hearing%20for%20Sept%2015%202015%20930am%20Case%20Management.pdf>

<sup>3</sup>Florida Rules of Civil Procedure 1.200

[http://phonl.com/fl\\_law/rules/frcp/frcp1200.htm](http://phonl.com/fl_law/rules/frcp/frcp1200.htm)

<sup>4</sup> January 14, 2016 Email Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%2012.12pm%20Alan%20Rose%20Proposed%20Order%20Email.pdf>

<sup>5</sup> January 14, 2016 Eliot Email to Rose with Dr. Report

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20at%203.30pm%20Eliot%20response%20to%20Rose%20re%20Order.pdf>

<sup>6</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

2016 at 4:15pm<sup>7</sup> without waiting for Eliot's comments and proposed order and this too in violation of Administrative Order 5.204-5/09<sup>8</sup> and further asked for an immediate ruling that day from Judge Phillips, knowing there are five days for my response and proposed order to be sent to him before seeking relief with the court as if unopposed with no counter order. This further evidences Mr. Rose's continued Sharp Practices and violation and contempt of the court decorum, efforts to obstruct due process and tortiously interfere with the fair administration of justice;

4. Florida licensed attorney Alan Rose on behalf of Ted Bernstein having further misled this Court about the status of the case and the time necessary for a proper validity Trial at the September 15, 2015 case management conference and left no time for a proper trial for the 10 witnesses called by the Trustee or for Eliot to properly cross examine witnesses available that day leaving Eliot and this Court with insufficient time for a proper trial / hearing which was improperly held without proper pre-trial procedures to determine outstanding discovery and requests for production and proper witnesses.
5. That the January 14, 2016 hearing for standing was also improperly scheduled at a UMC hearing by Alan Rose, despite needing an evidentiary hearing as requested by Eliot at the hearing to give testimony and have any witnesses present but which Eliot was denied opportunity for such by this Court;
6. Where Judge Phillips asked Eliot at the January 14, 2016 hearing what statute gave him standing as a named Beneficiary in the Shirley Trust document that Phillips has Ordered to be valid and when Eliot, a Pro Se litigant, did not know off the top of his head the Florida Statute giving

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<sup>7</sup> January 14, 2016 4:15 pm Alan Rose Letter to Judge Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%204.06pm%20ExParte%20Letter%20to%20Judge%20Phillips%20Alan%20Rose%20Proposed%20Order.pdf>

<sup>8</sup><http://15thcircuit.co.palm-beach.fl.us/documents/10179/15133/5.204.pdf>

named beneficiaries standing in a Trust case where they are named, Judge Phillips, who is supposed to know the statutes himself improperly ruled against Eliot's standing for this sole reason of his lack of knowing the statute at the hearing and based solely on the claims of Alan Rose and not on the merits after proper hearing with testimony from both sides or giving Eliot a chance to find the correct statute to preserve his standing. Judge Phillips, then quite rudely told Eliot if he did not like it to get a lawyer despite the fact that a prior motion for a Continuance of the validity trial itself was filed timely before Trial so that Texas attorney Candice Schwager could get admitted pro hac vice yet attorney Alan Rose denied Candice Schwager any such courtesy even though it was to benefit the minor children and Alan Rose has further denied Candice Schwager access to document production to further her review of the case while this Court improperly stated the motion for continuance was untimely when the statute permits it to be made even at the time of trial and where it was filed in writing before the trial.

7. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
8. That for instance in the Shirley Trust case addressed herein, Eliot and his two sisters are the beneficiaries of Shirley's Trust at the time it become irrevocable with a defined class of beneficiaries in stone upon her death, as stated in the trust;

ARTICLE II. AFTER MY DEATH - E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me.

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 [emphasis added]**. Any assets allocated under this Subparagraph 11.D. to my children (**as that term is defined under this Trust [emphasis added]**), 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 11.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 11.E. below.

and

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.

### ARTICLE III. GENERAL - E1 - 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 [Emphasis Added],**

That the trust language is clear that Ted and Pamela and their lineal descendants, at the time of Shirley's death were not beneficiaries and Eliot and his two sisters Lisa and Jill are. Further, the Court should note that Ted is considered predeceased for ALL PURPOSES OF DISPOSITIONS of the Shirley Trust, which would disqualify him as a Trustee to make dispositions, including holding hearings for construction and validity or making any disbursements and thus further reason to strike the Validity Hearing on December 15, 2015 as a Sham Hearing conducted by a deceased person under the trust.

9. Similarly, at Judge Phillips' validity hearing Order on December 16, 2016, Eliot was never shown a copy of beforehand or had chance to submit comments and a counter order to Rose was also issued in violation of ADMINISTRATIVE ORDER 5.204-5/09\*<sup>9</sup>, the order issued contains rulings on issues that were not Noticed to be Heard, not Scheduled for the Trial and in fact not heard at the hearing at all, no testimony or anything from either party on the ruled on items as evidenced in the transcript and thus the December 16, 2015 Order should further be stricken as an improper Void Order and for other far more serious reasons further defined herein. That the Rose Proposed Order for the January 14, 2016 hearing feeds off the December 16, 2016 Order and for this reason the December 16, 2016 Order and the Proposed Order should be stricken.

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<sup>9</sup> Administrative Order Regarding Preparation of Order - ADMINISTRATIVE ORDER 5.204-5/09\*

10. That Eliot further stated to the Court that the hearing was improperly scheduled by Rose when he knew Eliot had filed in December a Notice of Unavailability for the month of January and further learned that he was under medical care and prescription medications<sup>10</sup> making him medically unfit during the time of the January 14, 2016 hearing and again, using sharp practice unbecoming of an Attorney at Law, Rose scheduled the hearing and would not withdraw it despite knowing Eliot was not well and was still seeking to have counsel admitted to protect the children.
11. Eliot stated on the record that he was medically unfit and on heavy medications for any hearing that day and yet Judge Phillips ignored the request to postpone and schedule a proper evidentiary hearing to determine standing and rushed to rule without even having proper testimony on any of the items in Rose's Proposed Order.
12. That having declared in a September 15, 2015 hearing "love"<sup>11</sup> for Judge Colin and pre-judging that he would not question Colin's actions that have been called into question and alleged as Fraud by the Court and that he would not find that Colin did something wrong, wholly prejudiced Eliot's position and denies him fundamental due process rights.
13. Having further reviewed the Record of the Cases having determined that an outstanding Order by Judge Colin for Production<sup>12</sup> against prior fiduciaries Tescher & Spallina was never performed or complied with fundamentally prejudicing a proper validity Trial. In fact it was learned at the December 15, 2015 trial that NONE of the Original Dispositive Documents were available for inspection at the hearing and that Trustee Ted Bernstein claimed under oath he had

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<sup>10</sup> Dr. Ronik Seecharan Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160114%20Seecharan%20Letter%20Regarding%20procedure.pdf>

<sup>11</sup> September 15, 2015 Hearing Transcript Page 27 Lines 14-25 and Page 28 Lines 1-6

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>12</sup> February 18, 2014 Order to Turn Over ALL records of Tescher and Spallina to Curator

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

never seen the original trust he operates under nor took any steps to validate the documents in light of the fact that his prior counsel SPALLINA had admittedly fraudulently created a Shirley Trust document at the December 15, 2015 hearing he testified at as to the validity of the documents he admitted fraud in creating and then sent the fraudulent trust via mail to Attorney at Law Christine Yates representing Eliot's minor children and finally it was learned at the hearing that Tescher and Spallina had violated the Colin Court Order to turn over their records in entirety and still possessed Original dispositive documents;

14. That the totality of the related cases should have determined this case to be a "complex" case and the case management conference should have been conducted properly as such, again such deprivation of rights severely prejudiced the outcome;
15. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
16. That missing necessary witnesses and missing discovery were existent at the time of the validity trial including but not limited to witnesses Notary Publics who signed documents, Kimberly Moran and Lindsay Baxley (where Governor Rick Scott's Notary Public Division has already prosecuted in conjunction with the Palm Beach County Sheriff Moran for fraudulent notarization in these matters and Lindsay Baxley aka Lindsay Giles was also found to have improperly notarized a Will and Amended Trust of Simon) and Witnesses to the Execution of the alleged documents, Traci Kratish, Esq., Diana Banks, Rachel Walker and a John Doe signor, as well as, other witnesses William Stansbury and Donald Tescher, Esq. thus necessitating a new Trial after proper pre-trial proceedings are completed and a Case-Management Conference for a "complex" case is held before a non-conflicted and non-adverse judge;

17. That the circumstances of Judge Colin's handling of the case and specifically, including but not limited to, hearings held on Sept. 13, 2013<sup>13</sup> whereupon alleged Trustee Ted Bernstein appeared on the record claiming his fiduciary status as fiduciary for the Estate at a time he had not yet been appointed, a year after Simon's death at the time of the hearing, yet remaining silent as to various Frauds upon the Court admitted by his counsel, including an April 9, 2012 Petition for Discharge<sup>14</sup> claiming all beneficiaries had properly waived their interests and rights and Simon was in possession of them on that date. Ted Bernstein having known this to be false, as he did not complete his own Waiver until August 01, 2012 and therefore knew this statement that Simon had the completed Waivers in April 2012 to be false and further fraudulent actions involving the fiduciaries Tescher and Spallina who were acting as Simon's counsel at the time of the alleged signing and Ted's counsel when it was finally delivered to the Court as if Simon were delivering it alive Post Mortem months after his death while still acting as PR.
18. For clarification of this complex Post Mortem scheme, it should be noted that when Simon died, Ted was NOT appointed Successor PR by the Court while he maintained to the family on the day Simon died that he was acting as PR and acted as such and yet Ted was not appointed by Colin and issued Letters until October 13, 2013 after the hearing September 13, 2013 hearing that Colin threatened to read him Miranda's, leading to a series of bad rulings of Colin's that were designed to protect rather than have prosecuted those officers of his court involved in these frauds on the Court and the Beneficiaries. Yet, Ted's counsel Tescher and Spallina never filed for Letters for Ted when Simon died and instead they (Ted and his counsel Tescher and Spallina)

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<sup>13</sup> September 13, 2013 Colin Hearing - Mirand Warnings and more  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Tescher%20Ted%20Manceri.pdf>

<sup>14</sup> April 09, 2012 Alleged Simon Full Discharge Waiver Deposited by him with the Court after he passed away.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120409%20Petition%20for%20Discharge%20Full%20Waiver%20Shirley%20SIGNED%2020120409%20NOT%20FILED%20UNTIL%2020121024.pdf>



all choose to use Simon as PR for months after he died to file fraudulently filed documents and in some instance forged and fraudulently notarized for Simon Post Mortem, all these criminal acts committed as part of a complex legal scam to create the appearance that Simon closed his wife's estate properly before he died and made changes to Beneficiaries and Fiduciaries and documents prior to his own death.

19. Ted introduced his friends Tescher and Spallina to his father to do estate planning so as that Ted could get business in return from them.
20. Spallina and Tescher, Ted's close business associates that he retained as his counsel to represent him as Personal Representative and Trustee and Ted Bernstein further sat idly by as he learned that his mother's estate was closed by his deceased father acting as PR at a time after his death and while Ted was claiming he was the PR (prior to Letters issued in October 2013) through a series of fraudulent acts of his counsel Spallina and Tescher and the totality of the circumstances indicating Judge Colin is a necessary and material fact witness as Eliot Bernstein attempted to inform this Court on July 30, 2015 and Sept. 15, 2015 and at Trial Dec. 15th, 2015 and further by opposition herein;
21. That Judge Colin having issued prior Orders denying Ted Bernstein's motions to deny Eliot's Standings and that Eliot Bernstein has standing in all cases before this Court until proper hearings and trial determine otherwise;
22. Eliot Bernstein was sued individually in this action and Eliot has filed a counter complaint that also gives him individual standing. Eliot is also the alleged Trustee of his children's trusts, trusts that to this day he still has not been given a copy of. Eliot is also a beneficiary of the Simon Estate, the Shirley Bernstein Trust and the Shirley Bernstein Estate. Eliot also is alleged to be a beneficiary of Simon's Trust, as Simon's 2012 Amended Trust, allegedly done days before his

death, was improperly constructed, leaving Eliot still a beneficiary. Eliot is an interested party individually in all cases.

23. That a continuance should have been granted for Eliot Bernstein for all hearings to determine if his minor children's counsel Candice Schwager could be admitted pro hac vice or otherwise be afforded additional time to retain counsel of his choosing as the minor children have not been represented at any hearings, despite Rose's own contention that the children need independent counsel and where the Court should demand deposit of adequate funds from the Trusts or from the parties responsible for the need for counsel, Tescher and Spallina, into a proper account for no less than \$100,000.00 for immediate retention of counsel for the minors, thereby negating any need for guardians (who would then need to get counsel and so a guardian would only add additional expenses);
24. Hampering this effort to retain counsel for the minor children is Rose and his client Ted, as alleged Successor Trustee, refusal to turn over records to counsel Schwager<sup>15</sup> acting on behalf of Eliot and his minor children whom she is retained to represent but cannot enter the cases until she is approved Pro Hac Vice, a determination she will be making after getting the necessary case files from the fiduciaries. Currently, efforts underway to provide Eliot and his children with local counsel for Schwager have proved unsuccessful and perhaps that is because Eliot has exposed Fraud on the Court and alleges Fraud by the Court and several South Florida lawyers and judges involved, leading to a blackballing effect whereby many contacted will not even return calls after learning of who is involved in the case and many are already aware and instantly refuse.

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<sup>15</sup> Rose Letter Refusing to turn over documents to Attorney at Law Candice Schwager  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Rose%20Denying%20to%20talk%20or%20give%20information%20to%20Attorney%20Schwager.pdf>

25. The refusal to turn over documents by fiduciaries including Ted Bernstein have plagued this case from the start and continue to this day and in fact are what forced Eliot to seek counsel and Court relief to get documents statutorily owed to him in the first place as he and his children were denied dispositive documents for months after the death of his father and years after the death of his mother by Ted, Spallina, Tescher and others. Production requests are still outstanding and unheard by the Court, including records of the Court in toto due to the Fraud on the Court, which requires now discovery.
26. That no construction hearings have been held on the Wills, Trusts and instruments herein and / or not fully and fairly heard to determine beneficiaries, standing, valid trustees (where the PR of Simon's Estate Brian O'Connell has asserted an affirmative defense to the complaint in the Shirley Trust Construction case that Ted is NOT A VALID trustee serving in the Simon Trust under the terms of the trust<sup>16</sup> and if true would call for a rehearing of the validity hearing entirely with a new legally proper Trustee who is valid, not conflicted and not adverse to Beneficiaries as Ted is;
27. That hearings should be held on the removal of Ted Bernstein instantly by this Court from all fiduciary capacities PRIOR TO ANY ACTIONS involving Ted proceeding further and as the referenced September 13, 2013 hearing transcript footnoted herein already shows, Judge Colin had at that time of the first hearing in September 13, 2013 enough evidence involving TWO criminal acts learned and admitted to in the hearing involving Fraud on the Court and Fraud on the Beneficiaries, to state that he had enough evidence at that moment to read Ted and his counsel Spallina, Tescher (who did not appear but was represented) and Manceri their Miranda

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<sup>16</sup> Brian O'Connell pleading Ted is NOT A VALID Trustee Under Simon L Bernstein Amended and Restated Trust, Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

Warnings, twice, yet no action has since been taken by Colin or the Phillips Court to remedy such actions that leave Ted and his counsel with “unclean hands” and involvement in criminal activities;

28. That the present motions of Ted Bernstein and Alan Rose should be stayed indefinitely;
29. That this Court having given reason to Eliot Bernstein that he would not receive a fair trial and having not received fair trials based upon the findings herein should now for this reason and others stated in two disqualification petitions filed against Judge Phillips, voluntarily mandatorily Disqualify from these proceedings.
30. Further, Judge Phillips is also now a necessary material and fact witness to the improper Post Recusal steering of the cases by Judge Colin to his Court, first to Judge Coates, a former Proskauer Rose Partner and where Proskauer is Counter Defendant in this action and also Coates formerly was retained by Eliot’s Iviewit technology companies at the heart of the estate and trust matters, yet Coates took the cases and files and concealed in Court in this case his prior involvement with Eliot and Simon Bernstein’s companies when he was a Proskauer Partner and held a hearing where he then Sua Sponte recused himself (after getting all the court’s confidential and non published records sent to him) and then passed the cases to Judge Phillips, the alleged intended target all along of Colin’s improper Post Recusal steering as cited in the disqualification motions filed<sup>17</sup> and <sup>18</sup> and thus Phillips should also instantly disqualify and void

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<sup>17</sup> December 04, 2015 First Disqualification of Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>18</sup> December 28, 2015 Second Disqualification of Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED>

his orders as required by Judicial Canons as he will soon be subpoenaed for deposition and as a witness to relevant matters about the case steering, for his acts outside the color of law in taking this case while knowing of his witness status, if not made a defendant in any further proceedings, state and federal, for continued Fraud by the Court and aiding and abetting and more.

31. That Judge Phillips knowing he is a material and fact witness and now potential defendant of charges of Fraud By the Court in these cases has an adverse interest to Eliot, his wife and their minor children that reflect in his intent to deprive Eliot and his three minor children and lovely wife of their fundamental due process rights.
32. Phillips has threatened Eliot and his wife Candice repeatedly with contempt for nothing other than to create false record, while at the December 15, 2015 hearing an attorney at law, Spallina and an officer the court commits and admits Fraud on the Court, Fraud on the Beneficiaries, Mail Fraud and more, yet at the same hearing Phillips is too busy threatening Candice and then removing her from participating and forcing her from the bench with Eliot as the records of the hearings reflect and simultaneously doing nothing when Spallina admits criminal misconduct in the proceedings directly involving the cases before him. This adverse interest and conflict with Eliot is because Eliot has accused Phillips, Judge Colin and Judge Coates of being part of the improper Post Recusal steering by Colin and transfer of the cases by Colin (who recused 1 day after denying a disqualification motion that alleged **FRAUD BY THE COURT OF COLIN**). Judge Phillips rude and threatening behaviors reflected in the transcripts of the hearings appear entirely in retaliation and to suppress Eliot's rights to fair hearings and Eliot fears that he and his children have not and cannot receive due process in the Phillips court.

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[%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf](#)

33. The Proposed Order of Rose now attempts to remove Eliot's standing and his prior pleadings filed on behalf of himself and as Guardian of his minor children and remove his standing in the matters through this improper proposed Order without due process and in violation of Administrative Orders. The Order Rose has prepared for Phillips to sign does not accurately reflect the truth of the proceedings and is designed to remove Eliot's rights to his inheritancy through further denial of due process and procedure, even moving the court to attempt Gag Orders on Eliot and to suppress distribution of the December 15, 2016 hearing that exposes new frauds on the court and more.

34. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC consent Order for criminal conduct involving insider trading and admitted to new crimes under oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus mandating it be either felony or misdemeanor criminal conduct.**

35. The following information is cause for impeachment of Spallina's testimony made with "unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the

FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,  
  
“2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”<sup>19</sup>
- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing transcript Page 93 Lines 14-22<sup>20</sup>;

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<sup>19</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

<sup>20</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

14. . . . . THE COURT: You can answer the question, which  
15. . . . . is, did you plead to a felony?  
16. . . . . MR. BERNSTEIN: Sorry, sir.  
17. . . . . THE WITNESS: I have not.  
18. . . . . THE COURT: Okay. Next question.  
19. BY MR. BERNSTEIN:  
20. . . . Q. Have you pled guilty to a misdemeanor?  
21. . . . A. **I have not. [emphasis added]**  
22. . . . Q. Were you involved in a insider trading case?  
23. . . . . MR. ROSE: Objection. Relevance.  
24. . . . . THE COURT: Sustained. Next question.

c. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

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



16· ·Bernstein matters?  
17· ······MR. ROSE:· Objection.· Relevance.  
18· ······THE COURT:· Overruled.  
19· ······You can answer that.  
20· ······THE WITNESS:· Yes, I have.  
21· ·BY MR. BERNSTEIN:  
22· ··· Q.· ·And did you state to them that you  
23· ·fraudulently altered a Shirley trust document and then  
24· ·sent it through the mail to Christine Yates?  
25· ··· A.· ·Yes, I did.  
·1· ··· Q.· ·Have you been charged with that by the Palm  
·2· ·Beach County Sheriff yet?  
·3· ··· A.· ·No, I have not.  
·4· ··· Q.· ·Okay.· How many times were you interviewed by  
·5· ·the Palm Beach County Sheriff?  
·6· ······MR. ROSE:· Objection.· Relevance.  
·7· ······THE COURT:· Sustained.  
8· ·BY MR. BERNSTEIN:  
·9· ··· Q.· ·Did you mail a fraudulently signed document to  
10· ·Christine Yates, the attorney for Eliot Bernstein's  
11· ·minor children?  
12· ······MR. ROSE:· Objection.· Relevance.  
13· ······THE COURT:· Overruled.  
14· ······THE WITNESS:· Yes.  
15· ·BY MR. BERNSTEIN:  
16· ··· Q.· ·And when did you acknowledge that to the  
17· ·courts or anybody else?· When's the first time you came  
18· ·about and acknowledged that you had committed a fraud?  
19· ··· A.· ·**I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10· ·BY MR. BERNSTEIN:  
11· ··· Q.· ·And what was she convicted for?  
12· ··· A.· ·She had notarized the waiver releases of  
13· ·accounting that you and your siblings had previously  
14· ·provided, and we filed those with the court.

15. . . . Q. . We filed those with the court.  
16. . . . . Your law firm submitted fraudulent documents  
17. . to the court?  
18. . . . A. . No. We filed -- we filed your original  
19. . documents with the court that were not notarized, and  
20. . the court had sent them back.  
21. . . . Q. . And then what happened?  
22. . . . A. . And then Kimberly forged the signatures and  
23. . notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

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20. . . . . MR. BERNSTEIN: . Sure.  
21. . BY MR. BERNSTEIN:  
22. . . . Q. . You've testified here about Kimberly Moran.  
23. . . . . Can you describe your relationship with her?  
24. . . . A. . She's been our long-time assistant in the  
25. . office.

103

1. . . . Q. . Was she convicted of felony fraudulent  
2. . notarization in the Estate of Shirley Bernstein?  
3. . . . . MR. ROSE: . Objection. . Relevance.  
4. . . . . THE COURT: . Overruled.  
5. . . . . You're asking if she was convicted of a felony  
6. . . . with respect to the Estate of Shirley Bernstein?  
7. . . . . You can answer the question.  
8. . . . . MR. BERNSTEIN: . Correct.  
9. . . . . THE WITNESS: . I believe she was.

- g. SPALLINA then claims that it is "standard operating procedure" for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver

(already referenced and linked herein) submitted to this Court by Spallina's law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17 · · · · Q · · Okay · Are you aware of an April 9th full  
18 · waiver that was allegedly signed by Simon and you?  
19 · · · · A · · Yeah · That was the waiver that he had signed.  
20 · And then in the May meeting, we discussed the five of  
21 · you, all the children, getting back the waivers of the  
22 · accountings.  
23 · · · · Q · · Okay · And in that April 9th full waiver you  
24 · used to close my mother's estate, does Simon state that  
25 · he has all the waivers from all of the parties?  
·1 · · · · A · · He does · We sent out -- he signed that, and  
·2 · we sent out the waivers to all of you.  
·3 · · · · Q · · Okay · So on April 9th of 2012, Simon signed,  
·4 · with your presence, because your signature's on the  
·5 · document, a document stating he had all the waivers in  
·6 · his possession from all of his children.  
·7 · · · · · Had you sent the waivers out yet as of  
·8 · April 9th?

...

20 · BY MR. BERNSTEIN:

21 · · · · Q · · April 9th, 2012, you have a signed full waiver  
22 · of Simon's that says that he is in possession of all of  
23 · the signed waivers of all of the parties?  
24 · · · · A · · Standard operating procedure, to have him  
25 · sign, and then to send out the documents to the kids.

·..

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

·5· . . . . . Okay. So if you hadn't sent out the waivers  
·6· yet to the --  
·7· . . . A. I'm not certain when the waivers were sent  
·8· out.  
·9· . . . Q. Were they sent out after the --  
10· . . . A. I did not send them out.  
11· . . . Q. Okay. More importantly, when did you receive  
12· those? Was it before April 9th or on April 9th?  
13· . . . A. We didn't receive the first one until May.  
14· And it was your waiver that we received.  
15· . . . Q. So how did you allow Simon, as his attorney,  
16· to sign a sworn statement saying he had possession of  
17· all of the waivers in April if you didn't get mine 'til  
18· May?  
19· . . . . MR. ROSE: Objection. I think it's relevance  
20· . . . and cumulative. He's already answered.  
21· . . . . THE COURT: What's the relevance?  
22· . . . . MR. BERNSTEIN: Oh, this is very relevant.  
23· . . . . THE COURT: What is the relevance on the issue  
24· . . . that I have to rule on today?  
25· . . . . MR. BERNSTEIN: On the validity? Well, it's  
1· . . . relevant. If any of these documents are relevant,  
·2· . . . this is important if it's a fraud.  
·3· . . . . THE COURT: I'll sustain the objection.  
·4· . . . . MR. BERNSTEIN: Okay. Can I -- okay.  
·5· BY MR. BERNSTEIN:  
·6· . . . Q. When did you get -- did you get back prior to  
·7· Simon's death all the waivers from all the children?  
·8· . . . A. No, we did not.  
·9· . . . Q. So in Simon's April 9th document where he  
10· says, he, Simon, on April 9th has all the waivers from  
11· his children while he's alive, and you didn't even get  
12· one 'til after he passed from one of his children, how  
13· could that be a true statement?  
14· . . . . MR. ROSE: Objection. Relevance. Cumulative.  
15· . . . . THE COURT: Sustained.

h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as

“Not Eligible to Practice Law in Florida”<sup>21</sup> when he states in the December 15, 2015 hearing,

Page 91

7· ·BY MR. BERNSTEIN:

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

10· ··· A· ·No, I was not.

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

14· ··· A· ·Yes.

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

16· ··· A· ·I am not practicing.

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

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay. · You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm. · It wasn't  
·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22· ·BY MR. BERNSTEIN:

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<sup>21</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qqtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

23. . . . Q. Did the fraudulently altered document change  
24. the beneficiaries that were listed in Shirley's trust?  
25. . . . A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“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 [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI 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.”<sup>22</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam’s lineal descendants back into the trust would give them a chance to convert improperly %40 of the value to their families from %0.

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<sup>22</sup> Shirley Trust Page 7  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.

36. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25 · · · · Q · Okay · Ted, you were made aware of Robert  
1 · Spallina's fraudulent alteration of a trust document of  
2 · your mother's when?  
3 · · · · A · I believe that was in the early 2013 or '14.  
4 · · · · Q · Okay · And when you found out, you were the  
5 · fiduciary of Shirley's trust, allegedly?  
6 · · · · A · I'm not sure I understand the question.  
7 · · · · Q · When you found out that there was a fraudulent  
8 · alteration [sic] of a trust document, were you the  
9 · fiduciary in charge of Shirley's trust?  
10 · · · · A · I was trustee, yes · I am trustee, yes.  
11 · · · · Q · And your attorneys, Tescher and Spallina, and  
12 · their law firm are the one who committed that fraud,  
13 · correct, who altered that document?  
14 · · · · A · That's what's been admitted to by them,  
15 · correct.  
16 · · · · Q · Okay · So you became aware that your counsel  
17 · that you retained as trustee had committed a fraud,  
18 · correct?  
19 · · · · A · Correct.  
20 · · · · Q · What did you do immediately after that?  
21 · · · · A · The same day that I found out, I contacted

22· ·counsel· I met with counsel on that very day· I met  
23· ·with counsel the next day· I met with counsel the day  
24· ·after that.

25· ···· Q· ·Which counsel?

·1· ···· A· ·Alan Rose.

···

P 209-210

24· ·BY MR. BERNSTEIN:

25· ···· Q· ·Have you seen the original will and trust of  
·1· ·your mother's?

·2· ···· A· ·Can you define original for me?

·3· ···· Q· ·The original.

·4· ···· A· ·The one that's filed in the court?

·5· ···· Q· ·Original will or the trust.

·6· ···· A· ·I've seen copies of the trusts.

·7· ···· Q· ·Have you done anything to have any of the

·8· ·documents authenticated since learning that your

·9· ·attorneys had committed fraud in altering dispositive

10· ·documents that you were in custody of?

11· ······ MR. ROSE:· Objection· Relevance.

12· ······ THE COURT:· Overruled.

13· ······ THE WITNESS:· I have not.

14· ·BY MR. BERNSTEIN:

15· ···· Q· ·So you as the trustee have taken no steps to

16· ·validate these documents; is that correct?

17· ···· A· ·Correct.

37. Finally, as reported by the Palm Beach Post<sup>23</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage frauds that found judges and lawyers fraudulently conveying properties through "robosigning" aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

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<sup>23</sup> <http://www.mypalmbeachpost.com/guardianships-elizabeth-savitt/>  
and  
<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>



WHEREFORE, the proposed Order of Ted Bernstein is Objected to herein and an Alternate Order submitted.

Dated: February 9, 2016 □

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 9th day of February, 2016.

**/s/Eliot Ivan Bernstein**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of his minor children D.B., Ja. B. and Jo. B.;

JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12,  
and on behalf of her Minor child J.I.;

MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually,  
as Trustee f/b/o Max Friedstein and C.F., under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf  
of her minor child, C.F.,

Defendants.

**ALTERNATE ORDER**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee Ted Bernstein and Alan Rose's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children and other relief, and Eliot I. Bernstein having filed Opposition and appeared in Opposition. The Court, having considered the record, heard argument of counsel and the parties and having reconsidered the record and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Strike the Proposed Order of Alan B. Rose and Ted Bernstein in entirety;
2. That Florida Statutes 733.707, 736.0103, 731.201 (2)(4)(9)(11)(20) and (23) give Eliot standing as a Beneficiary, Heir and Interested Person and Trustee of the Eliot Bernstein Family Trust in this case and the Simon Estate, the Simon Trust and the Shirley Estate.
3. That there was no Construction Hearing held, Noticed or Scheduled;
4. That proper pre-trial procedures thus were not followed and must be corrected in furtherance of justice;
5. That the present motions of Ted Bernstein and Alan Rose are stayed indefinitely;
6. Judge Phillips mandatorily disqualify himself and void ALL orders for all the reasons stated in the disqualifications and for newly discovered factual admissions of fraud on the court learned at the December 15, 2015 hearing and further fraud on the court continued through perjured statements made under oath in testimony by a former officer of the court and former fiduciary constituting perjury, obstruction and more;
7. Instantly report new Admissions before this Court and perjurious statements made in the December 15, 2016 validity hearing by attorney at law, former officer of the court and former fiduciary in the Simon Bernstein Estate and Trust, Robert Spallina's admissions of his newly admitted Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and Violations of his signed SEC Consent Order for Securities Fraud and Insider Trading to all the proper authorities, including but not limited to, the Inspector General of the Courts, the Chief Judge of 15th Judicial,
8. That the new Court demand deposit of adequate funds from the Trusts or from bonding of the responsible parties for causing the need for counsel into a proper account for no less than \$100,000.00 for immediate retention of counsel of Eliot's choosing for the minor

children as they have not been represented at hearings despite their standing as alleged beneficiaries and despite the fact that the conflict arises due to the fraud on the court by the prior fiduciaries and their counsel as proven already and or provide leave to Eliot Bernstein to re-apply immediately for funds for Counsel upon a new Judge presiding.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this \_\_\_th day of February, 2016.

---

HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

**SERVICE LIST**

<p><b>COUNTER DEFENDANT</b> Robert L. Spallina, Esq., Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com</p>	<p><b>COUNTER DEFENDANT</b> Ted Bernstein, individually 880 Berkeley Boca Raton, FL 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p><b>COUNTER DEFENDANT</b> John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401</p>
<p><b>COUNTER DEFENDANT</b> Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com ddustin@tescherspallina.com kmoran@tescherspallina.com</p>	<p><b>COUNTER DEFENDANT</b> Ted Bernstein Life Insurance Concepts et al. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p><b>COUNTER DEFENDANT</b> Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a> <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>

<p><b>COUNTER DEFENDANT</b>  Donald Tescher, Esq.,  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite  500  Boca Raton, Florida 33432  dtescher@tescherspallina.com  ddustin@tescherspallina.com  kmoran@tescherspallina.com</p>	<p><b>COUNTER DEFENDANT &amp; COUNSEL TO TED BERNSTEIN SERVED</b>  Alan B. Rose, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  arose@pm-law.com  and  arose@mrachek-law.com</p>	<p><b>Counter Defendant</b>  TESCHER &amp; SPALLINA, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com  ddustin@tescherspallina.com  kmoran@tescherspallina.com</p>
	<p>Pamela Simon  President  STP Enterprises, Inc.  303 East Wacker Drive  Suite 210  Chicago IL 60601-5210  psimon@stpcorp.com</p>	<p><b>Counter Defendant</b>  Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial  Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net  mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b>  L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  lmrachek@mrachek-law.com</p>	<p><b>Counter Defendant</b>  Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin  Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  crubin@floridatx.com</p>	<p><b>Counter Defendant</b>  Kimberly Moran  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>
<p><b>Counter Defendant</b>  Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.c</p>	<p><b>Counter Defendant</b>  Estate of Simon Bernstein  Personal Representative  Brian M. O'Connell, Partner  Ciklin Lubitz Martens &amp; O'Connell  515 N Flagler Drive</p>	<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>

om	20th Floor West Palm Beach, FL 33401 boconnell@ciklinlubitz.com jfoglietta@ciklinlubitz.com	
Lisa Friedstein 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com lisa.friedstein@gmail.com lisa@friedsteins.com	Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com	



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

Probate Division

Case No.: 502014CP003698XXXXNBIJ

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended, Plaintiff,

v.

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

\_\_\_\_\_/

**AMENDED OPPOSITION TO MOTION TO MODIFY AND FINAL ORDER APPROVING SALE  
RULE 9.310. STAY PENDING REVIEW OF ALL CASES OF JUDGE PHILLIPS**

Now comes Eliot Ivan Bernstein, acting in the following capacities, Eliot Ivan Bernstein  
on Behalf of his Minor Children; Eliot Ivan Bernstein as Trustee f/b/o D.B., Ja. B. and Jo. B;  
Eliot Ivan Bernstein as Trustee of the Beneficiary "Eliot Bernstein Family Trust" and Eliot  
Bernstein as a named Beneficiary ("PETITIONER"), who respectfully petitions and pleads and  
shows this court as follows:

1. I am Eliot Bernstein and I make this statement in opposition to the Motion to Modify an Order of Sale filed by Alan Rose and Ted Bernstein.
2. I further make this statement for a Stay pending review under Florida Rules of Appellate Procedure 9.310 to Stay all cases Judge John G. Phillips is Assigned to pending review of an Appeal and Writ of Prohibition against Judge Phillips who should already be mandatorily Disqualified, such other cases being under Case Numbers:

Judge Martin Colin / Howard Coates / John Phillips Estate & Trust Cases

Estate and Trust Cases, Simon, Shirley and Eliot Children Cases Transferred from Colin to Coates to Phillips

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon Judge Coates Case
7. Case ID: 502015CP002717XXXXNB Judge David E. French Cases
8. Case # 2012CP004391 IX – Simon Bernstein Estate

3. The motion should be struck from the Calendar as it is not appropriate for a UMC Calendar motion as it requires an Evidentiary hearing and can not be heard in 5 minutes.
4. The motion should further be struck from the Calendar as it was filed as a “sharp practice” by attorney Alan Rose continuing sharp practices herein and specifically knowing that I had filed for Unavailability due to being on medication and medical treatment and that other hearings were specifically re-scheduled for this reason.
5. The motion should be denied as Ted Bernstein is not a proper Trustee and should be removed as Trustee or alternatively the motion should not be heard until after a proper hearing to remove

Ted Bernstein as Trustee and a proper investigation of multiple frauds upon the court in these matters, including recent fraudulent activity at a validity hearing held December 15, 2015 before this Court, involving officers and fiduciaries of the court.

6. The motion should further be denied and struck from the Calendar as it is filed by Alan Rose who must be Disqualified as a Material and Fact Witness under Florida Rules being a material and fact witness to the discovery, possession and chain of custody of multiple “original” documents and underlying instruments herein, as well as being a counter defendant in the stayed counter complaint in this case and finally as an alleged participant of the fraud on the court and fraud on the beneficiaries that continues to this day.
7. Judge Colin had specific concerns about the proceeds of the house sale going into Rose’s firm account. He stated on the record that no proceeds were to be used for legal fees or available to the trustee without a court order. The proceeds were not to be commingled or held by rose’s firm for fees or any back payments or anyway for them to access the money.
8. The money was to be frozen and untouched by any of them. Attorney fees from the trust are barred when there is a breach of duty claim in an adversary proceeding and there are multiple breach of fiduciary claims against Ted Bernstein.
9. The proceeds were to be held away from Ted Bernstein acting as trustee as well because of claims I have filed for breach of duty and upcoming pending hearings to remove Ted.
10. Additionally, there is no proper Sale contract for the Home as there is no known buyer and no determination that an arm’s length transaction has occurred.
11. There are NO ACCOUNTINGS IN FIVE YEARS in the Shirley Trust and thus selling assets appears improper without beneficiaries having any accountings to determine the value of their inheritancy, in violation of Probate Rules and Statutes.

12. Ted Bernstein has failed in his fiduciary duties to properly account and has illegally withheld documents and records away from beneficiaries to make decisions on anything with informed consent and information and this violates the fiduciaries duties to transparency wholly.
13. There has been no backup documentation provided justifying any such attorney fees claimed by Ted Bernstein and Alan Rose and there should be a full evidentiary hearing before any such fees are awarded and before any modification of any Order of Sale.
14. The underlying Order of Sale is invalid and should be vacated as Judge Colin knew and should have known he already should have been mandatorily disqualified as being a material and fact witness to fraud upon the Court in his Court committed by the Tescher and Spallina law firm that Ted Bernstein brought into the lives of Simon and Shirley Bernstein and who acted as Ted Bernstein's counsel as Trustee in this case and where Robert Spallina has admitted fraudulently altering a Shirley Trust and mailing it to various parties and whereby the fraudulent language added directly benefited Ted Bernstein and his family financially, where they had previously been considered predeceased for ALL purposes of dispositions of the Shirley Trust and as beneficiaries.

#### **RULE 9.310. STAY PENDING REVIEW**

15. This Court should now grant a Stay pending review of an Appeal and Writ of Prohibition pending with the 4th DCA as Judge Phillips should already have mandatorily been disqualified herein and the Stay should apply to all cases Judge Phillips is in related to this matter.
16. The Writ of Prohibition<sup>1</sup> and the original motion for Disqualification establish the grounds for granting the stay and this Court of Judge John Phillips is well aware of such grounds<sup>2</sup>.

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<sup>1</sup> January 29, 2016 Writ of Prohibition Phillips  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160129%20FINAL%20ESIGNED%204thDCA%20>

17. Such stay should be granted without the requirement of any bonding by Eliot I. Bernstein.

18. That the Court should take **JUDICIAL NOTICE** and REPORT THE FOLLOWING  
CRIMINAL MISCONDUCT AND NEW FRAUD ON THE COURT INFORMATION  
ADMITTED TO BEFORE JUDGE PHILLIPS UNDER OATH BY SPALLINA, the sole  
witness to the validity hearing before Judge Phillips, who in the hearing violated his signed SEC  
consent Order for criminal conduct involving insider trading and admitted to new crimes under  
oath, including Fraud on the Court, Fraud on Beneficiaries, Mail Fraud and more in the  
December 15, 2016 hearing. **Spallina Perjured his testimony about not having pled to  
felony or misdemeanor charges as the SEC Order shows he plead to criminal conduct thus  
mandating it be either felony or misdemeanor criminal conduct.**

19. The following information is cause for impeachment of Spallina's testimony made with  
"unclean hands" and voiding of the validity hearings ruling due to the criminal conduct learned  
and committed in the Court on December 15, 2015 by Spallina, a court appointed officer of the

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WRIT%20PROHIBITION%20FIRST%20PHILLIPS%20DISQUALDENIAL1.28.16%20ECF%20STAMPED  
%20COPY.pdf

January 29, 2016 Writ of Prohibition Phillips Appendix A

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160129%20FINAL%20ESIGNED%20APPENDIX%204thDCA%20WRIT%20PROHIBITION%20FIRST%20PHILLIPS%20DISQUALDENIAL1.28.16%20ECF%20STAMPED%20COPY.pdf>

<sup>2</sup> December 04, 2015 1st Disqualification Motion Judge John L. Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

December 04, 2015 1st Disqualification Judge John L. Phillips Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L.%20Phillips%20ECF%20STAMPED.pdf>

December 28, 2015 2nd Disqualification Judge John L. Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%2015,%202015%20ECF%20STAMPED%20COPY.pdf>

court and a court appointed fiduciary in these matters. Therefore, immediate actions should be taken by the Court to notify proper authorities, including but not limited to, the SEC of the violation of his Consent Order that Spallina signed as evidenced in the referenced herein Consent Order, the FBI regarding the newly admitted Mail Fraud, the Sheriff department regarding the newly admitted Fraud on the Court, Fraud on Beneficiaries and their counsel and the misuse of a deceased person's identity to close another deceased person's estate (now fully admitted), the Inspector General of the Courts due to the Fraud on the Court and alleged Fraud by the Court, the Chief Judge and where the Court is the scene of fresh new crimes of continued Fraud on the Court in these matters, this Court should disqualify itself entirely from the matters as it appears that one cannot investigate oneself or one's court and judicial friends and loves without a MASSIVE APPEARANCE OF IMPROPRIETY;

- a. On or about September 28, 2015, the SEC out of Washington, DC publicly announced Insider Trading and related charges in a separate action against Florida attorneys and Third-Party Defendants herein SPALLINA and TESCHER. That SPALLINA pled guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,

“2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the “Criminal Action”).”<sup>3</sup>

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<sup>3</sup> September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

- b. December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA stated the following from the hearing

transcript Page 93 Lines 14-22<sup>4</sup>;

14 · · · · · THE COURT: · You can answer the question, which  
15 · · · · · is, did you plead to a felony?  
16 · · · · · MR. BERNSTEIN: · Sorry, sir.  
17 · · · · · THE WITNESS: · I have not.  
18 · · · · · THE COURT: · Okay. · Next question.  
19 · BY MR. BERNSTEIN:  
20 · · · Q. · Have you pled guilty to a misdemeanor?  
21 · · · A. · **I have not. [emphasis added]**  
22 · · · Q. · Were you involved in a insider trading case?  
23 · · · · · MR. ROSE: · Objection. · Relevance.  
24 · · · · · THE COURT: · Sustained. · Next question.

- c. Further, in the SEC Consent signed by SPALLINA reads,

“12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C.. §523. that the allegations in the complaint are true...”

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<sup>4</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

d. SPALLINA further states under sworn testimony at the Validity Hearing regarding the trust documents he created being valid admits to fraudulently altering a Shirley Trust Document and sending to Attorney at Law Christine Yates, Esq. representing the minor children of Eliot via the mail, Page 95 Lines 14-25 and Page 96 Line 1-19,

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

17 · · · · · MR. ROSE: · Objection. · Relevance.

18 · · · · · THE COURT: · Overruled.

19 · · · · · You can answer that.

20 · · · · · THE WITNESS: · Yes, I have.

21 · · BY MR. BERNSTEIN:

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

25 · · · · A · · Yes, I did.

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

·3 · · · · A · · No, I have not.

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

·6 · · · · · MR. ROSE: · Objection. · Relevance.

·7 · · · · · THE COURT: · Sustained.

8 · · BY MR. BERNSTEIN:

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

12 · · · · · MR. ROSE: · Objection. · Relevance.

13 · · · · · THE COURT: · Overruled.

14 · · · · · THE WITNESS: · Yes.

15 · · BY MR. BERNSTEIN:

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

19 · · · · A · · **I don't know that I did do that [emphasis added].**

e. SPALLINA then perjures himself in self contradiction when he tries to claim that his law firm did not mail Fraudulent documents to the court and commits here further FRAUD ON THE COURT when he then slips up and admits that his legal



assistant and notary public Kimberly Moran, already prosecuted in these matters for fraudulent notarization and who has admitted forgery of six persons in these matters then sent the fraudulent documents back to the court when he states;

10 · BY MR. BERNSTEIN:

11 · . . . Q. · And what was she convicted for?

12 · . . . A. · She had notarized the waiver releases of

13 · accounting that you and your siblings had previously

14 · provided, and we filed those with the court.

15 · . . . Q. · We filed those with the court.

16 · . . . . Your law firm submitted fraudulent documents

17 · to the court?

18 · . . . A. · No. We filed -- we filed your original

19 · documents with the court that were not notarized, and

20 · the court had sent them back.

21 · . . . Q. · And then what happened?

22 · . . . A. · And then Kimberly forged the signatures and

23 · notarized those signatures and sent them back.

- f. That not only does SPALLINA admit to Felony criminal acts that have not yet been investigated but admits that his office members are also involved in proven Fraudulent Creation of a Shirley Trust and where MORAN has already admitted six counts of forgery for six separate parties (including for a deceased Simon and for Eliot) and fraudulent notarizations of such documents when Spallina states in the hearing Pages 102-103,

102

20 · . . . . MR. BERNSTEIN: · Sure.

21 · BY MR. BERNSTEIN:

22 · . . . Q. · You've testified here about Kimberly Moran.

23 · . . . . Can you describe your relationship with her?

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

25 · office.

103

· 1 · . . . Q. · Was she convicted of felony fraudulent

· 2 · notarization in the Estate of Shirley Bernstein?

· 3 · . . . . MR. ROSE: · Objection. · Relevance.

· 4 · . . . . THE COURT: · Overruled.

· 5 · . . . . You're asking if she was convicted of a felony

· 6 · . . . with respect to the Estate of Shirley Bernstein?

·7· . . . . . You can answer the question.  
·8· . . . . . MR. BERNSTEIN:· Correct.  
·9· . . . . . THE WITNESS:· I believe she was.

g. SPALLINA then claims that it is “standard operating procedure” for he and his clients to sign sworn Final Waivers under penalty of perjury with knowingly and irrefutably false statements and admitting that the April 09, 2012 Full Waiver (already referenced and linked herein) submitted to this Court by Spallina’s law firm in October of 2012 by Simon Bernstein, at a time after his death on September 13, 2012 and yet still acting as the Personal Representative, signed under penalty of perjury allegedly by Simon Bernstein and witnessed by Spallina, contained knowingly false statements . Then SPALLINA had a deceased Simon file that alleged sworn document with the Court as Personal Representative on a date after his death as part of a Fraud on the Court and Fraud on the Beneficiaries and Interested Parties. SPALLINA states in testimony as follows,

Pages 108-110

17· . . . Q· ·Okay· Are you aware of an April 9th full  
18· ·waiver that was allegedly signed by Simon and you?  
19· . . . A· ·Yeah· That was the waiver that he had signed.  
20· ·And then in the May meeting, we discussed the five of  
21· ·you, all the children, getting back the waivers of the  
22· ·accountings.  
23· . . . Q· ·Okay· And in that April 9th full waiver you  
24· ·used to close my mother's estate, does Simon state that  
25· ·he has all the waivers from all of the parties?  
·1· . . . A· ·He does· We sent out -- he signed that, and  
·2· ·we sent out the waivers to all of you.  
·3· . . . Q· ·Okay· So on April 9th of 2012, Simon signed,  
·4· ·with your presence, because your signature's on the  
·5· ·document, a document stating he had all the waivers in  
·6· ·his possession from all of his children.  
·7· . . . . . Had you sent the waivers out yet as of  
·8· ·April 9th?

· . . . .  
20· ·BY MR. BERNSTEIN:

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

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

· ..

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

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

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

· 9 · · · · Q · · Were they sent out after the --

10 · · · · A · · I did not send them out.

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

13 · · · · A · · We didn't receive the first one until May.

14 · And it was your waiver that we received.

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

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

21 · · · · · THE COURT: · What's the relevance?

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

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

25 · · · · · MR. BERNSTEIN: · On the validity? · Well, it's  
1 · · · · relevant · If any of these documents are relevant,

· 2 · · · · this is important if it's a fraud.

· 3 · · · · · THE COURT: · I'll sustain the objection.

· 4 · · · · · MR. BERNSTEIN: · Okay · Can I -- okay.

· 5 · BY MR. BERNSTEIN:

· 6 · · · · Q · · When did you get -- did you get back prior to  
· 7 · Simon's death all the waivers from all the children?

· 8 · · · · A · · No, we did not.

· 9 · · · · Q · · So in Simon's April 9th document where he  
10 · says, he, Simon, on April 9th has all the waivers from  
11 · his children while he's alive, and you didn't even get  
12 · one 'til after he passed from one of his children, how  
13 · could that be a true statement?

14 · · · · · MR. ROSE: · Objection · Relevance · Cumulative.

15 · · · · · THE COURT: · Sustained.

- h. Finally, SPALLINA also perjures himself under sworn oath at the hearing when testifying to the status of his Florida Bar license, which at this time he is listed as “Not Eligible to Practice Law in Florida<sup>5</sup>” when he states in the December 15, 2015 hearing,

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7· ·BY MR. BERNSTEIN:

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

10· ··· A· ·No, I was not.

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

14· ··· A· ·Yes.

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

16· ··· A· ·I am not practicing.

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

19· ··· A· ·I withdrew from my firm.

Pages 120-121

19· ·BY MR. BERNSTEIN:

20· ··· Q· ·Did you -- are you a member of the Florida  
21· ·Bar?

22· ··· A· ·Yes, I am.

23· ··· Q· ·Currently?

24· ··· A· ·Yes, I am.

25· ··· Q· ·Okay· You said before you surrendered your  
·1· ·license.

·2· ··· A· ·I said I withdrew from my firm· It wasn't

·3· ·that I was not practicing.

- i. Spallina further Perjures his testimony when asked if the Fraudulent Shirley Trust he created by Post Mortem fraudulently altering a Shirley Amendment and

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<sup>5</sup> [https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc\\_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr\\_42LioOrtJzs3cYZ41zA\\_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qgtF7RM\\_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx\\_eJ2II7ycdg2C6e8\\_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381](https://www.floridabar.org/wps/portal/flbar/home/attysearch/mprofile!/ut/p/a1/jc_LDolwEAXQT-ptthRaWo6mkRazxgdCNYUWaKLowfr_42LioOrtJzs3cYZ41zA_dLftdNZyH7vjYvTxACM3dBrawxEHIOI3ZqgSEHEE7qimxJMMNktoDIOr2qgtF7RM_8sjMoRf-T3zn8RJNQO5BXKtp0AxeYNIRTj-HTx_eJ2II7ycdg2C6e8_WXgh/dl5/d5/L2dBISEvZ0FBIS9nQSEh/?mid=497381)

disseminated through the mail attempted to change the beneficiaries of the Shirley Trust and he answered no. Yet, the following analysis shows different;

22. BY MR. BERNSTEIN:

23. Q. Did the fraudulently altered document change

24. the beneficiaries that were listed in Shirley's trust?

25. A. **They did not [emphasis added].**

Now comparing the language in the two documents the Court can see that this statement is wholly untrue. From the alleged Shirley Trust document,

“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 [emphasis added]** shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL !ANTONI 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.”<sup>6</sup>

Then the language from the fraudulent amendment states;

2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM '), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

20. Clearly the fraudulent amendment attempts to remove from the predeceased language regarding TED and PAMELA’s lineal descendants from being excluded by removing them from the

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<sup>6</sup> Shirley Trust Page 7

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Shirley%20Trust%20plus%20fraudulent%20amendment%202.pdf>

original trust language as being considered predeceased and thus change the beneficiaries of the Shirley Trust. In fact, adding Ted and Pam's lineal descendants back into the trust would give them a chance to convert improperly 40% of the value to their families from 0%.

21. This perjury by Spallina, acting already with proven unclean hands and admitted to crimes in the Estates and Trusts of Simon and Shirley Bernstein changed the outcome of the validity hearing adding cause for a rehearing and voiding the Order that resulted, which were already void and of no effect since Judge Phillips should have already voluntarily mandatorily disqualified himself from the proceedings prior to holding any hearings.
22. That as for Ted being qualified as a fiduciary, the following passage from the December 15, 2015 hearing that Ted called for to prove the validity of the dispositive documents after his former counsel admitted criminal activities shows that Ted, who used this disgraced attorney Spallina as his star and only witness to validate the documents, did nothing to validate the documents himself as Trustee to protect the beneficiaries harmed by his former counsels actions, his friend and business associate when he states, under oath,

Page 206-210

25. . . . Q. . Okay. Ted, you were made aware of Robert  
1. Spallina's fraudulent alteration of a trust document of  
2. your mother's when?  
3. . . . A. . I believe that was in the early 2013 or '14.  
4. . . . Q. . Okay. And when you found out, you were the  
5. fiduciary of Shirley's trust, allegedly?  
6. . . . A. . I'm not sure I understand the question.  
7. . . . Q. . When you found out that there was a fraudulent  
8. alteration [sic] of a trust document, were you the  
9. fiduciary in charge of Shirley's trust?  
10. . . . A. . I was trustee, yes. I am trustee, yes.  
11. . . . Q. . And your attorneys, Tescher and Spallina, and  
12. their law firm are the one who committed that fraud,  
13. correct, who altered that document?  
14. . . . A. . That's what's been admitted to by them,  
15. correct.

16. . . . Q. . . Okay. . . So you became aware that your counsel  
17. that you retained as trustee had committed a fraud,  
18. correct?

19. . . . A. . . Correct.

20. . . . Q. . . What did you do immediately after that?

21. . . . A. . . The same day that I found out, I contacted  
22. counsel. I met with counsel on that very day. I met  
23. with counsel the next day. I met with counsel the day  
24. after that.

25. . . . Q. . . Which counsel?

1. . . . A. . . Alan Rose.

...

P 209-210

24. BY MR. BERNSTEIN:

25. . . . Q. . . Have you seen the original will and trust of  
1. your mother's?

2. . . . A. . . Can you define original for me?

3. . . . Q. . . The original.

4. . . . A. . . The one that's filed in the court?

5. . . . Q. . . Original will or the trust.

6. . . . A. . . I've seen copies of the trusts.

7. . . . Q. . . Have you done anything to have any of the  
8. documents authenticated since learning that your  
9. attorneys had committed fraud in altering dispositive  
10. documents that you were in custody of?

11. . . . . MR. ROSE: . . Objection. . . Relevance.

12. . . . . THE COURT: . . Overruled.

13. . . . . THE WITNESS: . . I have not.

14. BY MR. BERNSTEIN:

15. . . . Q. . . So you as the trustee have taken no steps to

16. validate these documents; is that correct?

17. . . . A. . . Correct.

23. Finally, as reported by the Palm Beach Post<sup>7</sup> and others in an evolving story of

Probate/Guardian abuse emanating from Florida's courts, similar to the bank and mortgage  
frauds that found judges and lawyers fraudulently conveying properties through "robosigning"  
aka bank fraud, forgery and more, Florida's Judges are coming under fire for their bizarre

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<sup>7</sup> <http://www.mypalmbeachpost.com/guardianships-colin-savitt>  
and

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/Pacenti%20Articles%20Compiled%20as%20of%20Feb%202002%202016.pdf> (Large File = Patience)

<http://aaapg.net/florida-the-judges-wife-a-frequent-court-appointed-guardian/>

behaviors of probate/guardianship abuses and basically grave robbing Florida's elderly as has been evidenced herein, where dead person's identities are used to commit Fraud on the Court and when discovered covered up by further Fraud by the Court in conjunction with the lawyers and guardians and judges.

WHEREFORE, it is respectfully prayed for an Order Staying this case and all related cases pending review by the 4th DCA and striking such motion by Ted Bernstein from the Calendar or alternatively postponing the hearing on such motion until after motions to remove Ted Bernstein as a Trustee and fiduciary are fully heard and further granting a full evidentiary hearing should Ted Bernstein survive a proper hearing on motions to be removed as Trustee and for such other and further relief as may be just and proper.

Dated: February 10, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein on Behalf of his  
Minor Children; Eliot Ivan Bernstein  
as Trustee f/b/o D.B., Ja. B. and Jo.  
B; Eliot Ivan Bernstein as Trustee of  
the Beneficiary Eliot Bernstein  
Family Trust and Eliot Bernstein as a  
Named Beneficiary.  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 10<sup>th</sup> day of February, 2016.



**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein on Behalf of his  
Minor Children; Eliot Ivan Bernstein  
as Trustee f/b/o D.B., Ja. B. and Jo.  
B; Eliot Ivan Bernstein as Trustee of  
the Beneficiary Eliot Bernstein  
Family Trust and Eliot Bernstein as a  
Named Beneficiary.

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<p>m ddustin@tescherspallina.co m kmoran@tescherspallina.co m</p>		<p>m</p>
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	<p>Pamela Simon President STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>	<p><b>Counter Defendant</b> Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net mrmlaw1@gmail.com</p>
<p><b>Counter Defendant</b> L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp;</p>	<p><b>Counter Defendant</b> Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA</p>	<p><b>Counter Defendant</b> Kimberly Moran Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy</p>

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<p><b>Counter Defendant</b>  Lindsay Baxley aka Lindsay  Giles  Life Insurance Concepts  950 Peninsula Corporate  Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconce  pts.com</p>	<p><b>Counter Defendant</b>  Estate of Simon Bernstein  Personal Representative  Brian M. O'Connell, Partner  Ciklin Lubitz Martens &amp;  O'Connell  515 N Flagler Drive  20th Floor  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com  jfoglietta@ciklinlubitz.com</p>	<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>
<p>Lisa Friedstein  2142 Churchill Lane  Highland Park, IL 60035  Lisa@friedsteins.com  lisa.friedstein@gmail.com  lisa@friedsteins.com</p>	<p>Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  psimon@stpcorp.com</p>	

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

**NOTICE OF EVIDENTIARY HEARING**  
*Special-Set 30 Minutes Reserved*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for an evidentiary hearing on the following:

**DATE:** Monday, March 28, 2016  
**TIME:** 1:30 p.m.  
**JUDGE:** Honorable John L. Phillips  
**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile or U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 10<sup>th</sup> day of February, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
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*Attorneys for Ted S. Bernstein*

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

**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: <a href="mailto:iviewit@iviewit.tv">Eliot I. Bernstein (iviewit@iviewit.tv)</a></p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O’Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O’Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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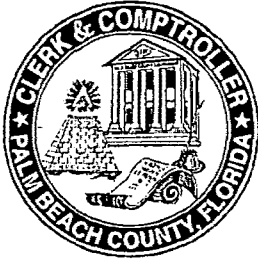
**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**



OFFICE OF THE  
CLERK OF THE CIRCUIT COURT  
Fifteenth Judicial Circuit - Palm Beach County  
Circuit Civil Division- P.O. Box 4667- West Palm Beach, FL 33402-4238

**SHARON R. BOCK**  
Clerk & Comptroller  
Palm Beach County

**SECOND NOTICE**

Date: January 6, 2016/February 16, 2016

To: ELIOT IVAN BERNSTEIN  
2753 NW 34<sup>TH</sup> STREET  
BOCA RATON, FL 33434

**FILED**

**FEB 16 2016**

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

RE: 2014CP003698

Please be advised, the attached document has been docketed and filed with the 4<sup>TH</sup> DCA, however, it has not been recorded, as it does not comply with RJA 2.520.

Please resubmit an *Amended Notice of Appeal* pursuant to RJA 2.520 for docketing and recording. Please leave a 3" X 3" blank space in the upper right hand corner of first page of document for recording purposes.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

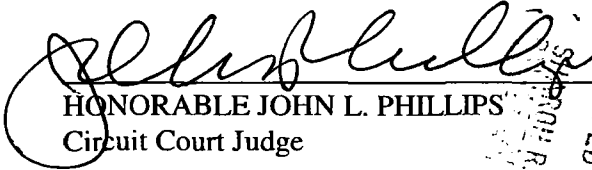
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**ORDER ON PLAINTIFF'S MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

THIS CAUSE came before the Court for hearing on February 4, 2016 on Successor Trustee's *Motion to Modify Final Order Approving Sale Dated May 6, 2015 and for Further Injunctive Relief* (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Eliot Bernstein's request to strike the Motion is DENIED.
2. Eliot Bernstein's motion for a stay pending appellate review is DENIED.
3. Based upon the objections of Eliot Bernstein to the Motion, the Trustee shall schedule the Motion for a 30-minute evidentiary hearing.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 16 day of February, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

FILED  
2016 FEB 17 PM 12:18  
STEPHEN R. BUCK, CLERK  
CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
PALM BEACH COUNTY, FLORIDA

## SERVICE LIST

Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

---

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO  
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE  
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on  
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of  
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard  
argument of counsel and being otherwise fully advised in the premises, hereby


ORDERS AND ADJUDGES:

FILED  
2016 MAR -2 PM 1:08  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

FILED  
MAR 2 PM 1:09  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
NORTH COUNTY BRANCH

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ <sup>T</sup> the Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued <sup>d</sup>advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are **not** fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed <sup>when</sup> ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is <sup>in fact, his actions are adverse + destructive to the children's interest.</sup> apparent Eliot Bernstein is not an adequate representative of the best interests of his children. <sup>JB</sup>

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost <sup>to</sup> the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

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<sup>1</sup> In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, <sup>are</sup> ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, upon notice from the Trustee's counsel the Court shall randomly

*each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to accept the appointment if selected. These lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.\**


9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall <sup>not</sup> ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

*proposed*  
*\* Parties shall furnish an Order appointing GAl with the lists. The Court will act without further hearing on the appointment, if possible.*

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
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(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

---

**RE-NOTICE<sup>1</sup> OF EVIDENTIARY HEARING**  
*Special-Set 30 Minutes Reserved*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for an evidentiary hearing on the following:

**DATE:** Friday, April 8, 2016

**TIME:** 9:45 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

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<sup>1</sup> Cancels previous Notice of Evidentiary Hearing scheduled for March 28, 2016.

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile or U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 2<sup>nd</sup> day of March, 2016.

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

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

**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: <a href="mailto:Eliot.I.Bernstein@iviewit.tv">Eliot I. Bernstein (iviewit@iviewit.tv)</a></p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey (<a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>) Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O’Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O’Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**AMENDED MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED  
MAY 6, 2015, FOR FURTHER INJUNCTIVE RELIEF, AND FOR ORDER TO SHOW  
CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), for further injunctive relief, and for an order to show cause, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially

scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow

website. The trial court sustained the Trustee's objection to this document. At the conclusion of the hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now



owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

13. In addition to the foregoing, the Trustee amends this Motion to seek entry of an Order to Show Cause directed to Eliot Bernstein as to why he is not in contempt of court for violating prior court orders. At a hearing on the Trustee's Motion for Approval, the Court enjoined Eliot Bernstein:

THE COURT: So we're going to take this one small step at a time, but I'm ordering an injunction against you not to contact the buyers directly or indirectly with respect to any information concerning this transaction. Understood?

MR. ELIOT BERNSTEIN: Yes. I've never contacted any buyers. (T. 5)

14. Later at the same hearing, the issue of publishing on the internet was raised:

THE COURT: I've already ordered him not to do anything directly or indirectly -- contact any aspect of this transaction -- with the buyer. That's direct or indirect. (T. 12)

15. The transaction closed on January 15, 2016, after a nine-and-a-half month delay due to Eliot objecting and demanding an evidentiary hearing, during which he presented no evidence, and then appealing various rulings. On February 1, 2016, the Warranty Deed and various closing documents, affidavits, etc., were recorded.

16. Since then, someone (either Eliot or someone believed to be acting in concert with him) has contacted the buyer, Lions Head Land Trust, and posted numerous blogs on the web describing the transaction and naming persons involved, including: the title lawyer paid by the Trust and the closing agent; the Buyer's legal entity; the Buyer's incorporator; the Buyer's lawyer; the beneficial owners of Lions Head Land Trust. A listing of the "headlines" of these posts is attached as Appendix B.

17. The Trustee requests an order directing Eliot Bernstein to immediately remove or cause to be removed all web blogposts concerning any of these trusts and estate matters, including everything to do with or mentioning the sale of property; and/or entry of an order to show cause why he should not be held in contempt of court.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion; enter an Order to Show Cause; and grant such other relief as is just.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of March, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
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Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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Joielle A. Foglietta, Esq.  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

## APPENDIX "B"

These are some of the blog headlines in the past two weeks:

- Lion Head Land Trust is OWNER of 7020 Lion Head PERIOD
- Is there a Trustee for Lion Head Land Trust? Was that XXXXX XXXXX? We know the incorporator so what is going on here?
- Old Republic National Title provided title insurance for Simon Bernstein Estate Case home located at 7020 Lion Head Lane Boca Raton Florida. Ted S. Bernstein CLOSED the Deal as the Seller. 22 days later the resident of the home dies under suspicious circumstances.
- XXXXX XXXXX Law is the Closing Agent LLC where 7020 Lions Head Lane Boca Raton was CLOSED for the Sale of the property, as seen on the warranty deed.
- Did Leilani Ochoada even know XXXXX XXXXX? Or did Florida Lawyer XXXX XXXX set all this up to hide XXXXX's ownership of 7020 Lion Head Lane in Boca Raton? Did Lawyer Laurence Pino trick an unsuspecting woman into pretending to own a corporation? If so Why? If not then who did, or did she suspect there was more to all this?
- It appears that Orlando attorney XXXX XXXX set up a Bogus Corporation for XXXX XXXX? But why? Was it to protect assets? To defer liability? To hide assets? Or was it to hide XXXX XXXXX, was he in danger from someone?
- And why did XXXX XXXXX Florida attorney choose Leilani Ochoada as his mark? What did he say to her, threaten her with or promise her to get her to go along with all this?
- Per the warranty deed you see only Ted S. Bernstein, his attorney Alan Rose as witness and another witness. And you see the Buyer as Lion Head Land Trust Inc. of which is incorporated by Leilani Ochoada. You see no trace of a XXXX XXXX or a XXXX XXXX. You only see this one woman left to take the heat, the liability, the media on all this. Why?
- XXXX XXXX found Dead at 7020 Lion Head Lane Boca Raton. Judge Martin Colin, Judge John Philips, the Boca Raton Sheriff and more have known of the dangers in the Simon Bernstein Case for years. Will they Do SOME actual investigations now or are the Florida Judges and Supreme Court too Powerful.
- Maybe Orlando attorney XXXX XXXX set up a phony corporation for XXXX XXXX to help him avoid taxes, hide assets, deter debt, get a mortgage or some other illegal activity on either of their parts.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

---

**AMENDED RE-NOTICE OF EVIDENTIARY HEARING**  
*Special-Set 30 Minutes Reserved*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for an evidentiary hearing on the following:

**DATE:** Friday, April 8, 2016

**TIME:** 9:45 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3,  
Palm Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S AMENDED MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF AND FOR ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN CONTEMPT OF COURT**

**TRUSTEE'S MOTION TO MODIFY FINAL ORDER APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile or U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3<sup>rd</sup> day of March, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
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West Palm Beach, FL 33401  
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Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
*Attorneys for Ted S. Bernstein*

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

## SERVICE LIST

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

**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tande oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**PLAINTIFF'S NOTICE OF DEPOSITION DUCES TECUM**

TO: All parties on attached service list.

**PLEASE TAKE NOTICE** that the undersigned will take the deposition of:

NAME	DATE/TIME	LOCATION
William Stansbury C/O Peter Feaman, Esq. PETER M. FEAMAN, P.A. 3695 W. Boynton Beach Blvd. Ste 9 Boynton Beach, FL 33436	March 29, 2016 at 10:00 a.m.	Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. 505 S. Flagler Drive, Suite 600 West Palm Beach, FL. 33401 Telephone: (561) 655-2250

upon oral examination, pursuant to Florida Rules of Civil Procedure, before U.S. Legal Support, Inc. Court Reporters, and/or any other Notary Public or officer authorized by law to take deposition. Said oral examination will continue from day-to-day until completed. You are hereby notified to appear and take part in said examination as you may be advised. This deposition is being taken for the purposes of discovery, for use at trial, as primary evidence or for such other purposes as are permitted under the applicable Statutes or Rules of Court. **The Deponent shall produce the documents set forth in the attached Exhibit "A".**

*If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the attorney listed below within two (2) working days of your receipt of this Notice; if you are hearing or voice impaired, call 1-800-955-8771.*

#### **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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 9<sup>th</sup> day of March, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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Jill Iantoni, individually and as trustee for her  
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[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

## **EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

### **Definitions**

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen E. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

### **Documents Requested**

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.



5. All documents sent by Stansbury to Cox concerning the Property.
6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

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PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign	_____ date _____
Disposal Approved by (crim)	Print _____	sign	_____ date _____
Manager Approval	Print _____	sign	_____ date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign	_____ date _____



IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

---

**MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF  
WILLIAM STANSBURY AND APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

COMES NOW William Stansbury, by and through his undersigned counsel, and moves  
this Court for the entry of a Protective Order with regard to two subpoenas served upon him on  
March 10, 2016 demanding him to appear for the taking of his deposition and to appear at a  
hearing scheduled for April 8, 2016, and states as follows:

1. On March 10, 2016, non-party William Stansbury was served (through counsel)  
with two subpoenas:

- a. Subpoena Duces Tecum to William Stansbury for appearance at deposition (a copy of which is attached hereto as **Exhibit "A"**); and
- b. Subpoena Duces Tecum to appear at evidentiary hearing/trial (a copy of which is attached hereto as **Exhibit "B"**).

--- **Statement of the Case** ---

2. This is an action brought by TED BERNSTEIN as Successor Trustee of the Shirley Bernstein Trust against all of the beneficiaries of the Shirley Bernstein Trust, plus Eliot Bernstein.

3. This action is a two-count complaint. (A copy of the Complaint is attached hereto as **Exhibit "C."**) The Motion filed by the Trustee on January 28, 2016, which is now set to be heard before the Court on April 8, 2016 at 9:45 a.m., involves the sale of the former homestead of Shirley and Simon Bernstein (Lion's Head property) and requests relief as to Eliot Bernstein concerning holding the proceeds of the sale of the homestead and further injunctive relief against Eliot Bernstein. A copy of the Motion is attached hereto as **Exhibit "D."**

4. William Stansbury is not a party to this action. The trial of this action as to Count II took place on December 15, 2015, and Stansbury was not involved other than as an observer. Stansbury has had no involvement in the administration of the Shirley Bernstein Trust. The Shirley Bernstein Trust is not a defendant in the case pending by William Stansbury against the Simon Bernstein Estate.

--- **Retaliatory Subpoenas** ---

5. This matter has devolved into retaliatory litigation tactics by Ted Bernstein as he seeks to involve William Stansbury in this action solely in an effort to cause William Stansbury

to incur fees and otherwise become involved in this case because William Stansbury has taken action in collateral matters adverse to that of Ted Bernstein.

6. Ted Bernstein is retaliating against William Stansbury as a result of Mr. Stansbury's issues which are adverse to Ted Bernstein on the following matters:

- a. Ted Bernstein is an individual Plaintiff in an action pending in the United States District Court for the Northern District of Illinois (the "Chicago litigation") in which he is claiming that he and the other adult children of Simon Bernstein are beneficiaries of a life insurance policy on the life of Simon Bernstein in the approximate amount of \$1,700,000.00. Mr. Stansbury believes that these insurance proceeds actually belong to the Estate of Simon Bernstein against which is pending his approximate \$2.5 million dollar claim for unpaid compensation. He therefore attempted to intervene in that action, which was vigorously opposed by Ted Bernstein. The Court denied the intervention but thereafter, after the original Personal Representatives of the Estate of Simon Bernstein (Tescher and Spallina) resigned as Personal Representatives, the Curator, Ben Brown, Esq. and subsequently the Successor Personal Representative, Brian O'Connell, Esq. became convinced that the Estate did have a valid interest in and to the insurance proceeds at issue in the Chicago litigation, and the Estate has now intervened in that case. Mr. Stansbury is funding the fees incurred by the Estate in that action. The intervention of the Estate now threatens Ted Bernstein because the life insurance proceeds of approximately \$1.7 million could, now that the Estate has intervened, not go to Ted Bernstein and the adult children, but rather to

the Simon Bernstein Trust, which is the sole monetary beneficiary of the Simon Bernstein Estate. The Estate's attorneys in Chicago feel so strongly about the merits of the Estate's position that they are willing to take this case on a contingency fee basis.

- b. Because the Simon Bernstein Trust could be the recipient of the life insurance proceeds coming from Illinois, it clearly puts Ted Bernstein in a conflict of interest position as, on the one hand, he is the Plaintiff in the Chicago litigation where he is trying to keep the funds away from the Simon Bernstein Trust while, on the other hand, he is holding the position of Successor Trustee of the Simon Bernstein Trust, which is the sole beneficiary of the Simon Bernstein Estate where the life insurance proceeds would be paid should he not prevail as Plaintiff. Therefore, he has a clear and direct conflict of interest. Mr. Stansbury filed a Petition to Remove Ted Bernstein as the Successor Trustee of the Simon Bernstein Trust based upon this conflict, as well as the fact that Ted Bernstein is facially not qualified to hold the position of Successor Trustee according to the plain language of the Trust. Simon Bernstein specifically disinherited Ted Bernstein in his Trust, writing that, for all purposes of the Trust, Ted Bernstein was considered to have pre-deceased him.
- c. Ted Bernstein has additional reasons to want to harass William Stansbury. Mr. Stansbury has also filed his Amended Petition to account for missing property (furniture and fixtures) from the oceanfront condominium owned by the Shirley Bernstein Trust, but which personal property inside was the property

of the Simon Bernstein Estate, and also to account for missing jewelry of the Simon Bernstein Estate. By Mr. Stansbury's Petition, Ted Bernstein is placed squarely in a position to account for the missing property. This also would give Ted Bernstein incentive to harass Mr. Stansbury.

- d. Ted Bernstein's attorney admitted to this Court at the status conference held on March 7, 2016 that the furniture and fixtures contained within the oceanfront condominium in Boca Raton belonged to the Simon Bernstein Estate but was sold along with the condo. He admitted that the Shirley Bernstein Trust, over which Ted Bernstein is the Successor Trustee, needed to reimburse the Estate of Simon Bernstein for the value of that furniture which he had no authority to sell. The sale of that oceanfront condominium took place two years ago and yet no reimbursement has been forthcoming. Mr. Stansbury, among others, brought this to the attention of the Court, further buttressing his position that the Subpoenas issues in this matter are only for harassment purposes.
- e. The proceeds of the sale of the oceanfront condominium, which took place two years ago, based on information and belief, were distributed to 7 of the 10 grandchildren of Simon and Shirley Bernstein. However, by the terms of the Shirley Bernstein Trust, Ted Bernstein's children were excluded as beneficiaries but received a share of the proceeds nonetheless. Mr. Stansbury has made the interested parties to this litigation aware of that as well.



--- Stansbury's Conduct is Not Relevant to the Issues Before the Court to be Heard on  
April 8, 2016 ---

7. Ted Bernstein has seized on one e-mail written by Kevin Hall that mentioned the name of William Stansbury to justify the issuance of the Subpoenas. Mr. Stansbury is clearly not involved as a witness in the matters before the Court on April 8, 2016. He is not a party and there is no justifiable reason to involve Mr. Stansbury other than the desire of Ted Bernstein to harass Mr. Stansbury.

8. The only connection Mr. Stansbury has to this litigation is as set forth in the e-mail from Kevin Hall to Alan Rose, wherein Mr. Stansbury's name is mentioned. A copy of the e-mail is attached hereto as **Exhibit "E."** There is no evidence that Mr. Stansbury has been or is involved in any way with the sale of the Lion's Head property which is the subject of the Motion for which he was subpoenaed, or any involvement after the sale concerning the Lion's Head property.

9. Further, the deposition date of March 29, 2016 was not cleared with counsel for Mr. Stansbury. Counsel for Mr. Stansbury is not available on that day. Finally, the location of the deposition is set for the office of counsel for Ted Bernstein in West Palm Beach. Mr. Stansbury resides in Boynton Beach and his deposition could easily be accomplished at the office of his attorney also located in Boynton Beach.

WHEREFORE, for all the foregoing reasons, William Stansbury requests this Honorable Court to enter a Protective Order protecting him from attending the deposition on March 29, 2016, and quashing the Subpoena on him for the hearing set for April 8, 2016, which does not involve him in any way.

---

Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below on this \_\_\_\_\_ day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Email: [boconnell@eiklinlubitz.com](mailto:boconnell@eiklinlubitz.com)  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
Boynton Beach, FL 33436  
Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_  
Peter M. Feaman  
Florida Bar No. 0260347

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

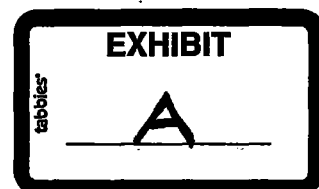
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**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT DEPOSITION**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions  
at the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 S. Flagler



Drive, Suite 600, West Palm Beach, FL 33401 (Telephone: (561) 655-2250) on March 29, 2016 at 10:00 a.m. for the taking of your deposition in this action, and to have with you at that time and place the documents identified on the attached Exhibit "A."

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

Dated on March 9, 2016.

  
\_\_\_\_\_  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

**Definitions**

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen E. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

**Documents Requested**

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.
5. All documents sent by Stansbury to Cox concerning the Property.

6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

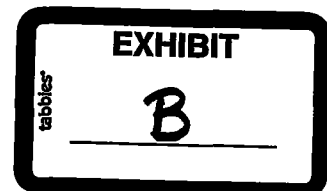
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**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

**YOU ARE COMMANDED** to appear before the Honorable John L. Phillips, Judge of the  
Circuit Court, at the North Branch of the Palm Beach County Courthouse, 3188 PGA Boulevard,

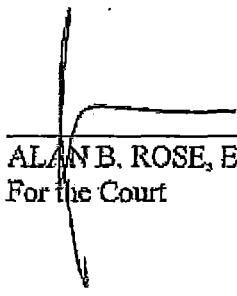




Palm Beach Gardens, FL 33410 *Courtroom 3* on April 8, 2016 at 9:45 A.M. to testify in this action and to have with you at that time, the documents outlined in Exhibit A attached to this Subpoena. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED this 9<sup>th</sup> day of March, 2016.

  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Tod Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

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8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
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11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
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13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

v.

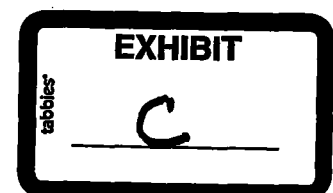
ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd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

Defendants.

---

**AMENDED COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee



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

Plaintiff hereby sues Defendants, and states:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.")
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.
5. An authentic copy of Shirley's Trust is attached as Exhibit "A".
6. Shirley's Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one of more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

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 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 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.

27. In essence, through his Special Power, 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 each such grandchild under Simon's Trust.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, *per stirpes*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").



31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment

by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "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 [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

**Defendants and Potential Beneficiaries**

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

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<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

**COUNT I –DECLARATORY AND OTHER RELIEF**

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of

appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY  
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley Trust”, attached as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.



82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of October, 2014.

**ATTORNEYS FOR PLAINTIFF**

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By: /s/ Alan B. Rose  
Alan B. Rose  
Fla. Bar No. 961825

## SERVICE LIST

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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBJJ

Plaintiff,

v.

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

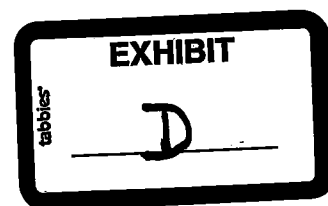
Defendants.

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**MOTION TO MODIFY FINAL ORDER APPROVING SALE**  
**DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting



the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical, and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.



The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
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(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
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(561) 245-8644 - Facsimile  
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

Attn: Alan Rose from Kevin Hall 3.7.16 Re: Lions Head Land Trust

Kevin Hall

Mon 3/7/2016 3:55 PM

To: arose@mrachek-law.com <arose@mrachek-law.com>; wesgator@msn.com <wesgator@msn.com>; pfeaman@feamanlaw.com <pfeaman@feamanlaw.com>; leilaniochoada@gmail.com <leilaniochoada@gmail.com>; leilani@cmrei.com <leilani@cmrei.com>; schwagerlawfirm@live.com <schwagerlawfirm@live.com>; iviewit@gmail.com <iviewit@gmail.com>; iviewit@iviewit.tv <iviewit@iviewit.tv>; tourcandy@gmail.com <tourcandy@gmail.com>; caroline@cprogers.com <caroline@cprogers.com>; marc.garber@flastergreenberg.com <marc.garber@flastergreenberg.com>; marcgarber@gmail.com <marcgarber@gmail.com>; mmulrooney@venable.com <mmulrooney@venable.com>;

Cc: Kevin Hall <kh.itconsultingsalesoffices@gmail.com>;

📎 1 attachment (20 MB)

KRHResearchLEILANIOCHOADALIONSHEADBOCA2016\_02\_18 12-33-12 kh.itconsultingsales Outgoing to +14076085448 .mp3;

Mr. Rose,

Leilani Ochoada was not contacted on "behalf" of Eliot I. Bernstein.

As you may recall, I came in to Eliot Bernstein's life as a "related" case person in New York after being introduced to other "related case" persons from someone from Washington, D.C., that I had first come into contact with on or around Sept. 2007 who was part of a group that was investigating complaints from persons who had contact with the U.S. Attorneys and FBI in New York.

Prior to my first call with this person from Washington, DC, I had already had direct personal experience and done work and events with Executive Detail of the NYS Police, a Governor ( Mario Cuomo ), US Secret Service Agents and persons protected by the US Secret Service, members of the US Senate including the US Senate Intelligence and Judiciary Committee person Diane Feinstein, other members of the US Judiciary Committee, US Armed Services Committee, US House Intelligence Committee, other former Governors and more. I also maintain a variety of relatives in State law enforcement positions and contacts in both law enforcement and the military as well.

During this first call this person from Washington, DC indicated he had done work for the US Justice Department, specifically the IRS and the US Postal Inspector's Office, asked me if I was aware of DOJ Agents with greater powers and authority over regular FBI Agents, and this person was directly involved in corruption between the NYS Discipline and Bar Committees and Appellate Division Departments specifically focusing on Manhattan and Wall Street attorneys and, to the best of my recollection, inquired during this first call if I had knowledge of the "Iviewit" case which at that time in 2007 I had never heard of before. This person from Washington, DC was later determined to have also been involved in cases out of Chicago and Boston and other cases in Florida including Estate cases in Palm Beach county. I have maintained communications with this person from Wash, DC. as needed since 2007 and was on the phone with him and others in relation to activities of the US Attorney for the Southern District of New York as recently as late January 2016 and was on the phone with him in relation to Estate corruption cases with Florida and NY ties just a week or so ago with several parties having been involved with NY's Moreland Commission.

I am sure by now you have reviewed my LinkedIn profile and determined I maintain rights in "Iviewit" interests and perhaps have reviewed the Complaint to the SEC of 2009 and Petition to the White House and White House Counsel's Office and the US Attorney General's Office and Federal agencies I have been involved with in furtherance of my interests in "Iviewit"

I was just on the phone today, Monday, March 7, 2016 at or around 2 pm EST with the FBI and specifically provided Leilani Ochoada's name and phone number as someone I had spoken to on or about Feb. 18th, 2016 and that several days after this the body of Mitch Huhem was allegedly found deceased at the St. Andrews Boca Raton, FL property and where issues of Witnesses who may be in danger etc were raised as Eliot Bernstein previously had his mini-van Car-bombed and apparently or allegedly your client Ted Bernstein raised a suggestion in Sept. of 2012 that Simon Bernstein may have been poisoned or murdered on the night of his passing and sought an autopsy and coroner's

002326

EXHIBIT

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investigation and allegedly reported this to the Palm Beach County Sheriff's Dept.

For the record, Eliot I. Bernstein never asked, instructed, authorized or directed me to have any contact with Leilani Ochoada or had any knowledge I was doing so at the time. I did this on my own initiative after getting information from William Stansbury about the Deed Transfer on file that you apparently signed as a Notary and Witness regarding the St. Andrews Boca Raton, Florida property and then from information I personally looked up at [www.sunbiz.org](http://www.sunbiz.org) where I quickly found:

1) [www.sunbiz.org](http://www.sunbiz.org) showed the name of the Registered Agent for Lions Head Land Trust Inc. as a dissolved company since 1997; I then had a subsequent call to the Florida Secretary of State where a person confirmed this Filing of Lions Head Land Trust Inc. should "not have been overlooked" by Internal Florida Secretary of State examiners and was initiating a request to the Examiner and an investigation with her Director as she worked in the Director's Office;

2) My own initiated google searches showed the Tallahassee, FL address listed with the Secretary of State for Lions Head Land Trust Inc came up to a business with a DIFFERENT name and a phone call to that Business initiated again by myself at my own direction on Feb. 18th had the person working there claiming Any use of their Tallahassee, FL address was not proper by Lions Head Land Trust, Inc. and that their company was not ISL, Inc. as indicated in the Lions Head Land Trust Inc filings;

3) whereupon a further google search that I, KRH, personally did and made of my own free will and volition and upon my own direction having Interests in "Iviewit", I then reached a business named CMREI in Orlando, FL whereupon I spoke with a person who went by the name of Leilani Ochoada who claimed to know Nothing about the Lions Head Land Trust filing, thought it may be Identity theft, had not Authorized this at all, had never lived in Boca Raton, FL, never bought any property and was not aware of it etc etc.

4) I informed Eliot Bernstein that Leilani Ochoada said she would come forward with a Sworn Statement and even do a Recorded call giving proper consent to the call later that day as she claimed she was Not a Buyer of this property and had no knowledge of it and provided no consent to anyone to do so in her name.

Thus, later that same day at my Suggestion Leilani Ochoada agreed to get on a Recorded Call whereupon I INITIATED a Call to Eliot Bernstein after Leilani Ochoada was on the call and Eliot Bernstein already had reason to believe this person was NOT a Buyer or Involved with Lions Head Land Trust Inc. and instead was a Victim of some type of Fraud.

Leilani Ochoada agreed to have a draft of her statement typed up of the call she was having with myself and Eliot Bernstein who I initiated on to the call and the draft of her Statement was as follows:

**Leilani Statement** which she confirmed was correct by email:

Leilani has:

- \* no knowledge of Lions Head Land Trust, Inc. at all
- \* never authorized anyone to use her name as an Incorporator
- \* until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, FL
- \* initially believed it was some form of identity theft
- \* never lived at any Boca Raton, FL address in general and never at 7020 Lions Head Land Trust Inc.
- \* never knew about any land deal with Mitch Huhem Laurence Pino or anything related to this property
- \* no absolutely nothing about the Articles of Incorporation and the addresses and companies named there
- \* consider it unauthorized fraudulent use of her name
- \* attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an Incorporator either by signed document or Electroncially

\* Pino has not been able to produce any written document that you allegedly signed with his office

\* Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files

So, Mr. Rose, I have been told you have been suggesting in legal papers that Leilani Ochoada is a "Buyer" at the St. Andrew's property? Is this True? She certainly never claimed to me that she was a "Buyer" in any sense and as shown by her statement drafted above quite to the contrary. Thus, are you claiming Leilani is the "Buyer" in this situation? To facilitate review, I have attached the MP3 Recording of the Call that both Leilani Ochoada and Eliot Bernstein agreed and consented to have Recorded.

Please note that I have copied this communication to William Stansbury and his attorney Peter Feaman and Leilani herself and Eliot and the attorney from Texas Candice Schwager and other attorney contacts of Eliot and others in order to quickly clarify matters and put the issues to rest.

I am curious, however, if you found any of the "Iviewit Stock" that Simon Bernstein had when you were at the 7020 Lions Head Lane Boca Raton, Fl home or if you know where all those Files and Records went?

Thank you in advance for your cooperation.

Glad I could be of assistance.

Regards,



Kevin R. Hall  
IT Consulting Sales Offices  
P.O. Box 756  
Kinderhook, NY 12106  
518-755-8128 Cell  
518-635-0668 office  
Skype ID = kh.itconsultingsales  
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**CONFIDENTIALITY NOTICE:**

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521. This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (518) 635-0668. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

Kevin R. Hall

IT Consulting Sales Offices

P.O. Box 756

Kinderhook, NY 12106



Dear Mr. Hall:

You may recall that I represent Ted S. Bernstein, Trustee.

I am writing to confirm that you were you involved in contacting Leilani Ochoada on behalf of Eliot Bernstein to obtain information on the trust which purchased the Bernstein residence at 7020 Lions Head Lane?

Can you share you confirm that? And, are you authorized to advise what you learned from that call or would we need to depose Mr. Eliot Bernstein?.

Also, can you confirm that Eliot Bernstein was on the telephone with you and spoke directly to Ms. Ochoada?

Thanks in advance for responding.

Alan Rose

Counsel for Successor Trustee of Shirley Bernstein Trust Agreement

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

---

**NOTICE TO COURT REGARDING SELECTION OF GUARDIAN AD LITEM**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, notifies this Court as follows pursuant to the Order entered in this case, and the companion Order entered in Case No. 502014CP002815XXXXNB, on March 1, 2016:

1. The parties have conferred in good faith, including with Eliot and Candice Bernstein, as required by the Court's Order. Eliot and Candice have suggested no one, and have not agreed to

the appointment of retired judge Diana Lewis, the only person the Trustee prefers who is willing to undertake this matter (albeit reluctantly given the internet hostility).

2. Thus, the Trustee proposed that the Court appoint Diana Lewis as guardian ad litem for Eliot's children, Jo.b, Ja.B. and D.B. (the "Beneficiaries").

3. As of the date of this filing, Eliot and Candice Bernstein have not proposed an alternate guardian ad litem.

4. In an effort to comply with this Court's directive for each party to "submit a list of three names of potential guardian ad litem, each of whom has agreed to accept the appointment if selected," *see Order entered in Case No. 502014CP003698XXXXNB, ¶ 8*, Trustee, through the undersigned, contacted a number of former judges, probate lawyers and several other Florida attorneys located in Palm Beach County; however, none of them would agree to accept the appointment if selected. Diana Lewis is willing to undertake this role, but has expressed concerns about the internet blogging issues, which have intensified. <http://tedbernsteinreport.blogspot.com/>

5. Trustee consents to the appointment of retired judge Diana Lewis, or any Florida-licensed lawyer located in Palm Beach County that is selected by the Court, as guardian ad litem. To the extent necessary, the undersigned will continue to search for suitable candidates, and requests should it be necessary that the Court will impose further confidentiality limitations or gag order solely to protect the guardian.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 15<sup>th</sup> day of March, 2016.

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Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

---

**RESPONSE AND OBJECTIONS TO SUBPOENA DUCES TECUM FOR DEPOSITION**

COMES NOW William Stansbury, by and through his undersigned counsel, and files this  
his response and objections to the Subpoena Duces Tecum served upon him through counsel on  
March 10, 2016, as follows:

1. None
2. One email.
3. None
4. One email.

5. None
6. None
7. None
8. None
9. Objection as an invasion of privacy, overly broad and not relevant to the subject matter of this proceeding. None.
10. Objection based upon invasion of privacy, and not relevant to the subject matter of this proceeding. None.
11. None
12. Objection based upon invasion of privacy, and not relevant to the subject matter of this proceeding. None.
13. None.



Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 16 day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**John P. Morrissey, Esq.**  
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West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Alan Rose, Esquire**  
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**Pamela Beth Simon**  
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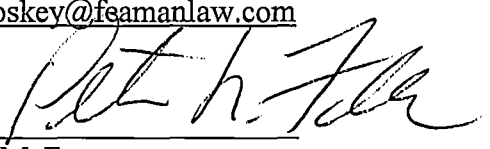
**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
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**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By: \_\_\_\_\_

  
Peter M. Feaman  
Florida Bar No. 0260347



IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

---

**MOTION FOR PROTECTIVE ORDER AS TO DEPOSITION OF  
WILLIAM STANSBURY AND APPEARANCE AT EVIDENTIARY HEARING/TRIAL**

COMES NOW William Stansbury, by and through his undersigned counsel, and moves  
this Court for the entry of a Protective Order with regard to two subpoenas served upon him on  
March 10, 2016 demanding him to appear for the taking of his deposition and to appear at a  
hearing scheduled for April 8, 2016, and states as follows:

1. On March 10, 2016, non-party William Stansbury was served (through counsel)  
with two subpoenas:

- a. Subpoena Duces Tecum to William Stansbury for appearance at deposition (a copy of which is attached hereto as **Exhibit "A"**); and
- b. Subpoena Duces Tecum to appear at evidentiary hearing/trial (a copy of which is attached hereto as **Exhibit "B"**).

--- **Statement of the Case** ---

2. This is an action brought by TED BERNSTEIN as Successor Trustee of the Shirley Bernstein Trust against all of the beneficiaries of the Shirley Bernstein Trust, plus Eliot Bernstein.

3. This action is a two-count complaint. (A copy of the Complaint is attached hereto as **Exhibit "C."**) The Motion filed by the Trustee on January 28, 2016, which is now set to be heard before the Court on April 8, 2016 at 9:45 a.m., involves the sale of the former homestead of Shirley and Simon Bernstein (Lion's Head property) and requests relief as to Eliot Bernstein concerning holding the proceeds of the sale of the homestead and further injunctive relief against Eliot Bernstein. A copy of the Motion is attached hereto as **Exhibit "D."**

4. William Stansbury is not a party to this action. The trial of this action as to Count II took place on December 15, 2015, and Stansbury was not involved other than as an observer. Stansbury has had no involvement in the administration of the Shirley Bernstein Trust. The Shirley Bernstein Trust is not a defendant in the case pending by William Stansbury against the Simon Bernstein Estate.

--- **Retaliatory Subpoenas** ---

5. This matter has devolved into retaliatory litigation tactics by Ted Bernstein as he seeks to involve William Stansbury in this action solely in an effort to cause William Stansbury

to incur fees and otherwise become involved in this case because William Stansbury has taken action in collateral matters adverse to that of Ted Bernstein.

6. Ted Bernstein is retaliating against William Stansbury as a result of Mr. Stansbury's issues which are adverse to Ted Bernstein on the following matters:

- a. Ted Bernstein is an individual Plaintiff in an action pending in the United States District Court for the Northern District of Illinois (the "Chicago litigation") in which he is claiming that he and the other adult children of Simon Bernstein are beneficiaries of a life insurance policy on the life of Simon Bernstein in the approximate amount of \$1,700,000.00. Mr. Stansbury believes that these insurance proceeds actually belong to the Estate of Simon Bernstein against which is pending his approximate \$2.5 million dollar claim for unpaid compensation. He therefore attempted to intervene in that action, which was vigorously opposed by Ted Bernstein. The Court denied the intervention but thereafter, after the original Personal Representatives of the Estate of Simon Bernstein (Tescher and Spallina) resigned as Personal Representatives, the Curator, Ben Brown, Esq. and subsequently the Successor Personal Representative, Brian O'Connell, Esq. became convinced that the Estate did have a valid interest in and to the insurance proceeds at issue in the Chicago litigation, and the Estate has now intervened in that case. Mr. Stansbury is funding the fees incurred by the Estate in that action. The intervention of the Estate now threatens Ted Bernstein because the life insurance proceeds of approximately \$1.7 million could, now that the Estate has intervened, not go to Ted Bernstein and the adult children, but rather to

the Simon Bernstein Trust, which is the sole monetary beneficiary of the Simon Bernstein Estate. The Estate's attorneys in Chicago feel so strongly about the merits of the Estate's position that they are willing to take this case on a contingency fee basis.

- b. Because the Simon Bernstein Trust could be the recipient of the life insurance proceeds coming from Illinois, it clearly puts Ted Bernstein in a conflict of interest position as, on the one hand, he is the Plaintiff in the Chicago litigation where he is trying to keep the funds away from the Simon Bernstein Trust while, on the other hand, he is holding the position of Successor Trustee of the Simon Bernstein Trust, which is the sole beneficiary of the Simon Bernstein Estate where the life insurance proceeds would be paid should he not prevail as Plaintiff. Therefore, he has a clear and direct conflict of interest. Mr. Stansbury filed a Petition to Remove Ted Bernstein as the Successor Trustee of the Simon Bernstein Trust based upon this conflict, as well as the fact that Ted Bernstein is facially not qualified to hold the position of Successor Trustee according to the plain language of the Trust. Simon Bernstein specifically disinherited Ted Bernstein in his Trust, writing that, for all purposes of the Trust, Ted Bernstein was considered to have pre-deceased him.
- c. Ted Bernstein has additional reasons to want to harass William Stansbury. Mr. Stansbury has also filed his Amended Petition to account for missing property (furniture and fixtures) from the oceanfront condominium owned by the Shirley Bernstein Trust, but which personal property inside was the property

of the Simon Bernstein Estate, and also to account for missing jewelry of the Simon Bernstein Estate. By Mr. Stansbury's Petition, Ted Bernstein is placed squarely in a position to account for the missing property. This also would give Ted Bernstein incentive to harass Mr. Stansbury.

- d. Ted Bernstein's attorney admitted to this Court at the status conference held on March 7, 2016 that the furniture and fixtures contained within the oceanfront condominium in Boca Raton belonged to the Simon Bernstein Estate but was sold along with the condo. He admitted that the Shirley Bernstein Trust, over which Ted Bernstein is the Successor Trustee, needed to reimburse the Estate of Simon Bernstein for the value of that furniture which he had no authority to sell. The sale of that oceanfront condominium took place two years ago and yet no reimbursement has been forthcoming. Mr. Stansbury, among others, brought this to the attention of the Court, further buttressing his position that the Subpoenas issues in this matter are only for harassment purposes.
- e. The proceeds of the sale of the oceanfront condominium, which took place two years ago, based on information and belief, were distributed to 7 of the 10 grandchildren of Simon and Shirley Bernstein. However, by the terms of the Shirley Bernstein Trust, Ted Bernstein's children were excluded as beneficiaries but received a share of the proceeds nonetheless. Mr. Stansbury has made the interested parties to this litigation aware of that as well.


--- Stansbury's Conduct is Not Relevant to the Issues Before the Court to be Heard on  
April 8, 2016 ---

7. Ted Bernstein has seized on one e-mail written by Kevin Hall that mentioned the name of William Stansbury to justify the issuance of the Subpoenas. Mr. Stansbury is clearly not involved as a witness in the matters before the Court on April 8, 2016. He is not a party and there is no justifiable reason to involve Mr. Stansbury other than the desire of Ted Bernstein to harass Mr. Stansbury.

8. The only connection Mr. Stansbury has to this litigation is as set forth in the e-mail from Kevin Hall to Alan Rose, wherein Mr. Stansbury's name is mentioned. A copy of the e-mail is attached hereto as **Exhibit "E."** There is no evidence that Mr. Stansbury has been or is involved in any way with the sale of the Lion's Head property which is the subject of the Motion for which he was subpoenaed, or any involvement after the sale concerning the Lion's Head property.

9. Further, the deposition date of March 29, 2016 was not cleared with counsel for Mr. Stansbury. Counsel for Mr. Stansbury is not available on that day. Finally, the location of the deposition is set for the office of counsel for Ted Bernstein in West Palm Beach. Mr. Stansbury resides in Boynton Beach and his deposition could easily be accomplished at the office of his attorney also located in Boynton Beach.

WHEREFORE, for all the foregoing reasons, William Stansbury requests this Honorable Court to enter a Protective Order protecting him from attending the deposition on March 29, 2016, and quashing the Subpoena on him for the hearing set for April 8, 2016, which does not involve him in any way.



Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below on this 15<sup>th</sup> day of March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*


**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
Boynton Beach, FL 33436  
Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By:   
Peter M. Feaman  
Florida Bar No. 0260347



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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

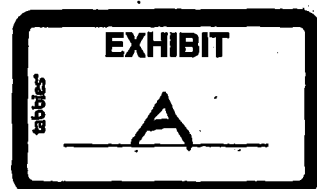
1659428  
3.10.2014  
1130am

**SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT DEPOSITION**

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

**YOU ARE COMMANDED** to appear before a person authorized by law to take depositions  
at the law firm of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., 505 S. Flagler



Drive, Suite 600, West Palm Beach, FL 33401 (Telephone: (561) 655-2250) on March 29, 2016 at 10:00 a.m. for the taking of your deposition in this action, and to have with you at that time and place the documents identified on the attached Exhibit "A."

If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys, and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

Dated on March 9, 2016.

  
\_\_\_\_\_  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flugler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

**EXHIBIT A**

YOU ARE REQUESTED to bring the following documents:

**Definitions**

"Documents" shall mean and include all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, specifically including all letters, emails, text messages, phone messages, notes, deed, title reports, or written communication of any kind—stored in any medium whether in paper or electronic format.

"Property" shall mean 7020 Lions Head Lane, Boca Raton, Florida 33496.

"Eliot" shall mean Eliot Ivan Bernstein, including any agents, employees or others acting on his behalf.

"Stansbury" shall mean William Elwood "Bill" Stansbury, together with his wife Eileen B. Stansbury and any and all agents, employees or others acting on his behalf, including his attorney, Peter M. Feaman, Esquire, or anyone employed by or affiliated with the Law Offices of Peter M. Feaman. (This request does not seek any documents sent solely between William Stansbury and his counsel, and includes only documents which were sent to or received from a third-party outside of the attorney-client relationship.)

"Hall" shall mean Kevin R. Hall.

"Cox" shall mean Crystal Cox.

**Documents Requested**

1. All documents sent by Stansbury to Eliot concerning the Property.
2. All documents sent by Eliot to Stansbury concerning the Property.
3. All documents sent by Stansbury to Hall concerning the Property.
4. All documents sent by Hall to Stansbury concerning the Property.
5. All documents sent by Stansbury to Cox concerning the Property.

6. All documents sent by Cox to Stansbury concerning the Property.
7. All documents sent by Stansbury relating to the Property to anyone else other than Eliot, Hall or Cox.
8. All documents sent by Stansbury to Cox, or Cox to Stansbury, on any matter.
9. All documents sent to Cox or Hall by anyone for which copies (bcc: or cc:) were provided to Stansbury.
10. All documents, including checks, canceled checks, credit card receipts or other documents showing any payments made by Stansbury to or on behalf of Eliot or his family, from and after May 6, 2015 to the present.
11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
12. All documents relating to the Property, including any internet research, title reports, deeds, notes, pictures, or otherwise in the possession of Stansbury relating to the Property.
13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.

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

TED BERNSTEIN, as Trustee of the Shirley  
Bernstein Trust Agreement dated May 20, 2008,  
as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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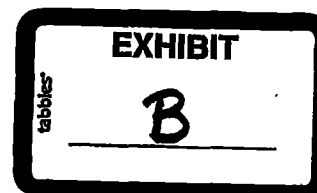
Defendants.

SUBPOENA DUCES TECUM TO WILLIAM STANSBURY FOR  
APPEARANCE AT EVIDENTIARY HEARING/TRIAL

THE STATE OF FLORIDA

TO: William Stansbury  
C/O Peter Feaman, Esq.  
PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Boulevard, Suite 9  
Boynton Beach, FL 33436

YOU ARE COMMANDED to appear before the Honorable John L. Phillips, Judge of the  
Circuit Court, at the North Branch of the Palm Beach County Courthouse, 3188 PGA Boulevard,



Palm Beach Gardens, FL 33410 *Courtroom 3* on **April 8, 2016** at **9:45 A.M.** to testify in this action and to have with you at that time, the documents outlined in **Exhibit A** attached to this Subpoena. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorneys and unless excused from this subpoena by these attorneys or the Court, you shall respond to this subpoena as directed.

DATED this 9<sup>th</sup> day of March, 2016.

  
ALAN B. ROSE, ESQ.  
For the Court

MRACHEK, FITZGERALD, ROSE,  
KONOPKA, THOMAS & WEISS, P.A.  
505 S. Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
Phone: 561-655-2250  
Fax: 561-655-5537  
*Attorneys for Plaintiff, Ted Bernstein*  
Alan B. Rose  
Florida Bar Number: 961825

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11. All documents evidencing any oral or written agreements between Stansbury and Eliot concerning (i) the Property; (ii) the Trusts or Estates of Simon Bernstein and/or Shirley Bernstein, (iii) the Illinois litigation; or (iv) any other subject matter.
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13. All documents concerning Lions Head Land Trust, Lions Head Land Trust, Inc., Mitchell and Deborah Huhem, Leilani Ochoada, Larry Pino, and anyone else involved in any way as an owner, participant, professional, lawyer, title examiner, etc. in the real estate transaction under which title of the Property transferred from the Shirley Bernstein Trust to the Lions Head Land Trust.



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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXSB

Plaintiff,

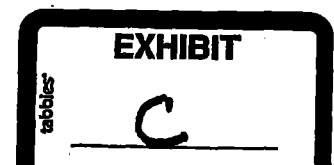
v.

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

Defendants.

**AMENDED COMPLAINT**

Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the "Trust"), pursuant to leave granted by and instructions from this Court to file an Amended Complaint, hereby files this Amended Complaint against and provides notice to those interested in the Trust and in the testamentary documents of Simon L. Bernstein and Shirley Bernstein, namely Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee



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

Plaintiff hereby sues Defendants, and states:

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.")
2. Shirley Bernstein died on December 8, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.
3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").
4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.
5. An authentic copy of Shirley's Trust is attached as Exhibit "A".
6. Shirley's Trust, Exhibit A, is clear and unambiguous.
7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.
8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

12. Simon L. Bernstein died on September 13, 2012.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document, which the Trustee first learned of in mid-January 2014, is not a valid amendment to Shirley's Trust, and has no bearing on this issue in this case.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one of more of my [Shirley's] lineal descendants and their spouses."

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets "shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, *per stirpes*."

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 ("Simon's Will").

25. An authentic copy of Simon's Will is attached as Exhibit "C".

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

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 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 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.

27. In essence, through his Special Power, 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 each such grandchild under Simon's Trust.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, *per stirpes*."

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different than the class of alternate/default beneficiaries (Shirley's "lineal descendants *then living*, *per stirpes*").

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus, it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment

by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

38. Article III.E.1 of Shirley's Trust states that, "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 [Shirley]".

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.



53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

#### Defendants and Potential Beneficiaries

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.<sup>1</sup> Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

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<sup>1</sup> Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

**COUNT I –DECLARATORY AND OTHER RELIEF**

66. Trustee restates the allegations contained in Paragraphs 1 to 65.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

72. There is no other adequate remedy at law.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

76. The Trustee's rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Trust, as aforesaid; (ii) instruct the trustee to whom to distribute the assets of Shirley's Trust; (iii) declare whether the power of appointment was validly exercised by Simon in accordance with his stated wishes; (iv) determine who are the proper recipients of distributions of the assets of the Shirley Trust pursuant to the power of

appointment, and if appropriate, direct the return of any funds distributed; (v) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**COUNT II – DECLARATORY JUDGMENT AS TO VALIDITY  
OF TESTAMENTARY DOCUMENTS**

79. Trustee restates the allegations contained in paragraphs 1-65 and 70-78.

80. This is an action, filed at the direction of the Court, for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- a. Shirley Bernstein Trust Agreement dated May 20, 2008 (“Shirley Trust”, attached as Exhibit “A”);
- b. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 (“Shirley First Amendment”, Exhibit “B”);
- c. Will of Simon L. Bernstein dated July 25, 2012 (“Simon Will”, Exhibit “C”);
- d. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 (“Simon Trust”, Exhibit “D”);
- e. Will of Shirley Bernstein dated May 20, 2008 (“Shirley Will”, Exhibit “E”).

(collectively, the “Testamentary Documents”).

81. Certain of the potential beneficiaries named herein have raised questions concerning the validity, authenticity and enforceability of the Testamentary Documents, including issues relating to the authenticity and genuineness of the signatures; the formalities of execution; and other issues.

82. The Trustee asserts that the Testamentary Documents are valid, genuine and enforceable, and requests that the Court enter a Final Judgment determining that the documents are valid, genuine and enforceable.

83. Specifically, Exhibits "A" and "E" were properly signed and executed by Shirley Bernstein on May 20, 2008, in the presence of two subscribing witnesses and a notary.

84. The Shirley Will has been admitted to probate.

85. Exhibit "B" was properly signed and executed by Shirley Bernstein on November 18, 2008, in the presence of two subscribing witnesses and a notary.

86. Exhibits "C" and "D" were properly signed and executed by Simon L. Bernstein on July 25, 2012, in the presence of two subscribing witnesses and a notary.

87. The Simon Will has been admitted to probate.

88. At the time of signing their respective Testamentary Documents, Shirley Bernstein and Simon L. Bernstein were competent and legally able to execute testamentary documents, and were not acting under any such undue influence or other disability as could cause the documents to be unenforceable under Florida law.

**WHEREFORE**, Plaintiff prays that this Court: (i) make a declaration and otherwise intervene in the administration of the Will and Trust as aforesaid; (ii) enter a judgment under the claim set forth in Count II for declaratory judgment that the Testamentary Documents are genuine, valid and fully enforceable according to their terms; (iii) determine who are the proper recipients of distributions and if appropriate, direct the return of any funds distributed; (iv) grant the Plaintiff Trustee his attorneys' fees and costs and other relief as may be just and proper.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 3rd day of October, 2014.

**ATTORNEYS FOR PLAINTIFF**

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By: /s/ Alan B. Rose  
Alan B. Rose  
Fla. Bar No. 961825

## SERVICE LIST

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Counsel for Lisa Sue Friedstein, individually and  
as trustee for her children, and as natural guardian  
for M.F. and C.F., Minors; Jill Marla Iantoni,  
individually and as trustee for her children, and as  
natural guardian for J.I. a minor

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE**  
**DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting



the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical, and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

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Attorneys for Ted S. Bernstein

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



**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B; Minors  
2753 NW 34th Street  
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\(john@jmorrisseylaw.com\)](mailto:John.P.Morrissey@jmorrisseylaw.com)  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.

Attn: Alan Rose from Kevin Hall 3.7.16 Re: Lions Head Land Trust

Kevin Hall

Mon 3/7/2016 3:55 PM

To: arose@mrachek-law.com <arose@mrachek-law.com>; wesgator@msn.com <wesgator@msn.com>; pfeaman@feamanlaw.com <pfeaman@feamanlaw.com>; leilaniochoada@gmail.com <leilaniochoada@gmail.com>; leilani@cmrei.com <leilani@cmrei.com>; schwagerlawfirm@live.com <schwagerlawfirm@live.com>; iviewit@gmail.com <iviewit@gmail.com>; iviewit@iviewit.tv <iviewit@iviewit.tv>; tourcandy@gmail.com <tourcandy@gmail.com>; caroline@cprogers.com <caroline@cprogers.com>; marc.garber@flastergreenberg.com <marc.garber@flastergreenberg.com>; marcrgarber@gmail.com <marcrgarber@gmail.com>; mmulrooney@venable.com <mmulrooney@venable.com>;

Cc: Kevin Hall <kh.itconsultingsalesoffices@gmail.com>;

📎 1 attachment (20 MB)

KRHRResearchLEILANIOCHOADALIONSHEADBOCA2016\_02\_18 12-33-12 kh.itconsultingsales Outgoing to +14076085448 .mp3;

Mr. Rose,

Leilani Ochoada was not contacted on "behalf" of Eliot I. Bernstein.

As you may recall, I came in to Eliot Bernstein's life as a "related" case person in New York after being introduced to other "related case" persons from someone from Washington, D.C., that I had first come into contact with on or around Sept. 2007 who was part of a group that was investigating complaints from persons who had contact with the U.S. Attorneys and FBI in New York.

Prior to my first call with this person from Washington, DC, I had already had direct personal experience and done work and events with Executive Detail of the NYS Police, a Governor ( Mario Cuomo ), US Secret Service Agents and persons protected by the US Secret Service, members of the US Senate including the US Senate Intelligence and Judiciary Committee person Diane Feinstein, other members of the US Judiciary Committee, US Armed Services Committee, US House Intelligence Committee, other former Governors and more. I also maintain a variety of relatives in State law enforcement positions and contacts in both law enforcement and the military as well.

During this first call this person from Washington, DC indicated he had done work for the US Justice Department, specifically the IRS and the US Postal Inspector's Office, asked me if I was aware of DOJ Agents with greater powers and authority over regular FBI Agents, and this person was directly involved in corruption between the NYS Discipline and Bar Committees and Appellate Division Departments specifically focusing on Manhattan and Wall Street attorneys and, to the best of my recollection, inquired during this first call if I had knowledge of the "Iviewit" case which at that time in 2007 I had never heard of before. This person from Washington, DC was later determined to have also been involved in cases out of Chicago and Boston and other cases in Florida including Estate cases in Palm Beach county. I have maintained communications with this person from Wash, DC. as needed since 2007 and was on the phone with him and others in relation to activities of the US Attorney for the Southern District of New York as recently as late January 2016 and was on the phone with him in relation to Estate corruption cases with Florida and NY ties just a week or so ago with several parties having been involved with NY's Moreland Commission.

I am sure by now you have reviewed my LinkedIn profile and determined I maintain rights in "Iviewit" interests and perhaps have reviewed the Complaint to the SEC of 2009 and Petition to the White House and White House Counsel's Office and the US Attorney General's Office and Federal agencies I have been involved with in furtherance of my interests in "Iviewit"

I was just on the phone today, Monday, March 7, 2016 at or around 2 pm EST with the FBI and specifically provided Leilani Ochoada's name and phone number as someone I had spoken to on or about Feb. 18th, 2016 and that several days after this the body of Mitch Huhem was allegedly found deceased at the St. Andrews Boca Raton, FL property and where issues of Witnesses who may be in danger etc were raised as Eliot Bernstein previously had his mini-van Car-bombed and apparently or allegedly your client Ted Bernstein raised a suggestion in Sept. of 2012 that Simon Bernstein may have been poisoned or murdered the night of his passing and sought an autopsy and coroner's

002379

EXHIBIT

investigation and allegedly reported this to the Palm Beach County Sheriff's Dept.

For the record, Eliot I. Bernstein never asked, instructed, authorized or directed me to have any contact with Leilani Ochoada or had any knowledge I was doing so at the time. I did this on my own initiative after getting information from William Stansbury about the Deed Transfer on file that you apparently signed as a Notary and Witness regarding the St. Andrews Boca Raton, Florida property and then from information I personally looked up at [www.sunbiz.org](http://www.sunbiz.org) where I quickly found:

1) [www.sunbiz.org](http://www.sunbiz.org) showed the name of the Registered Agent for Lions Head Land Trust Inc. as a dissolved company since 1997; I then had a subsequent call to the Florida Secretary of State where a person confirmed this filing of Lions Head Land Trust Inc. should "not have been overlooked" by Internal Florida Secretary of State examiners and was initiating a request to the Examiner and an investigation with her Director as she worked in the Director's Office;

2) My own initiated google searches showed the Tallahassee, FL address listed with the Secretary of State for Lions Head Land Trust Inc came up to a business with a DIFFERENT name and a phone call to that Business initiated again by myself at my own direction on Feb. 18th had the person working there claiming Any use of their Tallahassee, FL address was not proper by Lions Head Land Trust, Inc. and that their company was not ISL, Inc. as indicated in the Lions Head Land Trust Inc filings;

3) whereupon a further google search that I, KRH, personally did and made of my own free will and volition and upon my own direction having Interests in "Iviewit", I then reached a business named CMREI in Orlando, FL whereupon I spoke with a person who went by the name of Leilani Ochoada who claimed to know Nothing about the Lions Head Land Trust filing, thought it may be Identity theft, had not Authorized this at all, had never lived in Boca Raton, FL, never bought any property and was not aware of it etc etc.

4) I informed Eliot Bernstein that Leilani Ochoada said she would come forward with a Sworn Statement and even do a Recorded call giving proper consent to the call later that day as she claimed she was Not a Buyer of this property and had no knowledge of it and provided no consent to anyone to do so in her name.

Thus, later that same day at my Suggestion Leilani Ochoada agreed to get on a Recorded Call whereupon I INITIATED a Call to Eliot Bernstein after Leilani Ochoada was on the call and Eliot Bernstein already had reason to believe this person was NOT a Buyer or Involved with Lions Head Land Trust Inc. and instead was a Victim of some type of Fraud.

Leilani Ochoada agreed to have a draft of her statement typed up of the call she was having with myself and Eliot Bernstein who I initiated on to the call and the draft of her Statement was as follows:

**Leilani Statement** which she confirmed was correct by email:

Leilani has:

- \* no knowledge of Lions Head Land Trust, Inc. at all
- \* never authorized anyone to use her name as an Incorporator
- \* until Feb. 18th 2016 had no knowledge any entity was incorporated by filings at the Fla Secretary of State under her name and had no involvement with any land transaction involving 7020 Lions Head Lane, Boca Raton, FL
- \* initially believed it was some form of identity theft
- \* never lived at any Boca Raton, FL address in general and never at 7020 Lions Head Land Trust Inc.
- \* never knew about any land deal with Mitch Huhem Laurence Pino or anything related to this property
- \* no absolutely nothing about the Articles of Incorporation and the addresses and companies named there
- \* consider it unauthorized fraudulent use of her name
- \* attorney Laurence Pino never had Leilani's permission to incorporate any entity using her name as an Incorporator either by signed document or Electroncially

\* Pino has not been able to produce any written document that you allegedly signed with his office

\* Pino's Exec Assistant Cathy can not find Any document signed by Leilani after reviewing the files

So, Mr. Rose, I have been told you have been suggesting in legal papers that Leilani Ochoada is a "Buyer" at the St. Andrew's property? Is this True? She certainly never claimed to me that she was a "Buyer" in any sense and as shown by her statement drafted above quite to the contrary. Thus, are you claiming Leilani is the "Buyer" in this situation? To facilitate review, I have attached the MP3 Recording of the Call that both Leilani Ochoada and Eliot Bernstein agreed and consented to have Recorded.

Please note that I have copied this communication to William Stansbury and his attorney Peter Feaman and Leilani herself and Eliot and the attorney from Texas Candice Schwager and other attorney contacts of Eliot and others in order to quickly clarify matters and put the issues to rest.

I am curious, however, if you found any of the "Iviewit Stock" that Simon Bernstein had when you were at the 7020 Lions Head Lane Boca Raton, FL home or if you know where all those Files and Records went?

Thank you in advance for your cooperation.

Glad I could be of assistance.

Regards,



Kevin R. Hall  
IT Consulting Sales Offices  
P.O. Box 756  
Kinderhook, NY 12106  
518-755-8128 Cell  
518-635-0668 office  
Skype ID = kh.itconsultingsales  
[kh.itconsultingsalesoffices@gmail.com](mailto:kh.itconsultingsalesoffices@gmail.com)

**CONFIDENTIALITY NOTICE:**

This message and any attachments are covered by the Electronic Communications Privacy Act, 18 U.S.C. SS 2510-2521. This e-mail message is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message or call (518) 635-0668. If you are the intended recipient but do not wish to receive communications through this medium, please so advise the sender immediately.

On Mon, Mar 7, 2016 at 12:55 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

Kevin R. Hall

IT Consulting Sales Offices

P.O. Box 756

Kinderhook, NY 12106

002381

Dear Mr. Hall:

You may recall that I represent Ted S. Bernstein, Trustee.

I am writing to confirm that you were you involved in contacting Leilani Ochoada on behalf of Eliot Bernstein to obtain information on the trust which purchased the Bernstein residence at 7020 Lions Head Lane?

Can you share you confirm that? And, are you authorized to advise what you learned from that call or would we need to depose Mr. Eliot Bernstein?.

Also, can you confirm that Eliot Bernstein was on the telephone with you and spoke directly to Ms. Ochoada?

Thanks in advance for responding.

Alan Rose

Counsel for Successor Trustee of Shirley Bernstein Trust Agreement

IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

---

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that the undersigned attorney for William Stansbury has called up for hearing the following matter:

**Matter:** Motion for Protective Order as to Deposition of William Stansbury and Appearance at Evidentiary Hearing/Trial

**Date:** April 5, 2016

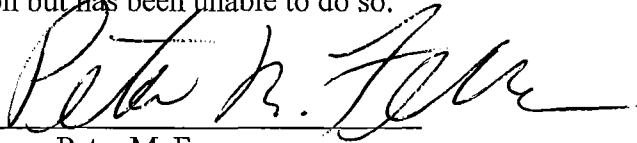
**Time:** 8:30 a.m.

**Place:** Honorable John L. Phillips  
NORTH COUNTY COURTHOUSE  
3188 PGA Boulevard, Courtroom 3  
Palm Beach Gardens, FL 33410

**Certification Pursuant to Local Rule 4 and Rule 2.215(e), Fla. R. Jud. Admin.:**

\_\_\_\_\_ Counsel has conferred with all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.

\_\_\_\_\_ Counsel has made reasonable efforts to confer with all parties who may be affected by the relief sought in the motion but has been unable to do so.

  
Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 22 day March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
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**John P. Morrissey, Esq.**  
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*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

**Pamela Beth Simon**  
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Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

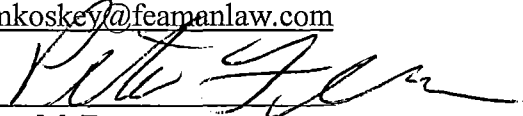
**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
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Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)



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[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By:   
Peter M. Feaman  
Florida Bar No. 0260347

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Plaintiff(s)

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

Related Cases:  
502011CP00653XXXXSB  
502014CA014637XXXXMB  
502014CP002815XXXXSB  
502015CP001162XXXXNB  
502015CP002717XXXXNB

v.

**NOTICE OF APPEAL**

ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

ELIOT BERNSTEIN

v.

ESTATE OF SIMON BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

**NOTICE OF APPEAL**

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th )  
District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in  
the Probate Division dated March 01, 2016 titled "ORDER ON SUCCESSOR TRUSTEE'S

MOTION TO APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS" and hereby appeals from each and every part of said Order.

Dated: March 29, 2016

/s/Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 29th day of March, 2016.

By: /s/ Eliot Ivan Bernstein  
Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS**

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Peter M. Feaman, Esq. Peter M. Feaman, P.A. 3695 West Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 (561) 734-5552 -Telephone (561) 734-5554 -Facsimile	Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com

<p>Email: <a href="mailto:service@feamanlaw.com">service@feamanlaw.com</a>:  <a href="mailto:mkoskey@feamanlaw.com">mkoskey@feamanlaw.com</a></p>	
<p>Gary R. Shendell, Esq.        Kenneth S. Pollock, Esq.        Shendell &amp; Pollock, P.L.        2700 N. Military Trail,        Suite 150        Boca Raton, FL 33431        (561)241-2323 - Telephone (561)241-2330-Facsimile        Email: <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p>	<p>Counter Defendant        Robert Spallina, Esq.        Donald Tescher, Esq.        Tescher &amp; Spallina        925 South Federal Hwy., Suite 500        Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq.        Joielle A. Foglietta, Esq.        Ciklin Lubitz Martens &amp; O'Connell        515 N. Flagler Dr., 20th Floor        West Palm Beach, FL 33401        561-832-5900-Telephone        561-833-4209 - Facsimile        Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>;  <a href="mailto:ifoglietta@ciklinlubitz.com">ifoglietta@ciklinlubitz.com</a>;  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>;  <a href="mailto:slobdell@ciklinliibitz.com">slobdell@ciklinliibitz.com</a></p>	<p>Counter Defendant        John J. Pankauski, Esq.        Pankauski Law Firm PLLC        120 South Olive Avenue        7th Floor        West Palm Beach, FL 33401  <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a>  <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>
<p>Counter Defendant        Mark R. Manceri, Esq., and        Mark R. Manceri, P.A.,        2929 East Commercial Boulevard        Suite 702        Fort Lauderdale, FL 33308  <a href="mailto:mrmlaw@comcast.net">mrmlaw@comcast.net</a></p>	<p>Counter Defendant        Donald Tescher, Esq.,        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein        880 Berkeley        Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant        TESCHER &amp; SPALLINA, P.A..        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein        Life Insurance Concepts, Inc.        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487  <a href="mailto:tbernstein@lifeinsuranceconcepts.com">tbernstein@lifeinsuranceconcepts.com</a></p>	<p>Counter Defendant        Alan B. Rose, Esq.        PAGE, MRACHEK, FITZGERALD, ROSE,        KONOPKA, THOMAS &amp; WEISS, P.A.        505 South Flagler Drive, Suite 600        West Palm Beach, Florida 33401        561-355-6991  <a href="mailto:arose@pm-law.com">arose@pm-law.com</a>  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p>
<p>Pamela Beth Simon        950 N. Michigan Avenue</p>	<p>Counter Defendant        L. Louis Mrachek, Esq.</p>

<p>Apartment 2603          Chicago, IL 60611          psimon@stpcorp.com</p>	<p>PAGE, MRACHEK, FITZGERALD, ROSE,          KONOPKA, THOMAS &amp; WEISS, P.A.          505 South Flagler Drive, Suite 600          West Palm Beach, Florida 33401          561-355-6991          lmrachek@mrachek-law.com</p>
<p>Jill Iantoni          2101 Magnolia Lane          Highland Park, IL 60035          jilliantoni@gmail.com</p>	<p>Counter Defendant          Pankauski Law Firm PLLC          120 South Olive Avenue          7th Floor          West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein          2142 Churchill Lane          Highland Park, IL 60035          lisa.friedstein@gmail.com          lisa@friedsteins.com</p>	<p>Dennis McNamara          Executive Vice President and General Counsel          Oppenheimer &amp; Co. Inc.          Corporate Headquarters          125 Broad Street          New York, NY 10004          800-221-5588          Dennis.mcnamara@opco.com          info@opco.com</p>
<p>Dennis G. Bedley          Chairman of the Board, Director and Chief Executive          Officer          Legacy Bank of Florida          Glades Twin Plaza          2300 Glades Road          Suite 120 West – Executive Office          Boca Raton, FL 33431          info@legacybankfl.com          DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq.          President          Oppenheimer Trust Company of Delaware          405 Silverside Road          Wilmington, DE 19809          302-792-3500          hunt.worth@opco.com</p>
<p>James Dimon          Chairman of the Board and Chief Executive Officer          JP Morgan Chase &amp; CO.          270 Park Ave. New York, NY 10017-2070          Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson          President &amp; Chief Executive Officer          Wilmington Trust Company          1100 North Market Street          Wilmington, DE 19890-0001          nwolfson@wilmingtontrust.com</p>
<p>William McCabe          Oppenheimer &amp; Co., Inc.          85 Broad St Fl 25          New York, NY 10004          William.McCabe@opco.com</p>	<p>STP Enterprises, Inc.          303 East Wacker Drive          Suite 210          Chicago IL 60601-5210          psimon@stpcorp.com</p>
<p>Charles D. Rubin          Managing Partner          Gutter Chaves Josepher Rubin Forman Fleisher Miller          PA          Boca Corporate Center          2101 NW Corporate Blvd., Suite 107          Boca Raton, FL 33431-7343</p>	<p>Ralph S. Janvey          Krage &amp; Janvey, L.L.P.          Federal Court Appointed Receiver          Stanford Financial Group          2100 Ross Ave, Dallas, TX 75201          rjanvey@kjllp.com</p>

<p>crubin@floridatx.com</p>	
<p>Kimberly Moran        Tescher &amp; Spallina, P.A.        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles        Life Insurance Concepts        950 Peninsula Corporate Circle        Suite 3010        Boca Raton, FL 33487        lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin        CBIZ MHM, LLC        1675 N Military Trail        Fifth Floor        Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC        General Counsel        6480 Rockside Woods Blvd. South        Suite 330        Cleveland, OH 44131        ATTN: General Counsel        generalcounsel@cbiz.com        (216)447-9000</p>
<p>Albert Gortz, Esq.        Proskauer Rose LLP        One Boca Place        2255 Glades Road        Suite 421 Atrium        Boca Raton, FL 33431-7360        agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company        A member of WiltonRe Group of Companies        187 Danbury Road        Wilton, CT 06897        cstroup@wiltonre.com</p>
<p>Estate of Simon Bernstein        Brian M O'Connell Pa        515 N Flagler Drive        West Palm Beach, FL 33401        boconnell@ciklinlubitz.com</p>	<p>Counter Defendant        Steven Lessne, Esq.        Gray Robinson, PA        225 NE Mizner Blvd #500        Boca Raton, FL 33432        steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr.        President &amp; Managing Director        Gray Robinson, PA        225 NE Mizner Blvd #500        Boca Raton, FL 33432        biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq.        Gunster, Yoakley &amp; Stewart, P.A.        777 South Flagler Drive, Suite 500 East        West Palm Beach, FL 33401        Telephone: (561) 650-0545        Facsimile: (561) 655-5677        E-Mail Designations:        slessne@gunster.com        jhoppel@gunster.com        eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC        Wells Fargo Plaza        925 South Federal Hwy Suite 500        Boca Raton, Florida 33432        dtescher@tescherspallina.com</p>	<p>David Lanciotti        Executive VP and General Counsel        LaSalle National Trust NA        CHICAGO TITLE LAND TRUST COMPANY, as        Successor        10 South LaSalle Street        Suite 2750        Chicago, IL 60603        David.Lanciotti@ctt.com</p>

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Brian Moynihan  
Chairman of the Board and Chief Executive Officer  
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Phone:(980) 335-3561

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or in the Interest Of  
vs.  
Tescher & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698X2

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. income tax return.)  
Are you Married? / Yes No Does your Spouse Work?... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknown</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one: I  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No **NO**

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 20 14.  
09/30/1963 68958008  
Date of Birth Driver's License or ID Number

Eliot Bernstein  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-246-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

Kelly Gold Frank



Kelly Gold Frank  
COMMISSION # FF0C0732  
EXPIRES: MAR. 25, 2017  
WWW.AARONNOTARY.COM

RECEIVED, 1/6/2016 9:14 AM, Clerk, Fourth District Court of Appeal



**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 6 day of JAN, 2016

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_



IN THE CIRCUIT COURT OF THE  
15<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
PALM BEACH COUNTY

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,  
Plaintiff,

PROBATE DIVISION  
CASE NO.: 502014CP003698XXXXNB  
DIVISION: IH

v.

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

---

**NOTICE OF CANCELLATION OF HEARING**

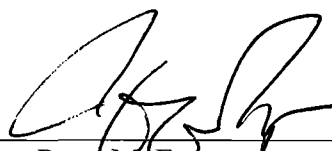
PLEASE TAKE NOTICE that the undersigned attorney for William Stansbury has cancelled the following hearing:

**Matter:** Motion for Protective Order as to Deposition of William Stansbury and Appearance at Evidentiary Hearing/Trial

**Date:** April 5, 2016

**Time:** 8:30 a.m.

**Place:** Honorable John L. Phillips  
NORTH COUNTY COURTHOUSE  
3188 PGA Boulevard, Courtroom 3  
Palm Beach Gardens, FL 33410



---

Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 30<sup>th</sup> day March, 2016:

**Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors**  
2753 Northwest 34<sup>th</sup> Street  
Boca Raton, Florida 33434  
Email: [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

**Alan Rose, Esquire**  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, Florida 33401  
Email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)

**John P. Morrissey, Esq.**  
330 Clematis Street, Suite 213  
West Palm Beach, Florida 33401  
Email: [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)  
*Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein*

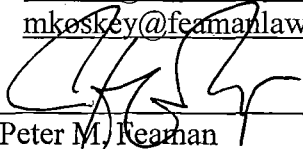
**Pamela Beth Simon**  
303 East Wacker Drive, Suite 2725  
Chicago, Illinois 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein**  
Email: [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

**Brian M. O'Connell, Esquire**  
**Joielle A. Foglietta, Esq.**  
Ciklin, Lubitz, Martens & O'Connell  
515 North Flagler Drive, 20<sup>th</sup> Floor  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com)  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor**  
Email: [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

PETER M. FEAMAN, P.A.  
3695 West Boynton Beach Blvd., #9  
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Telephone: (561) 734-5552  
Facsimile: (561) 734-5554  
Service: [service@feamanlaw.com](mailto:service@feamanlaw.com)  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)

By:   
Peter M. Feaman  
Florida Bar No. 0260347

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

---

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR  
ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

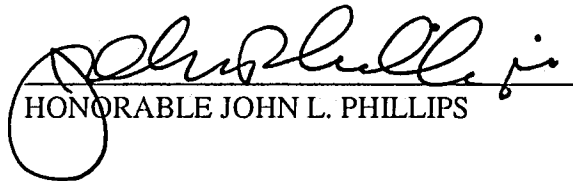
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: Attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of  
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2753 NW 34th Street  
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(561) 886-7628 - Cell  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for  
her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)



**RETURN OF SERVICE**

State of Florida

County of Palm Beach

15th Circuit Court

Case Number: 502014CP003698XXXXNBIJ Court Date: 4/8/2016 9:45 am



Plaintiff:

**TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended**

ROC2016005245

vs.

Defendant:

**ALEXANDRA BERNSTEIN, et al.,**

For:

Alan B. Rose  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 S. Flagler Drive  
Suite 600  
West Palm Beach, FL 33401

FILED  
2016 APR -4 PM 3:30  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
CIRCUIT PROBATE 2

Received by Pennie Atwell on the 10th day of March, 2016 at 12:57 pm to be served on **Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434.**

I, Pennie Atwell, do hereby affirm that on the **17th day of March, 2016 at 4:30 pm, I:**

**SUBSTITUTE RESIDENTIAL:** served by delivering a true copy of the **Subpoena Duces Tecum and Exhibit A** with the date and hour of service endorsed thereon by me, to: **Mrs. Bernstein as Spouse/Co-Resident**, who was fifteen (15) years of age or older, resided at the time of service **2753 NW 34th Street, Boca Raton, FL 33434**, which was also **Eliot Bernstein's** usual place of abode, and informed said person of the contents therein, in compliance with Florida Statute 48.031 or other state statute as applicable.

**Description** of Person Served: Age: 45, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 150, Hair: Blonde, Glasses: N

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes.

\_\_\_\_\_  
**Pennie Atwell**  
Process Server #931

**Rock Legal Services & Investigations Inc**  
2048 Ponce De Leon Avenue  
West Palm Beach, FL 33407  
(561) 296-7574

Our Job Serial Number: ROC-2016005245  
Ref: Bernstein v. Bernstein

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

CASE NO.: 50-2014-CP-003698-XXXX-NB

FOURTH DISTRICT CASE NO.: 4D16-222

ELIOT IVAN BERNSTEIN  
Appellant(s),

VS.

THEODORE STUART BERSTEIN AS TRUSTEE OF THE SHIRLEY TRUST  
Appellee(s)

**FILED**  
APR 06 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

# INDEX TO RECORD ON APPEAL

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THEODORE STUART BERSTEIN AS TRUSTEE OF THE SHIRLEY TRUST  
tberstein@lifeinsuranceconcepts.com

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

---

Record on Appeal Index  
Wednesday, April 06, 2016

Case #: 502014CP003698XXXXNB  
Case Description: TED BERNSTEIN

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04/06/16	PROGRESS DOCKET	0008-0012
08/06/14	COMPLAINT: F/B TED BERNSTEIN E-FILED Filed by PLAINTIFF TED BERNSTEIN	0013-0065
08/20/14	AGREED ORDER: AGREED ORDER ON ELIOT BERNSTEIN'S MOTION FOR EMERGENCY INTERI	0066-0069
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08/29/14	MOTION TO WITHDRAW: AS COUNSEL FOR TED BERNSTEIN, F/B: PANKAUSKI LAW FIRM E	0079-0081
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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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**Record on Appeal Index  
Wednesday, April 06, 2016**

**Case #: 502014CP003698XXXXNB  
Case Description: TED BERNSTEIN**

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PETITIONER	#17 CORRESPONDENCE FROM ROBERT SPALLINA TO SIMON BERNSTEIN DTD 7	#17	1917-1918
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Case Description: TED BERNSTEIN

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4	8/7/2014		ADDITIONAL COMMENTS
5	8/7/2014		RECEIPT FOR PAYMENT
6	8/8/2014		SUMMONS ISSUED
7	8/12/2014		RECEIPT FOR PAYMENT
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9	8/22/2014		SUBPOENA RETURNED / SERVED
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12	8/25/2014		SUMMONS ISSUED
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14	8/26/2014		RECEIPT FOR PAYMENT
15	8/26/2014		NOTICE OF HEARING
16	8/29/2014		MOTION TO WITHDRAW
17	9/3/2014		MOTION
18	9/3/2014		SUMMONS ISSUED
19	9/3/2014		SUMMONS ISSUED
20	9/3/2014		SERVICE RETURNED (NUMBERED)
21	9/5/2014		CROSS/COUNTER/3RD - CP,GA,MH
22	9/5/2014		APPL AND AFF OF INDIGENCY
23	9/5/2014		ANSWER
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40	11/24/2014		MOTION FOR DEFAULT
41	11/24/2014		NOTICE
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43	11/25/2014		REQUEST TO PRODUCE
44	11/25/2014		REQUEST TO PRODUCE

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#	Effective Date	Count	Description
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46	11/25/2014		NOTICE OF SERVICE
47	11/26/2014		AFFIDAVIT
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49	12/5/2014		PETITION
50	12/30/2014		MOTION TO DISMISS
51	1/8/2015		NOTICE OF HEARING
52	1/12/2015		MOTION
53	1/15/2015		NOTICE OF HEARING
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56	2/5/2015		ORDER
57	2/6/2015		NOTICE OF HEARING
58	2/17/2015		ANSWER & AFFIRMATIVE DEFENSES
59	2/24/2015		MOTION
60	2/27/2015		MOTION TO STRIKE
61	3/13/2015		NOTICE OF HEARING
62	3/21/2015		NOTICE
63	3/23/2015		MOTION
64	3/23/2015		NOTICE OF HEARING
65	3/25/2015		NOTICE OF HEARING
66	3/31/2015		ORDER GRANTING
67	4/2/2015		MOTION
68	4/2/2015		NOTICE OF HEARING
69	4/8/2015		ORDER
70	4/15/2015		MOTION
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72	4/17/2015		NOTICE OF HEARING
73	4/28/2015		NOTICE OF HEARING
74	5/5/2015		ORDER
75	5/5/2015		ORDER
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77	5/6/2015		ORDER
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79	5/14/2015		PETITION
80	5/18/2015		ORDER DENYING
81	5/19/2015		ORDER OF RECUSAL
82	5/19/2015		NOTICE OF REASSIGNMENT
83	5/20/2015		ANSWER & AFFIRMATIVE DEFENSES
84	5/26/2015		ORDER DENYING
85	6/10/2015		TRUE COPY
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87	6/10/2015		TRUE COPY
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#	Effective Date	Count	Description
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90	6/18/2015		NOTICE OF UNAVAILABILITY
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92	10/16/2015		TRUE COPY
93	11/13/2015		NOTICE
94	11/13/2015		NOTICE
95	11/20/2015		NOTICE OF MEDIATION
96	11/20/2015		WITNESS LIST
97	11/20/2015		EXHIBIT LIST
98	11/30/2015		CERTIFICATE
99	11/30/2015		NOTICE OF MEDIATION
100	11/30/2015		EVIDENCE/EXHIBIT LIST FILED
101	12/1/2015		PETITION
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103	12/4/2015		PETITION
104	12/4/2015		NOTICE
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116	12/23/2015		NOTICE OF UNAVAILABILITY
117	12/23/2015		NOTICE OF UNAVAILABILITY
118	12/28/2015		EMERGENCY MOTION
119	12/28/2015		EMERGENCY MOTION
120	12/31/2015		MOTION
121	12/31/2015		MOTION
122	1/4/2016		ORDER DENYING
123	1/4/2016		PETITION FOR APPOINTMENT
124	1/4/2016		NOTICE OF HEARING
125	1/5/2016		NOTICE OF HEARING
126	1/5/2016		NOTICE OF APPEAL
127	1/5/2016		APPL AND AFF OF INDIGENCY
128	1/5/2016		MOTION
129	1/6/2016		MEMORANDUM
130	1/6/2016		OBJECTION
131	1/6/2016		OBJECTION
132	1/7/2016		EXHIBIT LIST

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Case Description: TED BERNSTEIN

#	Effective Date	Count	Description
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134	1/7/2016		CERTIFICATE OF SERVICE
135	1/7/2016		ORDER
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137	1/8/2016		TRUE COPY
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139	1/8/2016		ACKNOWLEDGMENT OF NEW CASE
140	1/8/2016		AUTOMATIC RECEIPT APPELLATE FILING
141	1/13/2016		RESPONSE TO:
142	1/13/2016		RESPONSE TO:
143	1/14/2016		NOTICE OF HEARING
144	1/15/2016		INACTIVE DIVISION
145	1/15/2016		INACTIVE DIVISION
146	1/15/2016		INACTIVE ATTORNEY
147	1/19/2016		OBJECTION
148	1/19/2016		NOTICE OF APPEAL CIVIL
149	1/19/2016		APPL AND AFF OF INDIGENCY
150	1/21/2016		AUTOMATIC RECEIPT APPELLATE FILING
151	1/21/2016		AUTOMATIC RECEIPT APPELLATE FILING
152	1/28/2016		NOTICE OF HEARING
153	1/28/2016		MOTION
154	2/3/2016		ORDER
155	2/9/2016		OBJECTION
156	2/9/2016		OBJECTION
157	2/10/2016		MOTION
158	2/10/2016		NOTICE OF HEARING
159	2/16/2016		MEMORANDUM
160	2/17/2016		ORDER DENYING
161	3/2/2016		ORDER
162	3/2/2016		RE-NOTICE OF HEARING
163	3/3/2016		MOTION
164	3/3/2016		RE-NOTICE OF HEARING
165	3/9/2016		NOTICE OF TAKING DEPOSITION
166	3/15/2016		MOTION FOR PROTECTIVE ORDER
167	3/15/2016		NOTICE
168	3/16/2016		OBJECTION
169	3/18/2016		MOTION FOR PROTECTIVE ORDER
170	3/22/2016		NOTICE OF HEARING
171	3/29/2016		NOTICE OF APPEAL CIVIL
172	3/29/2016		APPL AND AFF OF INDIGENCY
173	3/30/2016		NOTICE OF CANCELLATION
174	4/5/2016		DEFENSE EVIDENCE
175	4/5/2016		PETITIONER EVIDENCE
176	4/5/2016		PETITIONER EVIDENCE

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#	Effective Date	Count	Description
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178	4/5/2016		PETITIONER EVIDENCE
179	4/5/2016		PETITIONER EVIDENCE
180	4/5/2016		PETITIONER EVIDENCE
181	4/5/2016		PETITIONER EVIDENCE
182	4/5/2016		PETITIONER EVIDENCE
183	4/5/2016		PETITIONER EVIDENCE
184	4/5/2016		PETITIONER EVIDENCE
185	4/5/2016		PETITIONER EVIDENCE
186	4/5/2016		PETITIONER EVIDENCE
187	4/5/2016		PETITIONER EVIDENCE
188	4/5/2016		PETITIONER EVIDENCE
189	4/5/2016		PETITIONER EVIDENCE
190	4/5/2016		PETITIONER EVIDENCE
191	4/5/2016		DEFENSE EVIDENCE
192	4/5/2016		DEFENSE EVIDENCE
193	4/5/2016		PETITIONER EVIDENCE

**CERTIFICATE OF CLERK**

STATE OF FLORIDA        )

COUNTY OF PALM BEACH )

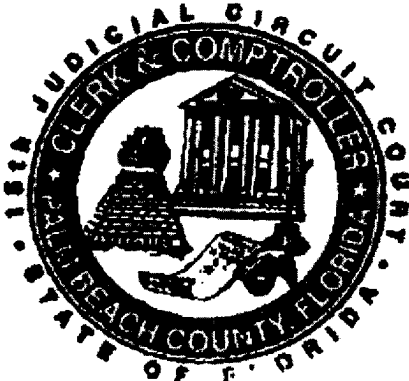
I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 1 to 2117 inclusive, consists of original papers and proceedings in Civil Action Case Number: 502014CP003698XXXXNB - TED BERNSTEIN 4D16-222 - ELIOT IVAN BERSTEIN V THEODORE STUART BERNSTEIN **as appears from the records and files of my office which have** been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,  
I have hereunto set my hand and affixed the seal  
of said Court this 6th day of     April     , 2016 A.D.

SHARON R. BOCK, Clerk of Circuit Court  
Palm Beach County, Florida

By: 

Catherine Markisen  
Deputy Clerk



**Markisen, Catherine R**

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**From:** COC\_DM-eappeals  
**Sent:** Wednesday, April 06, 2016 4:54 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-0222

-----Original Message-----

**From:** [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
**Sent:** Wednesday, April 06, 2016 4:31 PM  
**To:** COC\_DM-eappeals  
**Subject:** Pleading Accepted On Case: 16-0222

Your Received Records on case 16-0222 has been accepted and is now on the docket.

DCA Case No: 16-0222  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ET AL.  
LT Case No : 2011CP000653XXXXSB  
2014CP003698XXXXNB

**FILED**  
**APR 06 2016**  
**SHARON R. BOCK**  
**CLERK & COMPTROLLER**  
**CIRCUIT CIVIL DIVISION**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.



**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 7<sup>th</sup> day of April, 2016.

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

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Alan Rose, Esq.  
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Joielle A. Foglietta, Esq.  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee  
Of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division  
Case No.:2014CP003698 (IH)

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

Defendants.

---

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR  
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her  
**acceptance** of appointment as Guardian *ad litem* for Eliot  
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to  
this court's order dated April 4, 2016, and the terms and  
conditions set forth therein.

Page Two  
Case no.: 2014CP003698 (IH)

**CERTIFICATE OF SERVICE**

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7<sup>th</sup> day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC  
Diana Lewis  
2765 Tecumseh Drive  
West Palm Beach, FL 33409  
(561) 758-3017 Telephone  
Email: dzlewis@aol.com

By: /s/ Diana Lewis  
Diana Lewis (Fla. Bar No. 351350)  
(Mediator No.:32461 R)

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

Eliot Bernstein and Candice Bernstein,  
as Parents of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
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her children, and as natural guardian for M.F.  
and C.F., Minors; and Max Friedstein  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**RETURN OF SERVICE**

State of Florida

County of Palm Beach

15th Circuit Court

Case Number: 502014CP003698XXXXNBIJ Court Date: 4/8/2016 9:45 am



ROC2016005245

Plaintiff:

**TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended**

vs.

Defendant:

**ALEXANDRA BERNSTEIN, et al.,**

For:

Alan B. Rose  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 S. Flagler Drive  
Suite 600  
West Palm Beach, FL 33401

Received by Pennie Atwell on the 10th day of March, 2016 at 12:57 pm to be served on **Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434.**

I, Pennie Atwell, do hereby affirm that on the 17th day of March, 2016 at 4:30 pm, I:

**SUBSTITUTE RESIDENTIAL:** served by delivering a true copy of the **Subpoena Duces Tecum and Exhibit A** with the date and hour of service endorsed thereon by me, to: **Mrs. Bernstein as Spouse/Co-Resident**, who was fifteen (15) years of age or older, resided at the time of service **2753 NW 34th Street, Boca Raton, FL 33434**, which was also **Eliot Bernstein's** usual place of abode, and informed said person of the contents therein, in compliance with Florida Statute 48.031 or other state statute as applicable.

**Description of Person Served:** Age: 45, Sex: F, Race/Skin Color: White, Height: 5'5", Weight: 150, Hair: Blonde, Glasses: N

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true. I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the county in which service was effected in accordance with State Statutes.

\_\_\_\_\_  
Pennie Atwell  
Process Server #931

Rock Legal Services & Investigations Inc  
2048 Ponce De Leon Avenue  
West Palm Beach, FL 33407  
(561) 296-7574

Our Job Serial Number: ROC-2016005245  
Ref: Bernstein v. Bernstein

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

---

**ORDER ON PLAINTIFF'S AMENDED MOTION TO MODIFY FINAL ORDER  
APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

THIS CAUSE came before the Court for hearing on <sup>APRIL 8</sup> ~~February 4,~~ 2016 on Successor Trustee's  
*Amended Motion to Modify Final Order Approving Sale Dated May 6, 2015, for Further Injunctive*

*Relief, and for Order to Show Cause Why Eliot Bernstein Should Not Be Held in Contempt of Court*

*ELIOT BERNSTEIN made no appearance this date.*  
(the "Motion"). The Court, having considered the record, heard argument of counsel and being

otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Plaintiff's Motion, to the extent it seeks to modify the Final Order Approving Sale dated May 6, 2015 (the "Sale Order"), is GRANTED as provided in this Order.

2. The Court has been advised that the Trust's sale of real estate at 7020 Lions Head Lane, Boca Raton, Florida, in the St. Andrews Country Club (the "Property") closed on January 15, 2016. The net sales proceeds have been received by the Trustee in the Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. Trust Account, as required by the Sale Order.

3. The Trustee's request for permission to pay its counsel, Mrachek, Fitzgerald, Rose et al., the sum of \$40,000 as a reduced and discounted attorneys' fees solely from March 21, 2015,

through January 15, 2016, and relating solely to the approval and consummation of sale of the Property, is granted. The law firm has agreed to this reduction in the fees incurred in handling the litigation and closing relating to the real estate transaction. This amount may be paid immediately from the sale proceeds held in the law firm's trust account.

4. The Sale Order is modified to remove the requirement that a separate interest-bearing escrow account be opened. The \$25,000 portion of the sale proceeds required to be held in escrow as part of the sale may be held in the law firm's general IOTA account, and the remaining funds may be disbursed to the Trustee immediately.

5. The Trustee shall provide to all beneficiaries (i) a redacted copy of the HUD-1 (to protect the name of the buyer); (ii) an accounting of the sale; and (iii) proof of receipt of funds. This information shall be treated and considered as personal, private and confidential information which may not be shared by any recipient with anyone except: a parent, child, attorney, accountant or other professional advisor who has a legitimate need to know. In no event may any of these documents or the information contained in them relating to the sale be published, recorded, disseminated or posted on the internet by any of the beneficiaries or interested persons, including Eliot Bernstein and those acting in concert with any beneficiary or Eliot Bernstein.

6. All beneficiaries and interested persons, specifically including Eliot Bernstein, already have been ordered to take no action to interfere with or otherwise hinder or delay the sale of the House. Specifically, the Sale Order provides:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.



7. Now that the sale has closed, the beneficiaries Eliot Bernstein shall have no further involvement with the property at 7020 Lions Head Lane; shall not contact with the buyer; and shall not interfere with the buyer's quiet and peaceful enjoyment of the property. More specifically, all beneficiaries and interested persons, specifically including Eliot Bernstein, and those acting in concert with any beneficiary or Eliot Bernstein, are hereby enjoined from: (i) having any contact of any kind with the Buyers, including no contact by mail, email or telephone; (ii) attempting to learn the buyer's identity(s); (iii) publishing, publicizing or mentioning the buyer's identity(s) anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and (iv) from filing any action against buyer anywhere in the world (the "Injunction").

8. The buyer witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, after Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. The contract provides the following:

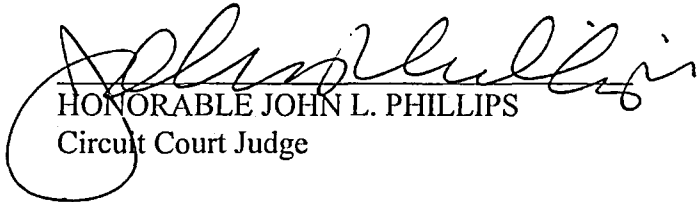
INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

---

<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

~~9. The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein. Information was published on the internet between the Court's earlier hearings,<sup>2</sup> but once the closing occurred and the Deed was recorded, Eliot and others have directly contacted persons affiliated with the Buyer, in an effort to learn and confirm the identity of the persons who beneficially own Lions Head Land Trust.~~

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 8 day of April, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

---

<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. Now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else.

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
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Counsel for Molly Simon, Alexandra Bernstein,  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
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Plaintiff,

v.

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

Defendants.

\_\_\_\_\_ /

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the April 8, 2016 *Order on Plaintiff's Amended Motion to Modify Final Order Approving Sale Dated May 6, 2016 and for Further Injunctive Relief*, has been served by electronic mail to all parties registered to receive Notice of Electronic Filing and by regular U.S. Mail to all other parties as indicated on the attached service list this 11<sup>th</sup> day of April, 2016, in the manner indicated.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 11<sup>th</sup> day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
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*Attorneys for Ted S. Bernstein*

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIH**

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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

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dated May 20, 2008, as amended,

Probate Division  
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Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

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**ORDER ON PLAINTIFF'S AMENDED MOTION TO MODIFY FINAL ORDER  
APPROVING SALE DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

THIS CAUSE came before the Court for hearing on <sup>APRIL 8</sup> ~~February 4, 2016~~ on Successor Trustee's  
*Amended Motion to Modify Final Order Approving Sale Dated May 6, 2015, for Further Injunctive  
Relief, and for Order to Show Cause Why Eliot Bernstein Should Not Be Held in Contempt of Court*

*ELIOT BERNSTEIN made no appearance this date.*  
(the "Motion"). The Court, having considered the record, heard argument of counsel and being  
otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. Plaintiff's Motion, to the extent it seeks to modify the Final Order Approving Sale dated May 6, 2015 (the "Sale Order"), is GRANTED as provided in this Order.
2. The Court has been advised that the Trust's sale of real estate at 7020 Lions Head Lane, Boca Raton, Florida, in the St. Andrews Country Club (the "Property") closed on January 15, 2016. The net sales proceeds have been received by the Trustee in the Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. Trust Account, as required by the Sale Order.
3. The Trustee's request for permission to pay its counsel, Mrachek, Fitzgerald, Rose et al., the sum of \$40,000 as a reduced and discounted attorneys' fees solely from March 21, 2015,

through January 15, 2016, and relating solely to the approval and consummation of sale of the Property, is granted. The law firm has agreed to this reduction in the fees incurred in handling the litigation and closing relating to the real estate transaction. This amount may be paid immediately from the sale proceeds held in the law firm's trust account.

4. The Sale Order is modified to remove the requirement that a separate interest-bearing escrow account be opened. The \$25,000 portion of the sale proceeds required to be held in escrow as part of the sale may be held in the law firm's general IOTA account, and the remaining funds may be disbursed to the Trustee immediately.

5. The Trustee shall provide to all beneficiaries (i) a redacted copy of the HUD-1 (to protect the name of the buyer); (ii) an accounting of the sale; and (iii) proof of receipt of funds. This information shall be treated and considered as personal, private and confidential information which may not be shared by any recipient with anyone except: a parent, child, attorney, accountant or other professional advisor who has a legitimate need to know. In no event may any of these documents or the information contained in them relating to the sale be published, recorded, disseminated or posted on the internet by any of the beneficiaries or interested persons, including Eliot Bernstein and those acting in concert with any beneficiary or Eliot Bernstein.

6. All beneficiaries and interested persons, specifically including Eliot Bernstein, already have been ordered to take no action to interfere with or otherwise hinder or delay the sale of the House. Specifically, the Sale Order provides:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.



7. Now that the sale has closed, the beneficiaries Eliot Bernstein shall have no further involvement with the property at 7020 Lions Head Lane; shall not contact with the buyer; and shall not interfere with the buyer's quiet and peaceful enjoyment of the property. More specifically, all beneficiaries and interested persons, specifically including Eliot Bernstein, and those acting in concert with any beneficiary or Eliot Bernstein, are hereby enjoined from: (i) having any contact of any kind with the Buyers, including no contact by mail, email or telephone; (ii) attempting to learn the buyer's identity(s); (iii) publishing, publicizing or mentioning the buyer's identity(s) anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and (iv) from filing any action against buyer anywhere in the world (the "Injunction").

8. The buyer witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, after Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. The contract provides the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

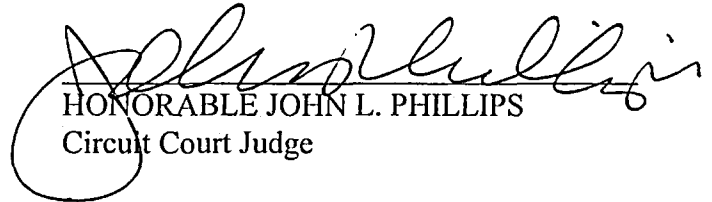
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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

~~9. The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein. Information was published on the internet between the Court's earlier hearings,<sup>2</sup> but once the closing occurred and the Deed was recorded, Eliot and others have directly contacted persons affiliated with the Buyer, in an effort to learn and confirm the identity of the persons who beneficially own Lions Head Land Trust.~~

JP

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 8 day of April, 2016.

  
HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. Now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else.

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

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children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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IN THE CIRCUIT/COUNTY COURT OF THE 15th JUDICIAL CIRCUIT  
IN AND FOR Palm Beach COUNTY, FLORIDA

Ted Bernstein  
Plaintiff/Petitioner or In the Interest Of  
vs.  
Eliot Bernstein  
Defendant/Respondent

CASE NO. 502014CP003698XX

502012CP004391XXXX  
502015CP001162XXXX  
502011CP000653XXXX  
502014CP003698XXXX  
502014CP002815XXXX  
502015CP002717XXXX  
502014CA014637XXXX

APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 3 dependents. (Include only those persons you list on your U.S. Income tax return.)  
Are you Married? Yes No Does your Spouse Work?...Yes No Annual Spouse Income? \$7296.00

2. I have a net income of \$0 paid weekly every two weeks semi-monthly monthly yearly other  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job Inventor Yes \$ No  
Social Security benefits Yes \$ No  
For you Yes \$ No  
For child(ren) Yes \$ No  
Unemployment compensation Yes \$ No  
Union payments Yes \$ No  
Retirement/pensions Yes \$ No  
Trusts Yes \$ No  
Veterans' benefits Yes \$ No  
Workers compensation Yes \$ No  
Income from absent family members Yes \$ No  
Stocks/bonds Yes \$ No  
Rental income Yes \$ No  
Dividends or interest Yes \$ No  
Other kinds of income not on the list Yes \$ No  
Gifts Yes \$ No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")  
Cash Yes \$ 0 No Savings account Yes \$ 0 No  
Bank account(s) Yes \$ 0 No Stocks/bonds Yes \$ 0 No  
Certificates of deposit or money market accounts Yes \$ 0 No Homestead Real Property\* Yes \$ 0 No  
Boats\* Yes \$ 0 No Motor Vehicle\* Yes \$ 0 No  
Non-homestead real property/real estate\* Yes \$ 0 No

\*show loans on these assets in paragraph 5

Check one: I DO DO NOT expect to receive more assets in the near future. The asset is INHERITANCE & ROYALTY

5. I have total liabilities and debts of \$28000 as follows: Motor Vehicle \$, Home \$, Other Real Property \$, Child Support paid direct \$, Credit Cards \$, Medical Bills \$, Cost of medicines (monthly) \$, Other \$28000

6. I have a private lawyer in this case..... Yes No NO

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s.775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 13 day of April, 2016  
09/30/1963 c6956008  
Date of Birth Driver's License or ID Number

Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-245-8588

2753 NW 34th St, Boca Raton, FL 33434  
Address, P O Address, Street, City, State, Zip Code

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME.  
THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.


ORDER DENYING MOTION FOR ORDER SHOW CAUSE

THIS CAUSE came before the Court for hearing on April 8, 2016, on the portion of Successor Trustee's *Amended Motion to Modify Final Order Approving Sale Dated May 6, 2015, for Further Injunctive Relief, and for Order to Show Cause Why Eliot Bernstein Should Not Be Held in Contempt of Court* (the "Motion") which sought entry of an Order to Show Cause. The Court, having considered the record, received evidence and heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. There is not clear and convincing evidence of a violation of the Final Order

Approving Sale dated May 6, 2015, because the injunctive provisions of that Order do not specifically address post-closing conduct. Thus, the request for a show cause order is denied.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 19 day of April, 2016.



HONORABLE JOHN L. PHILLIPS  
Circuit Court Judge

Copies to: Attached Service List

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

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[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

\_\_\_\_\_/

**TRUSTEE'S NOTICE OF COMPLIANCE WITH REQUIREMENTS OF  
APRIL 8, 2016, ORDER ON PLAINTIFF'S AMENDED MOTION TO MODIFY  
FINAL ORDER APPROVING SALE DATED MAY 6, 2015 ETC.**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, gives notice of compliance with the Court's Order dated April 8, 2016, as follows:

1. On April 25, 2016, the Trustee provided to each beneficiary: (i) a copy of the HUD-1; and (ii) proof of receipt of funds. In addition, the Trustee provided the signed contract addenda and a summary accounting of the transaction. Pursuant to the order, all of these documents were stamped CONFIDENTIAL and are to be treated as personal, private and confidential, and should not be shared with anyone in the world, nor posted on the internet.

WHEREFORE, the Trustee gives notice of compliance with the Court's order.



**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 25th day of April, 2016.

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Secondary: [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorneys for Ted S. Bernstein

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

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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(561) 833-0867 - Facsimile  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Pamela Beth Simon  
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Chicago, IL 60601  
Email: [psimon@stpcorp.com](mailto:psimon@stpcorp.com)

**NOTICE OF COMPLIANCE ONLY,  
WITHOUT COPIES OF DOCUMENT:**

Eliot Bernstein, individually  
2753 NW 34th Street  
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Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

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Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Plaintiff(s)

v.

ALEXANDRA BERNSTEIN; ET AL.

Defendant(s).

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

**NOTICE OF APPEAL**

ELIOT BERNSTEIN

v.

ESTATE OF SIMON BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

**NOTICE OF APPEAL**

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th )

District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in

the Probate Division dated April 04, 2016 titled "ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B."

and hereby appeals from each and every part of said Order.

Dated: May 02, 2016

**/s/Eliot Ivan Bernstein**  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 2nd day of May, 2016.

By: **/s/ Eliot Ivan Bernstein**  
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**SERVICE LIST**

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<p>Gary R. Shendell, Esq. Kenneth S. Pollock, Esq. Shendell &amp; Pollock, P.L. 2700 N. Military Trail, Suite 150 Boca Raton, FL 33431 (561)241-2323 - Telephone (561)241-2330-Facsimile Email: gary@shendellpollock.com ken@shendellpollock.com estella@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com</p>	<p>Counter Defendant Robert Spallina, Esq. Donald Tescher, Esq. Tescher &amp; Spallina 925 South Federal Hwy., Suite 500 Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O'Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900-Telephone 561-833-4209 - Facsimile Email: boconnell@ciklinlubitz.com; ifoglietta@ciklinlubitz.com; service@ciklinlubitz.com; slobdell@ciklinliibitz.com</p>	<p>Counter Defendant John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com</p>
<p>Counter Defendant Mark R. Manceri, Esq., and Mark R. Manceri, P.A., 2929 East Commercial Boulevard Suite 702 Fort Lauderdale, FL 33308 mrmlaw@comcast.net</p>	<p>Counter Defendant Donald Tescher, Esq., Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein 880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant TESCHER &amp; SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
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<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE,</p>

<p>Chicago, IL 60611 psimon@stpcorp.com</p>	<p>KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com</p>
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<p>Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Dennis McNamara Executive Vice President and General Counsel Oppenheimer &amp; Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>
<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer JP Morgan Chase &amp; CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson President &amp; Chief Executive Officer Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer &amp; Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatx.com</p>	<p>Ralph S. Janvey Krage &amp; Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>

<p>Kimberly Moran  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  k Moran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin  CBIZ MHM, LLC  1675 N Military Trail  Fifth Floor  Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC  General Counsel  6480 Rockside Woods Blvd. South  Suite 330  Cleveland, OH 44131  ATTN: General Counsel  generalcounsel@cbiz.com  (216)447-9000</p>
<p>Albert Gortz, Esq.  Proskauer Rose LLP  One Boca Place  2255 Glades Road  Suite 421 Atrium  Boca Raton, FL 33431-7360  agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company  A member of WiltonRe Group of Companies  187 Danbury Road  Wilton, CT 06897  cstroup@wiltonre.com</p>
<p>Estate of Simon Bernstein  Brian M O'Connell Pa  515 N Flagler Drive  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com</p>	<p>Counter Defendant  Steven Lessne, Esq.  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr.  President &amp; Managing Director  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq.  Gunster, Yoakley &amp; Stewart, P.A.  777 South Flagler Drive, Suite 500 East  West Palm Beach, FL 33401  Telephone: (561) 650-0545  Facsimile: (561) 655-5677  E-Mail Designations:  slessne@gunster.com  jhoppel@gunster.com  eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>	<p>David Lanciotti  Executive VP and General Counsel  LaSalle National Trust NA  CHICAGO TITLE LAND TRUST COMPANY, as  Successor  10 South LaSalle Street  Suite 2750  Chicago, IL 60603  David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese  Chairman</p>	<p>Brian Moynihan  Chairman of the Board and Chief Executive Officer</p>

Proskauer Rose LLP  
Eleven Times Square  
New York, NY 10036  
jleccese@proskauer.com

100 N Tryon St #170, Charlotte, NC 28202  
Phone:(980) 335-3561



IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or in the Interest Of  
vs.  
Tescher & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698X2

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. income tax return.)  
Are you Married? / Yes No Does your Spouse Work?... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknown</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one: I  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties *father's owed*

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No **NO**

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 20 14.  
09/30/1963 68958008  
Date of Birth Driver's License or ID Number

*[Signature]*  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-246-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

*[Signature]*



Kelly Gold Frank  
COMMISSION # FF000732  
EXPIRES: MAR. 25, 2017  
WWW.AARONNOTARY.COM

RECEIVED, 1/6/2016 9:14 AM, Clerk, Fourth District Court of Appeal

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 6 day of JAN, 2016

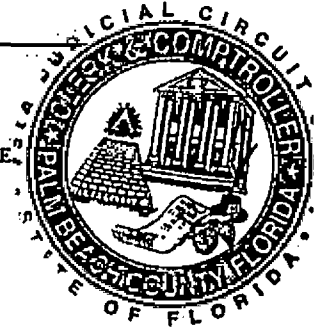
Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_



**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Tuesday, May 03, 2016 3:30 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-0064

-----Original Message-----

**From:** [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
**Sent:** Tuesday, May 03, 2016 2:34 PM  
**To:** COC\_DM-eappeals  
**Subject:** Pleading Accepted On Case: 16-0064

Your Notice of Appeal Filed on case 16-0064 has been accepted and is now on the docket.

DCA Case No: 16-0064  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE. ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**  
**MAY 03 2016**  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**Markisen, Catherine R**

---

**From:** Markisen, Catherine R  
**Sent:** Wednesday, May 04, 2016 8:49 AM  
**To:** tvaldez@qpwlaw.com  
**Subject:** FW: 2013CA009990/NOTICE OF APPEAL  
**Attachments:** 2013CA0099990.doc

**THIRD NOTICE**

**From:** Markisen, Catherine R  
**Sent:** Tuesday, February 16, 2016 10:07 AM  
**To:** tvaldez@qpwlaw.com  
**Subject:** FW: 2013CA009990/NOTICE OF APPEAL

**FILED**  
MAY 04 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**SECOND NOTICE**

**From:** Markisen, Catherine R  
**Sent:** Wednesday, January 06, 2016 11:06 AM  
**To:** 'tvaldez@qpwlaw.com'  
**Subject:** 2013CA009990/NOTICE OF APPEAL

NON COMPLIANCE WITH RJA 2.520

**Catherine Markisen**  
Court Specialist III  
Circuit Civil  
[CMarkisen@mypalmbeachclerk.com](mailto:CMarkisen@mypalmbeachclerk.com)

Constitutional Clerk & Comptroller  
*Serving the Citizens of Palm Beach County*  
205 N. Dixie Hwy  
West Palm Beach, FL 33401  
561 355-6091 Direct  
561 355-4643 Fax

[www.mypalmbeachclerk.com](http://www.mypalmbeachclerk.com)

**Tell us how we're doing at [www.mypalmbeachclerk.com/survey](http://www.mypalmbeachclerk.com/survey).**

 Follow us ON TWITTER  Become a fan ON FACEBOOK  Sign up for our E-NEWSLETTER

*Please be advised that Florida has a broad public records law, and all correspondence to me may be subject to disclosure. Under Florida public records laws email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.*

**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Thursday, May 05, 2016 1:09 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-1478

-----Original Message-----

From: [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
Sent: Thursday, May 05, 2016 12:00 PM  
To: COC\_DM-eappeals  
Subject: Pleading Accepted On Case: 16-1478

Your Determination of Indigent Status on case 16-1478 has been accepted and is now on the docket.

DCA Case No: 16-1478  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**  
MAY 05 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Thursday, May 05, 2016 1:09 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-1478

**FILED**  
**MAY 05 2016**  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

-----Original Message-----

**From:** [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [<mailto:eFile4DCA@FLCourts.org>]  
**Sent:** Thursday, May 05, 2016 12:00 PM  
**To:** COC\_DM-eappeals  
**Subject:** Pleading Accepted On Case: 16-1478

Your Notice of Appeal Filed on case 16-1478 has been accepted and is now on the docket.

DCA Case No: 16-1478  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.  
LT Case No : 2014CP003698XXXXNB

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

May 05, 2016

CASE NO.: 4D16-1478

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellant is directed to file, within fifteen (15) days from the date of this order, a conformed copy of the order being appealed. See Florida Rule of Appellate Procedure 9.110(d). This copy must contain a legible stamp from the clerk of the lower tribunal, showing the date and time the order being appealed was filed in that office.

Served:

cc: Lorin Louis Mrachek  
Gary R. Shendell  
Kenneth S. Pollock  
Peter Marshall Feaman  
Kimberly Moran  
Byrd "biff" F. Marshall, Jr.  
Lisa Friedstein  
Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin  
Ralph S. Janvey  
Joseph M. Leccese  
Brian Moynihan  
Clerk Palm Beach

Brian M. O'Connell  
Steven A. Lessne  
John Pankauski  
Donald R. Tescher  
Albert Gortz  
Charles D. Rubin  
Jill Iantoni  
Pamela Beth Simon  
James Dimon  
Neil Wolfson  
Lindsay Baxley  
Heritage Union Life Ins.  
Co.  
Hunt Worth

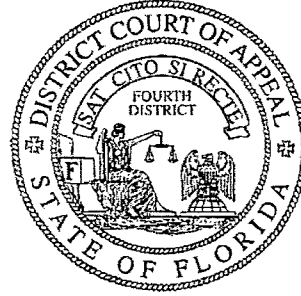
Mark R. Manceri  
John P. Morrissey  
Alan Benjamin Rose  
Joielle A. Foglietta  
Robert Spallina  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
Dennis McNamara  
William McCabe  
Stp Enterprises, Inc.  
T & S Registered Agents,  
Llc  
David Lanciotti

al

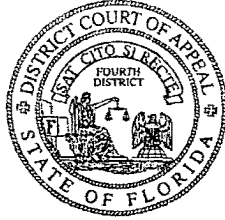
**FILED**  
MAY 05 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal







Fourth District Court of Appeal  
1525 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33401  
(561) 242-2000

**FILED**  
MAY 05 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**ACKNOWLEDGMENT OF NEW CASE**

DATE: May 05, 2016

STYLE: ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE,  
ETC., ET AL.

**4DCA#: 16-1478**

The Fourth District Court of Appeal has received the Notice of Appeal reflecting a filing date of May 2, 2016.

The county of origin is Palm Beach.

The lower tribunal case number provided is 2014CP003698XXXXNB.

The filing fee is waived.

Case Type: Probate Final

The Fourth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER and a physical address.

**ELECTRONIC FILING IS MANDATORY FOR ALL ATTORNEYS. Please visit [edca.4dca.org](http://edca.4dca.org) to register for eDCA, the court's electronic filing system.**

**ATTORNEYS WHO HAVE NOT REGISTERED FOR eDCA WILL NOT RECEIVE FURTHER PAPER DOCUMENTS FROM THE COURT**

cc: Lorin Louis Mrachek  
Gary R. Shendell  
Kenneth S. Pollock  
Peter Marshall Feaman  
Kimberly Moran  
Byrd "biff" F. Marshall, Jr.  
Lisa Friedstein  
Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin

Brian M. O'Connell  
Steven A. Lessne  
John Pankauski  
Donald R. Tescher  
Albert Gortz  
Charles D. Rubin  
Jill Iantoni  
Pamela Beth Simon  
James Dimon  
Neil Wolfson

Mark R. Manceri  
John P. Morrissey  
Alan Benjamin Rose  
Joielle A. Foglietta  
Robert Spallina  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
Dennis McNamara  
William McCabe  
Stp Enterprises, Inc.



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

June 09, 2016

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)

**BY ORDER OF THE COURT:**

Upon consideration of appellee's May 26, 2016 response, it is ORDERED that appellant's May 25, 2016 motion with specificity to order production of the full record and extend time to file initial brief is denied. Appellant shall file the initial brief within five (5) days from the date of this order.

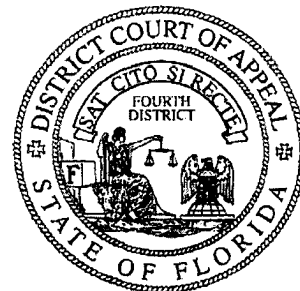
Served:

cc: Lorin Louis Mrachek	Brian M. O'Connell	Mark R. Manceri
Steven A. Lessne	John P. Morrissey	Kenneth S. Pollock
Alan Benjamin Rose	Peter Marshall Feaman	Donald R. Tescher
Joielle A. Foglietta	Charles D. Rubin	Eliot Ivan Bernstein
Lisa Friedstein	Jill Iantoni	Theodore Stuart Bernstein
Pamela Beth Simon	Dennis McNamara	Dennis G. Bedley
James Dimon	William McCabe	Gerald Lewin
Neil Wolfson	Stp Enterprises, Inc.	Ralph S. Janvey
Lindsay Baxley	T & S Registered Agents,	Joseph M. Leccese
Heritage Union Life Ins. Co.	Llc	Brian Moynihan
	David Lanciotti	
	Clerk Palm Beach	

kb

*Lon Weissblum*

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



**FILED**

JUN 09 2016

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

002459

IN RE: ESTATE OF SHIRLEY BERNSTEIN,  
Deceased.

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

WILLIAM E. STANSBURY,  
Plaintiff,

vs.

ESTATE OF SIMON L. BERNSTEIN; and BERNSTEIN FAMILY  
REALTY, LLC,  
Defendants.

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

vs.

ALEXANDRA BERNSTEIN, et al  
Defendants.

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO.:502011CP000653XXXXSB IY

CASE NO.: 502012CP004391XXXXNB IH

CASE NO.: 502012CA013933XXXX MB AA

CASE NO.: 502014CP003698XXXXNB IJ

NOTICE OF MEDIATION

Alan B. Rose, Esquire  
505 S. Flagler Dr., Suite 600  
West Palm Beach, Florida 33401  
(561) 355-6991  
[arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
[mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  
Attorney for Ted S. Bernstein

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925 S. Federal Highway, Suite 500  
Boca Raton, Florida 33432  
Phone: (561) 997-7008  
[Dtescher@tescherlaw.com](mailto:Dtescher@tescherlaw.com)  
[ddustin@tescherlaw.com](mailto:ddustin@tescherlaw.com)  
Former PR of the Estate of Simon L. Bernstein

Max Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
Beneficiary

Eliot Bernstein and  
Joshua, Jacob and Daniel Bernstein, Minors  
c/o Eliot and Candice Bernstein, Parents and Natural Guardians  
2753 N.W. 34<sup>th</sup> St.  
Boca Raton, Florida 33434  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) Pro Se

Jill Iantoni and  
Julia Iantoni, a Minor  
c/o Guy and Jill Iantoni, her Parents & Natural Guardians  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Robert Spallina, Esquire  
[rspallina@comcast.net](mailto:rspallina@comcast.net)  
Former PR of the Estate of Simon L. Bernstein

Brian M. O'Connell, Esquire  
Ashley Crispin Ackal, Esquire  
Ciklin Lubitz & O'Connell  
515 N. Flagler Drive., 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401 [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

John P. Morrissey, Esquire  
330 Clematis Street., Suite 213  
West Palm Beach, Florida 33401  
[john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com) Attorney for Molly Simon

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3695 Boynton Beach Blvd., Suite 9  
Boynton Beach, Florida 33436  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com) Attorney for William Stansbury

Gary R. Shendell, Esquire  
Kenneth S. Pollock, Esquire  
Matthew A. Tornincasa, Esquire  
2700 N. Military Trail, suite 150  
Boca Raton, Florida 33431  
Phone (561) 241-2323 Fax: (561) 241-2330  
[gary@shendellpollock.com](mailto:gary@shendellpollock.com) [estella@shendellpollock.com](mailto:estella@shendellpollock.com)  
[grs@shendellpollock.com](mailto:grs@shendellpollock.com) [ken@shendellpollock.com](mailto:ken@shendellpollock.com)  
[britt@shendellpollock.com](mailto:britt@shendellpollock.com) [grs@shendellpollock.com](mailto:grs@shendellpollock.com)  
[matt@shendellpollock.com](mailto:matt@shendellpollock.com) [robyne@shendellpollock.com](mailto:robyne@shendellpollock.com)  
[grs@shendellpollock.com](mailto:grs@shendellpollock.com) Attorney for Tescher and Spallina

Pamela Beth Simon  
950 N. Michigan Ave., Apt. 2603  
Chicago, IL 60611  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com) Beneficiary

Lisa Friedstein and  
Carley Friedstein, Minor  
c/o Jeffrey and Lisa Friedstein  
Parent and Natural Guardian  
2142 Churchill Lane  
Highland Park, IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com) [Lisa.friedstein@gmail.com](mailto:Lisa.friedstein@gmail.com) Beneficiary

Diana Lewis Guardian Ad Litem for  
Joshua, Jacob and Daniel Bernstein, Minors  
ADR & Mediation Services, LLC  
2765 Tecumseh Drive  
West Palm Beach, Florida 33409  
(561) 758-3017 [dzlewis@aol.com](mailto:dzlewis@aol.com)

YOU ARE HEREBY NOTIFIED, pursuant to the agreement of the parties, that a confidential Mediation Conference subject to the provisions of Florida Statutes Chapter 44 shall be held in this case as follows:

**MEDIATOR:** RONALD ALVAREZ  
**LOCATION:** Brian M. O'Connell, Esquire  
Ciklin Lubitz & O'Connell  
515 N. Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, Florida 33401

**DATE:** MONDAY, JULY 25, 2016

**TIME:** 10:00 AM - 5:00 PM

**PARTIES ARE ENCOURAGED TO  
SUBMIT WRITTEN MEDIATION  
SUMMARIES TO:**

[ron@matrixmediation.com](mailto:ron@matrixmediation.com)

**PRE PAYMENT REQUIRED**


A Full Day Seven Hours (7) has been reserved for this case.

**PLEASE REVIEW AND SIGN ATTACHED MEDIATION ENGAGEMENT CONFIRMATION  
RESERVED HOURS, RATES AND POLICY**

If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance, please contact Krista Garber, ADA Coordinator in the Administrative Office of the Court, Palm Beach County Courthouse, 205 North Dixie Highway, Room 5.2500, West Palm Beach, Florida, 33401; telephone number (561) 355-2431 within two (2) working days of your receipt of this order; if you are hearing or voice impaired, call 1-800-955-8771. I HEREBY CERTIFY that a true and correct copy of the foregoing was provided via facsimile or email to the above-named addressees this 21st of June, 2016  
DP



BY:

  
Rodney G. Romano, Esquire  
Florida Bar No.: 0559482  
1655 Palm Beach Lakes Boulevard  
Suite 700, The Forum  
West Palm Beach, Florida 33401  
Phone: (561) 340-3500 Fax: (561) 584-7792

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

CASE NO.: 50-2014-CP-003698-XXXX-NB

FOURTH DISTRICT CASE NO.: 4D16-1478

ELIOT IVAN BERNSTEIN  
Appellant(s),

VS.

THEODORE STUART BERSTEIN AS TRUSTEE OF THE SHIRLEY TRUST  
Appellee(s)

**FILED**  
JUL 01 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

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IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

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Record on Appeal Index  
Friday, July 01, 2016

Case #: 502014CP003698XXXXNB  
Case Description: SHIRLEY BERNSTEIN

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**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

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**Record on Appeal Index  
Friday, July 01, 2016**

**Case #: 502014CP003698XXXXNB  
Case Description: SHIRLEY BERNSTEIN**

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000003

002466

Case #: 502014CP003698XXXXNB

Case Description: SHIRLEY BERNSTEIN

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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
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65	3/25/2015		NOTICE OF HEARING
66	3/31/2015		ORDER GRANTING
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82	5/19/2015		NOTICE OF REASSIGNMENT
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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
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94	11/13/2015		NOTICE
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104	12/4/2015		NOTICE
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128	1/5/2016		MOTION
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131	1/6/2016		OBJECTION
132	1/7/2016		EXHIBIT LIST

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Case Description: SHIRLEY BERNSTEIN

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134	1/7/2016		CERTIFICATE OF SERVICE
135	1/7/2016		ORDER
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137	1/8/2016		TRUE COPY
138	1/8/2016		AUTOMATIC RECEIPT APPELLATE FILING
139	1/8/2016		ACKNOWLEDGMENT OF NEW CASE
140	1/8/2016		AUTOMATIC RECEIPT APPELLATE FILING
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151	1/21/2016		AUTOMATIC RECEIPT APPELLATE FILING
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157	2/10/2016		MOTION
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160	2/17/2016		ORDER DENYING
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162	3/2/2016		RE-NOTICE OF HEARING
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168	3/15/2016		NOTICE
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172	3/29/2016		NOTICE OF APPEAL CIVIL
173	3/29/2016		APPL AND AFF OF INDIGENCY
174	3/30/2016		NOTICE OF CANCELLATION
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Case Description: SHIRLEY BERNSTEIN

#	Effective Date	Count	Description
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179	4/5/2016		PETITIONER EVIDENCE
180	4/5/2016		PETITIONER EVIDENCE
181	4/5/2016		PETITIONER EVIDENCE
182	4/5/2016		PETITIONER EVIDENCE
183	4/5/2016		PETITIONER EVIDENCE
184	4/5/2016		PETITIONER EVIDENCE
185	4/5/2016		PETITIONER EVIDENCE
186	4/5/2016		PETITIONER EVIDENCE
187	4/5/2016		PETITIONER EVIDENCE
188	4/5/2016		PETITIONER EVIDENCE
189	4/5/2016		PETITIONER EVIDENCE
190	4/5/2016		PETITIONER EVIDENCE
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209	5/4/2016		MEMORANDUM
210	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
211	5/5/2016		AUTOMATIC RECEIPT APPELLATE FILING
212	5/5/2016		TRUE COPY
213	5/5/2016		ACKNOWLEDGMENT OF NEW CASE
214	5/12/2016		EXHIBIT LIST
215	5/23/2016		PETITIONER EVIDENCE
216	5/23/2016		RESPONDENT EVIDENCE
217	5/23/2016		PETITIONER EVIDENCE
218	5/23/2016		PETITIONER EVIDENCE
219	5/23/2016		PETITIONER EVIDENCE
220	6/9/2016		TRUE COPY

<b>Case #: 502014CP003698XXXXNB</b>			
<b>Case Description: SHIRLEY BERNSTEIN</b>			
<b>#</b>	<b>Effective Date</b>	<b>Count</b>	<b>Description</b>
221	6/22/2016		NOTICE OF MEDIATION



**CERTIFICATE OF CLERK**

STATE OF FLORIDA )

COUNTY OF PALM BEACH )

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages 1 to 365 inclusive, consists of original papers and proceedings in Civil Action Case Number:

502014CP003698XXXXNB - SHIRLEY BERNSTEIN

4D16-1478 - SHIRLEY BERNSTEIN

**as appears from the records and files of my office which have** been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,  
I have hereunto set my hand and affixed the seal  
of said Court this 1st day of July ,2016 A.D.

SHARON R. BOCK, Clerk of Circuit Court  
Palm Beach County, Florida

By:



Catherine Markisen  
Deputy Clerk



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**Markisen, Catherine R**

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**From:** COC\_DM-eappeals  
**Sent:** Friday, July 01, 2016 3:07 PM  
**To:** Clerger, Marie; Farrell, Holly A; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-1478

-----Original Message-----

From: [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
Sent: Friday, July 01, 2016 2:15 PM  
To: COC\_DM-eappeals  
Subject: Pleading Accepted On Case: 16-1478

Your Received Records on case 16-1478 has been accepted and is now on the docket.

DCA Case No: 16-1478  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**  
JUL 01 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

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

Defendants.

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**TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN  
TED S. BERNSTEIN, TRUSTEE AND BRIAN O'CONNELL, AS PR OF  
THE ESTATE OF SIMPN BERNSTEIN, REGARDING THE  
ESTATE'S PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE**

Plaintiff, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust"), moves the Court to approve the agreement between the Shirley Trust and Brian O'Connell, successor PR of the Estate, concerning certain personal property owned by the Estate which was sold as part of the Shirley Trust's sale of a condominium known as Aragon, and states:

1. When Simon Bernstein died, one of the his residences was an oceanfront condominium in Boca Raton in a building called the Aragon. The real property was owned by the Shirley Trust; Simon owned the personalty.

2. The Aragon condominium was sold on April 18, 2013. At the time, the co-Personal Representatives of the Estate directed Shirley's Trustee to sell the personalty with the real property, with the understanding that this could be evened-up at a later date.

3. After Simon's death, a reputable appraisal company valued all of the personalty at the Aragon unit at \$14,865 in Aragon. (This amount is quoted by claimant, William Stansbury, at ¶14 of his Motion filed on January 29, 2016.) Most of the items listed on the appraisal were sold, and the remaining items were transported to Simon's other residence at Lions Head Lane.

4. O'Connell, after his appointment, engaged a second appraisal company to reappraise all of the remaining personal property at Lions Head. This second appraisal by the Hall company located certain of the items from Aragon. When compared against the first appraisal of the Aragon property, there were items still present totaling \$2,408 in value. (Id. ¶17) It is presumed that the other property was included in the sale of Aragon.

5. That means approximately \$12,457 in dollar value of personal property owned by Simon Bernstein is no longer in the Estate's possession, having been sold with the Aragon Condo when it sold for \$1.6 million gross.

6. To resolve the "even-up" as contemplated, the Shirley Trust and the Estate have agreed that the Shirley Trust will pay the Personal Representative of Simon's Estate \$12,457 for the sold personal property, and there will be no further or outstanding obligations between those parties.

WHEREFORE, Ted S. Bernstein, Trustee, requests entry of an Order the agreement and directing the Trustee if the Shirley Trust to pay the Personal Representative of Simon's Estate \$12,457, thereby resolving all obligations between those parties.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 10<sup>th</sup> day of August, 2016.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
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**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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Guardian *Ad Litem* for  
Eliot Bernstein's minor children,  
Jo.B., Ja.B., and D.B.

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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children, and as natural guardian for J.I. a minor  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
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**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee of the Shirley Bernstein  
Trust Agreement dated May 20, 2008, as amended,

Probate Division  
Case No.: 2014CP003698XXXXNB

Plaintiff,

v.

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

Defendants.

---

**NOTICE OF HEARING**  
*Uniform Motion Calendar*

YOU ARE HEREBY NOTIFIED that the undersigned has called up for a hearing on the following:

**DATE:** Thursday, September 1, 2016

**TIME:** 8:30 a.m.

**JUDGE:** Honorable John L. Phillips

**PLACE:** Palm Beach North County Courthouse, 3188 PGA Blvd., Courtroom 3, Palm  
Beach Gardens, FL 33410

**MATTER(S) TO BE HEARD:**

**TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S.  
BERNSTEIN, TRUSTEE, AND BRIAN O'CONNELL, AS PR OF THE  
ESTATE OF SIMON BERNSTEIN, REGARDING THE ESTATE'S**

**PERSONAL PROPERTY SOLD WITH TRUST'S REAL ESTATE**

**CERTIFICATE OF SERVICE**

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile or U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 23<sup>rd</sup> day of August, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
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*Attorneys for Ted S. Bernstein*

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



**SERVICE LIST**

<p>Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja. B. and Jo. B, Minors 2753 NW 34th Street Boca Raton, FL 33434 (561) 245-8588 - Telephone (561) 886-7628 - Cell (561) 245-8644 - Facsimile Email: <a href="mailto:ElIot.I.Bernstein@iviewit.tv">ElIot.I.Bernstein@iviewit.tv</a></p> <p>John P. Morrissey, Esq. 330 Clematis Street, Suite 213 West Palm Beach, FL 33401 (561) 833-0866 - Telephone (561) 833-0867 - Facsimile Email: John P. Morrissey <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a> Counsel for Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein</p> <p>Lisa Friedstein, individually and as trustee for her children, and as natural guardian for M.F. and C.F., Minors; and Max Friedstein <a href="mailto:lisa.friedstein@gmail.com">lisa.friedstein@gmail.com</a></p> <p>Jill Iantoni, individually and as trustee for her children, and as natural guardian for J.I. a minor <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>	<p>Alan Rose, Esq. Mrachek Fitzgerald Rose Konopka Thomas &amp; Weiss, P.A. 505 S Flagler Drive, Suite 600 West Palm Beach, FL 33401 (561) 655-2250 - Telephone (561) 655-5537 - Facsimile Email: <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a></p> <p>Pamela Beth Simon 303 E. Wacker Drive, Suite 2725 Chicago, IL 60601 Email: <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p>Brian M. O’Connell, Esq. Joielle A. Foglietta, Esq. Ciklin Lubitz Martens &amp; O’Connell 515 N. Flagler Dr., 20th Floor West Palm Beach, FL 33401 561-832-5900 - Telephone 561-833-4209 - Facsimile Email: <a href="mailto:boconnell@ciklinlubitz.com">boconnell@ciklinlubitz.com</a>; <a href="mailto:jfoglietta@ciklinlubitz.com">jfoglietta@ciklinlubitz.com</a>; <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>; <a href="mailto:slobdell@ciklinlubitz.com">slobdell@ciklinlubitz.com</a></p>
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**"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Germaine English, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway, West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.'**

### **SPANISH**

**Si usted es una persona minusvalida que necesita algun acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Germaine English, 205 N. Dixie Highway, West Palm Beach, Florida, 33401; teléfono numero (561) 355-4380, por lo menos 7 dias antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente despues de recibir esta notificacion si el tiempo antes de la comparecencia que se ha programado es menos de 7 dias; si usted tiene discapacitacion del oido o de la voz, llame al 711.**

### **CREOLE**

**Si ou sè yon moun ki enfim, ki bézwen akomodasyon pou w ka patisipe nan powosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kek ed. Tanpri kontakte Germaine English, koodonate pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan, 205 North Dixie Highway, West Palm Beach, Florida 33401; telefonn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou paret nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si le ou gen pou w paret nan tribinal la mwens ke 7 jou; si ou gen pwoblem pou w tandè oubyen pale, rele 711.**

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

---

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPROVE AGREEMENT  
BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST,  
AND BRIAN O'CONNELL, AS PR OF THE ESTATE**

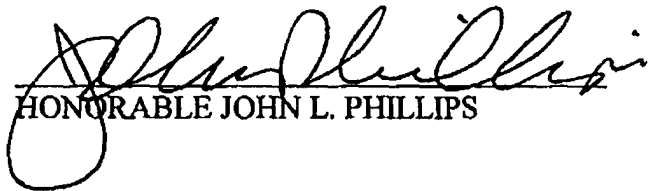
THIS CAUSE came before the Court on Successor Trustee's *Trustee's Motion to Approve Agreement Between Ted S. Bernstein, Trustee and Brian O'Connell, as Pr of The Estate of Simon Bernstein, Regarding the Estate's Personal Property Sold with Trust's Real Estate* ("the Motion"). The Court, having reviewed the Motion and the record, and having been advised that no one else

objected to the Motion or this proposed Order, and being otherwise fully advised in the premises,  
hereby ORDERS AND ADJUDGES:

1. The Motion is GRANTED.

2. The Shirley Trust will pay the Personal Representative of Simon's Estate \$12,457  
for the sold personal property, and there will be no further or outstanding obligations between those  
parties.

DONE AND ORDERED in Chambers, North County Courthouse on 9-1, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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Guardian *Ad Litem* for  
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Jo.B., Ja.B., and D.B.

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Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
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Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
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Konopka Thomas & Weiss, P.A.  
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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN RE: ESTATE OF SHIRLEY BERNSTEIN,  
Deceased.

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

\_\_\_\_\_  
WILLIAM E. STANSBURY,  
Plaintiff,

vs.  
ESTATE OF SIMON L. BERNSTEIN; and BERNSTEIN FAMILY  
REALTY, LLC,  
Defendants.

\_\_\_\_\_  
TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement  
Dated May 20, 2008, as amended,  
Plaintiff,

vs.  
ALEXANDRA BERNSTEIN, et al  
Defendants.

IN THE CIRCUIT COURT OF THE 15TH  
JUDICIAL CIRCUIT, IN AND FOR PALM  
BEACH COUNTY, FLORIDA

CASE NO.:502011CP000653XXXXSB IY

CASE NO.: 502012CP004391XXXXNB IH

CASE NO.: 502012CA013933XXXX MB AA

CASE NO.: 502014CP003698XXXXNB IJ

### MEDIATION REPORT

The above styled case was mediated on 7/25/2016, before **Ronald Alvarez** either pursuant to court order, or if not pursuant to court order, with the agreement of all participants that the privileges and rules of confidentiality would apply as if the meeting was pursuant to court order.

The outcome was: IMPASSE.

Comments:

Respectfully submitted,

/s/Ronald Alvarez

Ronald Alvarez, Mediator  
Matrix Mediation, LLC  
1655 Palm Beach Lakes Blvd.  
Suite 700  
West Palm Beach, Florida 33401  
Phone: (561) 340-3500  
Fax: Fax 561. 584.7792

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

**FILED**

September 22, 2016

SEP 22 2016

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

CASE NO.: 4D16-1449, 4D16-1476,  
4D16-1478  
L.T. No.: 2014CP002815XXXXNB,  
2014CP002815XXXXNB,  
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. OPPENHEIMER TRUST CO. OF  
DELAWARE, ET AL.

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED that appellant's September 6, 2016 motion for extension of time and to stay proceedings is denied. Appellant shall file the initial brief within twenty (20) days from the date of this order. No motions or other filings shall toll the time to file the initial brief, and no further extensions shall be granted absent a showing of extraordinary circumstances where, if a further extension is not granted, irreparable and material harm will result to the litigant.

Served:

cc: Steven A. Lessne  
Brian M. O'Connell  
John P. Morrissey  
Donald R. Tescher  
Eliot Ivan Bernstein  
Jill Iantoni  
Dennis McNamara  
William McCabe  
STP Enterprises, Inc.  
Joseph M. Leccese  
Brian Moynihan  
Hunt Worth

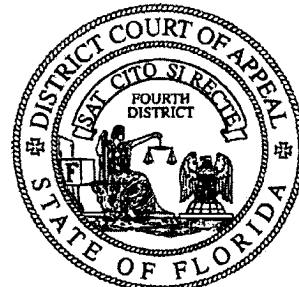
Alan Benjamin Rose  
Mark R. Manceri  
Kenneth S. Pollock  
Joielle A. Foglietta  
Charles D. Rubin  
Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin  
Lindsay Baxley  
Heritage Union Life Ins.  
Pamela Beth Simon  
Clerk Palm Beach

Lorin Louis Mrachek  
Gary R. Shendell  
Peter Marshall Feaman  
Hunt Worth  
Lisa Friedstein  
Theodore Stuart Bernstein  
James Dimon  
Neil Wolfson  
T & S Registered Agents  
David Lanciotti  
Ralph S. Janvey

ms

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
Fourth District Court of Appeal



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

PROBATE DIVISION IH  
CASE NO. 502014CP003698XXXXNB

Eliot Ivan Bernstein et al.,

Appellant,

v.

**NOTICE OF APPEAL OF A NON FINAL  
ORDER**

TED BERNSTEIN, AS TRUSTEE  
OF THE SHIRLEY BERNSTEIN TRUST  
TRUST AGREEMENT DATED MAY 20, 2008  
AS AMENDED,

Appellee

ALEXANDRA BERNSTEIN; ERIC  
BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY SIMON; PAMELA B. SIMON,  
Individually and as Trustee f/b/o Molly  
Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN,  
individually, as Trustee f/b/o D.B., Ja. B.  
and Jo. B. under the Simon L. Bernstein



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

Appellee(s).

\_\_\_\_\_ /

**NOTICE IS GIVEN** that Eliot Ivan Bernstein, Appellant-Petitioner, appeals to the Fourth ( 4th ) District Court of Appeals from the Order of Palm Beach County Judge John L. Phillips sitting in the Probate Division dated September 01, 2016. A conformed copy of order is attached hereto, the nature of the order is a titled “ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPROVE AGREEMENT BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST, AND BRIAN O'CONNELL, AS PR OF THE ESTATE” (EXHIBIT 1) and hereby appeals from each and every part of said Order.

Dated: September 27, 2016

**/s/Eliot Ivan Bernstein**  
Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 27th day of September, 2016.

By: /s/ Eliot Ivan Bernstein  
 Eliot Ivan Bernstein  
 2753 NW 34th St.  
 Boca Raton, FL 33434  
 561-245-8588  
 iviewit@iviewit.tv

**SERVICE LIST - CASE NO. SC15-1077 & LOWER CASES DEFENDANTS, RESPONDENTS, COUNTER DEFENDANTS**

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<p>Peter M. Feaman, Esq.        Peter M. Feaman, P.A.        3695 West Boynton Beach Blvd., Suite 9        Boynton Beach, FL 33436        (561) 734-5552 -Telephone        (561) 734-5554 -Facsimile        Email: service@feamanlaw.com:        mkoskey@feamanlaw.com</p>	<p>Jill Iantoni        2101 Magnolia Lane Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>
<p>Gary R. Shendell, Esq.        Kenneth S. Pollock, Esq.        Shendell &amp; Pollock, P.L.        2700 N. Military Trail,        Suite 150        Boca Raton, FL 33431        (561)241-2323 - Telephone (561)241-2330-Facsimile        Email: gary@shendellpollock.com        ken@shendellpollock.com        estella@shendellpollock.com        britt@shendellpollock.com        grs@shendellpollock.com</p>	<p>Counter Defendant        Robert Spallina, Esq.        Donald Tescher, Esq.        Tescher &amp; Spallina        925 South Federal Hwy., Suite 500        Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq.        Joielle A. Foglietta, Esq.        Ciklin Lubitz Martens &amp; O'Connell        515 N. Flagler Dr., 20th Floor        West Palm Beach, FL 33401        561-832-5900-Telephone        561-833-4209 - Facsimile</p>	<p>Counter Defendant        John J. Pankauski, Esq.        Pankauski Law Firm PLLC        120 South Olive Avenue        7th Floor        West Palm Beach, FL 33401        courtfilings@pankauskilawfirm.com</p>

<p>Email: boconnell@ciklinlubitz.com;  ifoglietta@ciklinlubitz.com;  service@ciklinlubitz.com;  slobdell@ciklinliibitz.com</p>	<p>john@pankauskilawfirm.com</p>
<p>Counter Defendant  Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net</p>	<p>Counter Defendant  Donald Tescher, Esq.,  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein  880 Berkeley  Boca Raton, FL 33487  tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant  TESCHER &amp; SPALLINA, P.A..  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein  Life Insurance Concepts, Inc.  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant  Alan B. Rose, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE,  KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  561-355-6991  arose@pm-law.com  arose@mrachek-law.com</p>
<p>Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  psimon@stpcorp.com</p>	<p>Counter Defendant  L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE,  KONOPKA, THOMAS &amp; WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  561-355-6991  lmrachek@mrachek-law.com</p>
<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>	<p>Counter Defendant  Pankauski Law Firm PLLC  120 South Olive Avenue  7th Floor  West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein  2142 Churchill Lane  Highland Park, IL 60035  lisa.friedstein@gmail.com  lisa@friedsteins.com</p>	<p>Dennis McNamara  Executive Vice President and General Counsel  Oppenheimer &amp; Co. Inc.  Corporate Headquarters  125 Broad Street  New York, NY 10004  800-221-5588  Dennis.mcnamara@opco.com  info@opco.com</p>

<p>Dennis G. Bedley  Chairman of the Board, Director and Chief Executive Officer  Legacy Bank of Florida  Glades Twin Plaza  2300 Glades Road  Suite 120 West – Executive Office  Boca Raton, FL 33431  info@legacybankfl.com  DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq.  President  Oppenheimer Trust Company of Delaware  405 Silverside Road  Wilmington, DE 19809  302-792-3500  hunt.worth@opco.com</p>
<p>James Dimon  Chairman of the Board and Chief Executive Officer  JP Morgan Chase &amp; CO.  270 Park Ave. New York, NY 10017-2070  Jamie.dimon@jpmchase.com</p>	<p>Neil Wolfson  President &amp; Chief Executive Officer  Wilmington Trust Company  1100 North Market Street  Wilmington, DE 19890-0001  nwolfson@wilmingtontrust.com</p>
<p>William McCabe  Oppenheimer &amp; Co., Inc.  85 Broad St Fl 25  New York, NY 10004  William.McCabe@opco.com</p>	<p>STP Enterprises, Inc.  303 East Wacker Drive  Suite 210  Chicago IL 60601-5210  psimon@stpcorp.com</p>
<p>Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin Forman Fleisher Miller  PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  crubin@floridatax.com</p>	<p>Ralph S. Janvey  Krage &amp; Janvey, L.L.P.  Federal Court Appointed Receiver  Stanford Financial Group  2100 Ross Ave, Dallas, TX 75201  rjanvey@kjllp.com</p>
<p>Kimberly Moran  Tescher &amp; Spallina, P.A.  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle  Suite 3010  Boca Raton, FL 33487  lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin  CBIZ MHM, LLC  1675 N Military Trail  Fifth Floor  Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC  General Counsel  6480 Rockside Woods Blvd. South  Suite 330  Cleveland, OH 44131  ATTN: General Counsel  generalcounsel@cbiz.com  (216)447-9000</p>

<p>Albert Gortz, Esq.  Proskauer Rose LLP  One Boca Place  2255 Glades Road  Suite 421 Atrium  Boca Raton, FL 33431-7360  agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company  A member of WiltonRe Group of Companies  187 Danbury Road  Wilton, CT 06897  cstroup@wiltonre.com</p>
<p>Estate of Simon Bernstein  Brian M O'Connell Pa  515 N Flagler Drive  West Palm Beach, FL 33401  boconnell@ciklinlubitz.com</p>	<p>Counter Defendant  Steven Lessne, Esq.  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr.  President &amp; Managing Director  Gray Robinson, PA  225 NE Mizner Blvd #500  Boca Raton, FL 33432  biff.marshall@gray-robinson.com</p>	<p>Steven A. Lessne, Esq.  Gunster, Yoakley &amp; Stewart, P.A.  777 South Flagler Drive, Suite 500 East  West Palm Beach, FL 33401  Telephone: (561) 650-0545  Facsimile: (561) 655-5677  E-Mail Designations:  slessne@gunster.com  jhoppel@gunster.com  eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>	<p>David Lanciotti  Executive VP and General Counsel  LaSalle National Trust NA  CHICAGO TITLE LAND TRUST COMPANY, as  Successor  10 South LaSalle Street  Suite 2750  Chicago, IL 60603  David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese  Chairman  Proskauer Rose LLP  Eleven Times Square  New York, NY 10036  jleccese@proskauer.com</p>	<p>Brian Moynihan  Chairman of the Board and Chief Executive Officer  100 N Tryon St #170, Charlotte, NC 28202  Phone:(980) 335-3561</p>

EXHIBIT 1 - ORDER

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

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

Defendants.

---

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO APPROVE AGREEMENT  
BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST,  
AND BRIAN O'CONNELL, AS PR OF THE ESTATE**

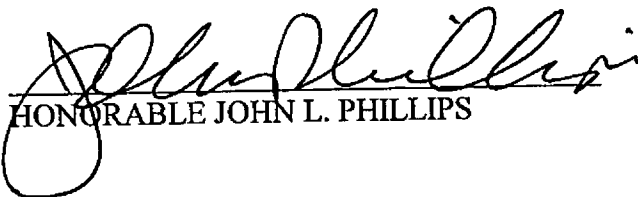
THIS CAUSE came before the Court on Successor Trustee's *Trustee's Motion to Approve Agreement Between Ted S. Bernstein, Trustee and Brian O'Connell, as Pr of The Estate of Simon Bernstein, Regarding the Estate's Personal Property Sold with Trust's Real Estate* ("the Motion").

The Court, having reviewed the Motion and the record, and having been advised that no one else

objected to the Motion or this proposed Order, and being otherwise fully advised in the premises,  
hereby ORDERS AND ADJUDGES:

1. The Motion is GRANTED.
2. The Shirley Trust will pay the Personal Representative of Simon's Estate \$12,457 for the sold personal property, and there will be no further or outstanding obligations between those parties.

DONE AND ORDERED in Chambers, North County Courthouse on 9-1, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list



**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

Diana Lewis, Esq.  
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2765 Tecumseh Drive  
West Palm Beach, FL 33409  
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Guardian *Ad Litem* for  
Eliot Bernstein's minor children,  
Jo.B., Ja.B., and D.B.

John P. Morrissey, Esq.  
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([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her  
children, and as natural guardian for M.F. and  
C.F., Minors; and Max Friedstein  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Iantoni, individually and as trustee for her  
children, and as natural guardian for J.I. a minor  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

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Joielle A. Foglietta, Esq.  
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561-833-4209 - Facsimile  
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[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
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L. Bernstein Trust Dtd 9/13/12, and on behalf of his  
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FRIEDSTEIN, Individually, as Trustee f/b/o Max  
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Trust Dtd 9/13/12, and on behalf of her minor child,  
C.F.,

Defendants.

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BETWEEN TED S. BERNSTEIN, TRUSTEE OF THE SHIRLEY BERNSTEIN TRUST,  
AND BRIAN O'CONNELL, AS PR OF THE ESTATE**

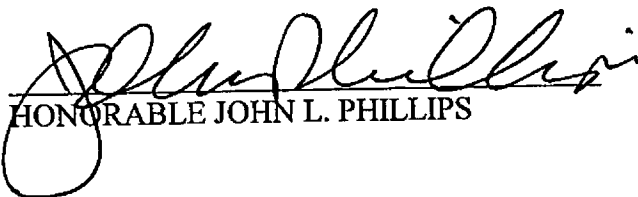
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DONE AND ORDERED in Chambers, North County Courthouse on 9-1, 2016.

  
HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

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[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

IN THE CIRCUIT/COUNTY COURT OF THE Fifteenth JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Eliot Ivan Bernstein  
Plaintiff/Petitioner or in the Interest Of  
vs.  
Tescher & Spallina, P.A. et al.  
Defendant/Respondent

CASE NO. 502014CP003698X2

**APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS**

Notice to Applicant: If you qualify for civil indigence you must enroll in the clerk's office payment plan and pay a one-time administrative fee of \$25.00. This fee shall not be charged for Dependency or Chapter 39 Termination of Parental Rights actions.

1. I have 0 dependents. (Include only those persons you list on your U.S. income tax return.)  
Are you Married? / Yes No Does your Spouse Work?... Yes  No Annual Spouse Income? \$ 0

2. I have a net income of \$ 0 paid weekly every two weeks semi-monthly monthly yearly  other I am working to pay  
(Net income is your total income including salary, wages, bonuses, commissions, allowances, overtime, tips and similar payments, minus deductions required by law and other court-ordered payments such as child support.)

3. I have other income paid weekly every two weeks semi-monthly monthly yearly other \_\_\_\_\_  
(Circle "Yes" and fill in the amount if you have this kind of income, otherwise circle "No")

Second Job <u>Inventor</u> Yes \$ <u>0.00</u> No	Veterans' benefits..... Yes \$ <u>no</u> No
Social Security benefits	Workers compensation..... Yes \$ <u>no</u> No
For you..... Yes \$ <u>no</u> No	Income from absent family members..... Yes \$ <u>no</u> No
For child(ren)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Unemployment compensation..... Yes \$ <u>no</u> No	Rental income..... Yes \$ <u>no</u> No
Union payments..... Yes \$ <u>no</u> No	Dividends or interest..... Yes \$ <u>no</u> No
Retirement/pensions..... Yes \$ <u>no</u> No	Other kinds of income not on the list..... Yes \$ <u>no</u> No
Trusts..... Yes \$ <u>unknown</u> No	Gifts..... Yes \$ <u>no</u> No

I understand that I will be required to make payments for fees and costs to the clerk in accordance with §57.082(5), Florida Statutes, as provided by law, although I may agree to pay more if I choose to do so.

4. I have other assets: (Circle "yes" and fill in the value of the property, otherwise circle "No")

Cash..... Yes \$ <u>no</u> No	Savings account..... Yes \$ <u>no</u> No
Bank account(s)..... Yes \$ <u>no</u> No	Stocks/bonds..... Yes \$ <u>no</u> No
Certificates of deposit or money market accounts..... Yes \$ <u>no</u> No	Homestead Real Property*..... Yes \$ <u>no</u> No
Boats*..... Yes \$ <u>no</u> No	Motor Vehicle*..... Yes \$ <u>no</u> No
	Non-homestead real property/real estate*..... Yes \$ <u>no</u> No

\*show loans on these assets in paragraph 5

Check one:  DO DO NOT expect to receive more assets in the near future. The asset is inheritance and patent royalties owed

5. I have total liabilities and debts of \$ 10,000.00 as follows: Motor Vehicle \$ 0, Home \$ 0, Other Real Property \$ 0, Child Support paid direct \$ 0, Credit Cards \$ 0, Medical Bills \$ \_\_\_\_\_, Cost of medicines (monthly) \$ \_\_\_\_\_, Other \$ 10,000.

6. I have a private lawyer in this case..... Yes No **NO**

A person who knowingly provides false information to the clerk or the court in seeking a determination of indigent status under s. 57.082, F.S. commits a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S. I attest that the information I have provided on this application is true and accurate to the best of my knowledge.

Signed this 4th day of September, 20 14.  
09/30/1963 68958008  
Date of Birth Driver's License or ID Number

Eliot Bernstein  
Signature of Applicant for Indigent Status  
Print Full Legal Name Eliot Bernstein  
Phone Number: 561-246-8588

2753 NW 34th St. Boca Raton FL 33434  
Address, P O Address, Street, City, State, Zip Code

Kelly Gold Frank



Kelly Gold Frank  
COMMISSION # FF0C0732  
EXP: RES: MAR. 25, 2017  
WWW.AARONNOTARY.COM

RECEIVED, 1/6/2016 9:14 AM, Clerk, Fourth District Court of Appeal

**CLERK'S DETERMINATION**

Based on the information in this Application, I have determined the applicant to be ( ) Indigent ( ) Not Indigent, according to s. 57.082, F.S.

Dated this 6 day of JAN, 2016

Clerk of the Circuit Court by \_\_\_\_\_

This form was completed with the assistance of: \_\_\_\_\_

Clerk/Deputy Clerk/Other authorized person.

**APPLICANTS FOUND NOT TO BE INDIGENT MAY SEEK REVIEW BY A JUDGE BY ASKING FOR A HEARING TIME. THERE IS NO FEE FOR THIS REVIEW.**

Sign here if you want the judge to review the clerk's decision \_\_\_\_\_



**Markisen, Catherine R**

---

**From:** COC\_DM-eappeals  
**Sent:** Thursday, September 29, 2016 4:13 PM  
**To:** Clerger, Marie; Farrell, Holly A; Guzman, Karla M; Markisen, Catherine R  
**Subject:** FW: Pleading Accepted On Case: 16-3314

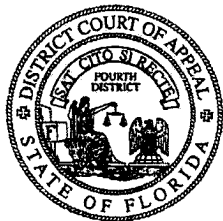
-----Original Message-----

From: [eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org) [mailto:[eFile4DCA@FLCourts.org](mailto:eFile4DCA@FLCourts.org)]  
Sent: Thursday, September 29, 2016 3:19 PM  
To: COC\_DM-eappeals  
Subject: Pleading Accepted On Case: 16-3314

Your Notice of Appeal Filed on case 16-3314 has been accepted and is now on the docket.

DCA Case No: 16-3314  
Case Name : ELIOT IVAN BERNSTEIN v TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.  
LT Case No : 2014CP003698XXXXNB

**FILED**  
SEP 29 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION



Fourth District Court of Appeal  
1525 Palm Beach Lakes Blvd.  
West Palm Beach, Florida 33401  
(561) 242-2000

**FILED**  
SEP 30 2016  
SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

**ACKNOWLEDGMENT OF NEW CASE**

DATE: September 30, 2016

STYLE: ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE,  
ETC., ET AL.

**4DCA#: 16-3314**

The Fourth District Court of Appeal has received the Notice of Appeal reflecting a filing date of September 27, 2016.

The county of origin is Palm Beach.

The lower tribunal case number provided is 2014CP003698XXXXNB.

The filing fee is waived.

Case Type: Probate Final

The Fourth District Court of Appeal's case number must be utilized on all pleadings and correspondence filed in this cause. Moreover, ALL PLEADINGS MUST INCLUDE THE ATTORNEY'S FLORIDA BAR NUMBER and a physical address.

**ELECTRONIC FILING IS MANDATORY FOR ALL ATTORNEYS. Please visit [edca.4dca.org](http://edca.4dca.org) to register for eDCA, the court's electronic filing system.**

**ATTORNEYS WHO HAVE NOT REGISTERED FOR eDCA WILL NOT RECEIVE FURTHER PAPER DOCUMENTS FROM THE COURT**

cc:	Lorin Louis Mrachek	Brian M. O'Connell	Mark R. Manceri
	Gary R. Shendell	Steven A. Lessne	John P. Morrissey
	Kenneth S. Pollock	John Pankauski	Alan Benjamin Rose
	Peter Marshall Feaman	Donald R. Tescher	Joielle A. Foglietta
	Kimberly Moran	Albert Gortz	Robert Spallina
	Byrd "biff" F. Marshall, Jr.	Charles D. Rubin	Eliot Ivan Bernstein
	Lisa Friedstein	Jill Iantoni	Theodore Stuart Bernstein
	Theodore Stuart Bernstein	Pamela Beth Simon	Dennis McNamara
	Dennis G. Bedley	James Dimon	William McCabe



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

September 30, 2016

CASE NO.: 4D16-3314

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.

---

Appellant / Petitioner(s)

Appellee / Respondent(s)

**BY ORDER OF THE COURT:**

ORDERED sua sponte that the court determines that this appeal seeks review of a final order, rather than a non-final order. Appellant may file directions to the clerk under Florida Rule of Appellate Procedure 9.200(a)(3) within ten (10) days from the date of this order, and appellee may file directions for additional documents and exhibits within ten (10) days after the appellant's filing of directions to the clerk. The times for preparing the record on appeal, serving the index to the record on appeal, and for service of briefs are extended correspondingly.

Served:

cc: Lorin Louis Mrachek  
Gary R. Shendell  
Kenneth S. Pollock  
Peter Marshall Feaman  
Kimberly Moran  
Byrd "biff" F. Marshall, Jr.  
Lisa Friedstein  
Theodore Stuart Bernstein  
Dennis G. Bedley  
Gerald Lewin  
Ralph S. Janvey  
Joseph M. Leccese  
Brian Moynihan

Brian M. O'Connell  
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John Pankauski  
Donald R. Tescher  
Albert Gortz  
Charles D. Rubin  
Jill Iantoni  
Pamela Beth Simon  
James Dimon  
Neil Wolfson  
Lindsay Baxley  
Heritage Union Life Ins.  
Co.  
Hunt Worth

Mark R. Manceri  
John P. Morrissey  
Alan Benjamin Rose  
Joielle A. Foglietta  
Robert Spallina  
Eliot Ivan Bernstein  
Theodore Stuart Bernstein  
Dennis McNamara  
William McCabe  
Stp Enterprises, Inc.  
T & S Registered Agents,  
Llc  
David Lanciotti  
Clerk Palm Beach

al

**FILED**

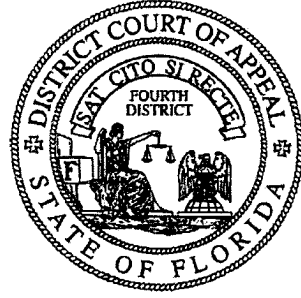
SEP 30 2016

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

002505

*Lonnn Weissblum*

**LONN WEISSBLUM, Clerk**  
**Fourth District Court of Appeal**



IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH  
COUNTY, FLORIDA

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Plaintiff,

L.T. No.: 2014CP003698XXXXNB

v.

**APPELLANT'S REQUEST FOR  
PRODUCTION OF FULL RECORD  
AND INDEX ON APPEAL;  
4TH DCA CASE NO. 4D16-3314**

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon wider the Simon L. Bernstein Trust  
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as  
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Friedstein and C.F., under the Simon L. Bernstein  
Trust Dtd 9/13/12, and on behalf of her minor child,  
C.F.,

Defendants.

---

TO CLERK:

Please accept this as a Request for Production of the Entire Record and Index on Appeal in Case  
Number 2014CP003698XXXXNB in relation to Fourth District Court of Appeals Case No.  
4D16-3314.

Appellant also seeks production of the Transcript from the only presently known hearing, a UMC Hearing held in this case on Sept. 1, 2016 to also be included as part of the Record on Appeal.

Dated: October 10, 2016

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone. 561-245-8588  
iviewit@iviewit.tv

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to the Service List Below on this 10<sup>th</sup> day of October, 2016.

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein, Pro Se  
2753 NW 34<sup>th</sup> ST  
Boca Raton, FL 33434  
Telephone.561-245-2588  
iviewit@iviewit.tv

**SERVICE LIST**

Diana Lewis, Esq.  
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<p>John P. Morrissey, Esq.          330 Clematis Street, Suite 213          West Palm Beach, FL 33401          (561) 833-0766-Telephone          (561) 833-0867 -Facsimile          Email: John P. Morrissey          (john@jrmoiTisseylaw.com)</p>	<p>Lisa Friedstein          2142 Churchill Lane Highland Park, IL 60035          lisa@friedsteins.com</p>
<p>Peter M. Feaman, Esq.          Peter M. Feaman, P.A.          3695 West Boynton Beach Blvd., Suite 9          Boynton Beach, FL 33436          (561) 734-5552 -Telephone          (561) 734-5554 -Facsimile          Email: service@feamanlaw.com:          mkoskey@feamanlaw.com</p>	<p>Jill Iantoni          2101 Magnolia Lane Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>
<p>Gary R. Shendell, Esq.          Kenneth S. Pollock, Esq.          Shendell &amp; Pollock, P.L.          2700 N. Military Trail,          Suite 150          Boca Raton, FL 33431          (561)241-2323 - Telephone (561)241-2330-Facsimile          Email: gary@shendellpollock.com          ken@shendellpollock.com          estella@shendellpollock.com          britt@shendellpollock.com          grs@shendellpollock.com</p>	<p>Counter Defendant          Robert Spallina, Esq.          Donald Tescher, Esq.          Tescher &amp; Spallina          925 South Federal Hwy., Suite 500          Boca Raton, Florida 33432</p>
<p>Brian M. O'Connell, Esq.          Joielle A. Foglietta, Esq.          Ciklin Lubitz Martens &amp; O'Connell          515 N. Flagler Dr., 20th Floor          West Palm Beach, FL 33401          561-832-5900-Telephone          561-833-4209 - Facsimile          Email: boconnell@ciklinlubitz.com;          ifoglietta@ciklinlubitz.com;          service@ciklinlubitz.com;          slobdell@ciklinliibitz.com</p>	<p>Counter Defendant          John J. Pankauski, Esq.          Pankauski Law Firm PLLC          120 South Olive Avenue          7th Floor          West Palm Beach, FL 33401  <a href="mailto:courtfilings@pankauskilawfirm.com">courtfilings@pankauskilawfirm.com</a>  <a href="mailto:john@pankauskilawfirm.com">john@pankauskilawfirm.com</a></p>
<p>Counter Defendant          Mark R. Manceri, Esq., and          Mark R. Manceri, P.A.,          2929 East Commercial Boulevard          Suite 702          Fort Lauderdale, FL 33308  <a href="mailto:mrmlaw@comcast.net">mrmlaw@comcast.net</a></p>	<p>Counter Defendant          Donald Tescher, Esq.,          Tescher &amp; Spallina, P.A.          Wells Fargo Plaza          925 South Federal Hwy Suite 500          Boca Raton, Florida 33432  <a href="mailto:dtescher@tescherspallina.com">dtescher@tescherspallina.com</a></p>
<p>Theodore Stuart Bernstein</p>	<p>Counter Defendant</p>

<p>880 Berkeley Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>TESCHER &amp; SPALLINA, P.A.. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 dtescher@tescherspallina.com</p>
<p>Theodore Stuart Bernstein Life Insurance Concepts, Inc. 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 tbernstein@lifeinsuranceconcepts.com</p>	<p>Counter Defendant Alan B. Rose, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 arose@pm-law.com arose@mrachek-law.com</p>
<p>Pamela Beth Simon 950 N. Michigan Avenue Apartment 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Counter Defendant L. Louis Mrachek, Esq. PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS &amp; WEISS, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 561-355-6991 lmrachek@mrachek-law.com</p>
<p>Jill Iantoni 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	<p>Counter Defendant Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401</p>
<p>Lisa Sue Friedstein 2142 Churchill Lane Highland Park, IL 60035 lisa.friedstein@gmail.com lisa@friedsteins.com</p>	<p>Dennis McNamara Executive Vice President and General Counsel Oppenheimer &amp; Co. Inc. Corporate Headquarters 125 Broad Street New York, NY 10004 800-221-5588 Dennis.mcnamara@opco.com info@opco.com</p>
<p>Dennis G. Bedley Chairman of the Board, Director and Chief Executive Officer Legacy Bank of Florida Glades Twin Plaza 2300 Glades Road Suite 120 West – Executive Office Boca Raton, FL 33431 info@legacybankfl.com DBedley@LegacyBankFL.com</p>	<p>Hunt Worth, Esq. President Oppenheimer Trust Company of Delaware 405 Silverside Road Wilmington, DE 19809 302-792-3500 hunt.worth@opco.com</p>
<p>James Dimon Chairman of the Board and Chief Executive Officer</p>	<p>Neil Wolfson President &amp; Chief Executive Officer</p>

<p>JP Morgan Chase &amp; CO. 270 Park Ave. New York, NY 10017-2070 Jamie.dimon@jpmchase.com</p>	<p>Wilmington Trust Company 1100 North Market Street Wilmington, DE 19890-0001 nwolfson@wilmingtontrust.com</p>
<p>William McCabe Oppenheimer &amp; Co., Inc. 85 Broad St Fl 25 New York, NY 10004 William.McCabe@opco.com</p>	<p>STP Enterprises, Inc. 303 East Wacker Drive Suite 210 Chicago IL 60601-5210 psimon@stpcorp.com</p>
<p>Charles D. Rubin Managing Partner Gutter Chaves Josepher Rubin Forman Fleisher Miller PA Boca Corporate Center 2101 NW Corporate Blvd., Suite 107 Boca Raton, FL 33431-7343 crubin@floridatax.com</p>	<p>Ralph S. Janvey Krage &amp; Janvey, L.L.P. Federal Court Appointed Receiver Stanford Financial Group 2100 Ross Ave, Dallas, TX 75201 rjanvey@kjllp.com</p>
<p>Kimberly Moran Tescher &amp; Spallina, P.A. Wells Fargo Plaza 925 South Federal Hwy Suite 500 Boca Raton, Florida 33432 kmoran@tescherspallina.com</p>	<p>Lindsay Baxley aka Lindsay Giles Life Insurance Concepts 950 Peninsula Corporate Circle Suite 3010 Boca Raton, FL 33487 lindsay@lifeinsuranceconcepts.com</p>
<p>Gerald R. Lewin CBIZ MHM, LLC 1675 N Military Trail Fifth Floor Boca Raton, FL 33486</p>	<p>CBIZ MHM, LLC General Counsel 6480 Rockside Woods Blvd. South Suite 330 Cleveland, OH 44131 ATTN: General Counsel generalcounsel@cbiz.com (216)447-9000</p>
<p>Albert Gortz, Esq. Proskauer Rose LLP One Boca Place 2255 Glades Road Suite 421 Atrium Boca Raton, FL 33431-7360 agortz@proskauer.com</p>	<p>Heritage Union Life Insurance Company A member of WiltonRe Group of Companies 187 Danbury Road Wilton, CT 06897 cstroup@wiltonre.com</p>
<p>Estate of Simon Bernstein Brian M O'Connell Pa 515 N Flagler Drive West Palm Beach, FL 33401 boconnell@ciklinlubitz.com</p>	<p>Counter Defendant Steven Lessne, Esq. Gray Robinson, PA 225 NE Mizner Blvd #500 Boca Raton, FL 33432 steven.lessne@gray-robinson.com</p>
<p>Byrd F. "Biff" Marshall, Jr. President &amp; Managing Director Gray Robinson, PA</p>	<p>Steven A. Lessne, Esq. Gunster, Yoakley &amp; Stewart, P.A. 777 South Flagler Drive, Suite 500 East</p>

<p>225 NE Mizner Blvd #500  Boca Raton, FL 33432  biff.marshall@gray-robinson.com</p>	<p>West Palm Beach, FL 33401  Telephone: (561) 650-0545  Facsimile: (561) 655-5677  E-Mail Designations:  slessne@gunster.com  jhoppel@gunster.com  eservice@gunster.com</p>
<p>T&amp;S Registered Agents, LLC  Wells Fargo Plaza  925 South Federal Hwy Suite 500  Boca Raton, Florida 33432  dtescher@tescherspallina.com</p>	<p>David Lanciotti  Executive VP and General Counsel  LaSalle National Trust NA  CHICAGO TITLE LAND TRUST COMPANY, as  Successor  10 South LaSalle Street  Suite 2750  Chicago, IL 60603  David.Lanciotti@ctt.com</p>
<p>Joseph M. Leccese  Chairman  Proskauer Rose LLP  Eleven Times Square  New York, NY 10036  jleccese@proskauer.com</p>	<p>Brian Moynihan  Chairman of the Board and Chief Executive Officer  100 N Tryon St #170, Charlotte, NC 28202  Phone:(980) 335-3561</p>



**Markisen, Catherine R**

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**From:** Markisen, Catherine R  
**Sent:** Thursday, October 13, 2016 4:24 PM  
**To:** Eliot Ivan Bernstein (iviewit@iviewit.tv)  
**Subject:** 502014CA003698  
**Attachments:** C:\Users\cmarkisen\AppData\Local\Temp\ICLocal\6ce20fc4-a155-4dd2-8455-5d471a0f1502.pdf

I received the attached directions to clerk. The hearing transcript that you request be included in the record, will need to be order by you from the court reporter and filed in this case, before I prepare the record.

Sincerely,  
Cathi markisen

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D <u>12/16/2015</u>	CASE STYLE <u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV <u>2014CP003698 IH</u>	PLTF/PET/ <u>TED BERNSTEIN</u>
JUDGE <u>JOHN L PHILLIPS</u>	DEFT/RESP/ <u>ALEXANDRA BERNSTEIN</u>
HEARING DATE <u>12/15/2015</u>	HRG TYPE <u>FINAL JUDGMENT</u>
CHARGE <u>N/A</u>	COURT CLERK <u>ANGELA BUDD</u>
	<input checked="" type="checkbox"/> Clerk not present at trial

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

PALM BEACH COUNTY FL 15TH JUDICIAL CIRCUIT

2016 APR - 9 AM 11:26

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 Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

2014 CP 003698

**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.**



P1  
12-15-15

CONFIRMED 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

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LAST WILL  
OF SHIRLEY BERNSTEIN.

TESCHER & SPALLINA, P.A.

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/0</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
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TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

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PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

SHIRLEY BERNSTEIN

TRUST AGREEMENT

*Prepared by:*

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

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SHIRLEY BERNSTEIN

TRUST AGREEMENT

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

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

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

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

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

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

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

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

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

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

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

## ARTICLE II. AFTER MY DEATH

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

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

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

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

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

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

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL 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.

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

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

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

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

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

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

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

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

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

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

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

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

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;

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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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

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

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

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

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

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

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

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

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

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

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

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

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

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

SP

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.

*[remainder of page intentionally left blank]*

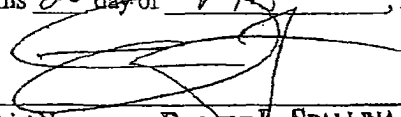
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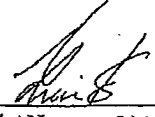
IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

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: TRACY KRATICH  
Address: 16068 CLENCEST AVENUE  
DEER BEACH, FL 33446

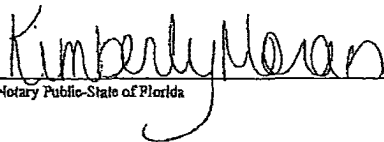
STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

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

NOTARY PUBLIC STATE OF FLORIDA  
  
Kimberly Moran  
Commission #DD766470  
Expires: APR. 28, 2012  
BONDED 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 \_\_\_\_\_

F:\WPDATA\Aldric\Bernstein, Shirley & Simon\2008 Estate Planning\Shirley Bernstein Trust Agreement.Lwpd [05 15:11 19 08]

SHIRLEY BERNSTEIN  
TRUST AGREEMENT

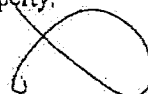


ATTACHMENT

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

One Dollar (\$1.00) Cash

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



---

SHIRLEY BERNSTEIN, Settlor and Trustee



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.TESCHERSPELLINA.COM

SUPPORT STAFF  
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 34<sup>th</sup> 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

2014CP003698 EXHIBIT B  
Δ2  
12-15-15

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.

LAW OFFICES  
TESCHER & SPALLINA, P.A.

002556





Pamela B. Simon	950 North Michigan Avenue Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 <sup>th</sup> Street 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

5. Petitioner, pursuant to Section 731.302 of the Florida Probate Code, and as permitted by Fla. Prob. R. 5.400(f), files herewith waivers and receipts signed by all interested persons:

- (a) acknowledging that they are aware of the right to have a final accounting;
- (b) waiving the filing and service of a final accounting;
- (c) waiving the inclusion in this petition of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers or other agents employed by the personal representative and the manner of determining that compensation;
- (d) acknowledging that they have actual knowledge of the amount and manner of determining compensation of the personal representative, attorneys, accountants, appraisers, or other agents, and agreeing to the amount and manner of determining such compensation, and waiving any objections to the payment of such compensation;
- (e) waiving the inclusion in this petition of a plan of distribution;
- (f) waiving service of this petition and all notice thereof;
- (g) acknowledging receipt of complete distribution of the share of the estate to which they are entitled; and
- (h) consenting to the entry of an order discharging petitioner, as personal representative, without notice, hearing or waiting period and without further accounting.

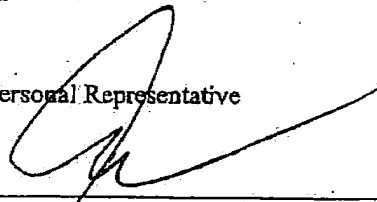
Petitioner requests that an order be entered discharging petitioner as personal representative of this estate and releasing the surety on any bond which petitioner may have posted in this proceeding from any liability on it.



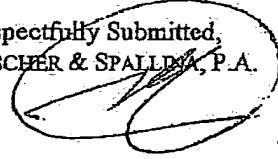
Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on April 9, 2012.

Personal Representative

  
\_\_\_\_\_  
SIMON L. BERNSTEIN

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

  
By: \_\_\_\_\_  
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
561-997-7008

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**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/01</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-STRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
		TTL	14				

PALM BEACH COUNTY  
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 Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

---

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 heretunder 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.

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*[remainder of page intentionally left blank]*

FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT




(P3) 12-15-15

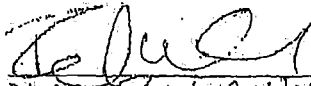
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

  
SHIRLEY BERNSTEIN

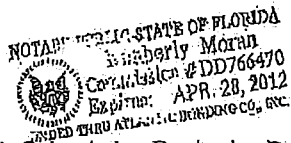
This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 18 day of Nov, 2008:

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


  
Print Name: Michael Walker  
Address: 100 Plaza Real South  
Suite 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]

  
Signaturo - Notary Public State of Florida

Print, type or stamp name of Notary Public

Personally Known  or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

\\WPDATA\Users\Shirley S. Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement1 vpd [11/09/26 18:08]

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/0</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/>	Clerk not present at trial

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-STRYD R-RETD
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PALM BEACH COUNTY  
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XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

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Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

002564

WILL OF  
SIMON L. BERNSTEIN

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIVED  
OCT - 2 2012  
SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

*Prepared by:*

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

2014CP003698  
PLAINTIFF'S  
EXHIBIT  
4

LAW OFFICES  
TESCHER & SPALLINA, P.A.

Py  
12-15-15

---

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**

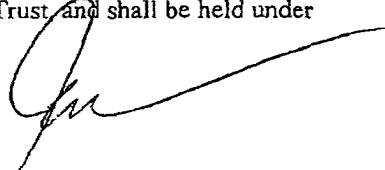
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley 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  
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the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

#### ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint 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

LAST WILL  
OF SIMON L. BERNSTEIN

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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.

LAST WILL  
OF SIMON L. BERNSTEIN

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

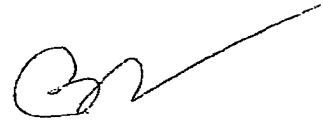
l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

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

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

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

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



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

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

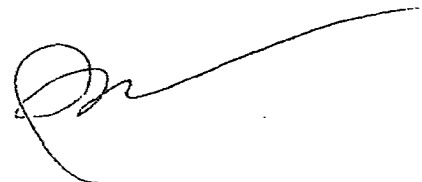
6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering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

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

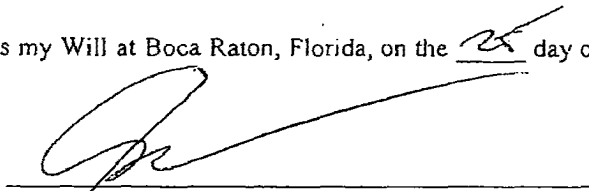
8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

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

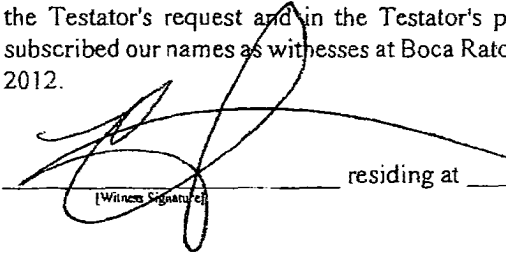
*[remainder of page intentionally left blank]*



I have published and signed this instrument as my Will at Boca Raton, Florida, on the 26 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**

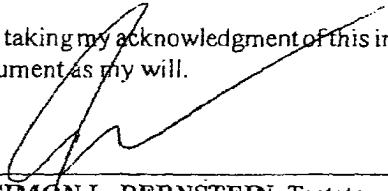
[Witness Address]

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.

  
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran,

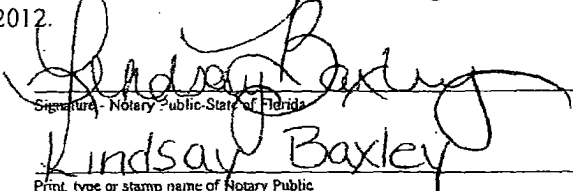
have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

  
Witness


Kimberly Moran  
Witness

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

[Seal with Commission Expiration Date]

  
Signature - Notary Public - State of Florida

Lindsay Baxley  
Print, type or stamp name of Notary Public

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

LAST WILL  
OF SIMON L. BERNSTEIN

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LAW OFFICES

TESCHER & SPALLINA, P.A.

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**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/0</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/>	Clerk not present at trial

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-STRYD R-RET'D
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
	14						

PALM BEACH COUNTY  
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Box \_\_\_\_\_ Envelope  Poster \_\_\_\_\_ Roll \_\_\_\_\_ Xray \_\_\_\_\_ Awk \_\_\_\_\_ Val \_\_\_\_\_ Sealed \_\_\_\_\_  
 Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

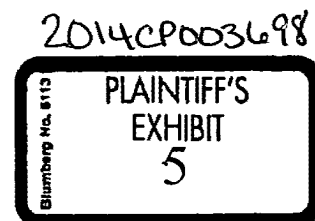
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**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*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.**



PS  
12-15-15

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

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

## ARTICLE II. AFTER MY DEATH

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

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

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

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

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

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

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

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

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

### ARTICLE III. GENERAL

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

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

C. **Substance Abuse.**

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

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

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

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

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

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



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.

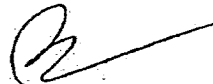
6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor 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 I.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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

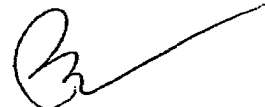
13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

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

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

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

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



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

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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:

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

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LAW OFFICES  
**TESCHER & SPALLINA, P.A.**



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.

*[remainder of page intentionally left blank]*



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

SETTLOR and TRUSTEE:

*[Handwritten Signature]*  
\_\_\_\_\_  
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 27 day of July, 2012:

*[Handwritten Signature]*  
\_\_\_\_\_  
Print Name: **ROBERT L. SPALLINA**  
Address: **7387 WISTERIA AVENUE  
PARKLAND, FL 33076**

*[Handwritten Signature]*  
\_\_\_\_\_  
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]*  
\_\_\_\_\_  
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 \_\_\_\_\_

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERNSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
		TTL	14				

PALM BEACH COUNTY  
 NORTH COUNTY BRANCH  
 2016 APR -5 AM 11:26  
 FILED

Box \_\_\_\_\_ Envelope  Poster \_\_\_\_\_ Roll \_\_\_\_\_ Xray \_\_\_\_\_ Awk \_\_\_\_\_ Val \_\_\_\_\_ Sealed \_\_\_\_\_  
 Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

002600



**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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

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

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

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

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

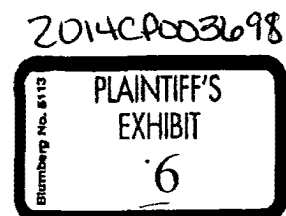
"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

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

*[remainder of page intentionally left blank]*

FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



Pe 12-15-15

TS001397

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**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

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

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

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

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

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

---

*[remainder of page intentionally left blank]*





---

**FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT**

---

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

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

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

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

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), 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 respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

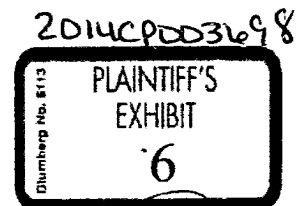
3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

---

*[remainder of page intentionally left blank]*

FIRST AMENDMENT TO  
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



12-15-15  
TS001397

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D <u>12/16/2015</u>	CASE STYLE <u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV <u>2014CP003698 IH</u>	PLTF/PET/ <u>TED BERNSTEIN</u>
JUDGE <u>JOHN L PHILLIPS</u>	DEFT/RESP/ <u>ALEXANDRA BERNSTEIN</u>
HEARING DATE <u>12/15/2015</u>	HRG TYPE <u>FINAL JUDGMENT</u>
CHARGE <u>N/A</u>	COURT CLERK <u>ANGELA BUDD</u>
	<input checked="" type="checkbox"/> Clerk not present at trial

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-OSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
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NOTES DTD 3/12/08	1	10					
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NOTES DTD 2/01/12	1	13					
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CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
TTL	14						

PALM BEACH COUNTY  
 NORTH COUNTY BRANCH  
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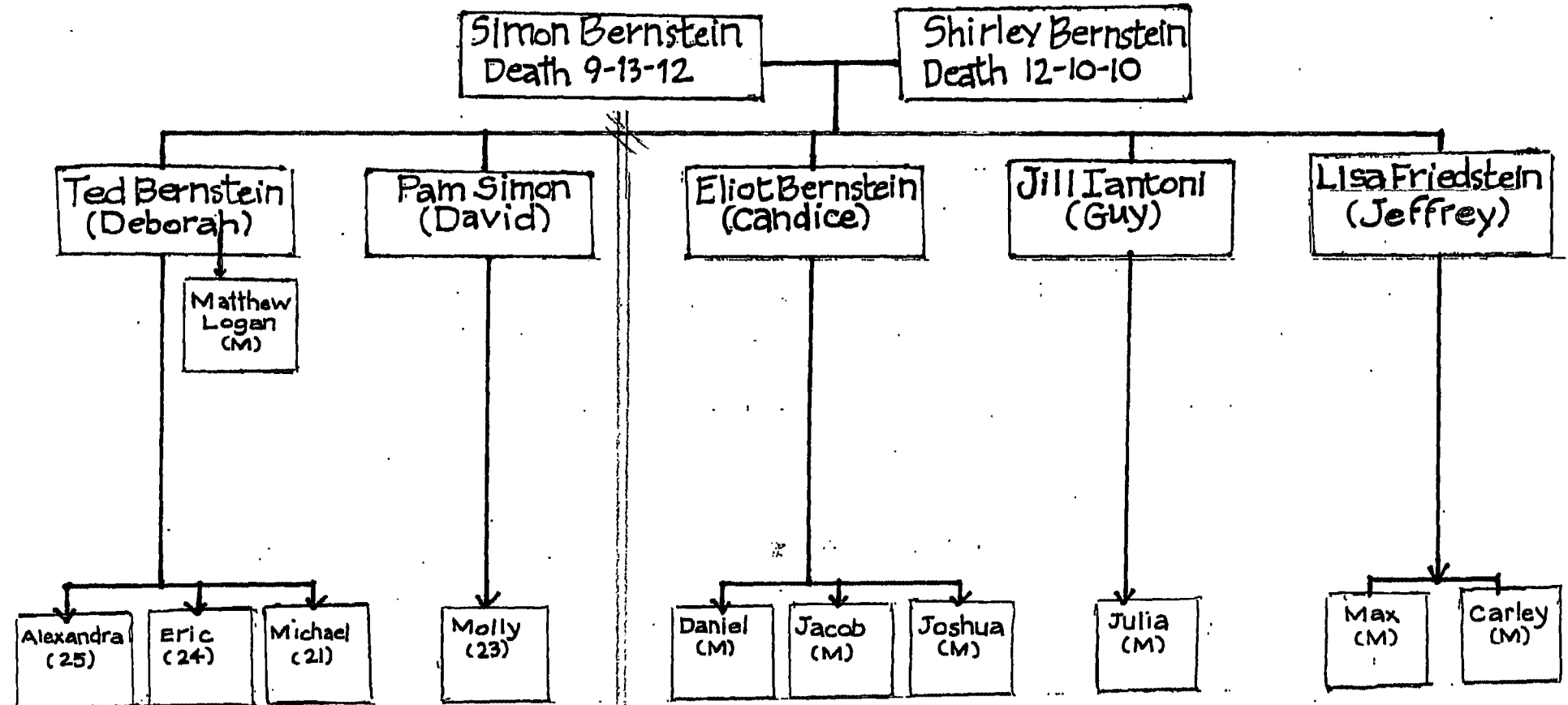
Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE _____	COURT CLERK _____	EVIDENCE CLERK _____
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FOR CLERK USE ONLY			
PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

002606

# BERNSTEIN FAMILY

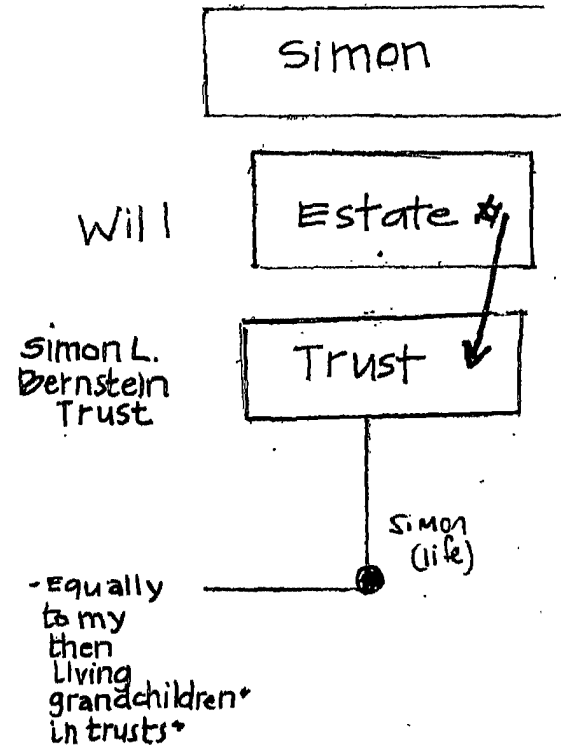
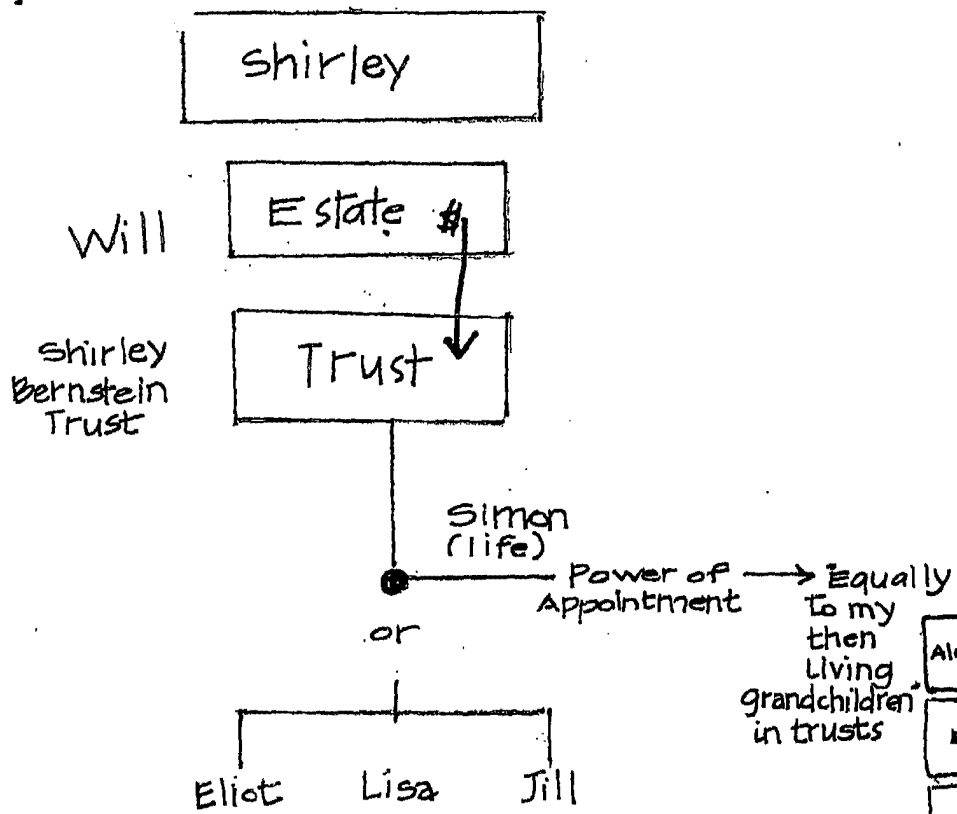


002607

1-15-12  
D7

Shamburg No. 6719  
PLAINTIFF'S  
EXHIBIT  
7

2014CP003698



- Alexandra
- Erie
- Michael
- Molly
- Daniel
- Jacob
- Joshua
- Julia
- Max
- Carley



**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	12/16/2015	CASE STYLE	IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08
CASE # / DIV.	2014CP003698 IH	PLTF/PET/	TED BERNSTEIN
JUDGE	JOHN L PHILLIPS	DEFT/RESP/	ALEXANDRA BERNSTEIN
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Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

kec (first) \_\_\_ drt \_\_\_ co. **D** rac \_\_\_ pjf \_\_\_ meg \_\_\_ raj \_\_\_ naf \_\_\_ jlk \_\_\_ rls \_\_\_ dbr \_\_\_ sml \_\_\_

**Bookeeping:**

open new billing file/subfile

bill to file no. \_\_\_\_\_

**CLIENT/CASE MAINTENANCE**

Client No. 11187.001

Case No.

Date Added: 11/16/2007

**CLIENT NAME: Simon & Shirley Bernstein**

**Address: 7020 Lions Head Lane,**

**City: Boca Raton State: FL Zip: 33496**

**Business Phone: Home Phone:**

**Fax Phone:**

**Contact Name: Simon & Shirley Bernstein**

**Referral Source:**

**Originating Attorney: DRT**

**Primary Attorney: DRT**

**Secondary Attorney: RLS**

**Category Code: Rate Code:**

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

**Estate Planning**

**Fee Type: Bill Type:**

**Related Cases:**

**Engagement Letter:**

**Retainer: Fees: Costs: \$**

**Notes:**

**Related Parties:**

**Name:**

**Addr:**

**Tel. No.:**

**Fax No.:**

**Relationship:**

**Name:**

**Addr:**

**Tel. No.:**

**Fax No.:**

**Relationship:**

**Opposing Parties:**

**Name:**

**Addr:**

**Tel. No.:**

**Fax No.:**

**Relationship:**

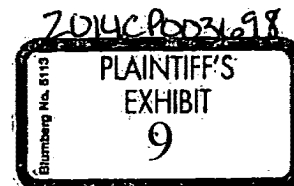
**Name:**

**Addr:**

**Tel. No.:**

**Fax No.:**

**Relationship:**



**P9**

12-15-15

TS003232

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	12/16/2015	CASE STYLE	IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08
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JUDGE	JOHN L PHILLIPS	DEFT/RESP/	ALEXANDRA BERNSTEIN
HEARING DATE	12/15/2015	HRG TYPE	FINAL JUDGMENT
CHARGE	N/A	COURT CLERK	ANGELA BUDD
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<b>TTL</b>		14					

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Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

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

Fund Foundation  
- SCorp. issue

House - JTT  
Condo - move to Shily's name

Business:

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

Bill/Ted - discuss w/Ted

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

2014CP003698



P 10  
12-15-15

Benson

3/12/89

Funders

- Director
  - Dr. Scott Brown
  - Julie London
  - Tracy Kates
  - Si Stanley
  - ALBERTSON BENNETT
- Si Stanley to Fund of \$125k
- "5" Case to Funder??
  - Reference
  - Si was taking 3%
- Binder after - We receive Funder's Determination Letter

Case

- Transfer to Si's New Trust

LEP

- Ted; Plan out for Current Purposes

Comparison

- Vorne Trust - Buy to Succession Trust
- Ted Properties →
- Det-Sch - Buy

\* See Table  
 Comp of  
 at Si's  
 Done

Mattias Logan

- ~~SP~~ <sup>Sp</sup> ~~with~~ Spouse Care in Part

Finances <sup>Spouse</sup>  
- Succession Trusts  
To for Spouse  
- Bill for Sp

\* No Spouse

1/31/08

BERNSTEIN

- Buy-Sell @ J's Death (Association on Error Purchase)
  - Value is \$10M
- Voting Trust
  - 33% of Shares Share of Trust
- J's Success Error Purchase (Asset Protection)
  - CCP for J
  - Decoupling Asset Protection Trust
- Home
  - Look into Title on the Properties

1/31/08 Bernstein, Si + Shirley

c/w Si, Ted  
RWS, DKT

yes — simple buy-sell:  
Ted to have power to buy Si's  
shares ('13) for ~~8~~ X

Terms

- 1<sup>st</sup> redemption
- 2d Ted buy out
- 303
- 6166

no — GRAT

yes — Voting Trust

yes — Asset Protection  
Delaware Asset Protection Trust

yes — FLP

Steve Greenwald



Penniston

12/18/07

- 1/2 of 25 Spans PB for DOT

- 21 Spans

- 12 Spans PB Penniston

- 10: 57 PB Across PB

12/19/07 Bernstein

sell  $\frac{1}{2}$  to trust  
put  $\frac{1}{2}$  ~~to~~ WARRIFF

Sy  
Shares = 33%

~~sell  
put  
to  
trust~~

Grant to trust

Trusts  
for other  
kids

option to buy  
purchase  
Shares  
cap. the  
price &  
estate tax values

Ted

Lisa  
Jill  
Elliot  
Pam  
Ted

-	non-voting shares only	}	7% - Lisa Trust
-			7% - Jill Trust
-			7% - Elliot Trust
Fund			12% Foundation/CRT ??

Seymour  
J. Bernstein

11187.001

Lowry, List  
To B. St. D.  
DPT  
4/18/07

- Stanley Taxes Cont OK } Part Boston for
  - IP for Fox Kiss } Kansas State License
  - Farrow View of Space } - 200k LHS 2005
  - New @C Trucks } - 200k Acquisition
- J 30M in Loof

Assets

- J - 2.5M Point
- J - 2.5M SY
- J - 1.0M SY
- Home - 2.0M Point
- Auto - 1.0M Stanley
- Misc - 2.5M
- CC -

Planning Memo To St.

- CHARITABLE PLANNING HOW TO CARRY  
@ MR. SIMPSON.
- J 150k/yr - LHS
- J 2M - DOTT
- Best Common House

11/14/02

Sy & Shirley Bernstein

\$

10,000,000+

The company

Pam

- Lisa

- Jill

- Elliott 3

- Feb - 3

S/H Agreement - Book value buy-out

2.5M Joint brokerage n/c

2.5M Sy

1.0M Sy

3.0M House J/T

1.07M MTG

1.0M <sup>net</sup> Conto - Shirley? - The Aragon

2.0M misc

2.0M Life ins.

5.0M 33 Sh. of Co.

- CLAT? Mt. Sinai - m.B.

Boca Raton Community Hosp

- Patricia Becker - wants to provide for her ✓

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/01</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
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Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

# TESCHER & SPALLINA, P.A.

ATTORNEYS-AT-LAW

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

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

TEL: 561.998.7847  
FAX: 561.998.2642  
WWW.TESCHERLAW.COM

April 9, 2008

*Personal and Confidential*

**VIA FEDERAL EXPRESS**

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

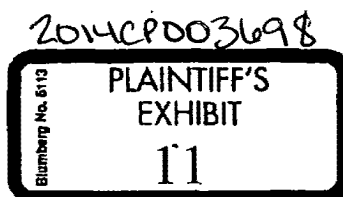
**Re: Estate Planning**

Dear Shirley and Si:

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

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

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



002622

P 11  
12-15-15

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

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

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

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

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

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

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

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

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

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

### **Family Trusts**

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

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



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

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

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

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

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

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

#### **Ancillary Documents**

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

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

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

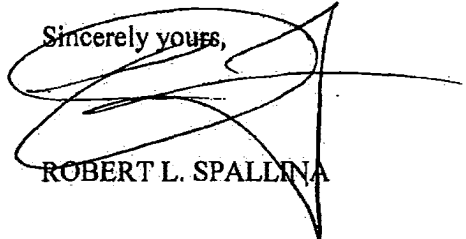
After you have had time to review the enclosed, please contact us with any questions or changes you may have. We know that there is a lot to digest here and would be happy to set-up a meeting to

TESCHER & SPALLINA, P.A.

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

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

Sincerely yours,

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

ROBERT L. SPALLINA

RLS/wp

Enclosures

cc: Donald R. Tescher, Esq.

TESCHER & SPALLINA, P.A.

002626

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
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DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

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Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

602627

JE/MLF

Si Peruvian

2/1/12

SIPC - Peruvian	-	500k
LIC Peruvian	-	100k
Q-12		<u>600k</u>

LOANS	Si's Error	Value	Error Top
1.24 JAN	- LLP	- 1.15	.8M
5M WF	- INA	- .75	.25M
			<u>1.55M</u>

Summer Error

Summer's Error	Top	FMV
- Conos	- 1.0M	2.0M
- Heuer	- 1.0M	2.0M
- 1/2 LLP	- 1.15M	.8M
		<u>5.8M</u>

LIC

← - Top	45	
← - SI	33	∅ Value (Top)
← - GC	12	
← - PUC	10	
	<u>100.5M</u>	

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 13

1.25M →	200k	Top: PUC (P13)
Mansoa →	0-2 yrs	200k
	2-4 yrs	200k
	4	100k

12-15-15

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D <u>12/16/2015</u>	CASE STYLE <u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/01</u>
CASE # / DIV. <u>2014CP003698 IH</u>	PLT/PET/ <u>TED BERNSTEIN</u>
JUDGE <u>JOHN L PHILLIPS</u>	DEFT/RESP/ <u>ALEXANDRA BERNSTEIN</u>
HEARING DATE <u>12/15/2015</u>	HRG TYPE <u>FINAL JUDGMENT</u>
CHARGE <u>N/A</u>	COURT CLERK <u>ANGELA BUDD</u>
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 Disposal Approved by(crim) Print \_\_\_\_\_ sign \_\_\_\_\_ date \_\_\_\_\_  
 Manager Approval Print \_\_\_\_\_ sign \_\_\_\_\_ date \_\_\_\_\_  
 Destruction Date \_\_\_\_\_  
 Destruction Witnessed by Print \_\_\_\_\_ sign \_\_\_\_\_ date \_\_\_\_\_

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

Thank you ~ Eliot

---

**From:** Eliot Ivan Bernstein [mailto:[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)]

**Sent:** Thursday, May 17, 2012 8:17 AM

**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.  
([atrspallina@tescherspallina.com](mailto:atrspallina@tescherspallina.com))

**Cc:** 'Simon Bernstein'; 'Caroline Prochotska Rogers, Esquire ([caroline@cprogers.com](mailto:caroline@cprogers.com))'; Michele M. Mulrooney ~ Partner @ Venable LLP ([mmulrooney@Venable.com](mailto:mmulrooney@Venable.com)); 'Andy Dietz'; 'Donna Dietz'

**Subject:** Estate of Shirley Bernstein

**PRIVATE & CONFIDENTIAL**

May 17, 2012

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

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

1. Caroline Prochatska Rogers, Esq.  
3500 North Lake Shore Drive  
17th Floor  
Chicago, IL 60657  
(773) 804-9400 ext 19  
[caroline@cprogers.com](mailto:caroline@cprogers.com)

---

2. Michele M. Mulrooney, Esq.  
[mmulrooney@Venable.com](mailto:mmulrooney@Venable.com)  
(will get new address shortly)

---

3. Andrew & Donna Dietz  
2002 Circle Drive  
Hermosa Beach, California 90254  
(310) 410-0936 ext1271  
[andyd@rockitcargo.com](mailto:andyd@rockitcargo.com)

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

5

2014C0003698



TS003977

12-15-15

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/0</u>
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Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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

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

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

SUPPORT STAFF  
DIANE DUSTIN  
JOAN MAPLE  
KIMBERLY MORAN  
SUANN TESCHER

May 24, 2012

*Personal and Confidential*

**Via Federal Express**

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

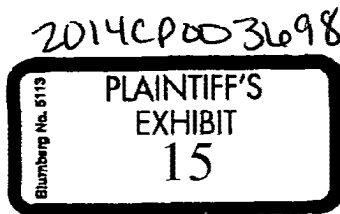
**Re: Estate Planning**

Dear Si:

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

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

You are the Grantor and Trustee of your Trust and William Stansbury is designated as your



P 15  
12-15-15

TS003983

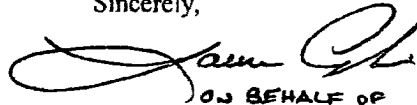


Mr. Simon L. Bernstein  
May 24, 2012  
Page 2

successor Trustee. Your children will serve as sole Trustees of their respective children's trusts until such grandchildren become co-Trustees upon attaining 25 years of age. At age 35, a grandchild will serve as sole Trustee of his or her separate trust and may appoint and replace co-Trustees that are not Related or Subordinate Parties, as defined under the document, to serve with him or her. Separate trusts for lineal descendants other than your grandchildren will serve as co-Trustees or sole Trustees of their separate trust at age 25.

If you have any questions or if there are any changes you would like to make, please let us know. We look forward to hearing from you.

Sincerely,



ON BEHALF OF  
ROBERT L. SPALLINA

RLS/lag

Enclosure(s)

LAW OFFICES  
TESCHER & SPALLINA, P.A.

TS003984

002633

**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](http://www.tescherspallina.com)

**TS003985**

**002634**

DRAFT: May 24, 2012

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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

TS003986

002635

DRAFT: May 24, 2012

the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

#### ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint WILLIAM E. STANSBURY as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security

**DRAFT: May 24, 2012**

for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or

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persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses

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incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes, interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds

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thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

*[remainder of page intentionally left blank]*



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I have published and signed this instrument as my Will at Boca Raton, Florida, on the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_ residing at \_\_\_\_\_  
[Witness Signature] [Witness Address]

\_\_\_\_\_  
[Witness Address]

\_\_\_\_\_ residing at \_\_\_\_\_  
[Witness Signature] [Witness Address]

\_\_\_\_\_  
[Witness Address]

=====

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State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

\_\_\_\_\_  
SIMON L. BERNSTEIN, Testator

We, \_\_\_\_\_ and \_\_\_\_\_, have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and \_\_\_\_\_, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

\_\_\_\_\_  
Print, type or stamp name of Notary Public

LAST WILL  
OF SIMON L. BERNSTEIN

**SIMON L. BERNSTEIN**  
**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

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SIMON L. BERNSTEIN

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**AMENDED AND RESTATED TRUST AGREEMENT**

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This Amended and Restated Trust Agreement is dated this \_\_\_\_\_ day of \_\_\_\_\_, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "*Trust Agreement*," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

**ARTICLE I. DURING MY LIFE AND UPON MY DEATH**

**A. Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

**B. Payments During My Life.** If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

TS003995

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C. **Upon My Death.** Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

## ARTICLE II. AFTER MY DEATH

A. **Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. **Disposition of Trust Upon My Death.** Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "**beneficiary**" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. **Trusts for Beneficiaries.** The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

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1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

**D. Termination of Small Trust.** If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

**E. Contingent Gift.** If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

**F. Protective Provision.** No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

**G. Maximum Duration.** Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

### ARTICLE III. GENERAL

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**A. Disability.** Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

**B. Timing of Income Distributions.** The Trustee shall make required payments of income at least quarterly.

**C. Substance Abuse.**

1. **In General.** If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. **Testing.** The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. **Treatment.** If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

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in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is



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raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (d) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

**H. Presumption of Survivorship.** If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

**I. Governing Law.** This Agreement is governed by the law of the State of Florida.

**J. Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

**K. Release of Medical Information.**

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

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beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 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

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

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proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.



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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. **Additions.** To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. **Title and Possession.** To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. **Dealing with Estates.** To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. **Agents.** To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. **Tax Elections.** To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

**B. Resignation.** A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

**C. Appointment of Successor Trustee.**

1. **Appointment.** Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, WILLIAM E. STANSBURY shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

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4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

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3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in

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money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

**K. Third Parties.** No one dealing with the Trustee need inquire into its authority or its application of property.

**L. Merger of Trusts.** If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

**M. Multiple Trustees.** If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

#### **ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS**

**A. GST Trusts.** I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such

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fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

**B. Individual Retirement Accounts.** In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

I. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

DRAFT: May 24, 2012

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.



DRAFT: May 24, 2012

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

**DRAFT: May 24, 2012**

663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

**G. Residence as Homestead.** I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

*[remainder of page intentionally left blank]*

DRAFT: May 24, 2012

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this \_\_\_ day of \_\_\_\_\_, 2012:

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Print Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2012, by SIMON L. BERNSTEIN.

Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

**IN THE 15TH JUDICIAL CIRCUIT  
PALM BEACH COUNTY  
EXHIBIT LIST**

Pg 1

DATE REC'D	<u>12/16/2015</u>	CASE STYLE	<u>IN RE: SHIRLEY BERNSTEIN TRUST AGREE DTD 45/20/08</u>
CASE # / DIV.	<u>2014CP003698 IH</u>	PLTF/PET/	<u>TED BERNSTEIN</u>
JUDGE	<u>JOHN L PHILLIPS</u>	DEFT/RESP/	<u>ALEXANDRA BERNSTEIN</u>
HEARING DATE	<u>12/15/2015</u>	HRG TYPE	<u>FINAL JUDGMENT</u>
CHARGE	<u>N/A</u>	COURT CLERK	<u>ANGELA BUDD</u>
		<input checked="" type="checkbox"/> Clerk not present at trial	

Description	QTY	PLT/PET / ID	PLT/PET / EV	DFT/RSP / ID	DFT/RSP / EV	COURT ID/EV	D-DSTRYD R-RETD
WILL OF SHIRLEY BERNSTEIN DTD 5/20/08	1	1					
TRUST AGREEMENT DTD 5/20/08	1	2					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	3					
WILL OF SIMON L. BERSTEIN DTD 7/25/12	1	4					
AMENDED AND RESTATED TRUST AGREEMENT SIMON L BERNSTEIN DTD 7/25/12	1	5					
FIRST AMENDMENT TO TRUST AGREEMENT DTD 11/18/08	1	6					
BERNSTEIN FAMILY FLOW CHART	1	7					
CLIENT/CASE MAINTENANCE DTD 11/16/07	1	9					
NOTES DTD 3/12/08	1	10					
CORRESPONDENCE FROM ROBERT SPALLINA TO MR & MRS SIMON BERNSTEIN DTD 4/09/08	1	11					
NOTES DTD 2/01/12	1	13					
EMAIL FROM ELIOT BERNSTEIN TO ROBERT SPALLINA DTD 5/17/12	1	14					
CORRESPONDENCE FROM TESCHER & SPALLINA TO SIMON BERNSTEIN DTD 5/24/12	1	15					
DURABLE POWER OF ATTORNEY DTD 7/25/12	1	16					
<b>TTL</b>		<b>14</b>					

PALM BEACH COUNTY  
 NORTH COUNTY BRANCH  
 2016 APR -5 AM 11:26  
 FILED

Box  Envelope  Poster  Roll  Xray  Awk  Val  Sealed   
 Special Instructions \_\_\_\_\_ Transported by: \_\_\_\_\_

XFER DATE \_\_\_\_\_ COURT CLERK \_\_\_\_\_ EVIDENCE CLERK \_\_\_\_\_

**FOR CLERK USE ONLY**

PLT/PET Exhibits Returned	Y / N _____	DFT/RESP Exhibits Returned	Y / N _____
Disposal Approved by	Print _____	sign _____	date _____
Disposal Approved by (crim)	Print _____	sign _____	date _____
Manager Approval	Print _____	sign _____	date _____
Destruction Date	_____		
Destruction Witnessed by	Print _____	sign _____	date _____

DURABLE POWER OF ATTORNEY

I, SIMON L. BERNSTEIN, Social Security No. [REDACTED], of Palm Beach County, Florida, revoke all powers of attorney previously issued by me and appoint ROBERT L. SPALLINA as attorney-in-fact for me and to otherwise act for me and on my behalf, as provided herein:

- \_\_\_\_\_ a. To create and fund an inter vivos trust for my benefit, the benefit of a family member or for the benefit of my pet as part of my estate planning and tax minimization objectives.
- \_\_\_\_\_ b. To amend, modify, revoke, or terminate a trust created by me or on my behalf if the trust explicitly provides for amendment, modification or termination by my agent.
- \_\_\_\_\_ c. To create or change rights of survivorship on financial accounts and property, real, intangible and tangible, owned by me.
- \_\_\_\_\_ d. To deal with retirement plans, including individual retirement accounts, rollovers, and voluntary contributions, changing the ownership or beneficiary designations on such accounts, plans and/or annuities.
- \_\_\_\_\_ e. To deal with life insurance, including the power to cash in or change the ownership or beneficiary designations of life insurance policies, excluding, however, life insurance policies of which my attorney-in-fact is not an owner nor co-owner thereof but is an insured thereof.
- \_\_\_\_\_ f. To make gifts on my behalf as part of my estate planning and tax minimization objectives to my spouse, my lineal descendants or to trusts primarily for their benefit, that to any one such recipient does not exceed annually in aggregate the exclusion amount provided for under Code Section 2503(b). When a person eligible to receive gifts is serving as my agent hereunder, the aggregate of all gifts to such agent during the calendar year allowable shall not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of my estate. However, gifts completed prior to a recipient's commencing to serve as agent shall not be affected by this limitation. Furthermore, to pay any charitable pledges I have made even if they are not yet due.
- \_\_\_\_\_ g. To waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- \_\_\_\_\_ h. To make statutory elections and disclaimers, including the power to disclaim or refuse to accept an inheritance, life insurance proceeds, or elective share.
- \_\_\_\_\_ i. To establish bank accounts, including renting safe deposit boxes, and brokerage accounts on my behalf.

2014CP003698

Blumberg No. 0113  
PLAINTIFF'S  
EXHIBIT  
16

P 16  
12/15/15

LAW OFFICES

TESCHER & SPALLINA, P.A.

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- j. To have access to any safe deposit box rented by me or by me with others (including authority to have it drilled), to remove the contents therefrom and to terminate the lease of the box.
- k. To sell, purchase or to assign, transfer and deliver all cash, bonds, stocks, securities, annuities and other property of any kind, real or personal, owned by me.
- l. To withdraw any funds standing to my credit or to my credit jointly with others in any bank, savings and loan association or other financial institution.
- m. To conduct banking transactions as provided in section 709.2208(1) of the Florida Statutes, including but not limited to endorsing and delivering any checks, drafts, certificates of deposit, notes or other instruments for the payment of money payable to or belonging to me.
- n. To convey any real property, interest in real property, or beneficial interest in a trust holding real property, including, but without limitation, homestead real property and real property in any type of joint ownership, including tenancy by the entireties, which I may own or possess.
- o. To mortgage real property, including homestead real property, and to join with my spouse and my spouse's legal guardian where necessary, to accomplish this encumbrance.
- p. To execute and deliver any assignment, stock power, deed or other instrument which my attorney-in-fact deems necessary or appropriate to carry out and effectuate this power of attorney, to sign my name to any instrument pertaining to or required in connection with the transfer of my property, and to give full receipts and discharges.
- q. To conduct investment transactions as provided in section 709.2208(2) of the Florida Statutes, including but not limited to delegating to a transfer agent or similar person the authority to register any stocks, bonds or other securities either into or out of the principal's or nominee's name.
- r. To borrow funds to avoid forced liquidation of assets.
- s. To enter into buy-sell agreements.
- t. To forgive and collect debts.
- u. To make and complete funding of charitable pledges.
- v. To hire counsel and otherwise act to represent and/or protect my interest in any

legal action.

- w. To collect amounts due to me and to qualify me for various government entitlements such as Medicaid or Supplemental Social Security.
- x. To deal with and collect proceeds from health and/or long term care insurance.
- y. To sign tax returns, IRS powers of attorney, and to settle tax disputes.
- z. To petition a court of competent jurisdiction for an elective share of the estate of my deceased spouse.
- aa. To convey any property, tangible or intangible, real or personal, to the trustee of a revocable trust of which I was an original grantor, including my homestead.
- bb. To execute any document on my behalf for the purpose of qualifying for any public/private benefit; and if when applying for Medicaid benefits, my income exceeds the income cap, to create an irrevocable income trust and to transfer so much of my income of said trust as will enable me to qualify for Medicaid benefits.
- cc. To exercise all rights and privileges over, or relating to the ownership of, property, including without limitation the exercise of voting rights relating to such property or ownership.
- dd. To deal with the United States Postal Service on my behalf, including but not limited to renting a post office box and collecting mail or forwarding my mail.
- ee. To expend funds for the maintenance and day-to-day care of my pets; to provide informed consent for veterinary treatment and surgical and diagnostic procedures for my pets; to give informed consent and make health care decisions for my pets and to provide, withhold or withdraw such consent on my behalf; to make decisions regarding the administration of drugs for my pets; to apply for pet insurance to defray the costs of veterinary services; and to submit claims to my pet insurance company.

Every bank or other financial institution, insurance company, transfer agent, issuer, obligor, safe deposit box company, title insurance company or other person, firm or corporation to which this power of attorney or a photocopy hereof is presented is authorized to receive, honor and give effect to all instruments signed pursuant to the foregoing authority without inquiring as to the circumstances of their issuance or the disposition of the property delivered pursuant thereto. All acts done hereunder by my attorney-in-fact after revocation of this power of attorney or after my death shall be valid and enforceable in favor of anyone who relies on this power of attorney and has not received prior actual written notice of the revocation or death. All acts done by my attorney-in-fact pursuant to this power shall be binding upon me and my heirs, devisees and personal representatives.

DURABLE POWER OF ATTORNEY  
OF SIMON L. BERNSTEIN

3

LAW OFFICES

TESCHER & SPALLINA, P.A.

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My said attorney-in-fact shall not be liable for any acts or decisions made by said attorney-in-fact in good faith and under the terms of this Durable Power of Attorney.

I give and grant unto my said attorney-in-fact full power and authority to do and perform all and every act and thing that may be requisite and necessary as fully to all intents and purposes as I might or could if personally present, hereby ratifying and confirming all that my said attorney-in-fact shall lawfully do or cause to be done by virtue of this power of attorney.

This Durable Power of Attorney shall not be affected by subsequent incapacity of the principal except as provided by statute.

IN WITNESS WHEREOF I have signed this Durable Power of Attorney this 25 day of July, 2012.

Signed in the presence of:

[Signature]  
Print Name: ROBERT SPALLINA

[Signature]  
SIMON L. BERNSTEIN

[Signature]  
Print Name: Kimberly Moran

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]  
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 [check] or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_





LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

ATTORNEYS  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

July 26, 2012

**VIA U.S. MAIL**

Mr. Simon Bernstein  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487

**Re: Estate Planning**

Dear Si,

Enclosed for your file is a conformed copy of your Last Will (the original of which is being held in our safe).

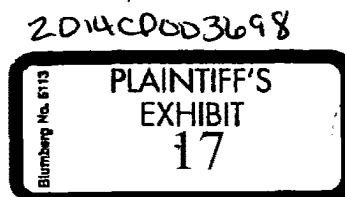
If you have any questions, please do not hesitate to call.

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/ac

Enclosures



*P17*  
*12-15-15*

002674

TS003982



STATE OF FLORIDA

THIS DOCUMENT HAS A LIGHT BACKGROUND OF TRUE WATERMARKED PAPER. HOLD TO LIGHT TO VERIFY FLORIDA WATERMARK.

OFFICE of VITAL STATISTICS

CERTIFICATION OF DEATH

STATE FILE NUMBER: 2012256765

DATE ISSUED: September 18, 2012

DECEDENT INFORMATION

STATE FILE DATE: September 17, 2012

NAME: SIMON LEON BERNSTEIN

DATE OF DEATH: September 13, 2012

SEX: MALE

AGE: 076 YEARS

DATE OF BIRTH: December 2, 1935

SSN: [REDACTED]

BIRTHPLACE: FLINT, MICHIGAN

PLACE WHERE DEATH OCCURRED: INPATIENT

FACILITY NAME OR STREET ADDRESS: DELRAY MEDICAL CENTER

LOCATION OF DEATH: DELRAY BEACH, PALM BEACH COUNTY

SURVIVING SPOUSE, DECEDENT'S RESIDENCE AND HISTORY INFORMATION

MARITAL STATUS: WIDOWED

SPOUSE: NONE

RESIDENCE: [REDACTED]

COUNTY: PALM BEACH

OCCUPATION, INDUSTRY: SALES, LIFE INSURANCE

RACE:  White  Black or African American  Asian Indian  Chinese  Filipino  Native Hawaiian

American Indian or Alaskan Native--Tribe:

Japanese  Korean  Vietnamese

Guamanian or Chamorro

Samoan

Other Pacific Isl:

Other Asian:

Other:

Unknown

HISPANIC OR HAITIAN ORIGIN? NO, NOT OF HISPANIC/HAITIAN ORIGIN

EDUCATION: HIGH SCHOOL GRADUATE OR GED

EVER IN U.S. ARMED FORCES? NO

PARENTS AND INFORMANT INFORMATION

FATHER: THEODORE BERNSTEIN

MOTHER: NORA UNKNOWN

INFORMANT: TED STUART BERNSTEIN

RELATIONSHIP TO DECEDENT: SON

INFORMANT'S ADDRESS: [REDACTED]

PLACE OF DISPOSITION AND FUNERAL FACILITY INFORMATION

PLACE OF DISPOSITION: THE GARDENS MEMORIAL PARK  
BOCA RATON, FLORIDA

METHOD OF DISPOSITION: ENTOMBMENT

FUNERAL DIRECTOR/LICENSE NUMBER: GARRETT JACOBS, F019844

FUNERAL FACILITY: BOCA RATON FUNERAL HOME F040152  
19785 HAMPTON DRIVE, BOCA RATON, FLORIDA 33434

CERTIFIER INFORMATION

TYPE OF CERTIFIER: MEDICAL EXAMINER

MEDICAL EXAMINER CASE NUMBER: 121500913

TIME OF DEATH (24 hr): 0227

CERTIFIER'S NAME: MICHAEL D BELL

CERTIFIER'S LICENSE NUMBER: ME54359

NAME OF ATTENDING PHYSICIAN (If other than Certifier): NOT ENTERED

201400031098  
Blumberg No. 8113  
PLAINTIFF'S  
EXHIBIT  
18

*C. Meade G...*

THE ABOVE SIGNATURE CERTIFIES THAT THIS IS A TRUE COPY OF THE OFFICIAL RECORD ON FILE IN THIS OFFICE.  
WARNING: THIS DOCUMENT IS PRINTED OR PHOTOCOPIED ON SECURITY PAPER WITH WATERMARKS OF THE GREAT SEAL OF THE STATE OF FLORIDA. DO NOT ACCEPT WITHOUT VERIFYING THE PRESENCE OF THE WATERMARKS. THE DOCUMENT FACE CONTAINS A MULTICOLORED BACKGROUND, GOLD EMBOSSED SEAL, AND THERMOCHROMIC FL. THE BACK CONTAINS SPECIAL LINES WITH TEXT.

REQ: 2013121648

*P 18*



\* 2 8 3 6 6 0 6 4 \*

DH FORM 1948 (04-10)

CERTIFICATION OF VITAL RECORD

HEALTH

TS004163

002676

12-15-15

VOID IF ALTERED OR ERASED

VOID IF ALTERED OR ERASED



2007 WEST PALM BEACH FL 33411  
OCT 13 2007 WEST PALM BEACH FL 33411

LAW OFFICES OF  
STEVEN I. GREENWALD, P. A.  
BOCA PALM PROFESSIONAL PLAZA  
6971 NORTH FEDERAL HIGHWAY SUITE 105  
BOCA RATON, FLORIDA 33487

To: Mr. and Mrs. Simon L. Bernstein  
7020 Lions Head Lane  
Boca Raton, Florida 33496

Blumberg No. 8113  
PLAINTIFFS  
EXHIBIT  
40-A

2007-10-13

QDP-A-F  
COMPS RE  
12-15-15

002678

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LAW OFFICES OF  
**STEVEN I. GREENWALD, P.A.**

BOCA PALM PROFESSIONAL PLAZA  
6971 NORTH FEDERAL HIGHWAY, SUITE 105  
BOCA RATON, FLORIDA 33487

e-mail: sigreenwald@561net.com

TELEPHONE (561) 994-5560  
FAX (561) 994-5629

October 12, 2007

Mr. and Mrs. Simon L. Bernstein  
7020 Lions Head Lane  
Boca Raton, Florida 33496

Re: Estate Planning

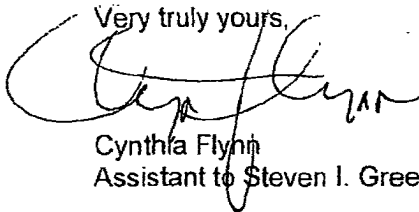
Dear Mr. and Mrs. Bernstein:

Pursuant to the request of Diane of your office, please find enclosed copies of the following estate planning documents:

Living Wills  
Durable Powers of Attorney  
Designation of Health Care Surrogate  
Trust Agreement dated August 15, 2000  
Last Wills and Testaments  
First Codicils to Last Wills

If you should need anything further, please do not hesitate to contact us.

Very truly yours,



Cynthia Flynn  
Assistant to Steven I. Greenwald

enclosures



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LAW OFFICES OF  
**STEVEN I. GREENWALD, P.A.**  
BOCA PALM PROFESSIONAL PLAZA  
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October 12, 2007

Mr. and Mrs. Simon L. Bernstein  
7020 Lions Head Lane  
Boca Raton, Florida 33496

Re: Estate Planning

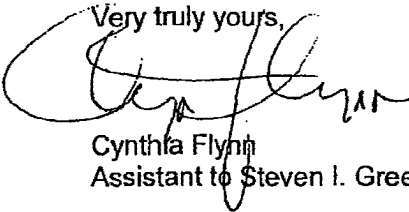
Dear Mr. and Mrs. Bernstein:

Pursuant to the request of Diane of your office, please find enclosed copies of the following estate planning documents:

Living Wills  
Durable Powers of Attorney  
Designation of Health Care Surrogate  
Trust Agreement dated August 15, 2000  
Last Wills and Testaments  
First Codicils to Last Wills

If you should need anything further, please do not hesitate to contact us.

Very truly yours,



Cynthia Flynn  
Assistant to Steven I. Greenwald

enclosures



	<p>LAST WILL AND TESTAMENT OF SIMON BERNSTEIN</p> <p>DATED <i>August 15, 2000</i></p>	<p>PROSKAUER ROSE LLP Attorneys at Law 1000 Brickell Avenue, Suite 2400 West Miami Beach, Florida 33134-3733</p>
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Blumberg No. 0113  
PLAINTIFF'S  
EXHIBIT  
40-C

I, SIMON L. BERNSTEIN, of the County of Palm Beach, State of Florida, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills, Testaments and Codicils at any time made by me.

FIRST: I direct that all my just debts and funeral and administration expenses be paid as soon after my death as may be practicable.

SECOND: I hereby direct that, pursuant to Florida Statutes §732.515, or the comparable provision in effect at the time of my death, my personal and household effects, including jewelry, works of art and automobiles, if any, be distributed in accordance with a separate written statement executed by me. In the event there shall be more than one such written statement, the statement bearing the last date shall be controlling. If no such written statement is found and properly identified by my Personal Representatives within thirty days after my Personal Representatives are appointed, it shall be conclusively presumed that no such writing exists. In the event there shall be no such written statement (or to the extent such written statement does not effectively dispose of all of my personal and household effects, including jewelry, works of art and automobiles, if any), I give and bequeath all (or the balance) of my personal and household effects, if any, to my wife, SHIRLEY BERNSTEIN, if she survives me, or, if she predeceases me, to such of my children, TED STUART BERNSTEIN, PAMELA BETH SIMON, ELIOT BERNSTEIN, JILL LANTONI and LISA SUE FRIEDSTEIN, as shall survive me, in shares as nearly equal as they shall agree upon, or, failing agreement, said personal and household effects shall be sold and the proceeds therefrom added to and disposed of as part of my residuary estate.

THIRD: If my wife, SHIRLEY BERNSTEIN, survives me, I

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PROSKAUER ROSE LLP  
2255 GLADES ROAD  
BOCA RATON, FLORIDA 33431



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give and bequeath to my Trustees a "credit equivalent amount" (as defined below) to hold in separate trust to pay so much of the income therefrom and such sums out of the principal thereof (even to the extent of the whole thereof) to such of my wife and my descendants, living from time to time, equally or unequally, and to any one or more of them to the exclusion of the others, as my Trustees, in their absolute discretion, deem necessary or advisable; provided, however, that no such payment shall be made to my wife from the principal of the trust under this Article THIRD until the principal of her trust, if any, under Article FOURTH of this Will shall first have been exhausted. Any balance of the income shall be accumulated and added to principal annually.

Upon the death of my wife, the then principal of the trust shall pass to such one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

The "credit equivalent amount" shall be (a) the maximum amount which could comprise my taxable estate for Federal estate tax purposes without resulting in any Federal estate tax, after taking into account the applicable credit amount as defined in



Section 2010(c) of the Code, but no other credits allowable against such tax, reduced by (b) the aggregate of:

(1) the value (as finally determined for Federal estate tax purposes) of all property (including interests in property) includable in my estate for Federal estate tax purposes which passes under other provisions of this Will or otherwise than under this Will and with respect to which no marital deduction or charitable deduction is finally allowed in determining said tax, and

(2) the amount of my adjusted taxable gifts within the meaning of Section 2001(b) of the Code.

The trust under this Article THIRD shall be known as the "Simon L. Bernstein Credit Equivalent Trust."

FOURTH: I give and bequeath to my Trustees an amount equal to my "Unused GST Exemption" (as defined below) to hold in separate trust to pay the income therefrom in quarterly or more frequent installments to my wife, SHIRLEY BERNSTEIN, during her life.

I authorize and empower my Trustees, from time to time, to pay to my wife such sums out of the principal of her trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in her best interests; provided, however, that no such payment shall be made to my wife from the principal of her trust under this Article FOURTH until the principal of her trust, if any, under subdivision (a) of Article FIFTH of this Will shall first have been exhausted.

Upon the death of my wife, the then principal of the trust shall pass to such of one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon my death if my wife predeceases me, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren

and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

I direct that all estate and inheritance taxes of whatever kind imposed by reason of the inclusion of the trust under this Article in my wife's estate for such tax purposes shall (absent a contrary provision in my wife's Will) be charged, without right of reimbursement, against the principal of the trust for the benefit of my wife under subdivision (a) of Article FIFTH of this Will.

My "Unused GST Exemption" shall be an amount equal to the maximum GST exemption allowable to me pursuant to Section 2631 of the Code, reduced by the aggregate amount of my GST Exemption which has been allocated or deemed allocated by me or which shall be allocated by my Personal Representatives with respect to property transferred by me either under the provisions of this Will or otherwise than under this Will.

The trust under this Article FOURTH shall be known as the "Simon L. Bernstein Exempt Marital Trust."

FIFTH: All the rest, residue and remainder of my estate, real, personal or otherwise and wheresoever situate, including any lapsed legacy or bequest, hereinafter called my residuary estate, shall be disposed of as follows:

(a) If my wife, SHIRLEY BERNSTEIN, survives me, my residuary estate shall be held by my Trustees in separate trust to pay the income therefrom in quarterly or more frequent installments to my wife during her life.



I authorize and empower my Trustees, from time to time, to pay to my wife such sums out of the principal of her trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in her best interests.

Upon the death of my wife, the then principal of her trust shall pass to such one or more of my descendants, in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my wife shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

The trust for my wife under this subdivision (a) shall be known as the "Simon L. Bernstein Non-Exempt Marital Trust.

(b) If my wife predeceases me, my residuary estate shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN as survive me and for the descendants who survive me of such of them as may predecease me, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

SIXTH: All shares, portions or parts above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SIXTH

shall be combined and held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions or parts, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a grandchild or more remote descendant of mine and who has descendants then living, or, in default thereof, shall be divided into as many equal portions or parts as may be necessary to provide one for each of my then living grandchildren, and one for each of them who is then dead but who leaves descendants who are then living (such descendants to take in parts, per stirpes, the share set aside for them), and each such portion or part shall be distributed absolutely, except that any portion or part

so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SIXTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion or part so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SIXTH shall be disposed of as provided in this Article SIXTH.

SEVENTH: Each share or portion above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SEVENTH shall be held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary





during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of mine and who has descendants then living, or, in default thereof, for my then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SEVENTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SEVENTH shall be disposed of as provided in this Article SEVENTH.

EIGHTH: I nominate and appoint my wife, SHIRLEY BERNSTEIN, as my Personal Representative. If my wife fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: ALBERT W. GORTZ; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my wife, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my wife, SHIRLEY BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees. If my either my wife or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly

and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.

My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever.

NINTH: I hereby grant to my Personal Representatives and Trustees, in addition to the general powers conferred upon them by law, the following discretionary powers:

(a) To distribute my estate and set up the trusts herein at one time or at different times as soon after my death as they may deem practicable, whether before or after the expiration of any statutory period.

(b) To charge or credit to principal or income or to apportion between them, in such manner as they deem advisable, any ordinary or extraordinary expenses and any extraordinary, wasting or liquidating dividends and any dividends payable in the stock of the corporation declaring the dividend or payable in the stock of another corporation and so-called "capital gains dividends" declared by investment companies or investment trusts; to determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money; upon the death of an income beneficiary, or any other termination of a trust herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which my Personal Representatives or Trustees are authorized in their discretion to accumulate shall be added to principal.

(c) To set apart out of the income of the trusts

herein (or out of the income of corporations of which the trusts own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as they, in their absolute discretion, shall deem advisable.

(d) To claim expenses chargeable against principal as estate tax or income tax deductions as they deem advisable and to determine if and to what extent any adjustment in favor of principal required by law shall be made.

(e) To make any payment or distribution (required or authorized under this Will) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard, among such shares, to whether the property distributed has an equivalent basis for income tax purposes.

(f) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute), exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder; said leases may extend beyond the duration of the trusts herein.

(g) To borrow such sums as they deem advisable for the proper administration of my estate and the trusts hereunder and to give security therefor.

(h) To continue, settle or discontinue any business or partnership in which I may be interested.

(i) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be at my death or when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article of my Will, so long as they, in their absolute discretion, deem it advisable.

(j) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable and without regard to any duty to diversify or, except with respect to any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of



an interest in any form of partnership or corporation or through any other form of participation or ownership.

(k) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but my Personal Representatives or Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to my estate or any trust hereunder.

(l) To retain possession, in their absolute discretion, of any property payable absolutely to an infant, and to invest and reinvest the same, to collect the income therefrom, and, after deducting all proper expenses, to apply the income and principal to the use of said infant (and in the case of tangible personal property to permit the infant to have the custody and use of all or part of it from time to time), with all the powers, rights and compensation of Trustees hereunder, provided, however, that nothing herein contained shall be construed to prevent or postpone the vesting of said property in said infant or to suspend the alienability of said property.

(m) In determining the amounts applicable to the use of an infant, to consider or disregard the ability of the parent or parents of said infant to support said infant; and to make payment of any amount, applicable to the use of or payable to an infant, (1) to the guardian (whether qualified in my domicile or any other jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act, or (4) to apply the same for his or her benefit; the receipt of such guardian, parent or Custodian or the evidence of the application of such amount shall be a full discharge to my Personal Representatives and Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of my grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(n) Severally to authorize, by instrument in writing, any person or corporation, including any co-fiduciary, bank or trust company, to act in the place of said Personal Representative or Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Personal Representative or Trustee.

(o) To remove any property held by them hereunder to or from my domicile or any other jurisdiction.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held by them hereunder in exchange for securities thereof.

(q) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in

the names of a majority of the Personal Representatives or Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Personal Representatives or Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To file such gift tax and income tax returns jointly with my spouse as they deem advisable.

(t) To compromise, settle, subordinate, arbitrate, extend, renew, modify, waive or extend the statute of limitations with respect to, or release, in whole or in part, any claim held by or against my estate or the trusts herein, or any mortgage or other security held by them or held against any property held by them hereunder.

(u) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make any necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general or otherwise.

(v) To the extent permitted by law, to register any property held by them hereunder in their names as Personal Representatives or Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(w) To lend such sums out of the income (other than of any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that adequate security be obtained from, and reasonable interest be charged to, the borrower.

(x) To guarantee loans made to any beneficiary hereunder.

(y) To trade on margin (but only with the approval of my spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, my Personal Representatives and Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

TENTH: (a) All the powers granted to my Personal Representatives and Trustees hereunder may be exercised after the termination of the trusts hereunder in connection with the proper

administration and distribution thereof.

(b) Notwithstanding any provision in this Will to the contrary, any power (including discretionary powers) granted to my Personal Representatives and Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause my estate to lose all or part of the tax benefit afforded my estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to the trusts for my spouse under Articles FOURTH and FIFTH of this Will, (1) subdivisions (a), (b), (c) and (p) of the preceding Article of this Will shall not apply and (2) my spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(c) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause my death or the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether I or said person, or the life beneficiary or said person, as the case may be, died first, then, for the purposes of this Will, said person shall be deemed to have died before me or before said life beneficiary, and my estate shall pass in such manner as would occur hereunder if said person had predeceased me or said life beneficiary, as the case may be.

(d) I direct that my Personal Representative(s) shall exercise the right, under Section 2207A(a)(1) of the Code and under any similar provision of any state law, to recover from the persons receiving any property referred to in said provisions (including the Trustees of any trust other than the pre-residuary trust under Article FOURTH of my spouse's Will) the amount of estate and inheritance taxes (and any interest and penalties relating thereto) paid by my estate attributable to such property. Subject to the direction in the preceding sentence, all estate and inheritance taxes of whatever kind imposed by reason of my death upon the property disposed of in this Will and upon any other property, including insurance but not including the pre-residuary trust under Article FOURTH of my spouse's Will (the taxes on which are to be paid out of the residuary trust thereunder), otherwise disposed of and subject to the imposition of said taxes, shall be charged, without right of reimbursement, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

For the foregoing purposes, estate and inheritance taxes shall include any generation-skipping transfer tax on a direct skip taking effect at my death (other than a direct skip from a trust not created by me), but no other generation-skipping transfer tax.

(e) Any income or principal payable to a beneficiary hereunder may, in the discretion of my Personal Representatives and Trustees, be applied by them for the benefit of said beneficiary.

(f) All testamentary powers of appointment granted in

this Will shall be exercisable by specific reference to this Will and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the donee of the power or the donee's estate or creditors of the donee or of the donee's estate.

(g) Any person may renounce, in whole or in part, any provision in his or her favor hereunder and, in such event, the property covered by said provision, to the extent renounced, shall be disposed of as though said person had predeceased me, and if said property is to be held in trust, to the extent renounced, said property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

(h) Any Personal Representative or Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Personal Representative or Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Personal Representative or Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Personal Representative(s) or Trustee(s).

(i) With respect to any Personal Representative or Trustee who is interested, in his or her individual capacity, in any firm or corporation in which my estate or any trust hereunder may have an interest, I direct that he or she may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but I direct that if one or more of my Personal Representatives or Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of my estate and of said trust shall be made by said disinterested Personal Representative(s) or Trustee(s).

(j) A person from time to time qualified as Personal Representative or Trustee hereunder shall not be disqualified from purchasing assets of my estate, provided (1) said purchaser shall not participate as Personal Representative or Trustee in the decisions of the Personal Representatives or Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Personal Representative(s) or Trustee(s); and (2) in fixing said price, conditions and terms said other Personal Representative(s) or Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Personal Representative or Trustee.

(k) My Personal Representatives and Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of my said Personal Representatives and Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of my Personal Representatives or Trustees has no such interest, then as to all such matters the decision of my estate or of the trusts hereunder shall be made by said disinterested Personal Representative(s) or Trustee(s).



(l) My Personal Representatives and Trustees may exercise any rights or options with respect to any policy of life insurance held by them, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy; applying dividends against premiums or to purchase paid up additions; and exercising options with respect to surrender or payment of death proceeds.

(m) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(n) I direct that any administration expenses or debts charged to principal and not claimed and allowed as estate tax deductions shall be charged, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

(o) I direct that all charges incurred by my Personal Representatives in storing, packing, shipping, delivering and insuring any property passing under the provisions of this Will, whether such property is specifically bequeathed or otherwise, shall be paid by my Personal Representatives as expenses of administering my estate.

(p) Notwithstanding the provisions of Article SEVENTH of this Will, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article SEVENTH.

(q) Wherever in this Will property is directed to be added to or combined with an existing trust for a descendant of mine hereunder, my Personal Representatives and Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

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(r) If, at any time, there shall be a trust under the Will of my spouse, or a trust created by me or by my spouse during our lifetimes, for the same beneficiaries and subject to the same provisions as a trust under this Will (or as a trust intended to be created under this Will), my Personal Representatives and Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in section 2642(a) of the Code), to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(s) I authorize and empower my Personal Representatives to allocate the GST Exemption allowable to me pursuant to Section 2631 of the Code, to the extent that it shall not have been allocated (or deemed allocated) by me during my lifetime, in such manner as they, in their absolute discretion, shall determine.

(t) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of my Will) in effect at the time of my death, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(u) Every Personal Representative and Trustee hereunder, original and substitute, shall be chargeable only with said fiduciary's own respective receipts or acts, and shall not be liable for any loss or damage occurring hereunder without said fiduciary's willful default or deliberate wrongdoing, unless such loss or damage be occasioned by a violation of an express provision of this Will, and shall not be liable to my estate or any person beneficially interested hereunder for any loss or depreciation which may arise from any investment retained or made in accordance with the provisions of this Will or which may be occasioned by the exercise of any discretion authorized herein, whether such investment be continued or made in accordance with or in disregard of recommendations obtained as above provided.

(v) Wherever the context permits, the words "Personal Representatives" or "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(w) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be

taken or reached by any legal or equitable process in satisfaction thereof, it being my intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(x) In determining whether or not to exercise any discretionary power to pay income or principal of my estate or any trust hereunder, my Personal Representatives or Trustees may, but shall not be required to, (1) with respect to the trusts created under Article THIRD, Article FOURTH, and subdivision (a) of Article FIFTH of this Will, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of my estate or any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) I waive compliance by my Trustees with any law now or hereafter in effect requiring qualification, registration or accounting by my Trustees to any Court.

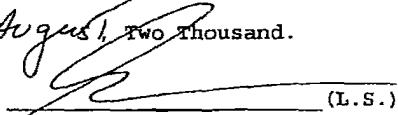
(z) Wherever reference is made in this Will to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

ELEVENTH: The term "descendants" as used in this Will shall specifically exclude my daughter PAMELA BETH SIMON and her

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descendants. Except as provided in Article SECOND of this Will, I have not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15 day of August, Two Thousand.

  
\_\_\_\_\_  
(L.S.)

The foregoing instrument, consisting of this and seventeen preceding typewritten pages, was signed, sealed, published and declared by SIMON L. BERNSTEIN, the Testator, to be his Last Will and Testament, in our presence, and we, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses, this 15<sup>th</sup> day of August, Two Thousand at 2255 Glades Road, Boca Raton, Florida..

George Makubian residing at 1133 SW 20th Street  
Boca Raton, FL

Robert J. [Signature] residing at 2415 NW 32nd St.  
Boca Raton, FL

STATE OF FLORIDA )  
 ) SS.:  
COUNTY OF PALM BEACH )

We, SIMON L. BERNSTEIN, *George O. Karibjanian* and *Robert Jacobowitz*, the Testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, were sworn, and declared to the undersigned officer that the Testator, in the presence of the witnesses, signed the instrument as his Last Will and that each of the witnesses, in the presence of the Testator and in the presence of each other, signed the Will as a witness.

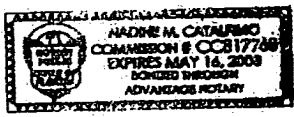
*[Signature]*  
\_\_\_\_\_  
Testator

*George O. Karibjanian*  
\_\_\_\_\_  
Witness

*[Signature]*  
\_\_\_\_\_  
Witness

Subscribed and sworn to before me by SIMON L. BERNSTEIN, the Testator, and by *George O. Karibjanian* and *Robert Jacobowitz*, the witnesses, on *August 15*, 2000, all of whom personally appeared before me. SIMON L. BERNSTEIN is personally known to me or has produced as identification. *George O. Karibjanian* is personally known to me or has produced as identification. *Robert Jacobowitz* is personally known to me or has produced as identification.

*[Signature]*  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number is:



	<p>LAST WILL AND TESTAMENT OF SIMON BERNSTEIN</p>	<p>DATED: <i>August 15, 2000</i></p> <p><b>PROSKAUER ROSE LLP</b> Attorneys at Law 2255 Glades Road, Suite 340 West Boca Raton, FL 33431-7388</p>
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<p>LAST WILL AND TESTAMENT OF SHIRLEY BERNSTEIN</p>	<p>DATED: <i>August 15, 2000</i></p>	<p>PROSKAUER ROSE LLP Attorneys at Law 2255 Gables Road, Suite 340 West Boca Raton, FL 33431-7283</p>
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Blumberg No. 5113  
PLAINTIFF'S  
EXHIBIT  
40-D

I, SHIRLEY BERNSTEIN, of the County of Palm Beach, State of Florida, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all prior Wills, Testaments and Codicils at any time made by me.

FIRST: I direct that all my just debts and funeral and administration expenses be paid as soon after my death as may be practicable.

SECOND: I hereby direct that, pursuant to Florida Statutes §732.515, or the comparable provision in effect at the time of my death, my personal and household effects, including jewelry, works of art and automobiles, if any, be distributed in accordance with a separate written statement executed by me. In the event there shall be more than one such written statement, the statement bearing the last date shall be controlling. If no such written statement is found and properly identified by my Personal Representatives within thirty days after my Personal Representatives are appointed, it shall be conclusively presumed that no such writing exists. In the event there shall be no such written statement (or to the extent such written statement does not effectively dispose of all of my personal and household effects, including jewelry, works of art and automobiles, if any), I give and bequeath all (or the balance) of my personal and household effects, if any, to my husband, SIMON L. BERNSTEIN, if he survives me, or, if he predeceases me, to such of my children, TED STUART BERNSTEIN, PAMELA BETH SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as shall survive me, in shares as nearly equal as they shall agree upon, or, failing agreement, said personal and household effects shall be sold and the proceeds therefrom added to and disposed of as part of my residuary estate.

THIRD: If my husband, SIMON L. BERNSTEIN, survives me,

THE ORIGINAL OF THIS DOCUMENT IS BEING  
HELD FOR SAFEKEEPING BY  
PROSKAUER ROSE LLP  
2255 GLADES ROAD  
BOCA RATON, FLORIDA 33431

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I give and bequeath to my Trustees a "credit equivalent amount" (as defined below) to hold in separate trust to pay so much of the income therefrom and such sums out of the principal thereof (even to the extent of the whole thereof) to such of my husband and my descendants, living from time to time, equally or unequally, and to any one or more of them to the exclusion of the others, as my Trustees, in their absolute discretion, deem necessary or advisable; provided, however, that no such payment shall be made to my husband from the principal of the trust under this Article THIRD until the principal of his trust, if any, under Article FOURTH of this Will shall first have been exhausted. Any balance of the income shall be accumulated and added to principal annually.

Upon the death of my husband, the then principal of the trust shall pass to such one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

The "credit equivalent amount" shall be (a) the maximum amount which could comprise my taxable estate for Federal estate tax purposes without resulting in any Federal estate tax, after taking into account the applicable credit amount as defined in

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Section 2010(c) of the Code, but no other credits allowable against such tax, reduced by (b) the aggregate of:

(1) the value (as finally determined for Federal estate tax purposes) of all property (including interests in property) includable in my estate for Federal estate tax purposes which passes under other provisions of this Will or otherwise than under this Will and with respect to which no marital deduction or charitable deduction is finally allowed in determining said tax, and

(2) the amount of my adjusted taxable gifts within the meaning of Section 2001(b) of the Code.

The trust under this Article THIRD shall be known as the "Shirley Bernstein Credit Equivalent Trust."

FOURTH: I give and bequeath to my Trustees an amount equal to my "Unused GST Exemption" (as defined below) to hold in separate trust to pay the income therefrom in quarterly or more frequent installments to my husband, SIMON L. BERNSTEIN, during his life.

I authorize and empower my Trustees, from time to time, to pay to my husband such sums out of the principal of his trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in his best interests; provided, however, that no such payment shall be made to my husband from the principal of his trust under this Article FOURTH until the principal of his trust, if any, under subdivision (a) of Article FIFTH of this Will shall first have been exhausted.

Upon the death of my husband, the then principal of the trust shall pass to such of one or more of my descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon my death if my husband predeceases me, said principal shall be divided into as many equal shares as may be necessary to provide one for each of my then living grandchildren

and one for each of my grandchildren who is then dead but who leaves descendants who are then living (such descendants to take in portions, per stirpes, the share set aside for them), and each such share or portion shall be distributed absolutely, except that any share or portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SIXTH of this Will.

I direct that all estate and inheritance taxes of whatever kind imposed by reason of the inclusion of the trust under this Article in my husband's estate for such tax purposes shall (absent a contrary provision in my husband's Will) be charged, without right of reimbursement, against the principal of the trust for the benefit of my husband under subdivision (a) of Article FIFTH of this Will.

My "Unused GST Exemption" shall be an amount equal to the maximum GST exemption allowable to me pursuant to Section 2631 of the Code, reduced by the aggregate amount of my GST Exemption which has been allocated or deemed allocated by me or which shall be allocated by my Personal Representatives with respect to property transferred by me either under the provisions of this Will or otherwise than under this Will.

The trust under this Article FOURTH shall be known as the "Shirley Bernstein Exempt Marital Trust."

FIFTH: All the rest, residue and remainder of my estate, real, personal or otherwise and wheresoever situate, including any lapsed legacy or bequest, hereinafter called my residuary estate, shall be disposed of as follows:

(a) If my husband, SIMON L. BERNSTEIN, survives me, my residuary estate shall be held by my Trustees in separate trust to pay the income therefrom in quarterly or more frequent installments to my husband during his life.

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I authorize and empower my Trustees, from time to time, to pay to my husband such sums out of the principal of his trust (even to the extent of the whole thereof) as my Trustees, in their absolute discretion, deem in his best interests.

Upon the death of my husband, the then principal of his trust shall pass to such one or more of my descendants, in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as my husband shall by Will appoint. To the extent that said power of appointment is not effectively exercised, said principal shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

The trust for my husband under this subdivision (a) shall be known as the "Shirley Bernstein Non-Exempt Marital Trust.

(b) If my husband predeceases me, my residuary estate shall be divided into shares, per stirpes, for such of my children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as survive me and for the descendants who survive me of such of them as may predecease me, and each such share shall be distributed absolutely, except that any share so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty shall be disposed of as provided in Article SEVENTH of this Will.

SIXTH: All shares, portions or parts above or below set aside for a grandchild or more remote descendant of mine and

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directed to be disposed of as provided in this Article SIXTH shall be combined and held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions or parts, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a grandchild or more remote descendant of mine and who has descendants then living, or, in default thereof, shall be divided into as many equal portions or parts as may be necessary to provide one for each of my then living grandchildren, and one for each of them who is then dead but who leaves descendants who are then living (such descendants to take in parts, per stirpes, the share set aside for them), and each such portion or part

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shall be distributed absolutely, except that any portion or part so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SIXTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion or part so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SIXTH shall be disposed of as provided in this Article SIXTH.

SEVENTH: Each share or portion above or below set aside for a grandchild or more remote descendant of mine and directed to be disposed of as provided in this Article SEVENTH shall be held by my Trustees in separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as my Trustees, in their absolute discretion, deem necessary or advisable, accumulating any balance of the income at least annually and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

I authorize and empower my Trustees, from time to time, to pay to the beneficiary such sums out of the principal of his or her trust (even to the extent of the whole thereof) as my Trustees deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

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In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for his or her then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of mine and who has descendants then living, or, in default thereof, for my then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of mine who is then the beneficiary of a trust under this Article SEVENTH shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of mine who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article SEVENTH shall be disposed of as provided in this Article SEVENTH.

EIGHTH: I nominate and appoint my husband, SIMON L. BERNSTEIN, as my Personal Representative. If my husband fails to qualify or ceases to be qualified, I nominate and appoint in his place the following individuals who shall be entitled to qualify, singly and in the order named: ALBERT W. GORTZ; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my husband, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my husband, SIMON L. BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees. If either my husband or PAMELA BETH SIMON fails to

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qualify or ceases to be qualified, I nominate and appoint in his or her place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.

My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever.

NINTH: I hereby grant to my Personal Representatives and Trustees, in addition to the general powers conferred upon them by law, the following discretionary powers:

(a) To distribute my estate and set up the trusts herein at one time or at different times as soon after my death as they may deem practicable, whether before or after the expiration of any statutory period.

(b) To charge or credit to principal or income or to apportion between them, in such manner as they deem advisable, any ordinary or extraordinary expenses and any extraordinary, wasting or liquidating dividends and any dividends payable in the stock of the corporation declaring the dividend or payable in the stock of another corporation and so-called "capital gains dividends" declared by investment companies or investment trusts; to determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money; upon the death of an income beneficiary, or any other termination of a trust herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid

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to the persons entitled to receive the income when it becomes payable, but any undistributed income which my Personal Representatives or Trustees are authorized in their discretion to accumulate shall be added to principal.

(c) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as they, in their absolute discretion, shall deem advisable.

(d) To claim expenses chargeable against principal as estate tax or income tax deductions as they deem advisable and to determine if and to what extent any adjustment in favor of principal required by law shall be made.

(e) To make any payment or distribution (required or authorized under this Will) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard, among such shares, to whether the property distributed has an equivalent basis for income tax purposes.

(f) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute), exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder; said leases may extend beyond the duration of the trusts herein.

(g) To borrow such sums as they deem advisable for the proper administration of my estate and the trusts hereunder and to give security therefor.

(h) To continue, settle or discontinue any business or partnership in which I may be interested.

(i) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be at my death or when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article of my Will, so long as they, in their absolute discretion, deem it advisable.

(j) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in

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their absolute discretion, deem advisable and without regard to any duty to diversify or, except with respect to any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(k) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but my Personal Representatives or Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to my estate or any trust hereunder.

(l) To retain possession, in their absolute discretion, of any property payable absolutely to an infant, and to invest and reinvest the same, to collect the income therefrom, and, after deducting all proper expenses, to apply the income and principal to the use of said infant (and in the case of tangible personal property to permit the infant to have the custody and use of all or part of it from time to time), with all the powers, rights and compensation of Trustees hereunder, provided, however, that nothing herein contained shall be construed to prevent or postpone the vesting of said property in said infant or to suspend the alienability of said property.

(m) In determining the amounts applicable to the use of an infant, to consider or disregard the ability of the parent or parents of said infant to support said infant; and to make payment of any amount, applicable to the use of or payable to an infant, (1) to the guardian (whether qualified in my domicile or any other jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act, or (4) to apply the same for his or her benefit; the receipt of such guardian, parent or Custodian or the evidence of the application of such amount shall be a full discharge to my Personal Representatives and Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of my grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(n) Severally to authorize, by instrument in writing, any person or corporation, including any co-fiduciary, bank or trust company, to act in the place of said Personal Representative or Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Personal Representative or Trustee.

(o) To remove any property held by them hereunder to or from my domicile or any other jurisdiction.

(p) To organize or participate in the organization of

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corporations, and to transfer to them any part or all of the property held by them hereunder in exchange for securities thereof.

(q) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Personal Representatives or Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Personal Representatives or Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To file such gift tax and income tax returns jointly with my spouse as they deem advisable.

(t) To compromise, settle, subordinate, arbitrate, extend, renew, modify, waive or extend the statute of limitations with respect to, or release, in whole or in part, any claim held by or against my estate or the trusts herein, or any mortgage or other security held by them or held against any property held by them hereunder.

(u) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make any necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general or otherwise.

(v) To the extent permitted by law, to register any property held by them hereunder in their names as Personal Representatives or Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(w) To lend such sums out of the income (other than of any trust for the benefit of my spouse that qualifies for the marital deduction under either Federal or state law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that adequate security be obtained from, and reasonable interest be charged to, the borrower.

(x) To guarantee loans made to any beneficiary hereunder.

(y) To trade on margin (but only with the approval of my spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, my Personal Representatives and Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust,

SB

so that title may pass by delivery.

TENTH: (a) All the powers granted to my Personal Representatives and Trustees hereunder may be exercised after the termination of the trusts hereunder in connection with the proper administration and distribution thereof.

(b) Notwithstanding any provision in this Will to the contrary, any power (including discretionary powers) granted to my Personal Representatives and Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause my estate to lose all or part of the tax benefit afforded my estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to the trusts for my spouse under Articles FOURTH and FIFTH of this Will, (1) subdivisions (a), (b), (c) and (p) of the preceding Article of this Will shall not apply and (2) my spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(c) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause my death or the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether I or said person, or the life beneficiary or said person, as the case may be, died first, then, for the purposes of this Will, said person shall be deemed to have died before me or before said life beneficiary, and my estate shall pass in such manner as would occur hereunder if said person had predeceased me or said life beneficiary, as the case may be.

(d) I direct that my Personal Representative(s) shall exercise the right, under Section 2207A(a)(1) of the Code and under any similar provision of any state law, to recover from the persons receiving any property referred to in said provisions (including the Trustees of any trust other than the pre-residuary trust under Article FOURTH of my spouse's Will) the amount of estate and inheritance taxes (and any interest and penalties relating thereto) paid by my estate attributable to such property. Subject to the direction in the preceding sentence, all estate and inheritance taxes of whatever kind imposed by reason of my death upon the property disposed of in this Will and upon any other property, including insurance but not including the pre-residuary trust under Article FOURTH of my spouse's Will (the taxes on which are to be paid out of the residuary trust thereunder), otherwise disposed of and subject to the imposition of said taxes, shall be charged, without right of reimbursement, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

For the foregoing purposes, estate and inheritance taxes shall include any generation-skipping transfer tax on a direct skip taking effect at my death (other than a direct skip from a trust not created by me), but no other generation-skipping transfer tax.

JB

(e) Any income or principal payable to a beneficiary hereunder may, in the discretion of my Personal Representatives and Trustees, be applied by them for the benefit of said beneficiary.

(f) All testamentary powers of appointment granted in this Will shall be exercisable by specific reference to this Will and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the donee of the power or the donee's estate or creditors of the donee or of the donee's estate.

(g) Any person may renounce, in whole or in part, any provision in his or her favor hereunder and, in such event, the property covered by said provision, to the extent renounced, shall be disposed of as though said person had predeceased me, and if said property is to be held in trust, to the extent renounced, said property shall become free of the trust for said person (and of any power of appointment said person may have with respect thereto) and shall be disposed of as though said person had predeceased me. I do not intend by the foregoing to suggest that any particular person should so renounce.

(h) Any Personal Representative or Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Personal Representative or Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Personal Representative or Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Personal Representative(s) or Trustee(s).

(i) With respect to any Personal Representative or Trustee who is interested, in his or her individual capacity, in any firm or corporation in which my estate or any trust hereunder may have an interest, I direct that he or she may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but I direct that if one or more of my Personal Representatives or Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of my estate and of said trust shall be made by said disinterested Personal Representative(s) or Trustee(s).

(j) A person from time to time qualified as Personal Representative or Trustee hereunder shall not be disqualified from purchasing assets of my estate, provided (1) said purchaser shall not participate as Personal Representative or Trustee in the decisions of the Personal Representatives or Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Personal Representative(s) or Trustee(s); and (2) in fixing said price, conditions and terms said other Personal Representative(s) or Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Personal Representative or Trustee.

(k) My Personal Representatives and Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of my

said Personal Representatives and Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of my Personal Representatives or Trustees has no such interest, then as to all such matters the decision of my estate or of the trusts hereunder shall be made by said disinterested Personal Representative(s) or Trustee(s).

(l) My Personal Representatives and Trustees may exercise any rights or options with respect to any policy of life insurance held by them, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy; applying dividends against premiums or to purchase paid up additions; and exercising options with respect to surrender or payment of death proceeds.

(m) In any judicial proceeding involving my estate or any trust hereunder and in any non-judicial settlement of the account of a Personal Representative or Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(n) I direct that any administration expenses or debts charged to principal and not claimed and allowed as estate tax deductions shall be charged, (1) if my spouse survives me, against the property disposed of in Article THIRD of this Will, or, to the extent that said property is insufficient, against my residuary estate, or, (2) if my spouse predeceases me, against my residuary estate.

(o) I direct that all charges incurred by my Personal Representatives in storing, packing, shipping, delivering and insuring any property passing under the provisions of this Will, whether such property is specifically bequeathed or otherwise, shall be paid by my Personal Representatives as expenses of administering my estate.

(p) Notwithstanding the provisions of Article SEVENTH of this Will, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article SEVENTH.

(q) Wherever in this Will property is directed to be added to or combined with an existing trust for a descendant of mine hereunder, my Personal Representatives and Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant

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hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(r) If, at any time, there shall be a trust under the Will of my spouse, or a trust created by me or by my spouse during our lifetimes, for the same beneficiaries and subject to the same provisions as a trust under this Will (or as a trust intended to be created under this Will), my Personal Representatives and Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in section 2642(a) of the Code), to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(s) I authorize and empower my Personal Representatives to allocate the GST Exemption allowable to me pursuant to Section 2631 of the Code, to the extent that it shall not have been allocated (or deemed allocated) by me during my lifetime, in such manner as they, in their absolute discretion, shall determine.

(t) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of my Will) in effect at the time of my death, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(u) Every Personal Representative and Trustee hereunder, original and substitute, shall be chargeable only with said fiduciary's own respective receipts or acts, and shall not be liable for any loss or damage occurring hereunder without said fiduciary's willful default or deliberate wrongdoing, unless such loss or damage be occasioned by a violation of an express provision of this Will, and shall not be liable to my estate or any person beneficially interested hereunder for any loss or depreciation which may arise from any investment retained or made in accordance with the provisions of this Will or which may be occasioned by the exercise of any discretion authorized herein, whether such investment be continued or made in accordance with or in disregard of recommendations obtained as above provided.

(v) Wherever the context permits, the words "Personal Representatives" or "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

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(w) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being my intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(x) In determining whether or not to exercise any discretionary power to pay income or principal of my estate or any trust hereunder, my Personal Representatives or Trustees may, but shall not be required to, (1) with respect to the trusts created under Article THIRD, Article FOURTH, and subdivision (a) of Article FIFTH of this Will, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of my estate or any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) I waive compliance by my Trustees with any law now or hereafter in effect requiring qualification, registration or accounting by my Trustees to any Court.

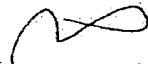
(z) Wherever reference is made in this Will to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time

ELEVENTH: The term "descendants" as used in this Will shall specifically exclude my daughter PAMELA BETH SIMON and her

SB

STATE OF FLORIDA )  
 : SS.:  
COUNTY OF PALM BEACH )


We, SHIRLEY BERNSTEIN, *George O. Karbyanian* and *Robert Jacobowitz*, the Testatrix and the witnesses respectively, whose names are signed to the attached or foregoing instrument, were sworn, and declared to the undersigned officer that the Testatrix, in the presence of the witnesses, signed the instrument as her Last Will and that each of the witnesses, in the presence of the Testatrix and in the presence of each other, signed the Will as a witness.

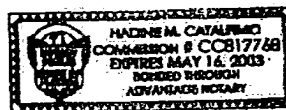
  
\_\_\_\_\_  
Testatrix

*George O. Karbyanian*  
\_\_\_\_\_  
Witness

*Robert Jacobowitz*  
\_\_\_\_\_  
Witness

Subscribed and sworn to before me by SHIRLEY BERNSTEIN, the Testatrix, and by *George O. Karbyanian* and *Robert Jacobowitz*, the witnesses, on *August 15*, 2000, all of whom personally appeared before me. SHIRLEY BERNSTEIN is personally known to me or has produced \_\_\_\_\_ as identification.  
*George O. Karbyanian* is personally known to me or has produced \_\_\_\_\_ as identification.  
*Robert Jacobowitz* is personally known to me or has produced \_\_\_\_\_ as identification.


  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number is:





descendants. Except as provided in Article SECOND of this Will, I have not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal this 15 day of August, Two Thousand.

 (L.S.)

The foregoing instrument, consisting of this and seventeen preceding typewritten pages, was signed, sealed, published and declared by SHIRLEY BERNSTEIN, the Testatrix, to be her Last Will and Testament, in our presence, and we, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses, this 15<sup>th</sup> day of August, Two Thousand at 2255 Glades Road, Boca Raton, Florida.

George Karibayannis residing at 1133 SW 20<sup>th</sup> Street

Boca Raton, FL

Bill [Signature] residing at 2415 NW 32<sup>nd</sup> St.

Boca Raton, FL

FIRST CODICIL TO  
LAST WILL AND TESTAMENT OF  
SHIRLEY BERNSTEIN

ORIGINAL DOCUMENT AT  
LAW OFFICES OF  
STEVEN I. GREENWALD, P.A.  
Boca Raton Professional Plaza  
6971 N. Federal Highway  
Suite 105  
Boca Raton, Florida 33487

I, SHIRLEY BERNSTEIN, a resident of the County of Palm Beach, State of Florida, declare that this is the First Codicil to my Last Will and Testament which is dated August 15, 2000.

FIRST: I revoke, in its entirety, Article EIGHTH of my Last Will and Testament. In place of this revoked Article EIGHTH, I substitute the following:

"EIGHTH: I nominate and appoint my husband, SIMON L. BERNSTEIN, as my Personal Representative. If my husband fails to qualify or ceases to be qualified, I nominate and appoint in his place the following individuals who shall be entitled to qualify, singly and in the order named: STEVEN I. GREENWALD, ESQUIRE; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my husband, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my husband, SIMON L. BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees.

If either my husband, or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in their place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.



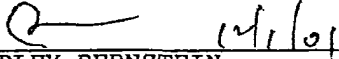
My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever."

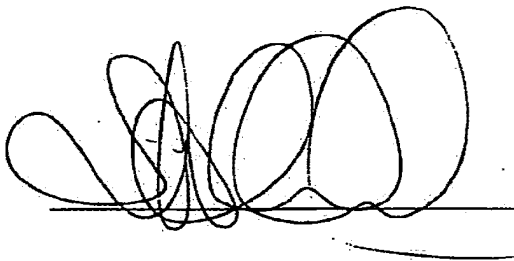
SECOND: I hereby confirm and republish my Will dated August 15, 2000, in all respects other than those herein mentioned.

IN WITNESS WHEREOF, I have signed this First Codicil consisting of 4 pages, this and the following pages included, and for the purpose of identification have placed my initials at the bottom of all pages, this 1st day of December, 2001.

  
SHIRLEY BERNSTEIN

We certify that the above instrument was on the date thereof signed and declared by SHIRLEY BERNSTEIN, as a First Codicil to her Will dated August 15, 2000, in our presence and that we, in her presence and in the presence of each other, have signed our names as witnesses thereto, believing SHIRLEY BERNSTEIN to be of sound mind at the time of signing.

*Keith Crunk* residing at 1344 N.W. 82nd Ave.  
Coral Springs, Fl. 33071

 residing at 7239 Ballantrae Court  
Boca Raton, Fl. 33496

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SELF-PROOF AFFIDAVIT

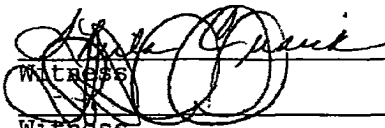
STATE OF FLORIDA

COUNTY OF PALM BEACH

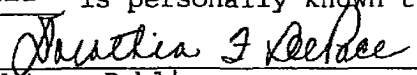
We, SHIRLEY BERNSTEIN, the Testatrix and the witnesses respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Testatrix signed this instrument as her First Codicil to her Last Will and Testament, and that she signed voluntarily and that each of the witnesses in the presence of the Testatrix, at her request, and in the presence of each other signed the Codicil as a witness and to the best of the knowledge of each witness the Testatrix was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

  
\_\_\_\_\_  
Testatrix

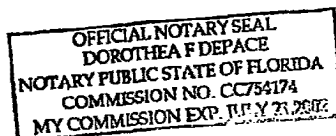
  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

Subscribed and sworn to before me by SHIRLEY BERNSTEIN, the Testatrix, Sheila Cusick and Steven I. Greenwald, the witnesses, on the 1st day of December, 2001, all of whom personally appeared before me. SHIRLEY BERNSTEIN is personally known to me, Sheila Cusick is personally known to me, and Steven I. Greenwald is personally known to me.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:



FIRST CODICIL TO  
LAST WILL AND TESTAMENT OF  
SIMON L. BERNSTEIN

ORIGINAL DOCUMENT AT  
LAW OFFICES OF  
STEVEN I. GREENWALD, P.A.  
Boca Raton Professional Plaza  
6971 N. Federal Highway  
Suite 105  
Boca Raton, Florida 33487

I, SIMON L. BERNSTEIN, a resident of the County of Palm Beach, State of Florida, declare that this is the First Codicil to my Last Will and Testament which is dated August 15, 2000.

FIRST: I revoke, in its entirety, Article EIGHTH of my Last Will and Testament. In place of this revoked Article EIGHTH, I substitute the following:

"EIGHTH: I nominate and appoint my wife, SHIRLEY BERNSTEIN, as my Personal Representative. If my wife fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: STEVEN I. GREENWALD, ESQUIRE; LISA SUE FRIEDSTEIN; PAMELA BETH SIMON.

With respect to any trust created under Article THIRD, Article FOURTH or subdivision (a) of Article FIFTH of this Will, I nominate and appoint my wife, my daughter LISA SUE FRIEDSTEIN, and my daughter PAMELA BETH SIMON as Trustees hereunder.

With respect to any trust created under Article SIXTH or Article SEVENTH of this Will, I nominate and appoint my wife, SHIRLEY BERNSTEIN, and my daughter PAMELA BETH SIMON as Trustees.

If either my wife, or PAMELA BETH SIMON fails to qualify or ceases to be qualified, I nominate and appoint in her place the following individuals who shall be entitled to qualify, singly and in the order named: LISA SUE FRIEDSTEIN; JILL IANTONI.



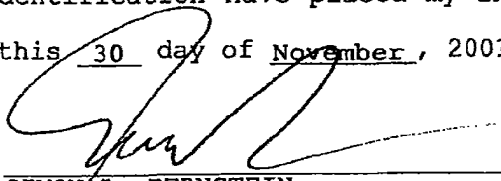
My Personal Representatives and Trustees at any time qualified hereunder are authorized and empowered to designate a person or persons or a bank or trust company to act with them and, subject to the foregoing, a sole surviving Personal Representative or Trustee at any time qualified hereunder is authorized and empowered to designate a person or persons or a bank or trust company to act with or to succeed him or her; provided, however, that JEANNIE BERNSTEIN shall never be designated as or serve as a Personal Representative or as a Trustee of any trust created hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

I direct that no bond or other security shall be required of any Personal Representative or Trustee named herein or designated as herein provided for any reason whatsoever."

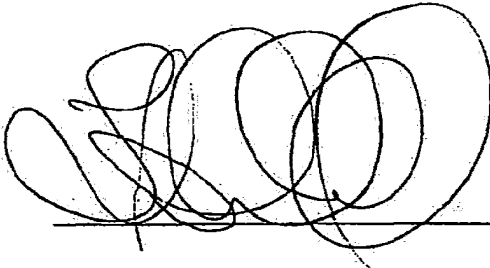
SECOND: I hereby confirm and republish my Will dated August 15, 2000, in all respects other than those herein mentioned.

IN WITNESS WHEREOF, I have signed this First Codicil consisting of 4 pages, this and the following pages included, and for the purpose of identification have placed my initials at the bottom of all pages, this 30 day of November, 2001.

  
\_\_\_\_\_  
SIMON L. BERNSTEIN

We certify that the above instrument was on the date thereof signed and declared by SIMON L. BERNSTEIN, as a First Codicil to his Will dated August 15, 2000, in our presence and that we, in his presence and in the presence of each other, have signed our names as witnesses thereto, believing SIMON L. BERNSTEIN to be of sound mind at the time of signing.

*Abila Cyria* residing at 1344 N.W. 82nd Ave.  
Coral Springs, Fl. 33071

 residing at 7239 Ballantrae Court  
Boca Raton, Fl. 33496




SELF-PROOF AFFIDAVIT

STATE OF FLORIDA

COUNTY OF PALM BEACH

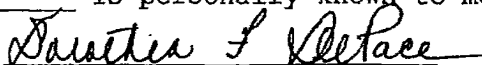
We, SIMON L. BERNSTEIN, the Testator and the witnesses respectively, whose names are signed to the attached or foregoing instrument, having been sworn, declared to the undersigned officer that the Testator signed this instrument as his First Codicil to his Last Will and Testament, and that he signed voluntarily and that each of the witnesses in the presence of the Testator, at his request, and in the presence of each other signed the Codicil as a witness and to the best of the knowledge of each witness the Testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

  
\_\_\_\_\_  
Testator

  
\_\_\_\_\_  
Witness

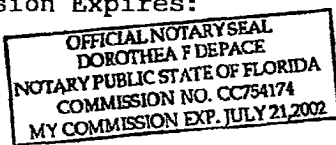
  
\_\_\_\_\_  
Witness

Subscribed and sworn to before me by SIMON L. BERNSTEIN, the Testator, Sheila Cusick and Steven I. Greenwald, the witnesses, on the 30 day of November, 2001, all of whom personally appeared before me. SIMON L. BERNSTEIN is personally known to me, Sheila Cusick is personally known to me, and Steven I. Greenwald is personally known to me.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

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Schwager Firm

Litigation Family  
Guardianship

Candice Schwager  
SCHWAGER FIRM  
1417 Ramada Dr.  
Houston, Texas 77062  
T 832.315.8489  
F 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

**Via Facsimile: 561-655-5537**

**arose@mrachek-law.com**

Alan M. Rose,  
Mrachek, Fitzgerald, Rose, Konopka, Thomas, & Weiss, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401

*Re: Voluntary Request for Stay of Trial Dec. 15th @ 9:30 am; Judge John L. Phillips, North Branch of Palm Beach County Case No. Case # 502014CP003698XXXXSB – Shirley Bernstein Trust Construction and related CASE Numbers below (believed to be at North Branch NB now):*

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case

2014CP003698  
EB  
2-25-16

Dear Mr. Rose:

I am writing to advise you that I am preliminarily retained and in the process of reviewing information to permit me to complete a proper Retainer and apply Pro Hac Vice in Florida as Trial Counsel for Eliot I. Bernstein and / or his minor children and am requesting that your office Voluntarily remove the matter from the Trial Calendar for Dec. 15th at 9:30 am EST.

Being from the State of Texas as a licensed attorney in good standing who is not presently licensed in the State of Florida, I understand I need "Local Counsel" in Florida to support my Pro Hac Vice application, however, I further understand that even obtaining a proper "Local Counsel" may take considerable time and when Eliot Bernstein has interviewed with prior Local Counsel providing case information and strategy, the local counsel then showed up in Court on behalf of your client Ted Bernstein instead.

Thus, simply for these reasons I am requesting that you voluntarily move the action off the Trial Calendar for Dec. 15th, 2015.

My preliminary review shows me this case is quite complex and perhaps should have been designated as such under Florida Rules of Civil Procedure.

In any event, there is a considerable number of documents, pleadings and relevant filings I will need to review to be properly prepared for Trial and voluntarily request that you move to stay the action for at least 30 days.

My understanding is that Eliot Bernstein even recently attempted to be heard before Judge Phillips at a Case-Management Conference held on Sept. 15, 2015 on the issue of having funds from the Trust to pay for Counsel for his children but did not get an opportunity to be fully heard before the Court and was otherwise denied on this day.

I also understand that Eliot I. Bernstein had previously filed even before that Case-Management Conference and applied to the Estate and the Trust for these funds but has so far been denied or not heard.

Thus, please confirm in writing by email at your earliest convenience by Monday morning 9 a.m., EST if you are moving to Stay the Trial or even withdraw the pleading altogether. I will be checking my email all weekend so please try to respond as timely as possible.

In the event you choose not to so move Voluntarily and stay the Trial scheduled for Dec. 15, 2015, it appears from my preliminary review that there are several grounds upon which to mandate a Stay of the Trial and even your removal as Trial Counsel upon grounds of being a necessary and material fact witness for the Trial.

I also understand that you have been sued in two counter-suits in these Florida proceedings and have a likely conflict of interest in representing Ted Bernstein as Trustee in the Trial on validity of Trusts and Wills of Shirley Bernstein and Simon Bernstein and that prior Judge Colin did not let you out of these cases as a counter defendant prior to his sudden recusal within 24 hours of denying a motion for mandatory Disqualification filed by Eliot Bernstein and thereafter Judge Colin acted to transfer the matters to the North Branch.

I have preliminarily reviewed the Transcript of Proceedings ( not signed by Stenographer ) of Sept. 15, 2015 and see many disturbing issues in a Trial moving forward on Dec. 15th, 2015 before Judge Phillips.

I also am reviewing related filings, pleadings and matters in the federal District Court of the Northern District of Illinois where Ted Bernstein is a party and the Estate of Simon Bernstein has been permitted to intervene and am investigating relief in the federal venue should I not hear back from

your office in a timely manner to voluntarily Stay the Trial scheduled before Judge Phillips on Dec. 15th, 2015.

Again, these are complicated cases with a volume of paper and pleadings and documents to review and request at least 30 days, I also think due to the complexity, especially with frauds relating to fiduciaries and counsel in the matters, the court should set this trial as a complex proceeding and follow those pre-trial prerequisites.

### **Improperly NOTICED Trial**

Simply reviewing the Notice that Eliot Bernstein was sent from the PR Brian O'Connell's office clearly shows the Case was Noticed to be heard in the Estate of Simon Bernstein.

RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference, provides in part: "**The matter to be considered shall be specified in the order or notice setting the conference.**"

Yet, a simple review of the Transcript from the Case Management Conference Noticed in the Estate of Simon Bernstein before Judge Phillips on Sept. 15, 2015 shows that you either Mistakenly or Knowingly presented False Information before the Court claiming that All 4 Cases were Noticed. I further noticed that neither Florida Licensed attorneys Brian O'Connell, nor Juy Foglieta, who were both present and who had sent the NOTICE for the Conference stood up to Correct the Record on this day and instead went along with you and Judge Phillips Scheduling and Moving in the Shirley Bemstein case when the case was only Noticed for Simon Bernstein Estate.

I know at least here in Texas and in most states of the nation lawyers have Professional Obligations to Correct matters before Courts and Tribunals although I also know Courts have inherent authority to correct mistakes and preserve the integrity of the proceedings although I have not seen from Eliot Bernstein any notice that Judge Phillips has corrected this yet despite

being specifically pointed to it in a recent Motion for Mandatory Disqualification filed against Judge Phillips.

Of course I have further seen where Licensed attorney Peter Feaman on behalf of the Creditor William Stansbury noticed you about a Conflict of Interest in your representation of Ted Bernstein and the conflicting actions Ted Bernstein is taking in the Illinois Federal litigation and yet you have taken no action to address this conflict.

I further see where Licensed attorney Peter Feaman noticed the PR Brian O'Connell back in Aug. of 2014 that he had an Absolute Duty to take action to Remove Ted Bernstein but not only has he failed to so move, but now is taking action to not even present his Defense at Trial that was scheduled at a Conference his Office NOTICED for Simon Bernstein's case.

**Case - Management and Due-Process Issues:**

All of this is very problematic from a Due Process and ethical perspective particularly where almost None of the Standard Pre-Trial Case Management Rules have been followed or even allowed to be Discussed by Eliot Bernstein on Sept. 15, 2015 creating a further basis to Stay the current Trial.

These Rules include items such as:

**RULE 1.200. PRETRIAL PROCEDURE (a) Case Management Conference:**

[http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/\\$FILE/Civil.pdf](http://www.floridabar.org/TFB/TFBResources.nsf/0/10C69DF6FF15185085256B29004BF823/$FILE/Civil.pdf)

“At such a conference the court may:  
(1) schedule or reschedule the service of motions, pleadings, and other papers;

(2) set or reset the time of trials, subject to rule 1.440(c); (3) coordinate the progress of the action if the complex litigation factors contained in rule 1.201(a)(2)(A)–(a)(2)(H) are present; (4) limit, schedule, order, or expedite discovery; (5) consider the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, and stipulations regarding authenticity of documents and electronically stored information; (6) consider the need for advance rulings from the court on the admissibility of documents and electronically stored information; (7) discuss as to electronically stored information, the possibility of agreements from the parties regarding the extent to which such evidence should be preserved, the form in which such evidence should be produced, and whether discovery of such information should be conducted in phases or limited to particular individuals, time periods, or sources; (8) schedule disclosure of expert witnesses and the discovery of facts known and opinions held by such experts; (9) schedule or hear motions in limine; (10) pursue the possibilities of settlement; (11) require filing of preliminary stipulations if issues can be narrowed; (12) consider referring issues to a magistrate for findings of fact; and (13) schedule other conferences or determine other matters that may aid in the disposition of the action. (b) Pretrial Conference. After the action is at issue the court itself may or shall on the timely motion of any party require the parties to appear for a conference to consider and determine: (1) the simplification of the issues; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof; (4) the limitation of the number of expert witnesses; (5) the potential use of juror notebooks; and (6) any matters permitted under subdivision (a) of this rule

Nowhere in the Sept. 15, 2015 Conference Transcript is there any Discussion or Determination by the Court on: 1) Outstanding Discovery including requests for Production by Eliot Bernstein; 2) the need for Pre-Trial Depositions; 3) Disclosure of Expert Witnesses particularly in a case that already has Admitted Document Fraud in Documents filed with

the Court where Forensic Experts are likely necessary; 4) and many other pre-trial issues as outlined in the Case Management rules.

### **Disqualification as Necessary and Material Fact Witness**

Of greater concern is that you apparently are attempting to proceed to an Improperly Noticed Trial rushed without proper Case Management on behalf of a Trustee that both the PR, Creditor and Eliot Bernstein has said is Invalid based upon Trust language.

Yet, having preliminarily reviewed your May 20, 2015 Email about alleged "Original" Documents in a related Oppenheimer Trust and your subsequent June 4, 2015 letter issued upon your Law Firm Letterhead apparently providing further information on "Original" ( actually "Duplicate Original" ) documents in Your Possession but have failed to include a Sworn Affidavit detailing the ***entire links in the Chain of Custody*** for this "Original" Best Evidence and in this regard, my preliminary review is that you most likely must be Disqualified under Florida ***RULE 4-3.7 LAWYER AS WITNESS*** grounds and are intertwined in the Chain of Custody and Possession of these Originals and other items with the PR Brian O'Connell and attorney Joy Foglietta and other staff at the Ciklin law firm.

I understand from Eliot Bernstein that, contrary to the express statement in your June 4, 2015 letter on your Law Firm Letterhead, it was not you that hand-delivered this package to Eliot Bernstein but instead was the PR Brian O'Connell, further involving the PR in the chain of document and evidence custody.

As you plan to use dispositive documents as Exhibits (any originals, duplicates, etc.) at trial please submit these records directly to the court bates stamped so that I may know nothing happened to them in transit and they do not become confused with any of the fraudulent documents already in circulation, I will then obtain them directly from the court.

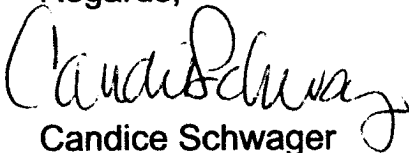


Another issue of concern is payment of attorney's fees for both Eliot and his minor children and as I will be reviewing the dispositive documents once I access them from the court for the terms I am of the understanding that beneficiary legal fees may be paid through wills and trusts for counsel, especially where this benefits the estates and trusts and the need for counsel was caused by serious breaches by the fiduciaries and counsel in these matters which has caused conflicts in beneficiaries and need for validity and construction hearings and more. I would presume forensic expenses will also be encumbered by the estates and trusts once we determine who we will have examine them. I would assume the same for Eliot and his children's costs for pre-trial expenses including but not limited to witnesses, depositions, etc.

I further understand there may be other Trust and business documents that anyone that is an "interested" party would standardly review with respect to Simon's Business Records and the Discovery requested by Mr. Eliot Bernstein from both your client and PR O'Connell.

Thus, based upon all the reasons, I am respectfully requesting that you Voluntarily move to Stay the Trial to investigate these matters, get Local counsel, and admitted Pro Hac Vice. Please respond by Monday morning.

Regards,

  
Candice Schwager

CC. Brian O'Connell - [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com)

Peter Feaman [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

John Morrissey - [john@morrisseylaw.com](mailto:john@morrisseylaw.com)

Jill Lantoni - [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

Lisa Friedstein - [lisa@friedsteins.com](mailto:lisa@friedsteins.com)



Candice Schwager  
SCHWAGER FIRM  
Tel: 832.315.8489  
Fax: 832.514.4738  
candiceschwager@icloud.com

December 11, 2015

**Via Facsimile:**

Court Coordinator  
15<sup>th</sup> Judicial Circuit of Florida  
NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410

*Re: EMERGENCY Application to appear pro hac vice and request for abatement or stay until counsel obtains local counsel and is admitted; Case Numbers (are believed to all be in North Branch now);*

1. Case # 502014CP003698XXXXSB – Shirley Trust Construction
2. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
3. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
4. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein  
Minor Children
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee  
Simon Trust Case

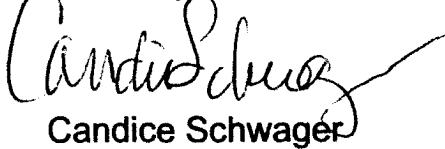
*Circuit Court of ;  
15th Judicial Circuit of Florida*

**NORTH COUNTY COURTHOUSE  
3188 PGA BLVD.  
PALM BEACH GARDENS, FLORIDA 33410**

Dear Sir or Madam:

Please accept the attached Motion to Abate and Stay until such time as I can obtain local counsel and have my application pro hac vice to appear on behalf of Eliot Bernstein's minor children, which I expect to be brief, given I have a regular attorney who has agreed previously agreed to assist me as local counsel in Florida. Thank you for granting abatement or stay until I can enter the case, as Eliot Bernstein's rights are being comprised in terms of due process.

Sincerely,



Candice Schwager  
SBN 34005603  
1417 Ramada Dr.  
Houston, Texas 77062  
832.315.8489  
832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

CC: All counsel of record

## **Eliot Ivan Bernstein**

---

**From:** Candice Schwager <attycandie@gmail.com>  
**Sent:** Friday, December 11, 2015 5:58 PM  
**To:** Alan Rose  
**Cc:** Candice Schwager; boconnell@sicklinlubitz.com; pfeaman@feamanlaw.com; john@morrisseylaw.com; jilliantoni@gmail.com; lisa@friedsteins.com; Eliot Ivan Bernstein; Eliot Ivan Bernstein; Eliot Ivan Bernstein  
**Subject:** Re: Scanned document from HP ePrint user

I should have it filed by Monday so your objection will likely be moot

Candice L. Schwager  
SCHWAGER FIRM  
T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

On Dec 11, 2015, at 4:53 PM, Alan Rose <[ARose@mrachek-law.com](mailto:ARose@mrachek-law.com)> wrote:

We do not agree.

We intend to move forward with the properly noticed trial on December 15<sup>th</sup>, pursuant to the Order dated September 24, 2015.

I am copying Eliot because you have not appeared as counsel formally, but only for his knowledge.

Alan B. Rose, Esq.  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)  
561.355.6991  
<image002.jpg>

505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
561.655.2250 Phone  
561.655.5537 Fax

**CONFIDENTIALITY NOTE:** THE INFORMATION CONTAINED IN THIS TRANSMISSION IS LEGALLY PRIVILEGED AND CONFIDENTIAL, 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 RECEIVE A COPY OF

THIS COMMUNICATION IN ERROR, PLEASE **IMMEDIATELY** (1) REPLY BY E-MAIL TO US, AND (2) DELETE THIS MESSAGE.

**TAX DISCLOSURE NOTE:** To ensure compliance with requirements imposed by the Internal Revenue Service (Circular 230), we inform and advise you that any tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, by any taxpayer for the purpose of (1) avoiding penalties that may be imposed under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any transactions or matters addressed herein.

If there any documents attached to this email with the suffix .pdf, those documents are in Adobe PDF format, If you have difficulty viewing these attachments, you may need to download the free version of Adobe Acrobat Reader, available at: <http://www.adobe.com>

**From:** Candice Schwager [<mailto:candiceschwager@icloud.com>]  
**Sent:** Friday, December 11, 2015 5:34 PM  
**To:** Alan Rose; [boconnell@sicklinlubitz.com](mailto:boconnell@sicklinlubitz.com); [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com); [john@morrisseylaw.com](mailto:john@morrisseylaw.com); [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com); [lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
**Cc:** Candice Schwager  
**Subject:** Fwd: Scanned document from HP ePrint user

Candice L. Schwager  
SCHWAGER FIRM  
T: 832.315.8489  
F: 832.514.4738  
[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
<http://www.schwagerfirm.com>

Begin forwarded message:

**From:** [eprintcenter@hp.com](mailto:eprintcenter@hp.com)  
**Date:** December 11, 2015 at 4:25:41 PM CST  
**To:** [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)  
**Subject:** Scanned document from HP ePrint user

This email and attachment are sent on behalf of [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com).

If you do not want to receive this email in future, you may contact [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com) directly or you may consult your email application for spam or junk email filtering options.

Regards,  
HP Team  
<filename-1.pdf>

## Eliot Ivan Bernstein

---

**From:** Alan Rose <ARose@mrachek-law.com>  
**Sent:** Wednesday, January 6, 2016 10:13 PM  
**To:** candice@schwagerfirm.com  
**Cc:** iviewit@iviewit.tv; john@jmorrisseylaw.com; psimon@stpcorp.com; jlliantoni@gmail.com; lisa@friedsteins.com; boconnell@ciklinlubitz.com; jfoglietta@ciklinlubitz.com; service@feamanlaw.com; mkoskey@feamanlaw.com; guy@gtlife.net; kh.itconsultingsalesoffices@gmail.com; tourcandy@gmail.com; iviewit@gmail.com  
**Subject:** Re: Eliot Bernstein Reschedule Tomorrow Hearing and Jan 14, 2016

Unless and until you are admitted in this matter by order of the court, please do not communicate with me at all.

As far as the meeting, you were permitted to attend by telephone as a one time courtesy to Eliot Bernstein. Based upon the conduct of you, Elliot and the unauthorized third person who was a surprise participant, we will not make the same mistake again. The meeting was an election of a manager, not a soapbox for pursuing your improper agenda. The meeting was conducted fairly in accordance with Florida law.

Please do not communicate with me any further. Unless Judge Phillips orders the parties to communicate with you, you'll receive no further response from me.

Alan B. Rose  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.

On Jan 6, 2016, at 7:45 PM, "[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)" <[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)> wrote:

Alan B. Rose, Esq.  
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.  
505 South Flagler Drive  
Suite 600  
West Palm Beach, Florida 33401  
[arose@Mrachek-Law.com](mailto:arose@Mrachek-Law.com)

Alan,

As you are aware, I provided you a Letter request prior to the alleged validity Trial before Probate Judge John L. Phillips of the North Branch in Palm Beach County seeking a voluntary continuance of the Trial which appears in all respects to have been improperly if not in fact illegally scheduled for Dec. 15, 2015 as I sought to be admitted Pro Hac Vice to represent the minor children of Eliot Bernstein and to the extent not conflicted, Eliot Bernstein as well.

A copy of the letter which also included a Notice of Abatement filed with the Florida Court is attached.

See,  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>

As you are further aware, I was on a Conference call with your office just yesterday, Jan. 5, 2016 and others purporting to be a Meeting of the Members of Bernstein Holdings, LLC and yet, not only did you appear to speak over the Objections I was raising generally to the Meeting and actions being taken by Ted Bernstein based upon my information review to date, at no time did you raise or attempt to raise any issue after the Meeting with respect to any imminent concern for the minor children in this case.

Nor did you attempt to email or contact me after the Meeting of yesterday, Jan. 5, 2016 in reference to the minor children and yet are now seeking some hearing on an emergency basis scheduled for tomorrow Jan. 7, 2016 and I must now again voluntarily request that you immediately move to reschedule your Motion as improperly noticed upon Eliot Bernstein with knowledge that I am seeking pro hac vice admission.

Please respond immediately about withdrawing and/or re-scheduling your improperly Noticed Hearing for tomorrow and the other improperly scheduled hearing on January 14, 2016 since as you know Eliot filed a motion for unavailability for the month of January and will not be able to attend. Also your service notice states that you made efforts to resolve the matters with Eliot acting Pro Se before scheduling and this was also never done.

I also note that the case you cited in your Motion of Florida Freedom Newspapers v. Sirmons District Court of Appeal of Florida, First District, 508 So.2d 462 (Fla. Dist. Ct. App. 1987) actually reversed the Trial Court's closing of Trial information from the public, noting as follows:

"The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court.

ERVIN, J., concurs.

NIMMONS, J., concurs, with written opinion."

<https://casetext.com/case/florida-freedom-newspapers-v-sirmons>

As you are aware and most definitely should be aware since your client Ted Bernstein is the central involved party, there is inter-related litigation in the US District Court for the Northern District of Illinois and being admitted in the federal courts I am aware that it is **only the names of minor children** which are not redacted, nor withheld under federal pleading standards but simply abbreviated. Example, J.B. or D.B. for Eliot's minor children as I am sure you are aware.

I do not believe even this, however, provides any authority or basis for the Transcripts ( "records" ) of a Trial to be altered and tampered with and highly object to any altering of any Transcript since neither I, nor Eliot Bernstein nor other parties have even reviewed the Transcript in the first instance.

I understand from Eliot Bernstein that any reference to minor children in the Transcripts should be minimal.

Thus, it truly appears that your motion is more of a "smoke-screen" and "sharp practices" which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn.

After all, Mr. Rose, neither you nor your client Ted Bernstein, nor even Judge Phillips himself apparently were concerned about the rights and welfare of minor children such as having Counsel for important evidentiary hearings and trials as evidenced by your improper refusal to voluntarily remove the action from the Trial calendar on Dec. 15, 2015. It appears more that you and your client Ted Bernstein may be more concerned about the subject of Ted Bernstein's business partner and/or former business partner Robert Spallina's testimony. A history of fraud in the courts of the Florida probate court from this case is not itself any basis for confidentiality and in fact the public interest is greater served by transparency and certainly this is not an "emergency" justifying your improper notice and practices.

As you may recall from my prior Letter, it appears that your office must mandatorily disqualify anyhow as being a material fact witness and this appears to be further strengthened by the documents you recently disseminated as part of the Notice of Meeting of Members of the Bernstein Holdings, LLC.

Moreover, I understand upon information and belief that your client Ted Bernstein is the subject of a federal investigation by the US Dept of Labor in relation to his Plan Administrator / Trustee / Fiduciary role in the Arbitrage International pension matters, a material fact that I have not seen disclosed in either your Notice of Meeting, during the Meeting or in prior disclosures.

The minor children will be better served by having full and proper Disclosures and productions from your office and client Ted Bernstein.

I will be supplementing my written requests to you about yesterday's "Meeting" of the Members of Bernstein Holdings, LLC, however, please respond first to re-scheduling this improperly noticed hearing on your motion.

Regards,

Candice Schwager  
SCHWAGER FIRM  
832.315.8489  
Fax 832.514.4738  
[candice@schwagerfirm.com](mailto:candice@schwagerfirm.com)  
<http://www.schwagerfirm.com>



**EXHIBIT A - LIST OF COUNTER COMPLAINT DEFENDANTS TO BE INCLUDED  
IN THE AMENDED COMPLAINT**

2014CP 003698  
M.  
2-25-16

**EXHIBIT A**  
**COUNTER COMPLAINT DEFENDANTS / PARTIES**

**COUNTER-DEFENDANTS/THIRD PARTY DEFENDANTS FOR AMENDED COMPLAINT AND PARTY DESIGNATIONS**

1. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, professionally;
2. Hon. Jorge Labarga, Chief Justice of the Florida Supreme Court, personally;
3. Judge Martin Colin, professionally;
4. Judge Martin Colin, personally;
5. Judge David French, professionally;
6. Judge David French, personally;
7. Judge Howard Coates, professionally;
8. Judge Howard Coates, personally;
9. Judge John Phillips, professionally;
10. Judge John Phillips, personally;
11. The State of Florida;
12. The Florida Supreme Court;
13. The 4th District Court of Appeals;
14. Palm Beach County Probate and Circuit Courts;
15. The County of Palm Beach;
16. The Palm Beach County Sheriff;
17. Detective Ryan Miller;
18. Detective David Groover;
19. Detective Andrew Panzer;
20. Captain Carol Gregg;
21. Theodore Bernstein, personally;
22. Theodore Bernstein, as alleged Trustee of the Shirley Trust;
23. Theodore Bernstein as Personal Representative of the Shirley Estate;
24. Theodore Bernstein as alleged Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95;
25. Theodore Bernstein, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
26. Pamela Beth Simon, personally;
27. Pamela Beth Simon, acting in any fiduciary capacity, corporate and company capacity and trustee capacity relevant herein;
28. Lisa Sue Friedstein, personally;
29. Lisa Sue Friedstein, as Natural Guardian of minor CF;
30. Jill Marla Iantoni, personally;
31. Jill Marla Iantoni, as Natural Guardian of minor JI;
32. David B. Simon, Esq., professionally;
33. David B. Simon, Esq., personally;
34. Adam Simon, Esq., professionally;
35. Adam Simon, Esq., personally;

36. The Simon Law Firm and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
37. Robert L. Spallina, Esq., personally;
38. Robert L. Spallina, Esq., professionally;
39. Robert L. Spallina, Esq., former alleged Co-Trustee of the Simon Bernstein Trust;
40. Robert L. Spallina, Esq., former alleged Co-Personal Representative of the Simon Bernstein Estate;
41. Donald R. Tescher, Esq. personally;
42. Donald R. Tescher, Esq. professionally;
43. Donald R. Tescher, Esq. former alleged Co-Trustee of the Simon Bernstein Trust;
44. Donald R. Tescher, Esq. former alleged Co-Personal Representative of the Simon Bernstein Estate;
45. Gutter Chaves Josepher Rubin Forman Fleisher Miller PA F.K.A. Tescher Gutter Chaves Josepher Rubin Ruffin & Forman PA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
46. Tescher & Spallina, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
47. T&S Registered Agents, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
48. Kimberly Francis Moran, personally;
49. Kimberly Francis Moran, professionally;
50. Lindsay Baxley aka Lindsay Giles, personally;
51. Lindsay Baxley aka Lindsay Giles, professionally;
52. Alan B. Rose, Esq. – personally;
53. Alan B. Rose, Esq. – professionally;
54. Page, Mrachek, Fitzgerald & Rose, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
55. Ciklin Lubitz Martens & O'Connell and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
56. Brian O'Connell, Esq., personally;
57. Brian O'Connell, Esq., professionally;
58. Brian O'Connell, Esq., fiduciary;
59. Joielle "Joy" A. Foglietta, Esq., personally;
60. Joielle "Joy" A. Foglietta Esq., professionally;
61. Joielle "Joy" A. Foglietta Esq., fiduciary;

62. Albert Gortz, Esq., personally;
63. Albert Gortz, Esq., professionally;
64. Proskauer Rose, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
65. Hopkins & Sutter and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
66. Foley & Lardner LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
67. Greenberg Traurig, LLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
68. Jon Swergold, Esq., personally;
69. Jon Swergold, Esq., professionally;
70. Gerald R. Lewin, CPA, personally;
71. Gerald R. Lewin, CPA, professionally;
72. CBIZ, Inc. (NYSE: CBZ) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
73. John Morrissey, Esq., personally;
74. John Morrissey, Esq., professionally;
75. John P. Morrissey, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
76. Mark R. Manceri, Esq., personally;
77. Mark R. Manceri, Esq., professionally;
78. Mark R. Manceri, Esq., P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
79. Pankauski Law Firm PLLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
80. John J. Pankauski, Esq., personally;
81. John J. Pankauski, Esq., professionally;
82. Steven A. Lessne, Esq., personally;
83. Steven A. Lessne, Esq., professionally;
84. GrayRobinson, P.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
85. GUNSTER and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;

86. Brandan J. Pratt, Esq., personally;
87. Brandan J. Pratt, Esq., professionally;
88. Huth & Pratt and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
89. Stanford Financial Group and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers, Receivers and Fiduciaries;
90. Oppenheimer & Co. Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
91. Oppenheimer Trust Company of Delaware and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
92. Janet Craig, personally;
93. Janet Craig, professionally;
94. Janet Craig, fiduciary;
95. Huntington Worth, personally;
96. Huntington Worth, professionally;
97. Huntington Worth, fiduciary;
98. William McCabe, Esq., personally;
99. William McCabe, Esq., professionally;
100. Legacy Bank of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
101. JP Morgan Chase & Co. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
102. LaSalle National Trust, NA and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
103. Chicago Title Land Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
104. Heritage Union Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;

105. Jackson National Life and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
106. Reassure America Life Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
107. WiltonRe and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
108. First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
109. United Bank of Illinois and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
110. Bank of America, Alleged successor in interest to LaSalle National Trust, N.A. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
111. Wilmington Trust Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
112. Regency Title dba US Title of Florida and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
113. Old Republic National Title Insurance Company and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
114. Nestler Poletto Sotheby's International Realty and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
115. Bernstein Family Realty, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
116. Bernstein Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
117. Bernstein Family Investments, LLLP and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns,

- Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
118. S.T.P. Enterprises, Inc., and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives, Attorneys, Insurers and Fiduciaries;
  119. S.B. Lexington, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  120. National Service Association, Inc. (of Illinois) and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  121. Life Insurance Concepts, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  122. LIC Holdings, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  123. LIC Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  124. Arbitrage International Management LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  125. Arbitrage International Marketing, Inc. and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  126. Arbitrage International Holdings, LLC and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  127. National Services Pension Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  128. Arbitrage International Marketing Inc. 401 (k) Plan and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
  129. Simon L. Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;

130. Simon L. Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
131. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
132. Simon L. Bernstein Estate and Will of Simon L. Bernstein (2012) and its current and former trustees, fiduciaries and counsel;
133. Simon L. Bernstein Amended and Restated Trust Agreement (2012) and its current and former trustees, fiduciaries and counsel;
134. Wilmington Trust 088949-000 Simon L. Bernstein Irrevocable Trust and its current and former trustees, fiduciaries and counsel;
135. Estate and Will of Shirley Bernstein (2008) and its current and former trustees, fiduciaries and counsel;
136. Shirley Bernstein Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
137. Shirley Bernstein Irrevocable Trust Agreement (2008) and its current and former trustees, fiduciaries and counsel;
138. Simon Bernstein Irrevocable Insurance Trust dated 6/21/1995 (currently missing and legally nonexistent) and its current and former trustees, fiduciaries and counsel;
139. Shirley Bernstein Marital Trust and Family Trust created under the Shirley Bernstein Trust (2008) and its current and former trustees, fiduciaries and counsel;
140. S.B. Lexington, Inc. 501(C)(9) VEBA TRUST and its current and former Divisions, Affiliates, Subsidiaries, Stockholders, Parents, Predecessors, Successors Assignors, Assigns, Partners, Members, Officers, Directors, Trustees, Employees, Agents, Administrators, Representatives;
141. Trust f/b/o Joshua Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
142. Trust f/b/o Daniel Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
143. Trust f/b/o Jake Bernstein under the Simon L. Bernstein Trust dtd 9/13/2012 and its current and former trustees, fiduciaries and counsel;
144. Eliot Bernstein Family Trust dated May 20, 2008 and its current and former trustees, fiduciaries and counsel;
145. Daniel Bernstein Irrevocable Trust dated September 7, 2006 and its current and former trustees, fiduciaries and counsel;
146. Jake Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
147. Joshua Z. Bernstein Irrevocable Trust dated September 07, 2006 and its current and former trustees, fiduciaries and counsel;
148. Traci Kratish, Fiduciary;
149. Christopher Prindle, personally;
150. Christopher Prindle, professionally;
151. Peter Montalbano, personally;
152. Peter Montalbano, professionally;
153. Steven Greenwald, personally;
154. Steven Greenwald, professionally;
155. Louis B. Fournet; professionally;



- 156. Louis B. Fournier, personally;
- 157. Alexandra Bernstein;
- 158. Michael Bernstein;
- 159. Eric Bernstein;
- 160. Molly Simon;
- 161. Max Friedstein;
- 162. John and Jane Doe State Defendants,

**EXHIBIT A - LIST OF POTENTIAL DEFENDANTS TO BE ADDED TO COUNTER COMPLAINT BASED ON NEED TO OBTAIN DISCOVERY AND POTENTIAL COMPANY - VEHICLE TO HIDE-MOVE ASSETS ETC**

- 163. John Hancock
- 164. Delray Medical Center;
- 165. Ronald V. Alvarez, Esquire, is a mediator;
- 166. CFC of Delaware, LLC.
- 167. Life Insurance Connection, Inc.
- 168. TSB Holdings, LLC
- 169. TSB Investments LLLP
- 170. Life Insurance Concepts, LLC
- 171. Life Insurance Innovations, Inc.
- 172. National Service Association, Inc. (of Florida)
- 173. Total Brokerage Solutions LLC
- 174. Cambridge Financing Company
- 175. National Service Association, Inc.
- 176. National Service Corp (FLORIDA)
- 177. Simon L. Bernstein Irrevocable Trust U/A 9/7/06
- 178. Shirley Bernstein Irrevocable Trust U/A 9/7/06
- 179. Simon Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 180. Shirley Bernstein 2000 Insurance Trust (dated august 15, 2000)
- 181. 2000 Last Will and Testament of Simon L. Bernstein
- 182. 2000 Last Will and Testament of Shirley Bernstein
- 183. Jill Iantoni Family Trust dated May 20, 2008
- 184. Lisa Friedstein Family Trust dated May 20, 2008
- 185. Daniel Bernstein Irrevocable Trust 07-JUL-10 049738
- 186. Jake Bernstein Irrevocable Trust 07-JUL-10 0497381
- 187. Joshua Z Bernstein Irrevocable Trust 07-JUL-10 0497381
- 188. Simon Bernstein Irrevocable Trust dated 6/21/95
- 189. Simon Bernstein Trust, NA
- 190. S.B. Lexington, Inc. Employee Death Benefit Trust
- 191. Simon Bernstein Trust Agreement dated May 13, 2008
- 192. Saint Andrews School Boca Raton

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

JUDGE JOHN PHILLIPS

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

**Response in Opposition To Omnibus  
Motion Filed Jan 07. 2016 by  
Lessnee-Oppenheimer**

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

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**RESPONSE IN OPPOSITION TO OMNIBUS MOTION...Filed Jan 07, 2016**

COMES NOW, Eliot Ivan Bernstein (“Eliot”) and Candice Michelle Bernstein (“Candice”), both PRO SE as Guardians for their three minor children (“Respondents”) and hereby files this **“Response in Opposition To Omnibus Motion...” Filed Jan 07. 2016**” and in support thereof states, as follows:

1. I oppose the motion by Steven Lessne in this case and the related motion by Alan M. Rose in what should be deemed a “complex” case, these motions seeking to appoint a Guardian for

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my children and oppose his motion for any “gag” order and since an Evidentiary Hearing and Testimony are both necessary with respect to the factual pleadings by Steven Lessne and such evidence and testimony including my own testimony on both matters which would last well beyond 30 minutes alone it is inappropriate and improper process to achieve anything at the Uniform Motion Calendar Hearing on Jan. 14, 2016 beyond Scheduling of Compliance for outstanding Discovery and Production, depositions and then an evidentiary hearing and a proper Case Management Conference for this “Complex” case.

2. This, however, naturally raises the issue of Lessne being a “resigned” Trustee and thus lacking standing herein and the Court should otherwise first schedule hearings on the motions in the related complex cases to remove Ted Bernstein as Trustee for not being qualified under the language of the trusts, for misconduct in fiduciary capacity, for waste and fraud upon the estate and other matters wherein even this very response by myself in this filing has been delayed by Representations by Creditor William Stansbury that his Florida Licensed Attorney Peter Feaman would be filing yesterday with the Court and Alan Rose a request to delay any hearing on these motions until a Status Conference / Case Management Conference for the Orderly scheduling of further hearings wherein Peter Feaman already notified this Court on Sept. 15, 2015 that removal of Ted Bernstein as Trustee should be the first order of business instead of a validity trial with Ted Bernstein as Trustee, but whereupon this Court improperly moved to Schedule Trial in Shirley Bernstein’s Trust case which was Not Notified for the Case Management Conference requested by the current PR of Simon’s Estate being Mr. Brian O’Connell and Joy Foglietta of the Ciklin Lubitz Martens & O’Connell firm who filed the Notice to bring the matter up for the Case Management Conference on Sept. 15, 2015 in the first instance.

3. Thus, both alleged Creditor William Stansbury and Florida Licensed Attorney Peter Feaman are both Necessary Witnesses in relation to the Integrity of these proceedings and the good faith efforts I have undertaken to uncover fraud upon the Court and in the Court which is directly relevant to resolution of any sham claim by attorney Steven Lessne or Alan Rose regarding guardianship, both being Florida licensed attorneys who have directly Mislead this Court in many ways including but not limited to falsely citing language from other Court orders such as Southern District of New York Judge Shira Scheindlin, or Alan Rose falsely claiming during the alleged validity trial that there has been no prior Order for Production of all Original Records by Tescher and Spallina when in fact this was part of the Discharge Order of Judge Colin to the extent any such Order of Judge Colin remains valid. See, Order of Colin on Production<sup>1</sup>.

4. Specifically, Alan Rose, a Served Counter Defendant in the related action in this complex case has knowingly misquoted an Order of SDNY Judge Shira Scheindlin by falsely portraying a Proskauer Rose proposed language in an Order as an actual Order, quote, finding of Hon. Judge Scheindlin herself and while this conduct recently occurred in matters before the 4th DCA<sup>2</sup>, this evidence is representative of the sharp practices that Alan Rose and Ted Bernstein have employed to avoid full and fair hearings, obstruct due process, and obscure actual truth seeking processes acting in conflict of interest and more while simultaneously not only denying proper funds for myself to obtain proper counsel for my minor children and myself but further denied retained Texas attorney Candice Schwager

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<sup>1</sup>February 18, 2014 Colin Order Regarding Turning Over ALL Records to Curator  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>2</sup>December 17, 2015 Sur Reply Showing Alan Rose Misquoting Federal Judge Shira Scheindlin Order  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151217%204th%20DCA%20Rose%20Ted%20Sur%20Reply%20Dec%2016%202015.pdf>

documents to review for her to further an application to be admitted pro hac vice after having opportunity to scope potential conflicts of interest between myself and minor children.

5. Alan Rose falsely stated to this Court at the Case Management Conference<sup>3</sup> that no hearings were held prior for guardianship hearings but yet Alan Rose had only a year earlier been denied<sup>4</sup> by Judge Colin who claimed Eliot and Candice did not need Guardians for their children and yet Alan Rose and Lessnee not only file similar false pleadings but move in coordination in their sharp practices where both Alan Rose and Lessnee should now be Witnesses.
6. Thus, attorney Alan Rose's conduct himself in these proceedings has relevance to both Lessne and Oppenheimer's sham motion as well as Rose's sham motion for guardianship since Rose and Ted Bernstein's own conduct has caused waste and harm to beneficiaries and delayed and obstructed the fact finding and truth seeking processes of this court and thus right there alone are 3 Witnesses in addition to myself that should be part of any Evidentiary hearing relating to appointment of a Guardianship and thus arriving at a Schedule would be the most that can happen on Jan. 14, 2016, or at least should be the most that can happen on this date.
7. In fact, Florida licensed attorney Peter Feaman has directly prepared pleadings and correspondence showing myself as being the only sibling in these cases to expose fraud and forgery and other proper matters in these cases and eligible to be a Successor Trustee. See, below.

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<sup>3</sup> September 15, 2015 Case Management Hearing Transcript Scheduled In Simon Estate ONLY, Page 28 Line 7-16

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150915%20Judge%20Phillips%20Hearing%20Transcript%20-%20Estate%20of%20%20Simon%20Bernstein.pdf>

<sup>4</sup> August 14, 2014 Order DENYING GUARDIAN

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

8. See filings by Peter Feaman on behalf of alleged Creditor William Stansbury relevant to the sham filing for Guardianship by Alan Rose on behalf of Ted Bernstein.
- a. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140217%20Stansbury%20Response%20in%20Opposition.pdf> Page 4-6 (C)
  - b. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140522%20JOINDER%20IN%20PETITION%20FILED%20BY%20ELIOT%20IVAN%20BERNSTEIN%20FOR%20REMOVAL%20OF%20TRUSTEE%20AND%20FOR%20TRUST%20ACCOUNTING.pdf>
  - c. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140627%20Response%20in%20Opposition%20to%20the%20Appointment%20of%20Ted%20Bernstein%20as%20Successor%20PR%20etc%20filed%20by%20Feaman%20Stansbury.pdf>
9. Then of course is the letter by Florida Licensed attorney Peter Feaman from August of 2014, nearly 17 months ago claiming PR Brian O'Connell had an absolute "duty" to file to Remove Ted Bernstein in showing failure to provide Accountings, waste of Trust assets and other matters, yet no action taken by PR O'Connell and no present follow-up by Peter Feaman although as indicated I have been delayed in this very filing by Representations of William Stansbury that Peter Feaman would be filing with the Court relative to these matters including holding hearings off until a Status or Case Management Conference but has yet to do that either, although it was represented it would be filed Tuesday, Jan., 12, 2016 further knowing I had filed for Unavailability with this Court which was served upon Alan Rose and further filed in my last opposition to the Gag order that I was under medication and needing medical care. See,

- a. August 29, 2014 Letter from Attorney at Law Peter Feaman, Esq. to Personal Representative Attorney Brian O'Connell re Conflicts and more of Ted and Alan Rose.  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>
- b. December 16, 2014, Letter from Attorney Peter Feaman to PR and Attorney Brian O'Connell Letter re O'Connell's Absolute Duty to Remove Ted –  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>
- c. [Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf](http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf)
- d. September 19, 2014 Attorney Peter Feaman to PR Attorney Brian O'Connell re Assets of Estates -  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140919%20Feaman%20Letter%20to%20Brian%20O'Connell%20re%20assets%20of%20Simon%20Estate%209%2019%202014.pdf>

10. William Stansbury is further a necessary Witness as he has information relating to an ongoing Federal investigation of Ted Bernstein by the US Dept. of Labor in relation to Ted Bernstein's fiduciary actions as Plan Administrator / Trustee involving Arbitrage International an asset of the Estate and Trusts where it is likely that further financial harm to beneficiaries including my minor children has occurred according to William Stansbury and yet Alan Rose and Ted Bernstein have not only failed to Disclose these matters to the Court and parties but further failed to disclose these matters in an alleged Meeting involving Bernstein Holdings and Bernstein Family Investments where Ted Bernstein and Alan Rose .

11. Further that the Estate itself by and through Brian O'Connell and Joy Foglietta has failed to account for or provide Documents and Records that should have been in their Custody despite prior Court Ordered Production<sup>5</sup> upon the former PR's, Tescher and Spallina, after their removal after admissions to fraudulently altering and creating a fraudulent Shirley Trust that Alan Rose misleads this Court about there being no such Court Order during an alleged Validity Trial<sup>6</sup> and having multiple cross examination questions sustained as a result of such misstatement to the Court where it appears that in contempt of such order for Tescher & Spallina to Produce and turn over all Originals and files, Alan Rose, alleged Fiduciary and Trustee Ted Bernstein, Brian O'Connell and Joy Foglietta and potentially others have left "Original" documents and files instead in the Custody of Tescher & Spallina where Spallina has now admitted to fraud upon beneficiaries and their counsel, mail fraud, fraud upon the Court in the filings his office prepared and other crimes and misconduct during the alleged "validity" trial before Your Honor where the PRs O'Connell & Foglietta are wholly and conspicuously absent from the "Validity trial" (despite having pleaded to the Court in the Shirley Trust Construction case that Ted was NOT A VALID TRUSTEE<sup>7</sup> in the SIMON TRUST, which would have materially affected the outcome of such hearing on the Simon Trust case and Ted's ability to argue the validity in the first place) among many other "missing Witnesses" at the alleged validity Trial such as Traci Kratish, Diana Banks, Donald

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<sup>5</sup> February 18, 2014 Court Ordered Production of ALL Records of Tescher and Spallina to Curator <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

<sup>6</sup> December 15, 2015 Validity Hearing Transcript - Transcript Page 123 Lines 10-18 & Page 124 3-7 and Pages 124 Line 17 to 125 Line 17. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

<sup>7</sup> February 17, 2015 Answer Affirmative Defenses Filed by PR Attorney Brian O'Connell stating Ted is NOT A VALID TRUSTEE under the terms of the Trust. <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>



Tescher, unknown signatory witnesses, leaving the Estate of Simon Bernstein without counsel despite the fact that one of the First Orders of Business PRs O'Connell and Foglietta should have sought at the Case Management Conference held Sept. 15, 2015 which was Held and Noticed only in the Estate of Simon Bernstein is a Compliance Order to obtain all the "Originals" and files/documents from Tescher & Spallina so proper Discovery and Production could occur to prove validity but instead results in an improperly schedule Trial in Shirley's Trust case which was not Noticed for Sept. 15, 2015 as required in the procedural rules of the Court.

12. Licensed attorney Peter Feaman and his client alleged Creditor William Stansbury further being Witnesses as both claimed to have observed Donald Tescher at the Courthouse after the validity trial yet was not produced by Alan Rose suggesting Tescher's presence was under Alan Rose's control.
13. Thus, Brian O'Connell and Joy Foglietta should further be called as Necessary Witnesses in relation to the integrity of proceedings and were further factual Witnesses in relation to missing documents, missing production, missing business records and intertwined in conduct with Alan Rose in sudden emerging "original" documents from the St. Andrew's Home allegedly for the Oppenheimer matters and other dispositive Estate and Trust documents yet Creditor William Stansbury had previously stated that his Florida licensed attorney Peter Feaman suggested that a Meeting at his Office and or Brian O'Connell's Office and inviting the Palm Beach County Sheriff's for Criminal investigation and prosecution of Ted Bernstein in relation to the missing Tangible Personal Property ("TTP") should occur, thus intertwining all of the various parties as witnesses in relation to any Guardianship hearing and necessity.

14. While I understand it was filed in a different case number, Steven Lessne is intertwined with Rose on numerous issues including not only the sudden emergence of “original” documents in the Oppenheimer case but further the sharp practices conduct wherein Lessne has **directly mislead this Court** by an almost identical sharp practice of Alan Rose where Southern District of New York Judge Hon. Shira Scheindlin is again knowingly misquoted wherein Lessne claims Judge Scheindlin issued some nationwide injunction against me again misquoting language “proposed” by Proskauer Rose where in actuality the language Judge Scheindlin determined in the Order was as follows: “IV. CONCLUSION For the foregoing reasons, a monetary sanction in the amount of \$3,500 is hereby imposed on Bernstein as is the injunctive sanction described above. The money is to be paid to the Clerk of the Court, Southern District of New York, forthwith. If Bernstein ignores the monetary sanction, defendants may obtain an enforceable judgment in the amount of \$3,500. If Bernstein continues to file motions in this case, he may be subject to additional monetary sanctions. The Clerk of the Court is directed to close the motion for sanctions (Docket Entry # 145). Dated: 14 New York, New York August 29, 2013 Opposition at 13. 7<sup>8</sup> “.
15. Thus, the only injunctive limitation determined by SDNY Judge Scheindlin is that if I file motions “**in this case**”, being the SDNY case, I “**may be subject to additional monetary sanctions**”, thus showing Lessne himself directly misleading this Court as a Florida licensed attorney.
16. The Court should note that Lessne left his firm Gray Robinson and took with him the Bernstein / Oppenheimer case as he transitioned to Alan Rose’s prior law firm Gunster.

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<sup>8</sup> August 29, 2013 Order the Most Honorable Shira A. Scheindlin  
<http://www.iviewit.tv/20130829%20Scheindlin%20Order%20Sanctioning%20Bernstein.pdf>

17. To the extent any Order of Judge Colin remains valid, he has already ruled upon motions by Alan Rose and Ted Bernstein on Guardianship and the related matters and DENIED those matters. See below Orders Colin in Rose Denial Guardian Shirley Trust Construction stating no Guardian necessary and Oppenheimer denial of same, This renewed attempt on virtually the same grounds constitutes further harassment and a 2<sup>nd</sup> bite at apple hoping for a better outcome than with Judge Colin.

a. Oppenheimer Denial

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20141107%20Omnibus%20Order%20Colin%20Oppenheimer%20Case.pdf>

b. Rose Trust Construction Denial

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140814%20Order%20Judge%20Martin%20Colin%20NO%20GUARDIAN%20FOR%20ELIOT%20CHILDREN.pdf>

c. Order Denying Contempt Against Eliot -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150504%20Order%20on%20Motion%20to%20Hold%20Eliot%20Bernstein%20in%20Contempt%20DENIED.pdf>

18. There has been no “construction” hearing scheduled much less any full and fair hearing after proper discovery and depositions.

19. Moreover, alleged Creditor William Stansbury’s attorney has previously written to Rose directly regarding Rose’s conflicts of interest and other matters of testimony relevant at any hearing as follows:

- a. August 08, 2014 Feaman Letters to Rose

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140808%20Response%20to%20Motion%20for%20Contempt%20-%20Exhibit%20Feaman%20Letter%20to%20Alan%20Re%20St%20Andrews%20Tuition.pdf>

- b. Pleading filed by PR Attorney Brian O'Connell in Shirley Trust – Ted NOT A VALID TRUSTEE IN SIMON -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

- c. January 16, 2015 Nevada District Court Ruling - Crystal Cox ruling Eliot and Crystal not associated -

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150116%20Cox%20Bernstein%20Nevada%20RICO%20Order%20Denying%20Motions%20for%20Summary%20Judgement.pdf>

20. I replead and re-allege the following in further opposition to any continued improper

attempts at a gag order which should be denied and stricken but certainly would require an adversarial evidentiary hearing first not part of the Uniform Motion Calendar Hearing of Jan. 14, 2016 and certainly not in 10 minutes.

21. I have already had to reschedule medical/dental related appointments due to Alan Rose's

actions this New Year, I am currently on prescription medication since January 02, 2016, including painkillers and muscle relaxers and am not fit to attend hearings, which is part of the reason for my unavailability this month. This scheduling and notice is improper and

further harassment and this is not the first time Alan Rose has deployed these tactics as the record for the cases reflects.

22. This is nothing but more of the same “sharp practices” and legal process abuses that Alan Rose and Trustee Ted Bernstein have perpetuated throughout the litigation.
23. Florida Licensed attorney ( presently ) Alan Rose and his client Ted Bernstein fail to point out to this Court their continuing Conflicts of Interest since both Alan Rose and Ted Bernstein have actively worked Against the Interests of the “grandchildren” to Shirley and Simon Bernstein by trying to block \$1.7 in Life Insurance proceeds from coming into the Estate.
24. Both attorney Alan Rose and Ted Bernstein have been involved in actions which directly were contrary to the best interests of minor children by refusing to agree to a Continuance of the validity trial in Dec. 2015 even for 30 days so my minor children could have Counsel by Candice Schwager, Esq. and yet now try to claim to come to this court for the welfare of minor children. See,
  - a. December 12, 2015 Attorney Candice Schwager Pro Hac Vice Letter to Court  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151212%20Candice%20Schwager%20Pro%20Hac%20Vice%20ECF%20Filing%20Stamped%20Copy.pdf>  
f
  - b. December 15, 2015 Phillips Trial Stay  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20ESIGNED%20Phillips%20Trial%20Stay%20ECF%20STAMPED%20COPY.pdf>
25. Ted Bernstein and Alan Rose have articulated no adequate basis to impose a Gag order.

26. In fact according to the Email Letter sent by attorney Schwager today to Alan Rose (see <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160106%20Schwager%20Letter%20to%20Alan%20Rose%20to%20Cancel%20Hearings.pdf> ) to seek his voluntary withdrawal of this Hearing, even one of the cases cited by Alan Rose actually has the District Court of Appeals reversing a Trial Court's Order closing a Trial from the public: "The orders of the trial court sealing the file and closing the proceedings are REVERSED. The public shall be permitted access to the court file and the transcript or reporter's notes of any proceedings in the trial court. ERVIN, J., concurs. NIMMONS, J., concurs, with written opinion." <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>
27. There was minimal if virtually any naming of the "grandchildren" and/or "minor children" in the Trial in any event and I should have every right to inspect and have my own copy of the Transcript and this appears to be nothing more than the bully sharp practices of Alan Rose and Ted Bernstein in trying to deny due process and access to the courts and the ability to seek proper appeal, collateral attack and other motions concerning the trial.
28. As attorney Schwager pointed out in her letter, "Thus, it truly appears that your motion is more of a "smoke-screen" and "sharp practices" which are more designed to further delay, obstruct and hinder the due process rights of Eliot Bernstein and his minor children and perhaps others in the truth seeking processes by this motion which must be withdrawn."
29. In one breathe, Alan Rose and Ted Bernstein rush to push a validity Trial through that had been requested years before by Plaintiff Eliot and do so in a manner to Deny Counsel to Minor Children but now that the hour of Truth is at hand where Ted Bernstein's business partner / former business partner Robert Spallina's testimony Admitting to mail fraud, fraudulently creating an Invalid Trust and Fraud Upon the Court in these matters and related

Testimony is about to be available as it should be, Alan Rose and Ted Bernstein are now suddenly ( and frantically ) the big heroes for minor children and rushing in by an improperly Noticed Hearing to gag truth without providing any specific justification that this will benefit any minor children.

30. Yet, as stated by the very case Alan Rose and Ted Bernstein have cited for this Court, “ Preserving the independence and integrity of the judicial process through open and publicly scrutinized judicial proceedings is the issue.”
31. “A strong and independent judiciary is the bulwark of a free society. If there were no public access to proceedings before the trial judge, there would be no safeguard for judicial independence nor any assurance of judicial integrity.”
32. “It is the existence of the right of access that is critical to the court's autonomy, not the public's exercise of that right. Knowing the public can attend these proceedings and review judicial records helps guarantee that those matters will be conducted with due regard for the public's interest in a fair and impartial judiciary.” See, <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>.
33. Minor children ultimately have to grow up and learn the laws of civil societies.
34. There is nothing in the Transcripts that relates to the actions and behaviors of the minor children and thus Alan Rose and Ted Bernstein have shown *nothing specific of a compelling nature* with respect to the minor children and this motion should be struck from the Calendar and denied.
35. Instead the Trial consisted of testimony and actions by Ted Bernstein’s business partners and his former counsel to him as fiduciary Robert Spallina and Donald Tescher who admitted to (i) illegally using the Mails to mail a fraudulently created invalid trust to the three minor

children's prior counsel Christine Yates, (ii) that his law firm deposited fraudulent documents in the Court record in the cases, (iii) that he fraudulently used a deceased Personal Representative to fraudulently close the Estate of Shirley Bernstein in these matters leading to the reopening of the Estate of Shirley and three years of litigation costs and expenses and (iv) that he was under an SEC Consent order for Felony Insider Trading charges and other matters.

36. The SEC Consent Orders<sup>9</sup> for Spallina and Tescher are already of Public Record by the Washington, DC Office of the US SEC itself naming Robert Spallina and Donald Tescher, Ted Bernstein's business partners and former disgraced counsel to him as fiduciary in these matters, who he and Alan Rose allowed to "hold onto" Original records even after Spallina's admitting to fraud that benefited his client Ted directly and also having the firm's paralegal notary public Kimberly Moran admit to criminal charges in this matter of forging documents, fraudulently notarizing them, including Post Mortem for Simon Bernstein and committing multiple frauds on the Court and beneficiaries in these matters.

37. See, "**FOR IMMEDIATE RELEASE 2015-213** *Washington D.C., Sept. 28, 2015* — The Securities and Exchange Commission today charged five Florida residents – including two lawyers and an accountant – with insider trading in advance of the acquisition of Pharmasset

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<sup>9</sup> September 28, 2015 SEC Press Release Regarding SPALLINA and TESCHER INSIDER TRADING CHARGES, "SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant"

<http://www.sec.gov/news/pressrelease/2015-213.html>

and

September 28, 2015 SEC Government Complaint filed against TESCHER and SPALLINA @

<http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

and

October 01, 2015 SEC Consent Orders Felony Insider Trading SPALLINA signed September 16, 2015 and TESCHER signed June 15, 2014

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>



Inc. by Gilead Sciences Inc. In a complaint filed in federal court in Newark, New Jersey, the SEC alleged that attorneys Robert L. Spallina and Donald R. Tescher and accountant Steven G. Rosen illegally traded on confidential information obtained from a mutual client who served on the board of directors of Princeton, New Jersey-based Pharmasset.”

38. Spallina, Tescher, Rosen, Palermo, and Markowitz collectively agreed to pay approximately \$489,000 to settle the charges. The settlements are subject to court approval.

39. “Lawyers and accountants occupy special positions of trust and confidence and are required to protect the information entrusted to them by their clients,” said Joseph G. Sansone, Co-Chief of the SEC’s Market Abuse Unit. “It is illegal for them to steal their clients’ confidential information to trade securities for their own profit or to tip others.” See, <http://www.sec.gov/news/pressrelease/2015-213.html>

40. Thus, those matters regarding Ted Bernstein’s business partners and prior counsel to him as fiduciaries are already a matter of public record being made public by the federal government.

41. However in the December 15, 2015 Hearing Spallina states to Your Honor that he had not pled guilty to either felony or misdemeanor criminal conduct and yet the Consent Order signed by Spallina directly contradicts his testimony before this Court and this Court should take Judicial Notice and report such misconduct.

42. That SPALLINA perjured his testimony and further misled this court as he did plead guilty of criminal misconduct and the SEC Consent signed by SPALLINA states,

“2. Defendant [Robert Spallina has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of

Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey, (the "Criminal Action")."

43. Yet, in a December 15, 2015 hearing under sworn oath as a witness in a Validity Hearing before Judge PHILLIPS, SPALLINA perjured himself and stated the following from the hearing transcript Page 93 Lines 14-17<sup>10</sup>;

14 · · · · · THE COURT: You can answer the question, which  
15 · · · · is, did you plead to a felony?  
16 · · · · · MR. BERNSTEIN: Sorry, sir.  
17 · · · · · THE WITNESS: I have not.

44. Further, in the SEC Consent signed by SPALLINA reads,

"12. Defendant understands and agrees to comply with the term of 17 C.P.R. f 202,S(e). which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523. that the allegations in the complaint are true..."

45. No compelling circumstances are shown by Ted Bernstein and his attorney Alan Rose to gag any part of the Trial herein other than what my attorney Candice Schwager says in her Letter Email that the standard in federal court for Pleadings is to simply abbreviate the minor child's name instead of spelling it out such as "J.B.", "D.B", etc. Where none of the parents of the minor children have objected on their children's behalf either.

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<sup>10</sup> December 15, 2015 PHILLIPS VALIDITY HEARING TRANSCRIPT

46. Nothing else more than that should happen here.
47. Alan Rose and Ted Bernstein's desperate attempt to hide and conceal the Truth of the Trial is just like what the District Court of Appeals found offensive in the case their papers cited, "In essence, one of the parties wished to conduct the proceedings in private to prevent the disclosure of certain information the party would otherwise prefer not be made public. The information is of a somewhat general nature and not specifically tied to a domestic relations case.<sup>8</sup>The information is not related to the marital relationship nor its breakup, to the welfare of the children, nor to the marital property."
48. "This may be so, but we do not find this reason to be sufficiently compelling, rising to the level that would deny the party an opportunity to receive a fair trial, to justify closing these proceedings." District Court of Appeal of Florida, First District. 508 So.2d 462 (Fla. Dist. Ct. App. 1987 ) <https://casetext.com/case/florida-freedom-newspapers-v-sirmons>
49. Having acted to repeatedly Deny minor children Counsel by denial of proper Trust funds and thus deny minor children rights, these actions now by Ted Bernstein and Alan Rose are a sham and must be denied.
50. Ted Bernstein would have this Court disregard and deny the actual history of fraud and abusive, bullying, extortive, illegal and coercive tactics and conduct of he and his business partners and his former counsel against Minor children as if Ted Bernstein had the Court on his own Payroll. See, May 6, 2013 Emergency Motion<sup>11</sup> and See Motion on St. Andrew's School<sup>12</sup>,

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<sup>11</sup> May 06, 2013 Bernstein Emergency Petition Florida Probate Simon and Shirley Estate Cases @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20Large.pdf>

<sup>12</sup> August 24, 2014 Emergency Motion <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140824%20Amended%20Emergency%20Motion%20to%20Compel%20Eliot%20School%20Saint%20Andrews%20Payments.pdf>

51. I, Eliot Bernstein, further renews and reminds this Court that it lacks jurisdiction to hear the matter as this Court was mandatorily disqualified at least as of Dec. 4, 2015<sup>13</sup> and was further moved to mandatory disqualify Dec.28, 2015<sup>14</sup> and thus no further action may be taken at this time beyond mandatory Disqualification.

WHEREFORE, it is respectfully prayed for an Order mandatorily Disqualifying Judge John L. Phillips, striking or alternatively Continuing the motions of Steven Lessnee and Oppenheimer until after a properly scheduled, noticed and held Case Management Conference for a “complex” case, proper Discovery, depositions and proper evidentiary hearings held first, sanctions against Alan Rose and Ted Bernstein and such other and further relief as may be just and proper.

Dated: January 13, 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 13th day of January, 2016.

<sup>13</sup> December 04, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20SIGNED%20NOTARIZED%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

<sup>14</sup> Dec 28, 2015 Disqualification of Judge Phillips

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%202015,%202015%20ECF%20STAMPED%20COPY.pdf>

and

Corrections

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

**/s/Eliot Ivan Bernstein**

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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.: 4D16-0064

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN v. TED BERNSTEIN, AS TRUSTEE. ET AL.

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Appellant / Petitioner(s)

Appellee / Respondent(s)

**WARNING: POTENTIAL CONFLICTS OF INTEREST OF THIS COURT**

**PETITION FOR ALL WRITS, WRIT OF PROHIBITION, WRIT OF MANDAMUS AND  
PETITION TO STAY CASES AND TEMPORARILY RESTRAIN SALE, TRANSFER,  
DISPOSITION OF ANY ASSET AND FOR PRESERVATION OF ALL EVIDENCE**

Now comes ELIOT IVAN BERNSTEIN (“PETITIONER”) who respectfully petitions  
and pleads and shows this court as follows:

1. This is a Petition for All Writs and is a Writ of of Prohibition as Directed and Determined  
by the 4th DCA, a Writ of Mandamus and an application for a Temporary Restraining Order-  
Stay prohibiting any transfer, sale or disposition of any assets herein under the Estates and Trusts  
of Simon and Shirley Bernstein and Trusts of PETITIONER’S minor children and further  
requiring the parties, including the courts where there has been proven Fraud on the Court, to  
preserve any and all evidence, documents, records, notes, statements, properties and materials  
relating to these Estate and Trust matters in all cases stated in the caption.

2. It is respectfully submitted that Hon. Judge John L. Phillips ( “Phillips” ) has failed to  
perform mandatory duties under Florida law by failing to mandatorily Disqualify himself under

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the Judicial Canons and as required by law by instead proceeding to act outside of his jurisdiction to hold an improperly scheduled Trial.

3. In so doing Judge Phillips has acted in excess of his jurisdiction and outside the law and must be prohibited by the writ herein. Because the Orders of Judge Phillips who should have mandatorily Disqualified are a nullity and void and must be officially voided, there are no valid and proper Orders under which the parties are acting and thus the parties herein and each case listed in the caption shall be temporarily restrained from any further transfers, sale, disposition or compromise of any asset herein pending proper determinations of authority to act, proper determinations of who is and should be Trustee, the Personal Representative and what Dispositive documents prevail and other substantive orders in the case.

#### **BASIS FOR INVOKING JURISDICTION**

4. This is an Original Proceeding filed in the Florida Supreme Court pursuant to Florida Rule of Civil Procedure 9.100(b) and 9.030 for extraordinary writs.

Florida Rule of Appellate Procedure Provides:

**Original Jurisdiction.** The Supreme Court may issue writs of prohibition to courts and all writs necessary to the complete exercise of its jurisdiction, and may issue writs of mandamus and quo warranto to state officers and state agencies. The supreme court or any justice may issue writs of habeas corpus returnable before the supreme court or any justice, a district court of appeal or any judge thereof, or any circuit judge.

5. This Court has jurisdiction to issue writs of mandamus, prohibition and any other writ within the exercise of its judicial authority. See *McFadden vs. Fourth Dist. Court of Appeal*, 682 So.2d 1068 (Fla. 1996).

Florida Rule of Appellate procedure 9.100(h) provides:

**Order to Show Cause.** If the petition demonstrates a preliminary basis for relief, a departure from the essential requirements of law that will cause material injury for which there is no adequate remedy by appeal, or that review of final administrative action would not provide an adequate remedy, the court may issue an order either directing the respondent to show cause, within the time set by the court, why relief should not be granted or directing the respondent to otherwise file, within the time set by the court, a response to the petition. In prohibition proceedings, the issuance of an order directing the respondent to show cause shall stay further proceedings in the lower tribunal.

6. Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.

7. As such, Judge John L. Phillips actually knows and should know he has an Oath to uphold the US Constitution and State Constitution of Florida.

8. As such, at all times relevant herein, Judge John L. Phillips actually knows and should know that fundamental US Constitutional Due Process requires fair Notice and an Opportunity to be Heard at a meaningful time and in a meaningful manner.

9. Moreover, Judge Phillips knew and had to know Florida Rule of Civil Procedure 1.200 Pre-Trial Procedure Case Management Conference provides that “The matter to be considered shall be specified in the order or notice setting the conference.” and further has provisions for determining a “complex case” and provisions relating to compliance with Discovery and production requests, determination of witnesses, pre-trial depositions, expert witnesses and other pre-trial procedures, yet Judge Phillips knowingly moved on Sept. 15, 2015 to order a “Trial” in a case that was Not Noticed to be Heard at the Case Management Conference and further demonstrated bias, prejudice, lack of impartiality creating a reasonable fear that Eliot Bernstein would not receive a fair trial and was denying due process by denying Eliot Bernstein proper notice and opportunity to be heard at the Case Management Conference of Sept. 15, 2015,

10. During the pendency of a Petition for All Writs filed by Petitioner Eliot I. Bernstein at the Florida Supreme Court including Writs of Prohibition and Mandamus and a request for a Stay and injunction at the Florida Supreme Court with respect to Judge Martin Colin, the current PR of the Simon Bernstein Estate Brian O'Connell of the Ciklin law firm brought into the Estate by Creditor Stansbury attorney Peter Feaman filed for a Status Conference after the case was transferred to Judge Phillips.

11. It is expressly noted that the re-filed Petition for All Writs with the Florida Supreme Court on June 30, 2015 expressly included a request for a Stay and Injunctive and other relief by the Florida Supreme Court further raising the novel and important Statewide issue of whether the Florida Courts themselves could be a proper forum consistent with due process to even hear the Bernstein matters herein for a variety of reasons including but not limited to current Chief Judge Labarga's involvement in the frauds upon the Florida Courts in the Proskauer Billing lawsuit.

12. It was expressly noted that the Proskauer Rose firm had "billed" for Estate Planning work involving Simon Bernstein and Bernstein family matters and further had been determined that Judge Coates who the case was originally transferred to after Judge Colin's "recusal" coming 24 hours after denial of a Disqualification motion himself had been a Proskauer Rose partner during the times of the original thefts of the underlying Technologies and Intellectual properties that were part of the Estate planning of Simon and Shirley Bernstein. The Court should note that Coates was a billing Proskauer Partner to the technology companies and that Proskauer is also a Counter Defendant in a stayed Counter Complaint of Bernstein's in a case he took over from Colin.

13. A status conference was scheduled by the Personal Representative O'Connell firm and held before Judge John L. Phillips at the North Branch on July 30, 2015.

14. During this Status Conference, Petitioner Bernstein attempted to Object before Judge Phillips to raise the issues of the pending Petition for All Writs and related relief and Judge Phillips, upon information and belief being words heard by Petitioner, Judge Phillips indicated this Petition would be discussed at a Case Management Conference that was being scheduled.

15. Again on July 30, 2015 at the Status Conference, Judge Phillips indicated at or near the close the issue of the Petition for All Writs filed by Petitioner Eliot Bernstein would be addressed at the Case Management Conference.

16. Petitioner Bernstein was acting Pro Se and without Florida Licensed counsel at this time and has been denied counsel and the funds for counsel from the Trusts and Estates part of which were specifically designed to plan for Eliot Bernstein and his immediate family including the minor children.

17. On several occasions during the pendency of the Petition for All Writs and at all relevant times herein, Petitioner Bernstein sought support from Creditor Stansbury and his licensed attorney Peter Feaman, Esq. for his Petition for All Writs and other relief making similar requests of the PR Brian O'Connell at the Ciklin law firm.

18. Prior to a Case Management Conference held by Judge Phillips at the North Branch on Sept. 15, 2015, Petitioner Bernstein specifically sought determination from the PR O'Connell firm on the Plan and Scheduling of issues to be heard and to further avoid delay and cost having been rendered indigent status by the continuing frauds herein.

19. Judge Phillips had actual knowledge and knew and at all times should have known that the Case Management Conference was Noticed and Scheduled for the Simon Bernstein case, not the Shirley Bernstein Trust case in the instant matter or other related cases.

20. After close of business hours on the eve of the Case Management Conference scheduled with Judge Phillips for Sept. 15, 2015, Petitioner Bernstein received a Filing by attorney Alan Rose on behalf of Ted Bernstein, still acting as Trustee despite licensed attorney Peter Feaman previously urging PR O'Connell in August of 2014 to file his own Petition to remove Ted Bernstein claiming he had an "absolute duty" or words to that effect to do so, including but not limited to, on grounds of the express language which Disqualified Ted and failures to account and waste of assets in the case as neither PR O'Connell nor Creditor attorney Peter Feaman took subsequent action to Remove Ted Bernstein despite the fact that Judge Colin who had denied Creditor Stansbury standing had now been suspiciously "Recused" within 24 hours of denying a subsequent mandatory Disqualification exposing not only Proven Fraud Upon the Court but also alleging Fraud By the Court and where Colin became a necessary and material fact witness to the fraud upon the Court committed by Ted as an alleged fiduciary and his court appointed attorneys Tescher and Spallina before Colin, all of them acting in fiduciary capacities in these matters.

21. Creditor Stansbury attorney had previously written to Alan Rose about his own "conflicts of interest" in representing Ted Bernstein yet had taken no further action by the time the Case Management Conference was held by Judge Phillips on Sept. 15, 2015 to cure the conflicts he was aware of.

**Judge Phillips Must be Mandatorily Disqualified for "Pre-Judging" the Case and for Bias, Prejudice and Reasonable Fear of Inability to Obtain a Fair Trial and Due Process**

22. While never permitting Petitioner Bernstein to be Heard on his Petition for All Writs at the Case Management Conference on Sept. 15, 2015 despite two specific representations to the contrary on July 30, 2015 by Judge Phillips, Judge Phillips fundamentally prejudiced the case and created the reasonable fear that Petitioner would never receive fair trial right from the outset of the Case Management Conference by claiming: “ I'm not here to question some other judge's order. You won't have me saying he was wrong. “

23. While this statement was in response to Creditor attorney Feaman questioning the Transfer to the North Branch, Judge Phillips determined from the outset and pre-judged Petitioner Bernstein's Petition for All Writs which sought to Void Judge Colin's Orders and declared him a necessary and material fact witness and further improperly prejudged all motions relating to the propriety of the prior Orders of Judge Colin.

24. Judge Phillips must be mandatorily disqualified on these grounds alone.

25. Yet Judge Phillips pre-judging, bias, prejudice and knowing misstatement of law and procedure in Florida went further saying,

“ If somebody made a mistake and you all think there's relief that should be granted to correct his mistake that's what the 4th is for. Please have a seat.”

26. The improper transfer to Phillips was already appealed at the Supreme Court of Florida by the Petition for All Writs at the time of the statement above and thus Phillips should have waited for a determination from the Supreme Court but did not and moved ahead.

27. It was only confirmed and discovered by Petitioner on Dec. 3, 2015 by Licensed attorney Peter Feaman that, contrary to Judge Phillips gross misstatement of law during the Sept. 15, 2015

Case Management Conference that Florida has Rule 1.540 that permits a Trial Judge to in fact void such orders.<sup>1</sup>

28. Further, the Florida Supreme Court has confirmed that Trial Courts and Judges in Florida have inherent power and authority to correct frauds in the court and preserve the integrity of proceedings.<sup>2</sup> Judge Phillips thus not only falsely represented his powers to a Pro Se party but could have simply brought up in Case Management if he wanted Eliot Bernstein to file a separate Stay despite the Stay request and Writs pending that Phillips said would be discussed or could have otherwise set a schedule for the filing and hearing of any motions regarding Judge Colin.

29. This Florida Supreme Court case makes it clear that “Finally, allegations of an attorney’s filing of fraudulent documents in connection with his or her client’s lawsuit would warrant a referral of that attorney to The Florida Bar for a possible violation of the Code of Professional Responsibility. See *id.* at 954 & n.2.” (emphasis added).<sup>3</sup>

30. The failure to take appropriate action as required by the Judicial Canons and Rules against attorneys Tescher & Spallina by Judge Colin is precisely one of the grounds upon why his Orders should be voided and yet Judge Phillips made it crystal clear from the outset at the Case Management Conference on Sept. 15, 2015 he would be taking no such action with Judge Colin and later goes on to compound the bias, prejudice and reasonable fear of not getting a fair trial when he professes his “love” for Judge Colin who is a material and fact witness as set forth above who should have his Orders voided.

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<sup>1</sup> See, [http://phonl.com/fl\\_law/rules/frcp/frcp1540.htm](http://phonl.com/fl_law/rules/frcp/frcp1540.htm)

<sup>2</sup> See, *Pino v the Bank of New York*, Feb. 2013, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>

<sup>3</sup> See, <http://www.floridasupremecourt.org/decisions/2013/sc11-697.pdf>



31. The remainder of the Transcript makes it clear how Judge Phillips prejudged and pre-determined any claims of Petitioner Bernstein by improperly cutting off and denying any fair opportunity for Eliot Bernstein to be heard on any issue thus demonstrating bias and prejudice as a further basis to mandate Disqualification.

32. This is further compounded and egregious where Pro se Petitioner Bernstein was having to be the one to try and step up and notify Judge Phillips that even licensed attorney PR O'Connell deemed Ted Bernstein to be invalid yet O'Connell failed to do so even though it was O'Connell's office as PR in the Simon Bernstein Estate that brought the matter on to be heard before Phillips in the first instance in the Simon Bernstein Estate at the Case Management Conference of Sept. 15, 2015.

33. Instead, Judge Phillips commits even further egregious and knowing Due process violations by permitting Alan Rose who has been claimed by Feaman to have conflicts of interest ( not raised before Phillips but raised during Judge Colin's handling of the case ) and claimed by both Feaman and O'Connell to be representing a Trustee Ted Bernstein who isn't "valid" under the language of the trust that precludes him and yet Phillips denies Eliot Bernstein to be heard there and instead allows Alan Rose to co-opt O'Connell's Management Conference to Schedule a Trial in Shirley Bernstein's Trust case the instant case before this Court which was never Noticed to be Heard in the first instance denying due process both on the count of improper Notice and on a fair Opportunity to be heard.

34. Judge Phillips clearly knew he was in the Simon Bernstein case and Petitioner Bernstein and Attorney at Law Peter Feaman attempted to clarify the matter and thus Phillips knew what he was doing when he improperly noticed a Trial to be scheduled in Shirley Bernstein when the

case was noticed for Simon Bernstein and thus Judge Phillips failure to sua sponte correct the matter on his own motion is further proof of bias, prejudice and reasonable fear of the inability to obtain a fair trial all of which mandates that Judge Phillips must be mandatorily disqualified.

35. The net effect of the due process violations and knowingly improper conduct by Judge Phillips is to again Deny Petitioner Eliot Bernstein fair opportunity to be heard and to even have Trial Counsel similar to the fraud upon the Court committed by Labarga in the Proskauer Billing lawsuit where it is later shown to Judge Colin that Ted Bernstein's attorneys Tescher & Spallina involved in the fraud are intimately involved with the Proskauer firm in the Boca Raton, Florida community and Proskauer is directly involved in these estate and trust matters as well.

36. It was only recently discovered during the week on or about Dec. 1, 2015 that the 4th DCA denied Petitioner's Writs as "moot" when no possible legal determination could be properly determined on "mootness" for the Mandamus petition and voiding of Judge Colin's Orders and determination of Colin as a necessary and material fact witness nor could the application for a Stay and Injunctive relief be determined as "moot" bringing the case back to that portion of the Writ and Petition that was filed in the Florida Supreme Court as to the novel and important statewide issue of whether the State of Florida and Florida Courts can provide due process in the Eliot Bernstein family matters based upon inherent conflicts of interest and fraud upon the Court and by the Court.

37. Yet, despite the fact that the 4th DCA just ruled and a reasonable argument could be made that not only should Judge Colin's Order denying Creditor Stansbury out of the Shirley and Simon Estates and Trusts be "re-heard" filed by Feaman, Feaman could have reasonably determined that until the 4th DCA spoke on Petitioner Bernstein's Petitions, there was a

reasonable basis to hold off before Phillips on a motion to Stay and Disqualify as unless someone had improper “inside” knowledge of what the 4th DCA was going to do, the 4th DCA could have issued a Show Cause Order for the Writs to be responded to thereby creating the Stay of the lower court rendering action before Phillips unnecessary and moot yet it had been just discovered Dec. 3rd, 2015 that Feaman would not take any such action before Phillips leaving Eliot Bernstein standing alone pro se at an improperly scheduled trial before Phillips on Dec. 15th, 2015 even though Feaman’s client Creditor Stansbury has sued Ted Bernstein and Tescher and Spallina in their fiduciary capacities both in the Civil court of Judge Kelley and the Estate cases all further calling into question the integrity of proceedings before Phillips as a further basis to disqualify.

38. The Petition for All Writs brought up very serious actions in the case including but not limited to alleged fraud by the court, proven fraud and fraud on the court, beneficiaries, including allegations of fraud by the original Personal Representatives and Trustees, the attorneys Tescher & Spallina<sup>4</sup>, who were directly involved in the drafting of specific Trust and Estate documents directly at issue before Judge Phillips.

39. The Petition for All Writs further brought up that, not only has one of the direct employees who was under the direction, control and management of Attorneys Tescher & Spallina, a Paralegal-Notary named Kimberly Moran, Admitted to Criminal charges in her acts of forging and fraud in preparation of FIVE Notarizations on dispositive documents of likely beneficiaries and a sixth POST MORTEM forgery for Simon Bernstein in the case in documents

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<sup>4</sup> Tescher and Spallina have recently been charged by the Securities & Exchange Commission for charges of Insider Trading. See <http://www.wsj.com/articles/sec-charges-five-with-insider-trading-over-2011-gilead-deal-1443460420> and <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf>

the law firm of Tescher & Spallina, P.A. **then fraudulently deposited** with the Palm Beach Court of Martin Colin and then later Attorney Spallina admitted to Palm Beach County Sheriff officers that he and his partner, Donald Tescher, Esq., further fraudulently altered a Shirley Bernstein trust document but also that Palm Beach County Probate Court Judge Martin Colin was a direct material and fact Witness to the fraud in and upon the Court and thus was mandated to Disqualify himself from the proceedings from the start and void his Orders, not simply issue a Recusal and thus further should have been a Witness for any Trial that Judge Phillips was trying to schedule although proceeding to improperly schedule the Trial in a case Not Noticed for the Case Management Conference.

40. Colin's Recusal came a day after denying his own Disqualification Motion filed by Eliot Bernstein seeking to strike and void entirely all Colin's Orders for the proven and multiple Frauds on the Court that have occurred and reset the case and replace all parties involved in the Frauds, including but not limited to, counsel, courts officials and court appointed fiduciaries involved or potentially involved with the prior frauds and frauds on the court in the cases. As Colin interfered and steered the transfer of the cases to the North District and ultimately Phillips after his recusal, this would be cause to reset the whole jurisdiction and transfer and further brought up the improprieties of Judge Phillips even acting at the Case Management Conference in the first instance by the improper Transfer by Colin, yet all of this was pre-judged and pre-determined by Phillips demonstrating bias, prejudice, lack of impartiality and denying due process.

41. In fact, the precise circumstances of the "Recusal" and Transfer of this case leading to Judge John L. Phillips presiding was brought up and pending before the Florida Supreme Court

at the time of the Case Management Conference of Sept. 15, 2015 and had been pending at all times Judge John L. Phillips has presided in this case.

42. In fact, proceeding without determination of the transfer issues raised in the All Writ Petition further denies due process, allegedly continues a fraud on the court and continues to cause waste, fraud and abuse for all parties and for all of the following reasons:

a. As noted in the Petition for All Writs, not only is Mandamus sought to force Judge Colin to issue a mandatory Disqualification in this case, not a Recusal, but further seeks Prohibition as Judge Colin, upon receiving the last motion for Disqualification on or about May 14, 2015, initially Denies the motion as insufficient and then, within 24 hours or less Sua Sponte “recuses” himself and afterwards proceeds to have “conversations” with other Judges in the Palm Beach Court Southern District interfering with the transfer process, in a case where Colin was already Petitioned to be a Material Fact Witness in the Fraud upon his Court and alleged fraud involving him directly as part of a larger Fraud by the Court. Colin’s Order and actions steer the case to the North District where the cases first ended up before one Judge Coates who ultimately at the first hearing, after denying any conflict with Petitioner, he suddenly Sua Sponte recused himself for multiple conflicts that should have precluded his involvement and mandated his mandatory disqualification before a hearing was even scheduled (wasting more time and costs of 5-10 attorneys who attended) and sending the cases before Judge John L. Phillips. It should be noted that this improper acceptance of the cases by Coates gave Coates and Proskauer (a counter defendant) highly privileged access to court records of Colin before the Sua Sponte recusal based on his inability to deny his conflicts he had concealed in taking the cases.

b. That Eliot Petitioned in the All Writ that Colin in fact allegedly knowingly transferred the case to Coates to give Proskauer Rose the confidential court files for their use in the matters they are involved in and giving them unfair advantage and knowing after gaining access to the files Coates would be forced out by his conflicts with Eliot and Iviewit. It should be noted that North District is the furthest courthouse approx 20-30 miles traveled for all parties involved, including 5-10 attorneys per hearing, fueling even more estate waste fraud and abuse as those attorney all have offices minutes away from the Palm Beach Main Courthouse.

c. Judge Coates also is alleged to maintain an interest in the Iviewit Companies as Proskauer Rose the law firm was a direct shareholder in the companies involved and where these companies and the Intellectual Properties which are suspended at the USPTO and are still under ongoing investigations and legal actions that directly implicate Proskauer and its partners, associates, of counsel et al.

d. Ironically enough, the first Judge where this case was steered by Judge Martin Colin's direct involvement while he was knowingly claimed to be a material and fact witness happens to be Judge Coates who just happened to not only turn out to formerly be a Partner at Proskauer Rose but who was reminded at the only appearance of this case in his Court in July of 2015 that Judge Coates was personally known to Eliot I. Bernstein as having worked at a Proskauer office right "across the hall" from their client Eliot I. Bernstein and the Iviewit companies in Boca Raton, Florida where some of the original Thefts of the Technology rights and inventions were occurring at the time and that his former firm Proskauer was not only conflicted in these matters but also was a Counter Defendant in the very matters before him that he was adjudicating upon.

e. Judge Coates ultimately recused himself on his own initiative from all of the cases herein although one case out of six, appears to have mistakenly not had a Recusal Order issued presently.

f. That it is alleged that the intended party that Colin may have intended to steer the cases to all along was Judge Phillips, as it is suspected Colin knew that Judge Coates was a former Proskauer Rose partner and that Eliot had included Proskauer in the Estate Cases before him now as Counter Defendants in certain actions in these matters and that Eliot had sued Proskauer previously and was pursuing them currently in other federal civil and criminal actions ongoing.

g. Further, the Petition for All Writs brought up whether the State of Florida Courts, presently headed by Chief Judge Jorge Labarga, can even be a fair and proper jurisdiction to hear any of these matters for a variety of reasons including but not limited to Judge Labarga's direct involvement in a prior case involving False Billing and Fraudulent Patent Applications filed in part by the international law firm of Proskauer Rose (where Judge Coates worked) involving Eliot I. Bernstein and his father Simon's Intellectual Property rights valued by Leading Experts in the digital video and imaging fields as worth Billions.

h. Moreover, the Petition for All Writs brought up for review and petitions and pleads making it clear that Eliot I. Bernstein seeks as relief the Vacating and Voiding of All Orders of Judge Martin Colin certainly at least from the time when he became a material and fact witness to the fraudulent dispositive documents being filed by Officers of the Court from the Tescher & Spallina law firm in Colin's court that were used to

illegally seize dominion and control of the Estates and Trusts fiduciary capacities, illegally alter beneficiaries and loot the Estates and Trusts of Simon and Shirley Bernstein of millions of dollars and yet despite a mandatory disqualification on his own initiative as proscribed by judicial cannon and statute continued to adjudicate outside the color of law. Colin then denied motions to voluntarily disqualify himself filed by Eliot.

i. For Phillips to act on Colin's prior Orders, as he does, without first knowing if the Orders of Colin will be stricken, "putting the cart before the horse," again causes fraud, waste and abuse of the Court and all parties time and monies, especially if the Colin Orders are stricken and all actions must then be reversed.

j. The All Writs Petition made it clear that under law Eliot I. Bernstein has the right to seek challenge, voiding and vacating of any such Orders in all jurisdictions where Fraud Upon the Court has occurred.

k. Yet, while the Petition for All Writs was first filed and pending ( and remains pending ) at the Florida Supreme Court, the current PR of Simon Bernstein's Estate Brian O'Connell's office filed prematurely to bring the cases onto the docket before Judge John L. Phillips for a Conference to set a schedule for other conferences and hearings to be held although PR O'Connell's office did not file or propose any Order for which motions and hearings should be held and this first appearance occurred before Judge John L. Phillips on or about July 30, 2015.

l. Approximately 7-8 lawyers for other parties appeared and Eliot I. Bernstein appeared in person at this first appearance before Judge John L. Phillips on July 30, 2015 and while Judge Phillips himself took No Notice or Acknowledgement on



his own action of the pending Petition for All Writs at the Florida Supreme Court in this case where hundreds of millions of dollars and properties are alleged to have been looted and illegally distributed, where admissions of crimes have already occurred in the filings before the Court, where murder has been alleged by Ted Bernstein to state authorities, Judge John L. Phillips did at least say twice on the Record during this first appearance when Eliot I. Bernstein brought up the pending Petition for All Writs that this Petition would be addressed at the next Court appearance and ultimately the parties were directed to work amongst themselves to arrive at a proposed schedule to hear matters by the next appearance.

m. Despite this direction by the Court and despite the fact that it was the PR of Simon Bernstein's Estate Brian O'Connell's office who had called for the original conference before Judge Phillips, on the *eve of the night before the second appearance on September 15, 2015 and after close of business hours at 5:18pm* no proposed Schedule had been made by the PR Brian O'Connell but instead attorney Alan Rose, attorney for alleged successor Trustee Ted Bernstein who is a business partner with Attorneys Tescher & Spallina and Ted's prior counsel who are at the center of the fraud upon the Court, proceeded to file an *after hours after close of business filing* with Judge John L. Phillips seeking to completely re-do and change the Schedule for the next morning to now be a schedule to attack and attempt to neutralize Eliot and appoint Guardians for Eliot Bernstein's children and Eliot Bernstein where no pleading for such had been made.

n. The Exhibit has material misrepresentations of case information and attempts to shift the court's focus from rectifying and dealing with the fraud on the court

and other frauds on beneficiaries to an assault of Slanderous and Defamatory information and case twisting to portray Petitioner Eliot as a cause of the problems in the matter and attempt to annihilate his and his children's rights and Judge Phillips held the hearing threatening contempt to Eliot and searching to see if there were guardianship pleadings regarding Eliot. Some of the key points of misrepresentation by Rose to Phillips are as follows:

o. The TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE starts as follows,

“The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.”

i. That in fact, Ted Bernstein and his clients, business partners and Attorneys at Law, Tescher and Spallina and their co conspirators, Alan B. Rose, Esq. and approximately six other lawyers who have all resigned due to irreconcilable differences with Ted after the Law Firm Tescher & Spallina, PA was found to have COMMITTED A FRAUD ON THE COURT AND FRAUD ON THE BENEFICIARIES, which has derailed with intent the proceedings and inheritances and cost the injured parties millions more while the fraud was NOT LEGALLY remedied by Judge Colin but instead carefully and craftily continued. That the crimes were uncovered, prosecuted in part and led to arrest, all due to the efforts of Eliot Bernstein and where Alan Rose is a central suspect in the alleged crimes under ongoing investigations, has numerous

conflicts and adverse interests (also a counter defendant in the matters at hand) and so one can see how he tries to twist the truth to a new Judge Phillips.

ii. If Judge Phillips had reviewed the record and determined who and why the hearings were held and who caused problems with the Estates and Trusts by committing FELONY CRIMINAL ACTS, he would have noticed that Eliot only reported the crimes. The costs incurred by all Beneficiaries, Creditors, Interested Parties, the courts, etc. are wholly attributable to Ted Bernstein and his minion of attorneys at law who have tried to defend the criminal acts done, attorneys at law, Donald Tescher, Robert Spallina, Alan B. Rose, et al. This toxic pleading by Rose should have led to sanctions by Judge Phillips for wholly distorting the record.

iii. The second sentence of the TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE filing of Rose states,

“With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.”

Wherein the delay in sale of real property again stems from a court order whereby it was found that Alan Rose and Ted Bernstein had failed to notify beneficiaries and interested parties of the sale of Simon's home in an undisclosed transaction with undisclosed terms and conditions of the sale and Judge Colin ceased the proposed sale. Again costs incurred by the failure of the fiduciary and his counsel to follow probate rules and statutes. Rose's estimation for a value of the Estates and Trusts years after the decedents deaths exhibits another glaring violation of probate rules and statutes by the alleged fiduciary Ted Bernstein and the former fiduciaries in that NO ACCOUNTINGS have been provided for Shirley's Trust and in Simon Trust, accounting does not start with an opening balance done after the decedent's death for over two years and the prior accountings by Tescher and Spallina that were required upon their removal for fraud and more were never done and never requested by Ted in violation of probate rules and statutes and accounting rules.

p. The next sentence is wholly false, whereby Rose states,

“For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. **The sole reason [emphasis added]** for the lack of progress is their disinherited son, Eliot Bernstein.”

First off Eliot is not a disinherited son by Shirley Bernstein as when she died the Eliot Bernstein Family Trust was a one-third beneficiary of the Shirley Trust, which became irrevocable upon her death and only due to the frauds proven and alleged and through fraudulent documents submitted in the matters to the

courts and others, the beneficiaries have come into question, the fiduciaries are in question, as well as the validity of the dispositive documents. Where the Governor Rick Scott has already found that documents attempting to disinherit Eliot in Simon case, a Will and Amended Trust allegedly signed 48 days prior to Simon's death, are again improperly notarized and the Governor's office has taken action against another notary in these matters and the documents are still being investigated as wholly fraudulent. Alan Rose is knowledgeable of these crimes of his colleagues Tescher and Spallina and Ted who recruited him and yet attempts to spin the truth to the newly appointed Judge Phillips in efforts to hide and conceal the fraud and the true cause of why the matter is before him and Phillips claiming he is "stupid" in the hearing acts as if he has read nothing in the docket and goes along with Rose's story, precluding Eliot from responding to the wholly false claims.

q. The next statement in Rose's diatribe of lies reads,

"If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters, 1 Eliot must be stopped before it is too late to salvage anything for the beneficiaries."

Rose fails to mention to this Court and in fact lies at the second hearing and states there have been no guardianship pleadings in the Simon and Shirley cases for a Guardian, where he is fully cognizant he filed and had heard a

guardianship hearing and was denied by Judge Colin as there was absolutely no basis for a guardian as already exhibited herein. From the hearing transcript Rose states,

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.

...

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.**

43. One look at the docket and the court could see that multiple attempts have been made by Rose et al. to try and gain guardianship and have failed repeatedly. Further, Eliot's children are not beneficiaries under the Shirley Bernstein Trust as of the date December 08, 2010 when it became irrevocable with Ted Bernstein, Pamela Bernstein Simon and their lineal descendants considered predeceased for all purposes of the Shirley Trust. Per Robert Spallina who drafted the documents, when under interrogation by Palm Beach County Sheriff officers stated,

“SPALLINA REITERATED THAT HER DOCUMENTS READ THAT UPON SIMON'S DEATH, EVERYTHING (HER ASSETS) WENT TO JILL, LISA, AND ELIOT.” Further Spallina states, “HE SAID SIMON TOLD HIM THAT HE WANTED TO MAKE THE NECESSARY CHANGES TO HAVE BOTH TRUSTS READ THAT THE 10 GRANDCHILDREN WERE THE BENEFICIARIES. HE TOLD ME THAT HE TOLD SIMON (SI AS HE CALLS HIM) THAT HE COULD NOT MAKE THOSE CHANGES TO SHIRLEY'S TRUST BECAUSE SHE HAD WROTE TED AND PAM AND THEIR CHILDREN AS PREDECEASED IN HER TRUST. SPALLINA REITERATED THAT SIMON CAN DO WHATEVER HE WANTS WITH HIS ESTATE, BUT ALL HE CAN DO WITH SHIRLEY'S TRUST IS GIVE IT TO LISA, JILL, AND ELIOT'S CHILDREN.”

44. Yet, Alan Rose continues to attempt to perpetrate this Fraud on the Court that Eliot is not a beneficiary in efforts to try and eliminate Eliot, the bane of his existence, in part why he can no longer represent parties other than himself as a Counter Defendant and also due to his direct involvement in continuing the fraud through toxic vexatious slanderous filings and continued fraud upon the court and beneficiaries.

45. That Eliot had tried at the first hearing and at the second hearing of Phillips to put forth an order for case management into the record but Judge Phillips repeatedly denied his efforts, chastising him for speaking, threatening contempt and other bantering of Eliot to deny his rights and precluding his statement from the record. The statement was as follows:

**PETITIONER'S STATEMENT ABOUT WHAT SHOULD HAVE HAPPENED AT  
STATUS CONFERENCE - ORDER FOR HEARINGS IF DUE PROCESS WAS  
AFFORDED**

1. Determine Non Conflicted Venue – Federal/State, if Federal transfer cases to Federal Court, all of them, Simon Estate has already intervened and been accepted in the Federal Court under Judge Robert Blakey, if State with Federal Monitor oversight to restrict further state run fraud on the court.
2. Reset all probate/trust cases due to Fraud on the Court and Fraud by the Court as prescribed by law and strike all previous orders, remove invalid pleadings filed by parties involved in the fraud on the court and fraud on the beneficiaries et al.
3. Remove all parties involved directly or retained by any party involved in the prior fraud on the court, including but not limited to Alan B. Rose, Esq. and Ted S. Bernstein both directly involved and benefiting from the prior fraud on the court and Upon information and belief, Judge John L. Phillips is a Palm Beach County Judge sitting in the North Branch acting as a Probate Judge herein.
4. Remove all cases out of Palm Beach county, possibly state, perhaps have judge from other state or fed monitor of state court hear proceedings to parse the multiple conflicts.
5. Return ALL assets and personal properties of Simon and Shirley Bernstein to the court, including home and condo sold and any other tangible personal property or distributions made.
6. Have Spallina Tescher et al. involved in the fraud return all fees and put up bonding or other sources of funding for Court costs, attorney fees for innocent injured parties from the fraud now necessitating these legal costs and to fund for independent forensic document examination and forensic accountings caused by their intentional interference with expectancies and causing adversity and turmoil between parties.
7. Immediate court ordered production of all parties involved in the fraud of all documents, accounts, records of any sort, including the courts records, all certified, including but not limited to:
8. Depositions, Interrogatories, etc. paid for by bad actors.
9. As Tescher and Spallina have provide upon their COURT ORDERED production of records after the court learned of their admitted fraudulent alteration of a Shirley Trust document to Palm Beach County Sheriff investigators, NO original documents, including but not limited to, all the Dispositive Documents they alleged to have executed with Simon and Shirley, the court should immediately seize all of their records and demand the original documents. It is alleged that virtually all of the records (approximately 9000 pages) of production produced by Tescher and Spallina are fraudulent and were carefully crafted for months after their law firm was found committing fraud on the court and fraud on



the beneficiaries to try and cover up their crimes further. It should be noted in the first hearing before Judge Colin, when he infamously stated that he had enough evidence at that time to read attorneys at law and fiduciaries Tescher and Spallina and their client, alleged fiduciary Ted Bernstein, their Miranda warnings, that attorney Spallina stated after admitting that documents had been submitted to the Court and others that were fraudulently notarized, including Post Mortem for Simon, that he knew of nothing else in the cases wrong at the time or done fraudulently. Yet several months later, while being investigated by Palm Beach County Sheriff investigators admitted to fraudulently altering himself, after discussions with his partner Donald R. Tescher, Esq, a Shirley Trust document. This concealment of the truth, along with Colin's allowing attorneys and fiduciaries involved in the original fraudulent activity to continue, turned into almost two years of proceedings attempting to demonize Eliot Bernstein as the cause and seek guardians and contempt proceedings and more, all bleeding the Estates and Trusts in court costs and attorney fees with scienter.

10. All of Simon Bernstein's business records and properties remain missing and unaccounted for and must be returned to the Court and distributed to the beneficiaries, fiduciaries and interested parties for examination.

11. Parties needing to produce all records and assets at this time, include but are not limited to, Alan B. Rose, Ted Bernstein, Gerald Lewin, Proskauer Rose LLP, Foley & Lardner LLP (including Hopkins Sutter documents acquired by Foley & Lardner ) Steven Lessne, Esq., Brian O'Connell, Esq., Judge Martin Colin, Judge David French, Judge Howard Coates, Judge John Phillips, Steven Greenwald, Esq., Traci Kratish, Esq., Oppenheimer Trust Company of New Jersey, Oppenheimer Trust Company of Delaware, JP Morgan, Heritage Union Life Insurance Company and all successors, LaSalle National Trust Company and others.

12. The Court must demand untampered with, signed and verified IRS certified tax returns for Simon and Shirley including for all companies owned, trusts, etc.

13. Distribute immediate Emergency funds to Eliot and his family who have been harmed for three years with no caveats attached to the funds other than to be reduced fairly when beneficiaries are determined and construction hearings completed.

14. Hold hearings to remove Ted Bernstein, Alan Rose, Esq. and John Morrissey, Esq. as Fiduciaries and/or Counsel.

15. Hold Will and Trust Construction hearings after hearings to remove Ted, as it would be wasteful to everyone to hold construction hearings where fiduciaries with adverse interests and conflicts are allowed to argue before the court and pervert the record and then have to overturn such rulings and proceedings conducted with fraudulent fiduciaries and counsel acting in violation of law and ethics rules.

16. Have hearings to determine new successor trustees. Corporate Trustee with Eliot as a Co-trustee to save legal costs by accessing records that have been suppressed and insure no further fraud occurs).
17. Determine Authenticity.
18. Determine Beneficiaries.

#### **OTHER ISSUES REQUIRING DISQUALIFICATION**

46. That Alan Rose, Esq. denied to Judge Phillips that guardian pleadings for Eliot and his children were filed in the Court when it was approximately year earlier where Alan Rose argued his own pleading for guardianship which was denied by the Court on August 20, 2014, with the court claiming, "In addition, to the extent that it would be necessary, the Court waives any requirement for the appointment of a guardian ad litem and further finds that, in respect to the Agreement and this Order, the Agreement is in the best interests of the minor children and that Eliot and Candice Bernstein adequately represent the interests of their minor children." It should be noted that Alan Rose and Ted Bernstein then went on to violate this Court order to pay for three minor children's school tuition that was court ordered and all three children were without notice removed from school after the second day when the Trustee Ted and his counsel Alan Rose failed to comply with the Order leading to massive damages to the children in their school futures.

47. This second appearance before Judge Phillips also generating fees for approximately 5-7 attorneys, all having to drive over 40 miles and all wasting time and money for a third hearing in approximately four months to achieve nothing but churning of legal bills and scheduling a hearing in a different case than was scheduled for hearing.

48. Sure enough, the next morning before Judge John L. Phillips, Judge Phillips proceeds to allow attorney Alan Rose to take over the schedule and course of proceedings despite the fact

that not only did his filing come after close of business hours the night before but also despite the fact that 2 other Florida licensed attorneys, the PR Brian O'Connell of the Estate of Simon Bernstein and attorney Peter Feaman for a Creditor William Stansbury who is suing Ted Bernstein and the Estate both agreed that the first Order of business should be a hearing to remove Ted Bernstein as an alleged Trustee and both had already filed motions before Judge Colin showing that Ted Bernstein is not properly acting as a Trustee and that he and his counsel Rose were alleged to be violating ethical cannons and fiduciary duties, yet Phillips ignored this information and moved in favor of Rose's request.

49. This last minute after close of business hours filing by Alan Rose and Judge Phillips conduct in permitting this after hours business filing to take over the case that day on September 15, 2015 under the circumstances and history of this case is sufficient to demonstrate lack of impartiality, bias and prejudice against Eliot I. Bernstein and a reasonable fear that he will not receive a fair trial before Judge Phillips sufficient to mandate Disqualification by Judge Phillips itself.

50. Still, the express words and conduct of Judge Phillips itself during this appearance culminating in the Order issued September 24, 2015 further provide the factual basis to mandate the Disqualification of Judge John L. Phillips since a careful and proper review of said Audio transcripts of said proceeding (it is presumed that Judge Phillips recorded the hearings as is his typical practice) will demonstrate notable bias and prejudice toward Eliot I. Bernstein creating the reasonable fear that he can not receive a fair trial before Judge Phillips.

51. It is noted that Candice Bernstein, wife of Eliot Bernstein, contacted the Court of Judge John L. Phillips the day after this appearance on or about Sept. 16\_, 2015 to determine how to

obtain an audio transcript and yet over 10 days later, neither Candice nor Eliot Bernstein have heard back from the Court of Judge Phillips in this request further demonstrating bias, prejudice and lack of impartiality and creating the reasonable fear that a fair trial can not occur before Judge Phillips and thus mandating Disqualification.

52. At the time of this second appearance before Judge John L. Phillips on Sept. 15, 2015, at no time anytime during this appearance did Judge Phillips even acknowledge the pending Petition for All Writs at the Florida Supreme Court which brings up very serious alleged criminal acts, fraudulent acts, acts showing Judge Colin as a material and fact witness, acts implicating the validity of ALL orders of Judge Colin, acts calling into question Chief Judge LaBarga himself, acts calling into question the transfer of the cases to Judge Phillips himself as the intended receipt of the cases through Colin's direct interference Post Recusal and whether as a matter of fundamental US Constitutional Due Process the Florida Courts can even be a proper jurisdiction to hear these cases and yet not only does Judge John L. Phillips wholly disregard this petition as if it did not even exist, but further acts with express words and conduct to deny and cut off and deprive Eliot I. Bernstein's fair Opportunity to be heard due process rights throughout the proceeding this day.

53. That at the second hearing, while demanding the scheduling of a hearing in a different case, Phillips requested the parties to identify how much time a Shirley Trust construction would take. When Rose stated it would take a day, Eliot Bernstein objected and stated that additional time of a day or two would be required as it would have to first entail a hearing to remove Ted Bernstein as Trustee first, as is allowed under Florida Probate Statute for a Trust Construction but Phillips again rudely cut off Eliot's request and moved forward scheduling only a day for the Trust Construction to be heard. The problem for Ted and Rose, also ignored by Judge Phillips is

that if Ted is not a valid Trustee as claimed by the PR and others how can he conduct further hearings and further, if the outcome of the Trust Construction does not come out as intended by Rose, Ted Bernstein and his lineal descendants will receive nothing and thus Ted cannot impartially represent the trust when his own pecuniary interest is at stake, creating an imparsable conflict of interest that makes him have adverse interests to certain alleged beneficiaries.

54. That at the second hearing scheduling conference Judge Phillips denied to hear a Petition for Attorney fees to be paid by the Estate for Eliot and his minor children beneficiaries, where the need for legal representation is a direct cause of proven frauds of on the court and the beneficiaries by the prior removed fiduciaries Tescher and Spallina and the current alleged fiduciary Ted Bernstein and then instead of providing payment for counsel, scheduled the trust construction hearing whereby Judge Phillips knew Eliot and his minor children would be deprived counsel at the hearing. Where Judge Phillips should have seen the need for counsel caused by the fraud which force trust construction and validity hearings on the victims and ordered those who directly caused the disputes through fraudulently altering the dispositive documents in the matters and causing the need for counsel now to post bonding or other remedies to cover such costs and not order the Estate to pay them further harming the beneficiaries.

55. These actions here not only demonstrate the lack of impartiality of Judge Phillips but further the competency of this Judge, both which mandate Disqualification.

56. Judge Phillips knew and should have known that due process is a fundamental US Constitutional right and the fair Opportunity to be heard is a part of that right.

57. Judge Phillips knew and should have known that a Petition such as the Petition for All Writs which calls up for review the fundamental fairness of the Florida Courts to act in these cases is central to any ability to move the case forward in his Court.

58. Yet without deciding, determining, or even acknowledging these Petitions by Eliot I. Bernstein, and the seriousness of the claims made, Judge Phillips not only denies Eliot Bernstein the fair opportunity to be heard by cutting him off repeatedly and not providing a fair opportunity but instead Judge Phillips goes even further making the fatal error of proclaiming actual "Love" for Judge Martin Colin, such that Judge Phillips proclaims his "Love" for Judge Martin Colin twice on the record without ever acknowledging, hearing, deciding or determining whether Colin is a Material Fact Witness or a participant in the Fraud In his Court, without permitting Eliot Bernstein the fair opportunity to be heard to proclaim that Judge Colin is a material and fact witness and instead Judge Phillips permits the attorney for Ted Bernstein, Alan B. Rose, Esq. who is at the center of the fraud with Tescher & Spallina to take over the proceedings, not even having the PR Brian O'Connell be heard who was the attorney who first Noticed the Conference that lead to this appearance in the first instance.

59. As pointed out in the Petition for All Writs pending with the Florida Supreme Court, Judge Martin Colin somehow had allowed attorneys Tescher & Spallina as well as alleged Trustee Ted Bernstein to Not provide any Accounting in the cases of the Simon and Shirley Bernstein Trusts for YEARS, violating Probate Rules and Statutes, despite being notified expressly by an Emergency filing made by Eliot I. Bernstein in May of 2015 detailing various acts of fraud and wrongdoing upon the court and before the Court in an Estate that should be worth in the millions, may in fact be worth be billions but somehow has been depleted to perhaps

\$2 million or less at this time without Accountings or accountability by fiduciaries and attorneys at law moving in fraud.

60. Proskauer Rose also was involved in prior Estate Planning for Simon Bernstein who was a 30% shareholder in the Iviewit Technologies and now where current alleged Trustee Ted Bernstein alleged on the night of Simon Bernstein's passing that this may be "murder" and called with others for a Sheriff's investigation and Coroner's investigation claiming Simon's girlfriend may have poisoned him.

61. Estate Planning was done at great expense to Simon and Eliot by Proskauer in addition to the Intellectual Property work, as Proskauer felt it was best to distribute the stock of the Iviewit companies into irrevocable trusts created for their children while the stock was at a relatively low value after seed investments, including from Wayne Huizenga and other institutional investors, the company had a Private Placement Memo with Wachovia, contracts with Fortune 100 companies for licensing of the IP and had Goldman Sachs preparing to go IPO at the height of the internet boom before the controlled bust, where it was anticipated the stock price would skyrocket. The intellectual properties being backbone technologies now power over 90% of internet transmissions. With the stocks transferred pre-IPO the growth would grow in the children of Eliot and Simon and skip taxes on the growth and transfer of the stocks that occur if it was done post-IPO, therefore the estate plans were being rushed as things were moving light speed toward IPO and Simon prepared plans as did Eliot for his children. Further bias, prejudice, lack of impartiality and a reasonable fear that a fair trial can not be held is demonstrated by Judge Phillips issuing the Order for Construction the Shirley Bernstein Trust case, which case and pleadings were not Noticed to be Heard at the second hearing as it was a hearing in the Simon Bernstein Estate and when Eliot Bernstein attempted to clarify the matter

and set straight the case being heard before the court that day the bias and prejudice was further exaggerated by Judge Phillips repeatedly denying Eliot I. Bernstein fair opportunity to be heard to even clarify on the Record which Case Judge Phillips was even discussing and issuing Orders under.

62. Due process requires fair notice and an opportunity to be heard. The Shirley Bernstein Trust case was not Noticed for hearing at the time of the appearance in Simon's Estate case noticed by the PR Brian O'Connell and the resulting VOID Order was issued on a pleading in the Shirley Trust case.

63. The Order issued by Judge Phillips in a case Not noticed to be heard and denying opportunity to even clarify on the record all the while disregarding any of the fundamental due process issues raised in the Petition for All Writs embodies all the grounds that mandate disqualification at this time particularly where the "rush" to Schedule a Trial in a case Not Noticed for Case Management specifically disregarded the outstanding Orders of Judge Colin for Tescher and Spallina to turn over all originals to the successor PR and yet the Trial proceeded to be scheduled without determination of Production and Discovery, without determination of proper Witnesses, without determination of the need for Experts in a case where clear document fraud and fraud upon the Court had already been admitted and proven.

64. Attorney at Law and new PR O'Connell has already Petitioned the Court that Ted is invalid as Trustee under the terms of the Trust and Attorney at Law Peter Feaman for the creditor William Stansbury has made a written statement entered into the court record that Ted and Alan Rose should be removed and are acting improperly in the Federal Insurance Case under Judge John Robert Blakey involving the Estate of Simon and more and yet Phillips in the second



hearing held by him allows Alan Rose to run the hearing scheduled by the PR O'Connell who virtually says nothing on the record and turn the hearing into a discussion about Shirley Bernstein's trust and schedule with Phillips a hearing for trust construction in Shirley's Trust which Rose was petitioning for without proper notice.

65. Rose also attempts to schedule a hearing to have a guardian placed on Eliot Bernstein and his children. where no motion was filed for such guardianship and no notice of hearing was scheduled for one and where Rose when asked by Phillips if a motion for guardianship had been filed, stated one had not been filed and factually failed to Disclose that in a prior Hearing for guardianship Rose was denied a Guardian motion for Eliot Bernstein and his children a year earlier on the same flawed logic he claimed to Phillips.

66. Judge Phillips must mandatorily be disqualified as his impartiality is reasonably questioned on multiple grounds as further set forth herein including but not limited to his "pre-judging" and "pre-determination" in the case that he would not do anything to find Judge Colin "wrong" prior to Petitioner even being heard on Sept. 15, 2015, further based upon Judge Phillips professed "love" for Judge Colin who is a necessary and material fact witness, for his due process violations in Ordering a Trial in Shirley Bernstein's Estate when the Conference was only "Noticed" for Simon Bernstein's Estate and for other grounds as set forth herein.

67. Judge Phillips impartiality is challenged as despite now being a material and fact witness in the matter, he did not clarify or rectify this matter first before determining if he could adjudicate, or allow the Florida Supreme Court to determine if the Colin transfer was improper, before taking ANY judicial action in the matters.

68. Instead, Judge John L. Phillips began acting in the matters and in fact held two hearings, including issuing an Order on Sept. 24, 2015 thereby scheduling a Trial date of December 15, 2015 on a claim for construction filed by Attorney Alan B. Rose, Esq. on behalf of an alleged trustee Ted Bernstein and further enforcing a prior Stay Order of Judge Martin Colin who was petitioned for mandatory Disqualification by Eliot I. Bernstein as a material and fact witness to fraud in the Court, upon the Court and potentially by the Court and further that this Order by Judge John L. Phillips was issued despite the pendency of a Petition for All Writs at the Supreme Court of Florida seeking Mandamus and Prohibition in relation to the conduct of Judge Martin Colin and further seeking injunctive relief and other redress.<sup>5</sup>

69. Judge John L. Phillips, both by express words, conduct and by omission has committed acts that mandate Disqualification since the judge's impartiality might reasonably be questioned in this proceeding as defined herein.

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<sup>5</sup> See Petition for All Writs by Eliot I. Bernstein @ See All Writ Filed with the Florida Supreme Court @ <http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

**CANON 3E(1)(a) - ...the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding.**

70. Judge John L. Phillips is further mandated to be Disqualified again both by express words, conduct and by omissions demonstrating bias and prejudice against Eliot I. Bernstein, a party in this proceeding as defined herein.

**CANON 3E(1)(d)(iv) - ...the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding;**

71. As already stated above Judge Phillips has knowledge that he is likely to be a material and fact witness in the improper Transfer of the case by Judge Colin and should have disqualified on that ground alone.

72. For the reasons set forth herein, Florida Probate Judge John L. Phillips must be mandatorily disqualified from this case and all related cases under the US and State Constitution. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10.

73. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

74. Should a judge not disqualify himself, the judge is in violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

75. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

76. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3  
"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E.  
Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:  
(d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

77. *State ex rel. Brown v. Dewell*, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). *See also Hayslip v. Douglas*, 400 So. 2d 553 (Fla. 4th DCA 1981). **The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's**

**impartiality rather than the judge's perception of his ability to act fairly and impartially.**

*State v. Livingston*, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." *Chastine v. Broome*, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." *Suarez v. Dugger*, 527 So. 2d 191, 192 (Fla. 1988).

78. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

79. WRIT OF PROHIBITION is proper to prevent an inferior court or tribunal from improperly exercising jurisdiction over a controversy and if a petition for a writ of prohibition demonstrates a preliminary basis for entitlement to relief, the court can issue an order to show cause why relief should not be granted. Once a show cause order issues in prohibition, it automatically stays the lower court proceeding. Fla. R. App. P. 9.100(h).

80. The writ of prohibition is issued when a judge improperly denies a motion for recusal or disqualification and appropriately directs the Judge to refrain from exceeding its jurisdiction. *Carroll v. Fla. State Hosp.*, 885 So. 2d 485 (Fla. 1st D.C.A. 2004) (noting that prohibition is the appropriate way to review a trial judge's order denying a motion to disqualify).

The Court further stated:

In *Metropolitan Dade County v. Martinsen*, 736 So. 2d 794, 795 (Fla. 3d DCA 1999), this Court restated the well-settled principle "that a party who has been guilty of fraud or misconduct in the prosecution or defense of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve her ends." *Hanono v. Murphy*, 723 So. 2d 892, 895 (Fla. 3d DCA 1998) (citing *Carter v. Carter*, 88 So. 2d 153, 157 (Fla. 1956)).

81. That COLIN influencing the matters after recusal appears further obstruction and may have given Proskauer inside information and records with intent and scienter in further efforts to derail PETITIONER'S rights and thus Judge Phillips should have disqualified as a material and fact witness on this issue alone or at minimum provided fair opportunity to Eliot Bernstein to be heard on the issues herein.

82. This is the exact same divisive and devious conduct exhibited herein – these state actors are employing the very institution they have subverted to achieve their ends.

83. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House *did not have jurisdiction* to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any

judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

84. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is *void ab initio* and does not have to be declared void by a judge. The law is established by the *U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, (1920) as well as other state courts, in *People v. Miller*. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." *Valley v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348.

85. Thus, because Judge Phillips should have disqualified and acted outside his jurisdiction, all such Orders of Judge Phillips should now be vacated and voided.

#### **All Prior Orders of Judge Phillips should be Vacated as Void and a legal nullity**

86. "Procedural due process promotes fairness in government decisions by requiring the government to follow appropriate procedures when its agents decide to deprive any person of life, liberty or property." *John Corp. v. City of Houston*, 214 F.3d 573, 577 (5th Cir. 2000) (internal citations and quotations omitted). "Substantive due process, by barring certain government actions regardless of the fairness of the procedures used to implement them, serves to prevent governmental power from being used for purposes of oppression." *Id.* In order to establish either a substantive or procedural due process violation, a plaintiff must first establish

the denial of a constitutionally protected property interest. See *Bryan v. City of Madison*, 213 F.3d 267, 276 (5th Cir. 2000).

**LEGAL AUTHORITIES**  
**MANDATORY DISQUALIFICATION**

87. Judge Phillips had a statutory duty and was mandated by judicial canons to disqualify himself on his own initiative years before his *Sua Sponte Recusal* on May 20, 2015 and after PETITIONER filed a Petition to Disqualify on May 14, 2015 that was legally sufficient within Fla. Stat. 38.10 and Fla. Rules Jud. Admin 2.330 and Judicial Canons.

88. The Florida Code of Judicial Conduct Canon 3 provides states:

A Judge SHALL disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning the party or a party's lawyers.

89. Disqualification is mandatory under Florida Rule of Judicial Administration Rule 2.330 and Florida Statute 38.10. In 1994, the U.S. Supreme Court held that "Disqualification is required if an objective observer would entertain reasonable questions about the judge's impartiality. If a judge's attitude or state of mind leads a detached observer to conclude that a fair and impartial hearing is unlikely, the judge must be disqualified." *Liteky v. U.S.*, 114 S.Ct. 1147, 1162 (1994). Positive proof of the partiality of a judge is not a requirement, only the appearance of partiality. *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988); *Levine v. United States*, 362 U.S. 610 (1960);

90. Should a judge not disqualify himself, the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996) ("The right to a



tribunal free from bias or prejudice is based, not on section 144, but on the Due Process Clause.") "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (internal quotation marks and citation omitted). *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976);

91. Judges do not have discretion not to disqualify themselves. By law, they are bound to follow the law. Should a judge not disqualify himself as required by law, then the judge has given another example of his "appearance of partiality" which further disqualifies the judge. Should a judge not disqualify himself, then the judge is violation of the Due Process Clause of the U.S. Constitution. *United States v. Sciuto*, 521 F.2d 842, 845 (7th Cir. 1996).

92. Disqualification is Mandatory under the Code of Judicial Conduct, Canon 3

"A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently" Section E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (iv) is to the judge's knowledge likely to be a material witness in the proceeding."

93. The issues before this Court are the failure of Phillips to mandatorily Disqualify and the "legal sufficiency" of the motion to Disqualify filed by PETITIONER and more importantly the failure of COLIN to mandatorily disqualify on his own initiative versus waiting for PRO SE PETITIONER to file sufficient pleadings. In order to demonstrate legal sufficiency, PETITIONER needed to show:

...a well-grounded fear that he will not receive a fair [hearing] at the hands of the judge. It is not a question of how the judge feels; it is a question of what feeling resides in the affiant's mind and the basis for such feeling.'

State ex rel. Brown v. Dewell, 131 Fla. 566, 573, 179 So. 695, 697- 98 (1938). See also Hayslip v. Douglas, 400 So. 2d 553 (Fla. 4th DCA 1981). The question of disqualification focuses on those matters from which a litigant may reasonably question a judge's impartiality rather than the judge's perception of his ability to act fairly and impartially. State v. Livingston, 441 So. 2d 1083, 1086 (Fla. 1983) (emphasis added). In a case where the PETITIONER'S liberty is at stake, the court "should be especially sensitive to the basis for the fear." Chastine v. Broome, 629 So. 2d 293, 294 (Fla. 4th DCA 1993). The circumstances of this case are of such a nature that they are "sufficient to warrant fear on PETITIONER'S part] that he would not receive a fair hearing by the assigned judge." Suarez v. Dugger, 527 So. 2d 191, 192 (Fla. 1988).

94. PETITIONER and his minor children are entitled to a full and fair proceeding, including a fair determination of the issues by a neutral, detached judge. Holland v. State, 503 So. 2d 1354 (Fla. 1987); Easter v. Endell, 37 F.3d 1343 (8th Cir. 1994). Due process guarantees the right to a neutral, detached judiciary in order "to convey to the individual a feeling that the government has dealt with him fairly, as well as to minimize the risk of mistaken deprivations of protected interests." Carey v. Piphus, 435 U.S. 247, 262 (1978). Principles of due process demand that this case be heard by another judge selected without COLIN'S prejudice and for COLIN to disqualify himself and remove his Orders issued outside his jurisdiction and outside the color of law:

The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. See *Carey v. Phipus*, 435 U.S. 247, 259-262, 266- 267 (1978). The neutrality requirement helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law. See *Matthews v. Eldridge*, 424 U.S. 319, 344 (1976). At the same time, it preserves both the appearance and reality of fairness, ‘generating the feeling, so important to a popular government, that justice has been done,’ *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172, (1951) (Frankfurter, J., concurring), by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).

95. The disqualification rules require judges to avoid even the appearance of impropriety and COLIN’S self-dealing actions after knowing he would be a material and fact witness to crimes that occurred in his court by officers and fiduciaries he appointed, in which his own actions became questionable, establishes a prima facie case of appearance of impropriety:

It is the established law of this State that every litigant...is entitled to nothing less than the cold neutrality of an impartial judge. It is the duty of the court to scrupulously guard this right of the litigant and to refrain from attempting to exercise jurisdiction in any manner where his qualification to do so is seriously brought into question. The exercise of any other policy tends to discredit and place the judiciary in a compromising attitude which is bad for the administration of justice. *Crosby v. State*, 97 So.2d 181 (Fla. 1957); *State ex rel. Davis v. Parks*, 141 Fla. 516,

194 So. 613 (1939); Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Mickle v. Rowe, 100 Fla. 1382, 131 So. 3331 (1930).

\* \*

The prejudice of a judge is a delicate question for a litigant to raise but when raised as a bar to the trial of a cause, if predicated on grounds with a modicum of reason, the judge in question should be prompt to recuse himself. No judge under any circumstances is warranted in sitting in the trial of a cause whose neutrality is shadowed or even questioned. Dickenson v. Parks, 104 Fla. 577, 140 So. 459 (1932); State ex rel. Aguiar v. Chappell, 344 So.2d 925 (Fla. 3d DCA 1977).

96. The United States Supreme Court has stated:

...the inquiry must be not only whether there was actual bias on respondent's part, but also whether there was 'such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused.' Ungar v. Sarafite, 376 U.S. 575, 588 (1964). 'Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties,' but due process of law requires no less. In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942 (1955). Taylor v. Hayes, 418 U.S. 488, 501 (1974) (emphasis added).

97. The appearance of impropriety violates state and federal constitutional rights to due process. A fair hearing before an impartial tribunal is a basic requirement of due process. See In re Murchison, 349 U.S. 133 (1955). "Every litigant is entitled to nothing less than the cold neutrality of an impartial judge." State ex rel. Mickle v. Rowe, 131 So. 331, 332 (Fla. 1930). Absent a fair tribunal, there can be no full and fair hearing.

98. In Partin v Solange et al, 2015 WL 2089081 (Fla.App. 4 Dist., 2015), the court granted the petition to disqualify stating the lower court judge cut-off petitioners' counsel and expressed

his prejudgment of the matter and in another hearing, the lower court judge made acerbic comments about petitioners and exhibited overall hostility toward both petitioners and their counsel. Not only did Phillips engage in this similar egregious conduct towards PETITIONER from the start but his disqualification is also mandated because of his direct involvement and handling of the fraudulently notarized and forged documents posited in his court and other direct involvement in the matters that eroded PETITIONER'S rights to fair and impartial due process under law by retaliating for two years against PETITIONER instead.

99. The Due Process Clause serves to protect use of fair procedures to prevent the wrongful deprivation of interests and is a guarantee of basic fairness. *Johnson v. Mississippi*, 403 U.S. 212, 216 (1971); *Peters v. Kiff*, 407, U.S. 493, 502 (1972). "[A] fundamental requirement of due process is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) *Garraghty v. Va. Dep't of Corr.*, 52 F.3d 1274, 1282 (4th Cir. 1995); Denying access to important records, evidence, and witnesses and mistreating PETITIONER and his minor children as a pro se party are violations of Equal Protection and due process of law. Pro se parties are a distinct minority class in judicial proceedings.

100. Judge Phillips should have demanded that the minor children and PETITIONER were represented by counsel, forced bonding of the fiduciaries and officers he appointed involved in the criminal acts, posted bonds for the court, reported the misconduct, removed all parties involved in the fraud instead of allowing them to continue to participate for months and even to this day, disqualified himself and instead Phillips took opposite actions to harm PETITIONER and his minor children and delay their inheritances by continuing the Fraud on the court, Fraud in the court and Fraud by the court, to intentionally cause catastrophic financial ruin

upon PETITIONER and his minor children by continuing to hold fraudulent proceedings and illegally issue orders.

101. None of the orders issued by a judge who has been disqualified or should have been disqualified by law are valid. They are void as a matter of law, and are of no legal force or effect. The orders issued by COLIN are null and void and of no force and effect as they are procured by fraud, without jurisdiction, the result of unlawful rulings, are unconstitutional and violate due process causing criminal Obstruction of Justice.

**ALL ORDERS OF JUDGE Phillips ARE A NULLITY AND ARE VOID**

102. Where a judge fails to disqualify, there is no jurisdiction to act and any order issued is illegal and void. *Kilbourn v. Thompson*, 103 U.S. 168 (1881). In *Kilbourn*, the Sergeant-at-Arms of the United States House of Representatives was held not to have immunity for ordering that the PLAINTIFF be arrested under a warrant issued by the House for refusing to testify because they lacked jurisdiction to issue such an order. *Id.* The court held that the House did not have jurisdiction to conduct the particular investigation. The Sergeant at Arms was liable for false arrest and could not assert the issuance of the warrant as a defense. *Id.* An order that exceeds the jurisdiction of the court is void, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. See *Pennoyer v. Neff* (1877) 95 US 714; *Windsor v. McVeigh* (1876) 93 US 274; A void judgment is no judgment at all and "a court must vacate any judgment entered in excess of its jurisdiction." *Lubben v. Selective Service System Local Bd. No. 27*, 453 F.2d 645 (1st Cir. 1972). *Kalb v. Feuerstein* (1940) 308 US 433.

103. "A void judgment does not create any binding obligation. *Kalb v. Feuerstein* (1940) 308 US 433. If a court grants relief, which, under the circumstances, it hasn't any

authority to grant, its judgment is to that extent void." An illegal order is forever void. A void order is void ab initio and does not have to be declared void by a judge. The law is established by the U.S. Supreme Court in Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, (1920) as well as other state courts, in People v. Miller. "Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities..." Valley v. Northern Fire and Marine Ins. Co., 254 U.S. 348

**I. PETITION TO STAY CASES AND TEMPORARILY RESTRAIN ANY SALE, TRANSFER, DISPOSITION OF ANY ASSET OR PROPERTY AND PRESERVATION OF EVIDENCE**

104. Petitioners must establish the following four elements:

- (1) a substantial likelihood that the plaintiffs will prevail on the merits; (2) a substantial threat that plaintiffs will suffer irreparable injury if the injunction is not granted; (3) the threatened injury to plaintiffs outweighs the threatened harm the injunction may do to the defendant; and (4) granting the preliminary injunction will not disserve the public interest. Church v. City of Huntsville, 30 F.3d 1332, 1342 (11th Cir.1994).

105. The mandamus petition herein and filed motion for mandatory Disqualification clearly shows said motion was legally sufficient and Judge Phillips should have mandatorily disqualified. Thus Petitioners have a substantial likelihood to prevail on this application. In addition to an illegal sale of real property being the home of deceased Simon Bernstein imminently scheduled for sale by June 10, 2015, Petitioners have shown loss of property, loss of records, loss of documents and evidence, loss of trusts and inheritances and other issues of irreparable harm. Granting a temporary stay and injunction against further threatened injury to

Petitioners outweighs and harm to Respondent –defendants. Granting a temporary stay is in the public interest until a neutral court can sort out the frauds and conflicts and proper parties and proper trustees and proper trusts and instruments.

106. PETITIONER has suffered at the hands of the Florida court system for thirteen years and has been denied INTELLECTUAL PROPERTIES and due process to seek redress as the alleged criminals are almost all attorneys at law in their various capacities as private lawyers, judges, prosecutors and politicians.

107. PETITIONER again cannot get redress or due process in the Florida court system and seeks to have the cases moved from the Florida court system as due to his pursuit of Supreme Court Justices, the Florida Bar and many Florida Lawyers and Law Firms and therefore PETITIONER fears he cannot get a fair and impartial hearing and adequate remedy of law by any party that is a member of the Florida Bar.

108. PETITIONER has properly filed a legally sufficient motion to remove JUDGE Phillips for disqualification on several grounds but who refused to follow Judicial Canons and Law and thus has caused severe harms to PETITIONER and his three minor children as the record reflects.

109. That COATES had reviewed the case file and stated on the record that he was NOT CONFLICTED with PETITIONER and the matters until PETITIONER reminded JUDGE COATES that despite his desire to stay on the case that he had JUDICIAL CANONS that could make his retaining the case violate them, whereby JUDGE COATES after several attempts to claim NO CONFLICT suddenly SUA SPONTE recused himself.



110. That due to this nefarious setup of PETITIONER'S cases to further stymie and delay and interfere with PETITIONER'S due process and procedure rights PETITIONER fears that no matter how or who the cases are transferred to in Florida that PETITIONER cannot receive due process and any successor to Judge Coates was part of a forgone plan to derail due process.

## **II. CONCLUSION AND PRAYER**

WHEREFORE, PETITIONER seeks a WRIT OF PROHIBITION to prohibit Phillips from:

1. Acting in excess of his lawful jurisdiction;
2. Attempting to enforce the ANY ORDER of Judge Phillips;
3. Taking any action in this matter other than vacating and voiding all Orders and immediately disqualifying himself;
4. Prohibition is invoked for the protection of PETITIONER and his minor children, whose safety and well being are in danger if this WRIT is denied for lack of a legal remedy.

WHEREFORE, PETITIONER seeks a WRIT OF MANDAMUS, compelling Judge Phillips to:

5. abide by the laws of the State of Florida, Federal law and the United States Constitution and cease acting beyond his jurisdiction immediately;
6. set aside the ALL ORDERS as void ab initio immediately;

7. set aside all other Orders in his Court as void ab initio immediately as they are the product of fraud on, in and by the court; and,

8. immediately disqualify himself from this case and take no further action.

**WHEREFORE**, PETITIONER seeks a 30 day STAY ORDER for all cases in order to move the cases to a conflict free venue, either state or federal and further:

9. Immediately Disqualify Judge Phillips and prohibit him from acting further herein and/or issue a Show Cause order to respond herein;

10. IMMEDIATELY SEIZE ALL ASSETS AND PROPERTIES OF THE ESTATES AND TRUSTS of Simon and Shirley Bernstein and have all assets that have been converted through the fraudulent orders immediately be returned and put in protective custody by this Court, until all matters of document fraud, trust constructions, trust validity, fraud and breaches of fiduciary duties can be adjudicated by a fair and impartial court of law; and,

11. And for such other and further relief as to this Court may seem just and proper.

DATED: January 29, 2016

Respectfully submitted,

**/s/Eliot Ivan Bernstein**

Eliot Ivan Bernstein  
2753 NW 34th St  
Boca Raton, FL 33434  
561-245-8588  
iviewit@iviewit.tv

**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 29th day of January, 2016.

/s/ Eliot Ivan Bernstein  
 Eliot Ivan Bernstein  
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IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN AND  
FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXSB (IY)

OPPENHEIMER TRUST COMPANY  
OF DELAWARE, in its capacity as  
Resigned Trustee of the Simon Bernstein  
Irrevocable Trusts created for the benefit  
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,  
in their capacity as parents and natural  
guardians of JOSHUA, JAKE AND  
DANIEL BERNSTEIN, minors,

Respondents.

ORDER FROM APRIL 20, 2015 CONTINUED HEARING ON  
RESPONDENTS' OBJECTION TO FINAL ACCOUNTING

On March 17, 2015, the Court conducted a one-hour evidentiary hearing on Respondents' "Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting" (the "Objection") and considered and overruled objections numbered 1 through 5. On April 20, 2015, the Court conducted an additional 2 ½ hour evidentiary hearing on the Objection. At the April 20, 2015 hearing, the Court ~~verbally~~ <sup>verbally</sup> ordered as follows:

1. Objections 6 through 9 are overruled.
2. Objection 10 is overruled based upon the testimony of Petitioner's President, Hunt Worth, that the statements produced by Petitioner for accounts titled (i) "Simon Bernstein Irrevocable Trust U/A 9/7/06 FBO Daniel Bernstein" (OPP0011-0036), (ii) "Simon Bernstein

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Irrevocable Trust U/A 9/7/06 FBO Jake Bernstein” (OPP0037-0062), and (iii) “Simon Bernstein Irrevocable Trust U/A 9/7/06 FBO Joshua Z Bernstein” (OPP0063-0089) relate solely to the three irrevocable trusts settled by Simon Bernstein, entitled “Daniel Bernstein Irrevocable Trust Dated September 7, 2006,” “Jake Bernstein Irrevocable Trust Dated September 7, 2006,” and “Joshua Bernstein Irrevocable Trust Dated September 7, 2006,” respectively.<sup>1</sup>

3. Objection 11 fails to state a legally-recognized objection.
4. Objections 14 through 17 are overruled.
5. Objection 18 fails to state a legally-recognized objection.
6. Objections 19 through 22 are overruled.
7. Objections 24 and 25 are overruled.
8. With regard to objection 27, Petitioner shall file a supplement to the Final Accountings to clarify: (i) that Petitioner has not conducted a forensic accounting of, or independently valued, LIC Holdings, Inc. (“LIC”), (ii) that Petitioner is not purporting to assign a value to the 1.33% interest of LIC that each trust owns, (iii) that there have been no transactions related to the shares of LIC held by the trusts (sale of shares, dividends, etc.) during Petitioner’s trusteeship, and (iv) that Petitioner intends to transfer the shares of LIC held by the

trusts, in kind, to the person or entity designated by the Court to receive the trusts’ assets. *NOTWITH- STANDING, THE ABBREVIATION OF “LIC” IN THE ACCOUNTING IS SIMILAR AS NOT AN APPROPRIATE VALUE OF THE LIC SHARES.*

9. With regard to objections 12, 13, 23, 26, and 28 through 90, in light of Respondents’ claim that they have had insufficient time to review the backup documents produced by Petitioner, Respondents shall file a notice with this Court, on or before June 1,

<sup>1</sup> Documents Bates-stamped OPP0001-1521 were admitted into evidence as Petitioner’s Exhibit 1 at the March 17, 2015 hearing, without objection. The three above-described trust documents were admitted into evidence at the March 17, 2015 hearing as Exhibits 6 through 8, respectively.



Copies furnished to:

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**CERTIFICATE OF CLERK**

STATE OF FLORIDA        )  
COUNTY OF PALM BEACH )

I, SHARON R. BOCK, Clerk of Circuit Court for the County of Palm Beach, State of Florida, do hereby certify that the foregoing pages        to        inclusive, consists of original papers and proceedings in Civil Action Case Number:

**as appears from the records and files of my office which have** been directed to be included in said Record, pursuant to Florida Rules of Appellate Procedure, 9.200(a)(1).

IN WITNESS WHEREOF,  
I have hereunto set my hand and affixed the seal  
of said Court this        day of        ,        A.D.

SHARON R. BOCK, Clerk of Circuit Court  
Palm Beach County, Florida

By: 

Deputy Clerk

