

1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE NO: 502012CP004391XXXXNBIH

4
5 IN RE:
6 ESTATE OF SIMON L. BERNSTEIN,
7 _____/

8
9
10 Proceedings before the Honorable
11 ROSEMARIE SCHER

12
13 [EXCERPT - OPENING STATEMENTS]

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15
16 Thursday, February 16, 2017
17 3188 PGA Boulevard
18 North County Courthouse
19 Palm Beach Gardens, Florida 33410
20 2:38 p.m. - 4:46 p.m.

21 ORIGINAL

22
23 Reported by:
24 Lisa Mudrick, RPR, FPR
25 Notary Public, State of Florida

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

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4 OPENING STATEMENTS

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6 MR. FEAMAN: Thank you, Your Honor. May
7 it please the Court. Peter Feaman on behalf of
8 William Stansbury. My remarks are by way of an
9 opening statement at this time, Your Honor, in
10 connection with Your Honor's order, case
11 management conference and order specially
12 setting hearings.

13 As Your Honor noted, we are dealing with
14 Stansbury's motion, docket entry 496, and
15 Stansbury's related motion to disqualify Alan
16 Rose and his law firm, docket entry 508.

17 The story and premise, Your Honor, for
18 this is that the personal representative of the
19 Simon Bernstein estate, Brian O'Connell, has a
20 fiduciary duty to all interested persons of the
21 estate. And that's found in Florida Statute
22 733.602(1) where it states a personal
23 representative is a fiduciary, and in the last
24 sentence, a personal representative shall use
25 the authority conferred by this code, the

1 authority in the will, if any, and the
2 authority of any order of the Court, quote, for
3 the best interests of interested persons,
4 including creditors, close quote.

5 Mr. Stansbury is an interesting --
6 interested person to the Estate of Simon
7 Bernstein as well as a claimant in this case.

8 Interesting -- interested persons -- yes,
9 he is an interesting person. But interested
10 persons is defined, Your Honor, in Florida
11 Statute 731.201(23) which states that an
12 interested person means, quote, any person who
13 may reasonably be expected to be affected by
14 the outcome of the particular proceeding
15 involved.

16 The evidence will show that Mr. Stansbury
17 clearly falls into that category.

18 The second part of our presentation, Your
19 Honor, will then involve the presentation of
20 evidence to show that in fact there is a
21 conflict of interest. And then part three --
22 of conflict of interest of Mr. Rose and his law
23 firm representing the estate in this case.

24 And thirdly, that the conflict of
25 interest, the evidence will show, is not

1 waivable.

2 The parties' chart, which we did and
3 submitted to Your Honor with our package last
4 week, is the color chart, I have an extra copy
5 if Your Honor does not have it.

6 THE COURT: I believe it is --

7 MR. FEAMAN: For the Court's convenience.

8 THE COURT: I believe it is in -- I know I
9 have it. And I know I had it. Oh, got it. I
10 knew it was in one of my notebooks. Thank you.

11 MR. FEAMAN: Thank you.

12 Now, the summation of the position of the
13 parties in connection with what the evidence
14 will show, Your Honor, shows that we are here
15 obviously on the Estate of Simon Bernstein, and
16 the proposed attorney is Alan Rose. That's the
17 box at the top. The two proceedings that are
18 engaged with regard to the estate right now is
19 the Stansbury litigation against the estate
20 which is wherein it is proposed that Mr. Rose
21 and his law firm defend the estate in that
22 case.

23 And more significantly, Your Honor,
24 because it really wouldn't matter what the
25 other litigation is that Mr. Rose is being

1 asked to defend, because more significantly is
2 the orange box on the right, which I will call
3 for the purposes of this litigation the Chicago
4 litigation. And in that action there are a
5 number of plaintiffs, one of whom is Ted
6 Bernstein individually. And the evidence will
7 show in this case that Alan Rose represents Ted
8 Bernstein individually, not only in other
9 matters, but he actually appeared in a
10 deposition on behalf of Mr. Bernstein
11 individually in that Chicago litigation, made
12 objections to questions. And the evidence will
13 show that he actually on a number of occasions
14 instructed Mr. Bernstein not to answer certain
15 questions that were directed to Mr. Bernstein
16 by counsel for the Estate of Simon Bernstein.

17 In that Chicago litigation we will present
18 to Your Honor certified copies of pleadings
19 from the Chicago litigation that shows the
20 following: That Ted Bernstein, among others,
21 sued an insurance company to recover
22 approximately \$1.7 million dollars of life
23 insurance proceeds. Mr. Stansbury became aware
24 that that litigation was going on, and moved to
25 intervene in that lawsuit. Mr. Stansbury was

1 denied.

2 So the evidence will show that he was able
3 to prevail upon Ben Brown, and Ben Brown moved
4 on behalf of the estate when he was curator to
5 intervene. And in fact the Estate of Simon
6 Bernstein --

7 MR. ROSE: May I object for a second?

8 THE COURT: Legal objection?

9 MR. ROSE: That he is completely
10 misstating the record of this Court and the
11 proceedings before Judge Colin.

12 THE COURT: You will have an opportunity
13 to respond and explain it to me.

14 MR. FEAMAN: Thank you, Your Honor.

15 And the evidence will show that the Estate
16 of Simon Bernstein is now an intervenor
17 defendant, and they filed their own intervenor
18 complaint seeking to recover that same \$1.7
19 million dollars that Ted Bernstein is seeking
20 to recover as a plaintiff in that same action.

21 So the evidence will show that Mr. Rose
22 represents Ted Bernstein. Ted Bernstein is
23 adverse to the estate. And now Mr. Rose seeks
24 to represent the estate to which his present
25 client, Ted Bernstein, is adverse in the

1 Stansbury litigation, which is why we are
2 there. Now --

3 THE COURT: Wait. Slow down one second.

4 MR. FEAMAN: Sure.

5 THE COURT: That is something you repeated
6 several times in your motion, but I want you to
7 state it one more time for me slowly.

8 MR. FEAMAN: Yes. The Chicago litigation
9 one of the plaintiffs is Ted Bernstein
10 individually. The Estate of Simon Bernstein
11 has now intervened in that action. And Ted
12 Bernstein as plaintiff is seeking to recover
13 \$1.7 million dollars.

14 Adversely, the Estate of Simon Bernstein
15 seeks to recover that same \$1.7 million dollars
16 and is arguing up there that it should not go
17 to the plaintiffs but should go to the estate.

18 So they are one hundred percent adverse,
19 that would be Ted Bernstein and the Estate of
20 Simon Bernstein.

21 And Mr. Rose represents Ted Bernstein, and
22 now seeks to represent the estate in a
23 similar -- in an action against the estate, and
24 they are both going on at the same time. Thus,
25 the conflict is an attorney cannot represent a

1 plaintiff in an action, whether he is counsel
2 of record in that action or not, that's adverse
3 to the Estate of Simon Bernstein, and at the
4 same time defend the Estate of Simon Bernstein
5 when he has a client that is seeking to deprive
6 the estate of \$1.7 million dollars.

7 Now, if Ted Bernstein and the other
8 plaintiffs in that case were monetary
9 beneficiaries of the estate, I suppose it could
10 be a waivable conflict. However, that's not
11 the case.

12 That drops us to the third box on the --
13 the fourth box on the chart, which is the green
14 one, which deals with the Simon Bernstein
15 Trust. The Simon Bernstein Trust is the
16 residual beneficiary of the Simon Bernstein
17 estate. And once the estate captures that
18 money as a result of the Chicago litigation, if
19 it does, then the trust will eventually accede
20 to that money after payment of creditors, one
21 of which would be or could be my client.

22 And who are the beneficiaries of the
23 trust? So we have the one beneficiary of the
24 Simon Bernstein estate, the Simon Bernstein
25 Trust, and who are the beneficiaries of the

1 trust? Not the children of Simon Bernstein.
2 Not Ted Bernstein. But the grandchildren of
3 Simon Bernstein, some of whom are adults and
4 some of whom are minors in this case. Such
5 that if the estate prevails in the Chicago
6 litigation, even assuming Mr. Stansbury wasn't
7 around making his claim against the estate, if
8 all of the distributions were finally made when
9 the estate wins that Chicago litigation, none
10 of it will ever end up in the hands of Ted
11 Bernstein as plaintiff. The only way
12 Mr. Bernstein can get that money is to prevail
13 as a plaintiff in the Chicago litigation.
14 Mr. Rose represents Mr. Bernstein, and
15 therefore there's a conflict, and it's a
16 non-waivable conflict.

17 And in my final argument when I discuss
18 the law, I will suggest to the Court that the
19 conflict that's presented before the Court is
20 in fact completely non-waivable.

21 THE COURT: Before you sit down, I want
22 you to address one thing that's been raised in
23 their responses. And that is why did it take
24 you so long to file it?

25 MR. FEAMAN: I filed it as soon as I

1 became aware that there was a conflict. For
2 example, when the order that we are seeking to
3 set aside was entered, I was not aware that the
4 Rose law firm represented Ted Bernstein in that
5 Chicago action. My client then brought it to
6 my attention. And as soon as we did that, I
7 moved to set aside the order because it became
8 apparent that there was a clear conflict.

9 Because initially, as I told Brian
10 O'Connell, Mr. Stansbury can't dictate who the
11 estate wishes to hire as its attorneys unless,
12 as it turns out, that attorney represents
13 interests that are adverse to the estate. And
14 that's when we filed our motion to set aside.

15 I got possession of the deposition that
16 will be offered today. The deposition revealed
17 to me what I have summarized here today, this
18 afternoon, and then we moved to set aside the
19 order. And then we thought that wasn't enough,
20 we should do a formal motion to disqualify,
21 which we did.

22 The chronology of the filings, the motion
23 to vacate, I am not sure exactly when that was
24 filed, but it wasn't too long after the entry
25 of the September 7th order, and then the motion

1 to disqualify came after that. And --

2 THE COURT: It was filed October 7th.

3 MR. FEAMAN: Pardon me?

4 THE COURT: It was filed October 7th.

5 MR. FEAMAN: Okay. The motion to vacate?

6 THE COURT: Yes.

7 MR. FEAMAN: Correct. We had to do our
8 due diligence. We got the copy of the
9 deposition, and moved. Because we don't get
10 copies of things that go on up there on a
11 routine basis.

12 THE COURT: Okay. I just wanted to ask
13 what your position was. Okay. All right.
14 Thank you.

15 Opening?

16 MR. ROSE: As a threshold matter, I think
17 even though this is an evidentiary hearing, you
18 are going to receive some documentary evidence,
19 I don't think there's a real need for live
20 testimony, in other words, from witnesses. No,
21 no.

22 THE COURT: Okay.

23 MR. ROSE: I am advising you. I am not
24 asking your opinion of it.

25 THE COURT: Thank you.

1 MR. ROSE: I am advising you. I have
2 spoken to Mr. Feaman.

3 THE COURT: Okay.

4 MR. ROSE: So I don't know there's going
5 to be live witnesses.

6 THE COURT: Okay.

7 MR. ROSE: He has seven documents or eight
8 documents he would like to put in evidence, and
9 I would be happy if they just went into
10 evidence right now.

11 THE COURT: He can decide how he wants to
12 do his case.

13 MR. ROSE: Okay.

14 THE COURT: You can do your opening.

15 MR. ROSE: I think we are going to be
16 making one long legal argument with documents,
17 so.

18 THE COURT: Okay. Well, let's do an
19 opening and then.

20 MR. ROSE: Let me start from the beginning
21 then.

22 THE COURT: Okay.

23 MR. ROSE: So we are here today, and there
24 are three motions that you said you would try
25 to do today. And I don't have any doubt you

1 will get to do all three today given how much
2 time we have and progress we are making and the
3 amount of time Mr. Feaman and I think this will
4 take.

5 THE COURT: Okay.

6 MR. ROSE: The three are completely
7 related. They are all the same. They are
8 three sides of the same coin.

9 Am I blocking you?

10 MR. O'CONNELL: Your Honor, could I step
11 to the side?

12 THE COURT: Yes, absolutely.

13 MR. ROSE: You can have the chart.

14 MR. O'CONNELL: Okay.

15 THE COURT: Mr. Rose, I have to ask you.
16 I received a, I think it was a flash drive, and
17 it had proposed orders on matters that were not
18 necessarily going to be heard today. I don't
19 think I got a flash drive with a proposed order.
20 I did receive Mr. Feaman's on these particular
21 orders.

22 MR. ROSE: I don't think I sent you a
23 flash drive that I recall.

24 THE COURT: Okay. But I did on the other
25 ones. That's what seemed odd to me.

1 MR. ROSE: I am not aware, I am sorry.

2 THE COURT: Okay. That's okay. You may
3 proceed.

4 MR. ROSE: There's three matters today and
5 they are sort of related, and they involve how
6 are we going to deal with the claim by
7 Mr. Stansbury against the Estate of Simon
8 Bernstein.

9 And there are currently three separate
10 proceedings. There's a proceeding in Illinois.
11 It's all taking place in Illinois. There's the
12 probate proceeding which we are here on which
13 is the Estate of Simon Bernstein. And there's
14 the Stansbury litigation that is pending in
15 circuit court. It's just been reassigned to
16 Judge Marx, so we now have a judge, and that
17 case is going to proceed forward. It's set for
18 trial, I believe, in July to September
19 timeframe.

20 So the first thing you are asked to do
21 today is to reconsider a valid court order
22 entered by Judge Phillips on September the 7th.
23 We filed our motion in August, and they had 30
24 days, more than 30 days before the hearing to
25 object or contest the motion to appoint us.

1 The genesis of the motion to appoint us
2 was what happened at mediation. We had a
3 mediation in the summer. The parties signed a
4 written mediation settlement agreement. We
5 have asked Your Honor at next week's hearing to
6 approve the mediation settlement agreement. It
7 is signed by every single one of the ten
8 grandchildren or their court-appointed guardian
9 ad litem, Diana Lewis, who has now been
10 approved by this Court, upheld by the 4th
11 District, and upheld by the Supreme Court this
12 week. So I think it's safe to say that she's
13 going to be here.

14 So the settlement agreement is signed by
15 all of those people. It's signed by my client
16 as the trustee. It's also signed by four of
17 the five children, excluding Eliot Bernstein.

18 And as part of this, once we had a
19 settlement, there was a discussion of how do we
20 get this relatively modest estate to the finish
21 line. And the biggest impediment getting to
22 the finish line is this lawsuit. Until this
23 lawsuit is resolved, his client is something.
24 We can debate what he is. He claims to be an
25 interested person. I think technically under

1 law he is a claimant. Judge, I think even
2 Judge Colin ruled he was not a creditor and
3 denied his motion to remove and disqualify Ted
4 Bernstein as trustee. That was pending and
5 there's an order that does that a long time
6 ago. If I could approach?

7 THE COURT: Sure.

8 MR. ROSE: I don't have the docket entry
9 number. This is in the court file. This was
10 Judge Colin on August 22nd of 2014.

11 THE COURT: I saw it.

12 MR. ROSE: He has been trying to remove me
13 and Mr. Bernstein for like almost three or four
14 years now. But that's only significant because
15 he is not a creditor. He is a claimant. So
16 what we want to do is we want to get his claim
17 to the finish line.

18 So I am not talking about anything that
19 happened at mediation. Mediation is now over.
20 We have a signed settlement agreement.

21 Mr. Stansbury participated in the mediation,
22 but we did not make a settlement with him.

23 Okay.

24 So as a result of the mediation, all the
25 other people, everybody that's a beneficiary of

1 this estate coming together and signing a
2 written agreement, those same people as part of
3 the written agreement said we want this case to
4 finish, and how are we going to do that.

5 Well, let's see. Mr. Stansbury is the
6 plaintiff represented by Mr. Feaman. The
7 estate was represented by -- do you?

8 THE COURT: No.

9 MR. ROSE: I can give you one to have if
10 you want to make notes on.

11 THE COURT: I would like that. I would
12 like that very much.

13 MR. ROSE: That's fine. I have two if you
14 want to have one clean and one with notes.

15 THE COURT: Thank you.

16 MR. ROSE: You will recall -- I don't want
17 to talk out of school because we decided we
18 weren't going to talk out of school. But I got
19 Mr. Feaman's -- like I didn't have a chance to
20 even get this to you because I hadn't seen his
21 until after your deadline, but.

22 THE COURT: This is demonstrative.

23 MR. ROSE: Okay.

24 THE COURT: He can pull up something new
25 demonstrative as well.

1 MR. ROSE: Mr. -- originally the defendant
2 here originally was assigned when he was alive.
3 When he died his estate was substituted in. He
4 hired counsel. His counsel didn't do much in
5 the case because I did all the work because I
6 was representing the companies, Ted Bernstein
7 and another trust. And in January of 2014 the
8 PRs of the estate resigned totally unrelated to
9 this.

10 So in the interim between the original PRs
11 and the appointment of Mr. O'Connell, we had a
12 curator. The curator filed papers, which I
13 filed, it's in the file, but I have sent it to
14 Your Honor, where he admits, he states that he
15 wanted to stay the litigation but he states
16 that I have been doing a great job representing
17 him and he hasn't even had to hire a lawyer yet
18 because he is just piggybacking on the work I
19 am doing.

20 I represented in this lawsuit the very one
21 that Mr. O'Connell wants to retain my firm to
22 handle. And he wants it with the consent --
23 and one thing he said was that there's some
24 people that aren't here. Every single person
25 who is a beneficiary of this estate wants my

1 firm to handle this for the reasons I am about
2 to tell you. And I don't think there's any
3 dispute about it.

4 I was the lawyer that represented the main
5 company LIC and AIM. Those are the shorthands
6 for the two companies. Mr. Stansbury was at
7 one point a ten percent stockholder in these
8 companies. He gave his stock back. Ted
9 Bernstein who is my client, and the Shirley
10 Bernstein trust, I represented all these people
11 in the case for about 15 or 18 months before we
12 settled. I could be off on the timing. But I
13 did all the documents, the production,
14 interviewed witnesses, interviewed everybody
15 you could interview. Was pretty much ready to
16 go to trial other than we had to take the
17 deposition of Mr. Stansbury, and then he had
18 some discovery to do.

19 We went and we settled our case. Because
20 we had a gap, because we didn't have a PR at
21 the time, we were in the curator period,
22 Mr. Brown was unwilling to do anything, so we
23 didn't settle the case.

24 So Mr. O'Connell was appointed, so he is
25 now the personal representative. He doesn't

1 know the first thing about the case. No
2 offense. I mean, he couldn't. You know, it's
3 not expected for him to know the first thing
4 about it. I don't mean the first thing. But
5 he doesn't know much about the case or the
6 facts.

7 We had discussions about hiring someone
8 from his law firm to do it. I met someone from
9 his law firm and provided some basic
10 information, but nothing really happened. We
11 were hopeful we'd settle in July. We didn't
12 settle.

13 So they said the beneficiaries with
14 Mr. O'Connell's consent we want Mr. Rose to
15 become the lawyer and we want Mr. Ted Bernstein
16 to become the administrator ad litem.

17 Now, why is that important? That's the
18 second motion you are going to hear, but it's
19 kind of important.

20 THE COURT: That's the one Phillips
21 deferred?

22 MR. ROSE: Well, what happened was
23 Mr. Feaman filed an objection to it timely.
24 And in an abundance of caution because it might
25 require an evidentiary or more time than we

1 had, Judge Phillips deferred. That was my
2 order. And my main goal was I wanted to get
3 into the case and so we could start going to
4 the status conferences and get this case
5 moving. And what happened was as soon as we
6 had the first status conference and we started
7 the case moving, until we got the motion to
8 disqualify, and stopped and put the brakes on.

9 And this is a bench trial, so there's
10 not -- this is like maybe argument, but it's a
11 little bit related. I believe that Mr. -- this
12 is the case they want to happen first and
13 they're putting the brakes on this case because
14 they want this case to move very slowly.
15 Because the only way there's any money to
16 pay --

17 MR. FEAMAN: Objection.

18 THE COURT: Legal objection?

19 MR. FEAMAN: What counsel believes is not
20 appropriate for --

21 THE COURT: Sustained.

22 MR. ROSE: Okay. So this case -- so
23 anyway. Mr. Bernstein, Ted Bernstein, Ted,
24 Simon and Bill, that's Ted, the dead guy Simon
25 and his client Bill, were the three main

1 shareholders of a company.

2 THE COURT: I got it.

3 MR. ROSE: Ted and Simon started it. They
4 brought Bill in and gave him some stock for a
5 while. Bill is suing for two and a half
6 million dollars. The only person alive on this
7 planet who knows anything about this case is
8 Ted. He has got to be the representative of
9 the estate to defend the case. He has got to
10 be sitting at counsel table. If he is not at
11 counsel table, he is going to be excluded under
12 the exclusionary rule and he will be out in the
13 hallway the whole trial. And whoever is
14 defending the estate won't be able to do it.
15 This guy wants Ted out and me out because we
16 are the only people that know anything about
17 this case.

18 So why is that important? Well, it makes
19 it more expensive. It makes him have a better
20 chance of winning. That's what this is about.
21 And at the same time the Illinois case is
22 really critical here because unless the estate
23 wins the money in Illinois, there's nothing in
24 this estate to pay him.

25 THE COURT: I understand.

1 MR. ROSE: Mr. O'Connell, I proffer, he
2 advised me today there's about \$285,000 of
3 liquid assets in the estate. And we are going
4 to get some money from a settlement if you
5 approve it.

6 Now, Eliot and Mr. Stansbury will probably
7 object to that. It's not for today. So we
8 have a settlement with the lawyers, the ones
9 that withdrew. So we got a little bit of money
10 from that. But there's really not going to be
11 enough money in the estate to defend his case,
12 pay all, do all the other things you got to do.
13 So this is critical for Mr. Stansbury.

14 So the original PR, the guys that
15 withdrew, they refused to participate in this
16 lawsuit because they knew the facts. They knew
17 the truth. They met with Simon. They drafted
18 his documents. So they were not participating
19 in this lawsuit.

20 Mr. Feaman stated in his opening that his
21 client tried to intervene. So Bill tried to
22 intervene directly into Illinois, and the
23 Illinois judge said, no thank you, leave.

24 So when these guys withdrew we got a
25 curator. The curator I objected --

1 THE COURT: Mr. Brown?

2 MR. ROSE: Ben Brown. He was a lawyer in
3 Palm Beach, a very nice man. He passed away in
4 the middle of the lawsuit at a very young age.
5 But he -- the important thing -- I interrupted,
6 and I apologize for objecting. I didn't know
7 what to do. But Mr. Brown didn't say, hey, I
8 want to get in this lawsuit in Illinois; let me
9 jump in here. Mr. Feaman and Mr. Stansbury
10 filed a motion to require Mr. Brown to
11 intervene in the case.

12 THE COURT: In the federal case?

13 MR. ROSE: In the federal case in
14 Illinois. Because it's critical for
15 Mr. Stansbury, it's critical for Mr. Stansbury
16 to get this money into the estate.

17 THE COURT: Into the estate, I understand.

18 MR. ROSE: Okay. So we had a hearing
19 before Judge Colin, a rather contested hearing
20 in front of Judge Colin. Our position was very
21 simple -- one of the things you will see, my
22 client's goals on every one of these cases are
23 exactly the same. Minimize time, minimize
24 expense, maximize distribution. So we have the
25 same goal in every case.

1 All the conflict cases you are going to
2 see all deal with situations where the lawyers
3 have antagonistic approaches and they want --
4 like in one case he has, it's one lawsuit the
5 lawyer wants two opposite results inside the
6 same lawsuit for two different clients. That's
7 completely different. And even that case,
8 which is the Staples case, it was two to one.
9 There was a judge that dissented and said,
10 look, I understand what you are saying, but
11 there's still not really a conflict there.

12 But our goals are those goals.

13 So what we said to Judge Colin is we think
14 the Illinois case is a loser for the estate.
15 We believe the estate is going to lose. The
16 lawyer who drafted the testamentary documents
17 has given an affidavit in the Illinois case
18 saying all his discussions were with Simon.
19 The judge in Illinois who didn't have that when
20 he first ruled had that recently, and he denied
21 their summary judgment in Illinois. So it's
22 going to trial. But that lawyer was the
23 original PR, so he wasn't bringing the suit.

24 Mr. Brown says, I am not touching this.
25 So we had a hearing, and they forced Mr. Brown

1 to intervene with certain conditions. And one
2 of the conditions was very logical. If our
3 goal is to save money and Mr. Stansbury,
4 Mr. Feaman's client, is going to pay the cost
5 of this, he will get it back if he wins, then
6 we got no objection anymore, as long as he is
7 funding the litigation. He is the only guy who
8 benefits from this litigation. None of the --
9 the children and the grandchildren they don't
10 really care.

11 Judge Lewis represents Eliot's three kids
12 versus Eliot. The money either goes to Eliot
13 or his three kids. She's on board with, you
14 know, we don't want to waste estate funds on
15 this. Our goal is to keep the money in the
16 family. He wants the money.

17 This is America. He can file the lawsuit.
18 That's great. But these people should be able
19 to defend themselves however they choose to see
20 fit. But the critical thing about this is
21 Mr. Brown didn't do anything in here. Judge
22 Colin said, you can intervene as long as he is
23 paying the bills. And that's an order. Well,
24 that order was entered a long time ago. It was
25 not appealed.

1 So one of the things, the third thing you
2 are being asked to do today is vacate that
3 order, you know. And I did put in my motion,
4 and I don't know if it was ad hominem toward
5 Mr. Feaman, it really was his client, his
6 client is driving this pace. He is driving us
7 to zero. I mean, we started this estate with
8 over a million dollars. He has fought
9 everything we do every day. It's not just
10 Eliot. Eliot is a lot of this. Mr. Stansbury
11 is driving us to zero as quickly as possible.

12 So in the Illinois case the estate is
13 represented by Stamos and Trucco. They are
14 hired by, I think, Ben Brown but was in
15 consultation with Mr. Feaman. They
16 communicated -- the documents will come into
17 evidence. I am assuming he is going to put the
18 documents on his list in evidence.

19 You will see e-mails from Mr. Stamos from
20 the Stamos Trucco firm, they e-mailed to
21 Mr. O'Connell, and they copied Bill Stansbury
22 and Peter Feaman because they are driving the
23 Illinois litigation. I don't care. They can
24 drive it. I think it's a loser. They think
25 it's a winner. We'll find out in a trial.

1 They are supposed to be paying the bills.
2 I think the evidence would show his client's in
3 violation of Judge Colin's orders because his
4 client hasn't paid the lawyer all the money
5 that's due. And Mr. O'Connell, I think, can
6 testify to that. I don't think it's a disputed
7 issue. But the lawyer's been paid 70 and he is
8 owed 40, which means Mr. Feaman's client is
9 right now technically in violation of a court
10 order.

11 I have asked numerous times for them to
12 give me the information. I just got it this
13 morning. But I guess I can file a motion to
14 hold him in contempt for violating a court
15 order.

16 But in the Chicago case the plaintiff is
17 really not Ted Bernstein, although he probably
18 nominally at some point was listed as a
19 plaintiff in the case. The plaintiff is the
20 Simon Bernstein 1995 irrevocable life insurance
21 trust. According to the records of the
22 insurance company, the only person named as a
23 beneficiary is a defunct pension plan that went
24 away.

25 THE COURT: Net something net something,

1 right?

2 MR. ROSE: Right. And then the residual
3 beneficiary is this trust. And these are
4 things Simon -- he filled out one designation
5 form in '95 and he named the 95 trust.

6 THE COURT: But there's no paperwork,
7 right?

8 MR. ROSE: We can't find the paperwork.
9 Not me. It was not me. I have nothing to do
10 with it. I said we. I wanted to correct the
11 record because it will be flown up to Illinois.

12 Whoever it is can't find the paperwork.
13 So there's a proceeding, and it happens in
14 every court, and there's Illinois proceedings
15 to determine how do you prove a lost trust.

16 This lawsuit is going to get resolved one
17 way or the other. But in this lawsuit the 95
18 trust Ted Bernstein is the trustee, so he
19 allowed, though under the terms of the trust in
20 this case, and we cited it to you twice or
21 three times, under Section 4J of the trust on
22 page 18 of the Simon Bernstein Trust, it says
23 that you can be the trustee of my trust, Simon
24 said you can be the trustee of my trust even if
25 you have a different interest as a trustee of a

1 different trust. So that's not really an
2 issue. And up in Chicago Ted Bernstein is the
3 trustee of the 95 trust. He is represented by
4 the Simon law firm in Chicago.

5 I have never appeared in court. He is
6 going to put in all kinds of records. My name
7 never appears -- I have the docket which he
8 said can come into evidence. I don't appear on
9 the docket.

10 Now, I have to know about this case though
11 because I represent the trustee of the
12 beneficiary of this estate. I've got to be
13 able to advise him. So I know all about his
14 case. And he was going to be deposed.

15 Guess who was at his deposition? Bill
16 Stansbury. Bill Stansbury was at his
17 deposition, sat right across from me. Eliot,
18 who is not here today, was at that deposition,
19 and Eliot got to ask questions of him at that
20 deposition. He wanted me at the deposition.
21 He is putting the deposition in evidence. If
22 you study the deposition, all you will see is
23 on four occasions I objected on what grounds?
24 Privilege. Be careful what you talk about; you
25 are revealing attorney/client privilege.

1 That's all I did. I didn't say, gee, don't
2 give them this information or that information.
3 And if I objected incorrectly, they should have
4 gone to the judge in Illinois. And I guarantee
5 you there's a federal judge in Illinois that if
6 I had objected improperly would have overruled
7 my objections. I instructed him to protect his
8 attorney/client privilege. That's what I was
9 there for, to advise him and to defend him at
10 deposition and to protect him. That's all I
11 did in the Illinois case. And that is over.

12 Now, I am rooting like crazy that the
13 estate loses this case in one sense because
14 that's what everybody that is a beneficiary of
15 my trust wants. But I could care less how that
16 turns out, you know, from a legal standpoint.
17 I don't have an appearance in this case. And
18 everyone up there is represented by lawyers.

19 So what we have now is we have this motion
20 which seeks to disqualify my law firm. We
21 still have the objection to Ted serving as the
22 administrator ad litem. And I think those two
23 kind of go hand in hand.

24 There's another component you should know
25 about that motion. But as I told you, our

1 goals are to reduce expense.

2 The reason that everybody wanted Ted to
3 serve as the administrator ad litem, so he
4 would sort of be the representative of the
5 estate, because he said he would do that for
6 free.

7 THE COURT: I remember.

8 MR. ROSE: Mr. O'Connell is a
9 professional. He is not going to sit there for
10 free for a one-week, two-week jury trial and
11 prepare and sit for deposition. That's enough
12 money -- just his fees alone sitting at trial
13 are enough to justify everything -- you know,
14 it's a significant amount of money.

15 So that's what's at issue today.

16 But their motion for opening statement,
17 and I realize this is going to overlap, my
18 other will be --

19 THE COURT: Which motion?

20 MR. ROSE: The disqualification.

21 THE COURT: I wasn't sure.

22 MR. ROSE: I got you. That was sort of
23 first up. All right. So I am back. That's
24 the background. You got the background for the
25 disqualification motion. This is an adversary

1 in litigation trying to disqualify me.

2 I think it is a mean-spirited motion by
3 Mr. Stansbury designed to create chaos and
4 disorder and raise the expense, maybe force the
5 estate into a position where they have to
6 settle, because now they don't have a
7 representative or an attorney that knows
8 anything about the case.

9 MR. FEAMAN: Objection.

10 THE COURT: Legal objection?

11 MR. FEAMAN: Comments on the motivation or
12 intention of opposing counsel in opening
13 statement is not proper.

14 THE COURT: I will allow it only -- mean
15 spirited I will strike. The other comments I
16 will allow because under Rule 4-1.7, and I may
17 be misquoting, but it is one of the two rules
18 we have been looking at under the Florida Bar,
19 the commentary specifically talks about an
20 adverse party moving to disqualify and the
21 strategy may be employed. So I will allow that
22 portion of his argument, striking mean
23 spirited.

24 MR. ROSE: Okay. If you turn to tab 2 of
25 the -- we, I think, sent you a very thin

1 binder.

2 THE COURT: Yes, you did.

3 MR. ROSE: We had already sent you the
4 massive book a long time ago.

5 THE COURT: Yes.

6 MR. ROSE: And I think all I sent you was
7 the very thin binder. If you turn to Tab 2.

8 THE COURT: In any other world this would
9 have been a nice sized binder. In this
10 particular case you are indeed correct, this is
11 a very thin binder.

12 MR. ROSE: Okay. If you flip to page
13 2240 --

14 THE COURT: I am just teasing you, sorry.

15 MR. ROSE: -- which is about five or six
16 pages in.

17 THE COURT: Yes.

18 MR. ROSE: This is where a conflict is
19 charged by opposing party.

20 THE COURT: Yes.

21 MR. ROSE: It's part of Rule 4-1.7. These
22 two rules have a lot of overlap.

23 And I would point for the record I did not
24 say that Mr. Feaman was mean spirited. I
25 specifically said mean spirited by his client.

1 THE COURT: Thank you.

2 MR. ROSE: So conflicts charged by the
3 opponent, and this is just warning you that
4 this can be used as a technique of harassment,
5 and that's why I am tying that in.

6 But the important things are I have never
7 represented Mr. Stansbury in any matter.
8 Generally in a conflict of interest situation
9 you will see I represented him. I don't have
10 any confidential information from
11 Mr. Stansbury. I have only talked to him
12 during his deposition. It wasn't very
13 pleasant. And if you disqualify me to some
14 degree my life will be fine, because this is
15 not the most fun case to be involved in. I am
16 doing it because I represent Ted and we are
17 trying to do what's right for the
18 beneficiaries.

19 THE COURT: Appearance for the record.
20 Someone just came in.

21 MR. ELIOT BERNSTEIN: Hi. Eliot Ivan
22 Bernstein.

23 THE COURT: Thank you.

24 MR. ELIOT BERNSTEIN: I am pro se, ma'am.

25 THE COURT: Thank you. You may proceed.

1 I just wanted the court reporter to know.

2 MR. ELIOT BERNSTEIN: Thank you, Your
3 Honor.

4 MR. ROSE: I don't have any confidential
5 information of Mr. O'Connell. He is the PR of
6 the estate. I don't know anything about
7 Mr. O'Connell that would compromise my ability
8 to handle this case. I am not sure he and I
9 have ever spoken about this case. But in
10 either case, I don't have any information.

11 So I can't even understand why they are
12 saying this is a conflict of interest. But the
13 evidence will show, if you look at the way
14 these are set up, these are three separate
15 cases, not one case. And nothing I am doing in
16 this case criticizes what I am doing in this
17 case. Nothing I am doing -- the outcome of
18 this case is wholly independent of the outcome
19 of this case. He could lose this case and win
20 this case. He could lose this case and lose
21 this case. I mean, the cases have nothing to
22 do with the issues.

23 Who gets the insurance proceeds? Bill
24 Stansbury is not even a witness in that case.
25 It has nothing to do with the issue over here,

1 how much money does Bill Stansbury get? So
2 you've got wholly unrelated, and that's the
3 other part of the Rule 4-1.9 and 4-1.7, it
4 talks about whether the matters are unrelated.
5 And I guess when I argue the statute I will
6 argue the statute for you.

7 At best what the evidence is going to show
8 you -- and I am not trying to win this on a
9 technicality. I want to win this like up or
10 down and move on. Because this estate can't --
11 this delay was torture to wait this long for
12 this hearing.

13 But if I showed up at Ted's deposition,
14 and I promise you I will never show up again, I
15 am out of that case, this is a conflict of
16 interest with a former client. I have ceased
17 representing him at his deposition. He is
18 never going to be deposed again. If it's a
19 conflict of interest with a former client, all
20 these things are the prerogative of the former
21 client. They are not the prerogative of the
22 new client. The new client it's not the issue.
23 So if I represented Ted in his deposition, I
24 cannot represent another person in the same or
25 a substantially related matter.

1 So I can't represent the estate in this
2 case because I sat at Ted's deposition, unless
3 the former client gives informed consent. He
4 could still say, hey, I don't care, you do the
5 Illinois case for the estate. I wouldn't do
6 that, but that's what the rule says. Use
7 information. There's no information. I am not
8 even going to waste your time. Reveal
9 information. So there's no information. If
10 this is the rule we are traveling under, you
11 deny the motion and we go home and move on and
12 get back to litigation. If we are traveling
13 under this rule, I cannot under 4-1.7 --

14 MR. FEAMAN: Excuse me, Your Honor, this
15 sounds more like final argument than it does
16 opening statement what the evidence is going to
17 show.

18 THE COURT: Overruled.

19 MR. ROSE: So under 4-1.7, except as in b,
20 and I am talking about b because that's maybe
21 the only piece of evidence we may need is the
22 waiver. I have a written waiver. I think it
23 has independent legal significance. Because if
24 I obtained his writing in writing, I think it's
25 admissible just because Mr. O'Connell signed

1 it. But they object, they may object to the
2 admission of the waiver, so I may have to put
3 Mr. O'Connell on the stand for two seconds and
4 have him confirm that he signed the waiver
5 document.

6 But except if it's waived, now let's put
7 that aside. We never even get to the waiver.
8 The representation of one client has to be
9 directly adverse to another client. So
10 representing Ted in his deposition is not --
11 has nothing to do -- first of all, Ted had
12 counsel representing him directly adverse. I
13 was there protecting him as trustee, protecting
14 his privileges, getting ready for a trial that
15 we had before Judge Phillips where he upheld
16 the validity of the documents, determined that
17 Ted didn't commit any egregious wrongdoing.
18 That's the December 15th trial. It's on appeal
19 to the 4th District. That's what led to having
20 Eliot determined to have no standing, to Judge
21 Lewis being appointed as guardian for his
22 children. That was the key. That was the only
23 thing we have accomplished to move the thing
24 forward was that, but we had that.

25 But that's why I was at the deposition,

1 but it was not directly adverse to the estate.

2 Number two, there's a substantial risk
3 that the representation of one or more clients
4 will be materially limited by my
5 responsibilities to another. I have asked them
6 to explain to me how might -- how what I want
7 to do here, which is to defend these people
8 that I have been doing -- I have asked
9 Mr. Feaman to explain to me how what I am doing
10 to defend the estate, like I defended all these
11 people against his client, could possibly be
12 limited by my responsibilities to Ted. My
13 responsibilities to Ted is to win this lawsuit,
14 save the money for his family, determine his
15 father did not defraud Bill Stansbury. So I am
16 not limited in any way.

17 So if you don't find one or two, you don't
18 even get to waiver. But if you get to waiver,
19 and this is evidence, it's one of the -- I only
20 gave you three new things in the binder. One
21 was the waiver. One was the 57.105 amended
22 motion.

23 I think the significance of that is after
24 I got the waiver, after I got a written waiver,
25 I thought that changed the game a little bit.

1 You know, if you are a lawyer and you file a
2 motion to disqualify -- so when I got the
3 written waiver --

4 MR. FEAMAN: Your Honor --

5 THE COURT: Legal objection.

6 MR. FEAMAN: Not part of opening statement
7 when you are commenting on a 57.105 motion --

8 THE COURT: Sustained.

9 MR. FEAMAN: -- that you haven't even seen
10 yet.

11 THE COURT: Sustained.

12 MR. FEAMAN: Thank you.

13 THE COURT: Sustained.

14 MR. ROSE: I got a waiver signed by
15 Mr. O'Connell. I had his permission, but I got
16 a formal written waiver. And it was after our
17 first hearing, and it was after -- so I sent it
18 to Mr. Feaman.

19 But if you look under the rule, it's a
20 clearly waivable conflict. Because I am not
21 taking an antagonistic position saying like the
22 work I did in the other case was wrong or this
23 or that.

24 And if you look at the rules of
25 professional conduct again, and we'll do it in

1 closing, but I am the one who is supposed to
2 decide if I have a material limitation in the
3 first instance. That's what the rules direct.
4 Your Honor reviews that. But in the first
5 instance I do not have any material limitation
6 on my ability to represent the estate
7 vigorously, with all my heart, with everything
8 my law firm's resources, and with Ted's
9 knowledge of the case and the facts to defend
10 his case, there is no limitation and there's no
11 substantial risk that I am not going to do the
12 best job possible to try to protect the estate
13 from this claim.

14 And I think we would ask that you deny the
15 motion to disqualify on the grounds that
16 there's no conflict, and the waiver for
17 Mr. O'Connell would resolve it.

18 And we also would like you to appoint Ted
19 Bernstein. There's no conflict of interest in
20 him defending the estate as its representative
21 through trial to try to protect the estate's
22 money from Mr. Stansbury. It's not like Ted or
23 I are going to roll over and help Mr. Stansbury
24 or sell out the estate for his benefit. That's
25 what a conflict would be worried about. We are

1 not taking a position in -- we are not in the
2 case yet, obviously. If you allow us to
3 continue in this case, we are not going to take
4 a position in this case which is different from
5 any position we have ever taken in any case
6 because all --

7 THE COURT: Just for the record, for the
8 record, I see you pointing. So you are not
9 taking a position in the Palm Beach circuit
10 court --

11 MR. ROSE: Case.

12 THE COURT: -- civil case --

13 MR. ROSE: Different than we've --

14 THE COURT: -- that's different than
15 probate or even the insurance proceeds?

16 MR. ROSE: Correct. Different from what
17 we did in the federal case in Illinois,
18 different from we are taking in the probate
19 case. Or more importantly, in fact most
20 importantly, we are not taking a position
21 differently than we took when I represented
22 other people in the same lawsuit.

23 You have been involved in lawsuits where
24 there are eight defendants and seven settled
25 and the last guy says, well, gee, let me hire

1 this guy's lawyer, either he is better or my
2 lawyer just quit or I don't have a lawyer. So
3 but I am not taking a position like here we
4 were saying, yeah, he was a terrible guy, he
5 defrauded you, and now we are saying, oh, no,
6 it's not, he didn't defraud you. That would be
7 a conflict. We have defended the case by
8 saying that Mr. Stansbury's claim has no merit
9 and we are going to defend it the same way.

10 And then that's what we'd like to do with
11 the Florida litigation, and then time
12 permitting we'd like to discuss the Illinois
13 litigation, because we desperately need a
14 ruling from Your Honor on the third issue you
15 set for today which is are you going to vacate
16 Judge Colin's order and free Mr. Stansbury of
17 the duty to fund the Illinois litigation.

18 Judge Colin entered the order. The issue
19 was raised multiple times before Judge
20 Phillips. He wanted to give us his ruling one
21 day, and we -- you know, he didn't. We were
22 supposed to set it for hearing. We had
23 numerous hearings set on that motion, the
24 record will reflect, and those were all
25 withdrawn. And now that they have a new judge,

1 I think they are coming back with the same
2 motion to be excused from that, and that's the
3 third thing you need to decide today.

4 THE COURT: All right.

5 MR. ROSE: Unless you have any questions.
6

7 (Opening statements excerpt concluded.)
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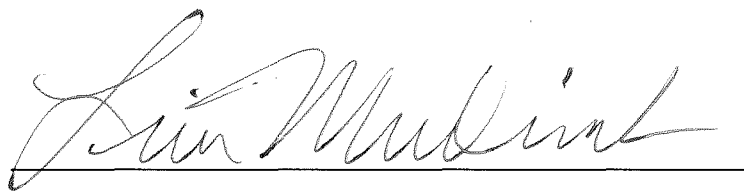
C E R T I F I C A T E

- - -

The State of Florida
County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I
was authorized to and did stenographically report
the foregoing proceedings, and that the excerpted
transcript is a true record.

Dated February 21, 2017.



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1 IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA
3 CASE NO: 502012CP004391XXXXNBIH

4
5 IN RE:
6 ESTATE OF SIMON L. BERNSTEIN,
7 _____/

8
9
10 Proceedings before the Honorable
11 ROSEMARIE SCHER

12
13 [EXCERPT - BRIAN O'CONNELL TESTIMONY]

14
15
16 Thursday, February 16, 2017
17 3188 PGA Boulevard
18 North County Courthouse
19 Palm Beach Gardens, Florida 33410
20 2:38 p.m. - 4:46 p.m.

21 ORIGINAL

22
23 Reported by:
24 Lisa Mudrick, RPR, FPR
25 Notary Public, State of Florida

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42

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

2 - - -

3 * * * * *

4 BRIAN O'CONNELL TESTIMONY

5 - - -

6 MR. FEAMAN: Next I would call Brian
7 O'Connell to the stand.

8 THE COURT: Okay.

9 - - -

10 Thereupon,

11 BRIAN O'CONNELL,

12 a witness, being by the Court duly sworn, was
13 examined and testified as follows:

14 THE WITNESS: I do.

15 THE COURT: Have a seat. Thank you very
16 much.17 Before we start I need six minutes to use
18 the restroom. I will be back in six minutes.

19 (A recess was taken.)

20 THE COURT: All right. Call

21 Mr. O'Connell. I apologize. Let's proceed.

22 MR. FEAMAN: Thank you, Your Honor.

23 DIRECT (BRIAN O'CONNELL)

24 BY MR. FEAMAN:

25 Q. Please state your name.

1 A. Brian O'Connell.

2 Q. And your business address?

3 A. 515 North Flagler Drive, West Palm Beach,
4 Florida.

5 Q. And you are the personal representative,
6 the successor personal representative of the Estate
7 of Simon Bernstein; is that correct?

8 A. Yes.

9 Q. And I handed you during the break Florida
10 Statute 733.602. Do you have that in front of you?

11 A. I do.

12 Q. Would you agree with me, Mr. O'Connell,
13 that as personal representative of the estate that
14 you have a fiduciary duty to all interested persons
15 of the estate?

16 A. To interested persons, yes.

17 Q. Okay. Are you aware that Mr. Stansbury,
18 obviously, has a lawsuit against the estate,
19 correct?

20 A. Correct.

21 Q. And he is seeking damages as far as you
22 know in excess of \$2 million dollars; is that
23 correct?

24 A. Yes.

25 Q. Okay. And the present asset value of the

1 estate excluding a potential expectancy in Chicago
2 I heard on opening statement was around somewhere a
3 little bit over \$200,000; is that correct?

4 A. Correct.

5 Q. And --

6 A. Little over that.

7 Q. Okay. And you are aware that in Chicago
8 the amount at stake is in excess of \$1.7 million
9 dollars, correct?

10 A. Yes.

11 Q. And if the estate is successful in that
12 lawsuit then that money would come to the Estate of
13 Simon Bernstein, correct?

14 A. Correct.

15 Q. And then obviously that would quintuple,
16 if my math is correct, the assets that are in the
17 estate right now; is that correct?

18 A. They would greatly enhance the value of
19 the estate, whatever the math is.

20 Q. Okay. So would you agree that
21 Mr. Stansbury is reasonably affected by the outcome
22 of the Chicago litigation if he has an action
23 against the estate in excess of two million?

24 A. Depends how one defines a claimant versus
25 a creditor. He certainly sits in a claimant

1 position. He has an independent action.

2 Q. Right.

3 A. So on that level he would be affected with
4 regard to what happens in that litigation if his
5 claim matures into an allowed claim, reduced to a
6 judgment in your civil litigation.

7 Q. So if he is successful in his litigation,
8 it would -- the result of the Chicago action, if
9 it's favorable to the estate, would significantly
10 increase the assets that he would be able to look
11 to if he was successful either in the amount of
12 300,000 or in an amount of two million?

13 A. Right. If he is a creditor or there's a
14 recovery then certainly he would benefit from that
15 under the probate code because then he would be
16 paid under a certain priority of payment before
17 beneficiaries.

18 Q. All right. And so then Mr. Stansbury
19 potentially could stand to benefit from the result
20 of the outcome of the Chicago litigation depending
21 upon the outcome of his litigation against the
22 estate?

23 A. True.

24 Q. Correct?

25 A. Yes.

1 Q. So in that respect would you agree that
2 Mr. Stansbury is an interested person in the
3 outcome of the estate in Chicago?

4 A. I think in a very broad sense, yes. But
5 if we are going to be debating claimants and
6 creditors then that calls upon certain case law.

7 Q. Okay.

8 A. But I am answering it in sort of a general
9 financial sense, yes.

10 Q. Okay. We entered into evidence Exhibits 7
11 and 8 which were e-mails that were sent to you
12 first by an associate in Mr. Stamos's office and --

13 MR. FEAMAN: Could I approach, Your Honor?

14 THE COURT: Yes. Do you have an extra
15 copy for him so I can follow along?

16 MR. FEAMAN: I think I do.

17 THE COURT: Okay. If you don't, no
18 worries. Let me know.

19 Does anyone object to me maintaining the
20 originals so that I can follow along? If you
21 don't --

22 MR. FEAMAN: I know we do.

23 MR. ROSE: If you need my copy to speed
24 things up, here.

25 ///

1 BY MR. FEAMAN:

2 Q. There's our copies of 7 and 8.

3 A. Which one did you want me to look at
4 first?

5 Q. Take a look at the one that came first on
6 January 31st, 2007. Do you see that that was an
7 e-mail directed to you from is it Mr. Kuyper, is
8 that how you pronounce his name?

9 A. Yes.

10 Q. Okay. On January 31st. Do you recall
11 receiving this?

12 A. Let me take a look at it.

13 Q. Sure.

14 A. I do remember this.

15 Q. All right. And did you have any
16 discussions with Mr. Kuyper or Mr. Stamos
17 concerning your comments regarding the Court's
18 ruling which was denying the estate's motion for
19 summary judgment?

20 A. There might have been another e-mail
21 communication, but no oral communication since
22 January.

23 Q. Did you send an e-mail back in response to
24 this?

25 A. That I don't recall, and I don't have my

1 records here.

2 Q. Okay.

3 A. I am not sure.

4 Q. Why don't we take a look at Exhibit 8, if
5 we could. That's the e-mail from Mr. Stamos dated
6 February 14th to you and me and Mr. Stansbury. Do
7 you see that?

8 A. Yes.

9 Q. And he says, "What's our position on
10 settlement?," correct?

11 A. Correct.

12 Q. Okay. And that's because Mr. Stamos had
13 received an e-mail from plaintiff's counsel in
14 Chicago soliciting some input on a possible
15 settlement, correct?

16 A. Yes.

17 Q. And when you received this did you respond
18 to Mr. Stamos either orally or in writing?

19 A. Not yet. I was in a mediation that lasted
20 until 2:30 in the morning yesterday, so I haven't
21 had a chance to speak to him.

22 Q. So then you haven't had any discussions
23 with Mr. Stamos concerning settlement --

24 A. No.

25 Q. -- since this?

1 A. Not -- let's correct that. Not in terms
2 of these communications.

3 Q. Right.

4 A. I have spoken to him previously about
5 settlement, but obviously those are privileged that
6 he is my counsel.

7 Q. Okay. And you are aware that -- would you
8 agree with me that Mr. Ted Bernstein, who is in the
9 courtroom today, is a plaintiff in that action in
10 Chicago?

11 A. Which action?

12 Q. The Chicago filed, the action filed by
13 Mr. Bernstein?

14 A. Can you give me the complaint?

15 Q. Sure.

16 MR. FEAMAN: If I can take a look?

17 THE COURT: Go ahead.

18 BY MR. FEAMAN:

19 Q. This is the --

20 MR. ROSE: We'll stipulate. The documents
21 are already in evidence.

22 THE COURT: Same objection?

23 MR. ROSE: I mean, we are trying to save
24 time.

25 ///

1 BY MR. FEAMAN:

2 Q. Take a look at the third page.

3 (Overspeaking.)

4 THE COURT: Hold on. Hold on. Hold on.

5 I have got everybody talking at once. It's
6 Feaman's case. We are going until 4:30. I
7 have already got one emergency in the, we call
8 it the Cad, that means nothing to you, but I am
9 telling you all right now I said we are going
10 to 4:30.

11 THE WITNESS: Yes, sir, Ted Bernstein is a
12 plaintiff.

13 BY MR. FEAMAN:

14 Q. Individually, correct?

15 A. Individually and as trustee.

16 Q. And Mr. Stamos is your attorney who
17 represents the estate, correct?

18 A. Correct.

19 Q. And the estate is adverse to the
20 plaintiffs, including Mr. Bernstein, correct?

21 A. In this action, call it the Illinois
22 action, yes.

23 Q. Correct.

24 A. Okay.

25 THE COURT: Hold on. One more time. Go

1 back and say that again. You are represented
2 by Mr. Stamos?

3 THE WITNESS: Right, in the Illinois
4 action, Your Honor.

5 THE COURT: Right.

6 THE WITNESS: And Ted Bernstein
7 individually and as trustee is a plaintiff.

8 THE COURT: Right, individually and as
9 trustee, got it.

10 THE WITNESS: And the estate is adverse to
11 Ted Bernstein in those capacities in that
12 litigation.

13 BY MR. FEAMAN:

14 Q. All right. And are you aware --

15 THE COURT: Thank you.

16 BY MR. FEAMAN:

17 Q. And are you aware that Mr. Rose represents
18 Mr. Ted Bernstein in various capacities?

19 A. Yes.

20 Q. Generally?

21 A. In various capacities generally, right.

22 Q. Including individually, correct?

23 A. That I am not -- I know as a fiduciary,
24 for example, as trustee from our various and sundry
25 actions, Shirley Bernstein, estate and trust and so

1 forth. I am not sure individually.

2 Q. How long have you been involved with this
3 Estate of Simon Bernstein?

4 A. A few years.

5 Q. Okay. And as far as you know
6 Mr. Bernstein has been represented in whatever
7 capacity in all of this since that time; is that
8 correct?

9 A. He is definitely -- Mr. Rose has
10 definitely represented Ted Bernstein since I have
11 been involved. I just want to be totally correct
12 about exactly what capacity. Definitely as a
13 fiduciary no doubt.

14 Q. Okay. And did you ever see the deposition
15 that was taken by your lawyer in the Chicago action
16 that was introduced as Exhibit 6 in this action?

17 A. Could I take a look at it?

18 Q. Sure. Have you seen that deposition
19 before, Mr. O'Connell?

20 A. I am not sure. I don't want to guess.
21 Because I know it's May of 2015. It's possible.
22 There were a number of documents in all this
23 litigation, and I would be giving you a guess.

24 Q. On that first page is there an appearance
25 by Mr. Rose on behalf of Ted Bernstein in that

1 deposition?

2 A. Yes.

3 Q. So would you agree with me that Ted
4 Bernstein is adverse to the estate in the Chicago
5 litigation? You said that earlier, correct?

6 A. Yes.

7 Q. Okay. And would you agree with me upon
8 reviewing that deposition that Mr. Rose is
9 representing Ted Bernstein there?

10 MR. ROSE: Objection, calls for a legal
11 conclusion.

12 THE WITNESS: There's an appearance by
13 him.

14 THE COURT: Sustained.

15 BY MR. FEAMAN:

16 Q. There's an appearance by him? Where does
17 it show that?

18 MR. ROSE: The objection is sustained.

19 THE COURT: I sustained the objection.

20 MR. FEAMAN: Oh, okay. Sorry.

21 BY MR. FEAMAN:

22 Q. Now, you have not gotten -- you said that
23 you wanted to retain Mr. Rose to represent the
24 estate here in Florida, correct?

25 A. Yes. But I want to state my position

1 precisely, which is as now has been pled that Ted
2 Bernstein should be the administrator ad litem to
3 defend that litigation. And then if he chooses,
4 which I expect he would, employ Mr. Rose, and
5 Mr. Rose would operate as his counsel.

6 Q. Okay. So let me get this, if I understand
7 your position correctly. You think that Ted
8 Bernstein, who you have already told me is suing
9 the estate as a plaintiff in Chicago, it would be
10 okay for him to come in to the estate that he is
11 suing in Chicago to represent the estate as
12 administrator ad litem along with his attorney
13 Mr. Rose? Is that your position?

14 A. Here's why, yes, because of events. You
15 have an apple and an orange with respect to
16 Illinois. Mr. Rose and Ted Bernstein is not going
17 to have any -- doesn't have any involvement in the
18 prosecution by the estate of its position to those
19 insurance proceeds. That's not on the table.

20 THE COURT: Say it again, Ted has no
21 involvement?

22 THE WITNESS: Ted Bernstein and Mr. Rose
23 have no involvement in connection with the
24 estate's position in the Illinois litigation,
25 Your Honor. I am not seeking that. If someone

1 asked me that, I would say absolutely no.

2 BY MR. FEAMAN:

3 Q. I am confused, though, Mr. O'Connell.
4 Isn't Ted Bernstein a plaintiff in the insurance
5 litigation?

6 A. Yes.

7 Q. Okay. And as plaintiff in that insurance
8 litigation isn't he seeking to keep those insurance
9 proceeds from going to the estate?

10 A. Right.

11 Q. Okay.

12 A. Which is why the estate has a contrary
13 position --

14 Q. So if the estate --
15 (Overspeaking.)

16 THE COURT: Let him finish his answer.

17 THE WITNESS: It's my position as personal
18 representative that those proceeds should come
19 into the estate.

20 BY MR. FEAMAN:

21 Q. Correct.

22 A. Correct.

23 Q. And it's Mr. Bernstein's position both
24 individually and as trustee in that same action
25 that those proceeds should not come into the

1 estate?

2 A. Right.

3 Q. Correct? And Mr. Bernstein is not a
4 monetary beneficiary of the estate, is he?

5 A. As a trustee he is a beneficiary,
6 residuary beneficiary of the estate. And then he
7 would be a beneficiary as to tangible personal
8 property.

9 Q. So on one hand you say it's okay for
10 Mr. Bernstein to be suing the estate to keep the
11 estate from getting \$1.7 million dollars, and on
12 the other hand it's okay for him and his attorney
13 to defend the estate. So let me ask you this --

14 A. That's not what I am saying.

15 Q. Okay. Well, go back to Exhibit 8, if we
16 could.

17 A. Which one is Exhibit 8?

18 Q. That's the e-mail from Mr. Stamos that you
19 got last week asking about settlement.

20 A. The 31st?

21 Q. Right.

22 A. Well, actually the Stamos e-mail is
23 February 14th.

24 Q. Sorry, February 14th. And Mr. Rose right
25 now has entered an appearance on behalf of the

1 estate, correct?

2 A. You have to state what case.

3 Q. Down here in Florida.

4 A. Which case?

5 Q. The Stansbury action.

6 A. The civil action?

7 Q. Yes.

8 A. Yes. You need to be precise because
9 there's a number of actions and various
10 jurisdictions and various courts.

11 Q. And Mr. Rose's client in Chicago doesn't
12 want any money to go to the estate. So when you
13 are discussing settlement with Mr. Stamos, are you
14 going to talk to your other counsel, Mr. Rose,
15 about that settlement when he is representing a
16 client adverse to you?

17 A. No.

18 Q. How do we know that?

19 A. Because I don't do that and have not done
20 that.

21 Q. So you --

22 A. Again, can I finish, Your Honor?

23 THE COURT: Yes, please.

24 THE WITNESS: Thanks. Because there's a
25 differentiation you are not making between

1 these pieces of litigation. You have an
2 Illinois litigation pending in federal court
3 that has discrete issues as to who gets the
4 proceeds of a life insurance policy. Then you
5 have what you will call the Stansbury
6 litigation, you represent him, your civil
7 action, pending in circuit civil, your client
8 seeking to recover damages against the estate.

9 BY MR. FEAMAN:

10 Q. So Mr. Rose could advise you as to terms
11 of settlement, assuming he is allowed to be counsel
12 for the estate in the Stansbury action down here,
13 correct?

14 A. About the Stansbury action?

15 Q. Right, about how much we should settle
16 for, blah, blah, blah?

17 A. That's possible.

18 Q. Okay. And part of those settlement
19 discussions would have to entail how much money is
20 actually in the estate, correct?

21 A. Depends on what the facts and
22 circumstances are. Right now, as everyone knows I
23 think at this point, there isn't enough money to
24 settle, unless Mr. Stansbury would take less than
25 what is available. There have been attempts made

1 to settle at mediations and through communications
2 which haven't been successful. So certainly I am
3 not as personal representative able or going to
4 settle with someone in excess of what's available.

5 Q. Correct. But the outcome of the Chicago
6 litigation could make more money available for
7 settlement, correct?

8 A. It it's successful it could.

9 Q. Okay. May be a number that would be
10 acceptable to Mr. Stansbury, I don't know, that's
11 conjecture, right?

12 A. Total conjecture.

13 Q. Okay.

14 A. Unless we are going to get into what
15 settlement discussions have been.

16 Q. And at the same time Mr. Rose, who has
17 entered an appearance at that deposition for
18 Mr. Bernstein in the Chicago action, his client has
19 an interest there not to let that money come into
20 the estate, correct?

21 MR. ROSE: Objection again to the extent
22 it calls for a legal conclusion as to what I
23 did in Chicago. I mean, the records speak for
24 themselves.

25 THE COURT: Could you read back the

1 question for me?

2 (The following portion of the record was
3 read back.)

4 "Q. And at the same time Mr. Rose, who
5 has entered an appearance at that deposition
6 for Mr. Bernstein in the Chicago action, his
7 client has an interest there not to let that
8 money come into the estate, correct?"

9 THE COURT: I am going to allow it as the
10 personal representative his impressions of
11 what's going on, not as a legal conclusion
12 because he is also a lawyer.

13 THE WITNESS: My impression based on
14 stated positions is that Mr. Ted Bernstein does
15 not want the life insurance proceeds to come
16 into the probate estate of Simon Bernstein.
17 That's what he has pled.

18 BY MR. FEAMAN:

19 Q. Right. And you disagree with Mr. Ted
20 Bernstein on that, correct?

21 A. Yes.

22 MR. FEAMAN: Thank you.

23 CROSS (BRIAN O'CONNELL)

24 BY MR. ROSE:

25 Q. And notwithstanding that disagreement, you

1 still believe that --

2 MR. ROSE: I thought he was done, I am
3 sorry.

4 MR. ELIOT BERNSTEIN: Are you done, Peter?

5 MR. FEAMAN: No, I am not, Your Honor.

6 MR. ROSE: I am sorry, Your Honor.

7 THE COURT: That's okay. I didn't think
8 that you were trying to.

9 MR. FEAMAN: Okay. We'll rest.

10 THE COURT: All right.

11 MR. FEAMAN: Not rest. No more questions.

12 MR. ELIOT BERNSTEIN: Excuse me, Your
13 Honor.

14 BY MR. ROSE:

15 Q. And notwithstanding the fact that in
16 Illinois Ted as the trustee of this insurance trust
17 wants the money to go into this 1995 insurance
18 trust, right?

19 A. Right.

20 Q. And he has got an affidavit from Spallina
21 that says that's what Simon wanted, or he's got
22 some affidavit he filed, whatever it is? And you
23 have your own lawyer up there Stamos and Trucco,
24 right?

25 A. Correct.

1 Q. And not withstanding that, you still
2 believe that it's in the best interests of the
3 estate as a whole to have Ted to be the
4 administrator ad litem and me to represent the
5 estate given our prior knowledge and involvement in
6 the case, right?

7 A. It's based on maybe three things. It's
8 the prior knowledge and involvement that you had,
9 the amount of money, limited amount of funds that
10 are available in the estate to defend the action,
11 and then a number of the beneficiaries, or call
12 them contingent beneficiaries because they are
13 trust beneficiaries, have requested that we consent
14 to what we have just outlined, ad litem and your
15 representation, those items.

16 Q. And clearly you are adverse to
17 Mr. Stansbury, right?

18 A. Yes.

19 Q. But in this settlement letter your lawyer
20 in Chicago is copying Mr. Stansbury and Mr. Feaman
21 about settlement position, right?

22 A. Correct.

23 Q. Because that's the deal we have,
24 Mr. Stansbury is funding litigation in Illinois and
25 he gets to sort of be involved in it and have a say

1 in it, how it turns out? Because he stands to
2 improve his chances of winning some money if the
3 Illinois case goes the way he wants, right?

4 A. Well, he is paying, he is financing it.

5 Q. So he hasn't paid in full, right? You
6 know he is \$40,000 in arrears with the lawyer?

7 A. Approximately, yes.

8 Q. And there's an order that's already in
9 evidence, and the judge can hear that later, but --
10 okay. So --

11 THE COURT: I don't have an order in
12 evidence.

13 MR. ROSE: You do. If you look at Exhibit
14 Number 2, page --

15 THE COURT: Oh, in the Illinois?

16 MR. ROSE: Yes, they filed it in Illinois.

17 THE COURT: Oh, in the Illinois.

18 MR. ROSE: But it's in evidence now, Your
19 Honor.

20 THE COURT: Yes, I am sorry, I didn't
21 realize it was in --

22 MR. ROSE: I am sorry.

23 THE COURT: No, no, that's okay.

24 MR. ROSE: I was going to save it for
25 closing.

1 THE COURT: In the Illinois is the Florida
2 order?

3 MR. ROSE: Yes.

4 THE COURT: Okay. That's the only thing I
5 missed.

6 MR. ROSE: Right.

7 BY MR. ROSE:

8 Q. The evidence it says for the reasons and
9 subject to the conditions stated on the record
10 during the hearing, all fees and costs incurred,
11 including for the curator in connection with his
12 work, and any counsel retained by the administrator
13 ad litem will initially be borne by William
14 Stansbury. You have seen that order before, right?

15 A. I have seen the order, yes.

16 Q. And the Court will consider a petition to
17 pay back Mr. Stansbury. If the estate wins in
18 Illinois, we certainly have to pay back
19 Mr. Stansbury first because he has fronted all the
20 costs, right?

21 A. Absolutely.

22 Q. Okay. So despite that order, you have
23 personal knowledge that he is \$40,000 in arrears
24 with the Chicago counsel?

25 A. I have knowledge from my counsel.

1 Q. Okay. That you shared with me, though?

2 A. Yes. It's information everyone has.

3 Q. Okay.

4 A. Should have.

5 Q. Would you agree with me that you have
6 spent almost no money defending the estate so far
7 in the Stansbury litigation?

8 A. Well, there's been some money spent. I
9 wouldn't say no money. I have to look at the
10 billings to tell you.

11 Q. Very minimal. Minimal?

12 A. Not a significant amount.

13 Q. Okay. Minimal in comparison to what it's
14 going to cost to try the case?

15 A. Yes.

16 Q. Have you had the time to study all the
17 documents, the depositions, the exhibits, the tax
18 returns, and all the stuff that is going to need to
19 be dealt with in this litigation?

20 A. I have reviewed some of them. I can't say
21 reviewed all of them because I would have to
22 obviously have the records here to give you a
23 correct answer on that.

24 Q. And you bill for your time when you do
25 that?

1 A. Sure.

2 Q. And if Ted is not the administrator ad
3 litem, you are going to have to spend money to sit
4 through a two-week trial maybe?

5 A. Yes.

6 Q. You are not willing to do that for free,
7 are you?

8 A. No.

9 Q. Okay. Would you agree with me that you
10 know nothing about the relationship, personal
11 knowledge, between Ted, Simon and Bill Stansbury,
12 personal knowledge? Were you in any of the
13 meetings between them?

14 A. No, not personal knowledge.

15 Q. Were you involved in the business?

16 A. No.

17 Q. Do you have any idea who the accountant --
18 well, you know who the accountant was because they
19 have a claim. Have you ever spoken to the
20 accountant about the lawsuit?

21 A. No.

22 Q. Have you ever interviewed any witnesses
23 about the lawsuit independent of maybe talking to
24 Mr. Stansbury and saying hello and saying hello to
25 Ted?

1 A. Or talking to different parties, different
2 family members.

3 Q. Now, did you sign a waiver, written waiver
4 form?

5 A. Yes.

6 Q. And did you read it before you signed it?

7 A. Yes.

8 Q. Did you edit it substantially and put it
9 in your own words?

10 A. Yes.

11 Q. Much different than the draft I prepared?

12 A. Seven pages shorter.

13 MR. ROSE: Okay. I move Exhibit 1 into
14 evidence. This is the three-page PR statement
15 of his position.

16 MR. FEAMAN: Objection, it's cumulative
17 and it's hearsay.

18 THE COURT: This is his affidavit, his
19 sworn consent?

20 MR. ROSE: Right. It's not cumulative.
21 It's the only evidence of written consent.

22 THE COURT: How is it cumulative? That's
23 what I was going to say.

24 MR. FEAMAN: He just testified as to why
25 he thinks there's no conflict.

1 THE COURT: But a written consent is
2 necessary under the rules, and that's been
3 raised as an issue.

4 MR. FEAMAN: The rule says that --

5 THE COURT: I mean, whether you can waive
6 is an issue, and I think that specifically
7 under four point -- I am going to allow it.
8 Overruled.

9 MR. ELIOT BERNSTEIN: Can I object?

10 THE COURT: Sure.

11 MR. ELIOT BERNSTEIN: That just came on
12 February 9th to me.

13 THE COURT: Okay.

14 MR. ELIOT BERNSTEIN: They didn't copy me
15 on this thing. I just saw it.

16 THE COURT: Okay.

17 MR. ELIOT BERNSTEIN: Which kind of
18 actually exposes a huge fraud going on here.
19 But I will get to that when I get a moment. It
20 shouldn't be in. I hardly had time to review
21 it. And I will explain some of that in a
22 moment, but.

23 THE COURT: I am overruling that
24 objection. All documents were supposed to be
25 provided by the Court pursuant to my order by

1 February 9th. This is a waiver of any
2 potential conflict that's three pages. And if
3 you got it February 9th you had sufficient
4 time. So overruled.

5 I am not sure what to call this,
6 petitioner's or respondent's, in this case. I
7 am going to mark these as respondent's.

8 MR. ROSE: You can call it Trustee's 1.

9 THE COURT: I could do that. Let me mark
10 it.

11 (Trustee's Exb. No. 1, Personal
12 Representative Position Statement.)

13 BY MR. ROSE:

14 Q. I think you alluded to it. But after the
15 mediation that was held in July, there were some
16 discussions with the beneficiaries, including Judge
17 Lewis who's a guardian ad litem for three of the
18 children, correct?

19 A. Yes.

20 Q. And you were asked if you would consent to
21 this procedure of having me come in as counsel
22 because --

23 THE COURT: I know you are going fast, but
24 you didn't pre-mark it, so you got to give me a
25 second to mark it.

1 MR. ROSE: Oh, I am sorry.

2 THE COURT: That's okay.

3 I have to add it to my exhibit list.

4 You may proceed, thank you.

5 BY MR. ROSE:

6 Q. You agreed to this procedure that I would
7 become counsel and Ted would become the
8 administrator ad litem because you thought it was
9 in the best interests of the estate as a whole,
10 right?

11 A. For the reasons stated previously, yes.

12 Q. And other than having to go through this
13 expensive procedure to not be disqualified, you
14 still agree that it's in the best interests of the
15 estate that our firm be counsel and that Ted
16 Bernstein be administrator ad litem?

17 A. For the defense of the Stansbury civil
18 action, yes.

19 Q. And that's the only thing we are asking to
20 get involved in, correct?

21 A. Correct.

22 Q. Now, you were asked if you had a fiduciary
23 duty to the interested persons including
24 Mr. Stansbury, right?

25 A. I was asked that, yes.

1 Q. So if you have a fiduciary duty to him,
2 why don't you just stipulate that he can have a two
3 and a half million dollar judgment and give all the
4 money in the estate to him? Because just because
5 you have a duty, you have multiple duties to a lot
6 of people, correct?

7 A. Correct.

8 Q. And you have to balance those duties and
9 do what you believe in your professional judgment
10 is in the best interests of the estate as a whole?

11 A. Correct.

12 Q. And you have been a lawyer for many years?

13 A. Yes.

14 Q. Correct? And you have served as trustee
15 as a fiduciary, serving as a fiduciary,
16 representing a fiduciary, opposing fiduciary,
17 that's been the bulk of your practice, correct?

18 A. Yes, yes and yes.

19 MR. ROSE: Nothing further.

20 THE COURT: Redirect?

21 MR. FEAMAN: Yes.

22 THE COURT: Wait a minute. Let me let
23 Mr. Eliot Bernstein ask any questions.

24 MR. ELIOT BERNSTEIN: Can I ask him
25 questions at one point?

1 THE COURT: You can.

2 MR. ELIOT BERNSTEIN: Your Honor, first, I
3 just wanted to give you this and apologize for
4 being late.

5 THE COURT: Don't worry about it. Okay.

6 MR. ELIOT BERNSTEIN: Well, no, it's
7 important so you understand some things.

8 I have got ten steel nails in my mouth so
9 I speak a little funny right now. It's been
10 for a few weeks. I wasn't prepared because I
11 am on a lot of medication, and that should
12 explain that. But I still got some questions
13 and I would like to have my....

14 MR. ROSE: I would just state for the
15 record that he has been determined to have no
16 standing in the estate proceeding as a
17 beneficiary.

18 THE COURT: I thought that was in the
19 Estate of Shirley Bernstein.

20 MR. ROSE: It's the same ruling --
21 (Overspeaking.)

22 THE COURT: Please, I will not entertain
23 more than one person.

24 MR. ROSE: By virtue of Judge Phillips'
25 final judgment upholding the documents, he is

1 not a beneficiary of the residuary estate. He
2 has a small interest as a one-fifth beneficiary
3 of tangible personal property, which is --

4 THE COURT: I understand.

5 MR. ROSE: Yes, he has a very limited
6 interest in this. And I don't know that he --

7 THE COURT: Wouldn't that give him
8 standing, though?

9 MR. ROSE: Well, I don't think for the
10 purposes of the disqualification by Mr. Feaman
11 it wouldn't.

12 THE COURT: Well, that would be your
13 argument, just like you are arguing that
14 Mr. Stansbury doesn't have standing to
15 disqualify you, correct?

16 MR. ROSE: Right.

17 THE COURT: So that's an argument you can
18 raise.

19 You may proceed.

20 CROSS (BRIAN O'CONNELL)

21 BY MR. ELIOT BERNSTEIN:

22 Q. Mr. O'Connell, am I a devisee of the will
23 of Simon?

24 MR. ROSE: Objection, outside the scope of
25 direct.

1 THE COURT: That is true. Sustained.

2 That was not discussed.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Do I have standing in the Simon estate
5 case --

6 MR. ROSE: Objection, calls for a legal
7 conclusion.

8 BY MR. ELIOT BERNSTEIN:

9 Q. -- in your opinion?

10 MR. ELIOT BERNSTEIN: Well, he is a
11 fiduciary.

12 THE COURT: He was asked regarding his
13 thoughts regarding a claimant, so I will allow
14 it. Overruled.

15 THE WITNESS: You have standing in certain
16 actions by virtue of your being a beneficiary
17 of the tangible personal property.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Okay, so beneficiary?

20 A. Right.

21 Q. Okay. Thank you. Which will go to the
22 bigger point of the fraud going on here, by the
23 way.

24 Are you aware that Ted Bernstein is a
25 defendant in the Stansbury action?

1 A. Which Stansbury action?

2 Q. The lawsuit that Mr. Rose wants Ted to
3 represent the estate in?

4 A. I'd have to see the action, see the
5 complaint.

6 Q. You have never seen the complaint?

7 A. I have seen the complaint, but I want to
8 make sure it's the same documents.

9 Q. So Ted --

10 THE COURT: You must allow him to answer
11 the questions.

12 MR. ELIOT BERNSTEIN: I am sorry, okay.

13 THE WITNESS: I would like to see if you
14 are referring to Ted Bernstein being a
15 defendant, if someone has a copy of it.

16 MR. ROSE: Well, I object. Mr. Feaman
17 knows that he has dismissed the claims against
18 all these people, and this is a complete waste.
19 We have a limited amount of time and these are
20 very important issues.

21 MR. ELIOT BERNSTEIN: Excuse me.

22 THE COURT: Wait.

23 MR. ROSE: These defendants they are
24 dismissed, they are settled. Mr. Feaman knows
25 because he filed the paper in this court.

1 THE COURT: Mr. Rose.

2 MR. ROSE: It's public record.

3 THE COURT: Mr. Rose, you are going to
4 have to let go of the -- it's going to finish
5 by 4:30.

6 MR. ROSE: Okay.

7 THE COURT: Because I know that's why you
8 are objecting, and you know I have to allow --

9 MR. ROSE: Okay.

10 THE COURT: All right? The legal
11 objection is noted. Mr. O'Connell can respond.
12 He asked to see a document.

13 BY MR. ELIOT BERNSTEIN:

14 Q. I would like to show you --

15 THE DEPUTY: Ask to approach, please.

16 MR. ELIOT BERNSTEIN: Oh, ask to.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Can I approach you?

19 THE COURT: What do you want to approach
20 with?

21 MR. ELIOT BERNSTEIN: I just want to show
22 him the complaint.

23 THE COURT: Complaint? As long as you
24 show the other side what you are approaching
25 with.

1 MR. ELIOT BERNSTEIN: It's your second
2 amended complaint.

3 MR. ROSE: No objection.

4 BY MR. ELIOT BERNSTEIN:

5 Q. Is Ted Bernstein a defendant in that
6 action?

7 A. I believe he was a defendant, past tense.

8 Q. Okay. Let me ask you a question. Has the
9 estate that you are in charge of settled with Ted
10 Bernstein?

11 A. In connection with this action?

12 MR. ROSE: Objection, relevance.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Yes, in connection with this action?

15 THE COURT: Which action?

16 MR. ELIOT BERNSTEIN: The Stansbury
17 lawsuit that Ted wants to represent.

18 THE COURT: If he can answer.

19 MR. ELIOT BERNSTEIN: This is the conflict
20 that's the elephant in the room.

21 THE COURT: No, no, no.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: I didn't allow anyone else to
24 have any kind of narrative.

25 MR. ELIOT BERNSTEIN: Sorry.

1 THE COURT: Ask a question and move on.

2 MR. ELIOT BERNSTEIN: Got it.

3 THE COURT: Mr. O'Connell, if you can
4 answer the question, answer the question.

5 THE WITNESS: Sure. Thanks, Your Honor.
6 I am going to give a correct answer. We have
7 not had a settlement in connection with Ted
8 Bernstein in connection with what I will call
9 the Stansbury independent or civil action.

10 BY MR. ELIOT BERNSTEIN:

11 Q. Okay. So that lawsuit --

12 A. The estate has not entered into such a
13 settlement.

14 Q. So Stansbury or Ted Bernstein is still a
15 defendant because he sued the estate and the estate
16 hasn't settled with him and let him out?

17 A. The estate prior to -- I thought you were
18 talking about me, my involvement. Prior to my
19 involvement there was a settlement.

20 Q. With Shirley's trust, correct?

21 A. No, I don't recall there being --

22 Q. Well, you just --

23 THE COURT: Wait. You have to let him
24 answer.

25 MR. ELIOT BERNSTEIN: Sorry, okay.

1 THE WITNESS: I recall there being a
2 settlement again prior to my involvement with
3 Mr. Stansbury and Ted Bernstein.

4 BY MR. ELIOT BERNSTEIN:

5 Q. But not the estate? The estate as of
6 today hasn't settled the case with Ted?

7 A. The estate, the estate, my estate, when I
8 have been personal representative, we are not in
9 litigation with Ted. We are in litigation with
10 Mr. Stansbury. That's where the disconnect is.

11 Q. In the litigation Ted is a defendant,
12 correct?

13 A. I have to look at the pleadings. But as I
14 recall the claims against Ted Bernstein were
15 settled, resolved.

16 Q. Only with Mr. Stansbury in the Shirley
17 trust and individually.

18 So let me ask you --

19 THE COURT: You can't testify.

20 MR. ELIOT BERNSTEIN: Okay.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Ted Bernstein, if you are representing the
23 estate, there's a thing called shared liability,
24 meaning if Ted is a defendant in the Stansbury
25 action, which he is, and he hasn't been let out by

1 the estate, then Ted Bernstein coming into the
2 estate can settle his liability with the estate.
3 You following? He can settle his liability by
4 making a settlement that says Ted Bernstein is out
5 of the lawsuit, the estate is letting him out, we
6 are not going to sue him. Because the estate
7 should be saying that Ted Bernstein and Simon
8 Bernstein were sued.

9 THE COURT: I am sorry, Mr. Bernstein, I
10 am trying to give you all due respect.

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: But is that a question?

13 MR. ELIOT BERNSTEIN: Yeah, okay.

14 THE COURT: I can't --

15 MR. ELIOT BERNSTEIN: I will break it
16 down, because it is a little bit complex, and I
17 want to go step by step.

18 THE COURT: Thank you. And we will be
19 concluding in six minutes.

20 MR. ELIOT BERNSTEIN: Then I would ask for
21 a continuance.

22 THE COURT: We will be concluding in six
23 minutes.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: Ask what you can.

1 MR. ELIOT BERNSTEIN: Okay.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Ted Bernstein was sued by Mr. Stansbury
4 with Simon Bernstein; are you aware of that?

5 A. I am aware of the parties to the second
6 amended complaint that you have handed me.

7 Q. Okay.

8 A. At that point in time.

9 Q. So both those parties share liability if
10 Stansbury wins, correct?

11 MR. ROSE: Objection.

12 THE WITNESS: No.

13 THE COURT: Hold on.

14 MR. ROSE: Objection, calls for a legal
15 conclusion, misstates the law and the facts.

16 MR. ELIOT BERNSTEIN: Well, if
17 Mr. Stansbury won his suit and was suing Ted
18 Bernstein --

19 THE COURT: Hold on one second. Hold on,
20 please. You have got to let me rule. I don't
21 mean to raise my voice at all.

22 But his question in theory is appropriate.
23 He says they are both defendants, they share
24 liability. Mr. O'Connell can answer that. The
25 record speaks for itself.

1 THE WITNESS: And the problem, Your Honor,
2 would be this, and I will answer the question,
3 but I am answering it in the blind without all
4 the pleadings. Because as I -- I will give you
5 the best answer I can without looking at the
6 pleadings.

7 THE COURT: You can only answer how you
8 can.

9 THE WITNESS: As I recall the state of
10 this matter, sir, this is the independent
11 action, the Stansbury action, whatever you want
12 to call it, Ted Bernstein is no longer a
13 defendant due to a settlement.

14 BY MR. ELIOT BERNSTEIN:

15 Q. He only settled with Mr. Stansbury,
16 correct? The estate, as you said a moment ago, has
17 not settled with Ted Bernstein as a defendant. So
18 the estate could be --

19 THE COURT: Mr. Bernstein, Mr. Bernstein.

20 MR. ELIOT BERNSTEIN: Uh-huh.

21 THE COURT: From the pleadings the Court
22 understands there is not a claim from the
23 estate against Ted Bernstein in the Stansbury
24 litigation. Is the Court correct?

25 MR. ELIOT BERNSTEIN: The Court is

1 correct.

2 THE COURT: Okay.

3 MR. ELIOT BERNSTEIN: But the estate, if
4 Mr. O'Connell was representing the
5 beneficiaries properly, should be suing Ted
6 Bernstein because the complaint alleges that he
7 did most of the fraud against Mr. Stansbury,
8 and my dad was just a partner.

9 THE COURT: Okay. So that's your
10 argument, I understand.

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: But please ask the questions
13 pursuant to the pleadings as they stand.

14 MR. ELIOT BERNSTEIN: Okay.

15 BY MR. ELIOT BERNSTEIN:

16 Q. Could the estate sue Ted Bernstein since
17 he is a defendant in the action who has shared
18 liability with Simon Bernstein?

19 MR. ROSE: Objection, misstates -- there's
20 no such thing as shared liability.

21 THE COURT: He can answer the question if
22 he can.

23 MR. ROSE: Okay.

24 THE WITNESS: One of the disconnects here
25 is that he is not a current beneficiary in the

1 litigation as you just stated.

2 MR. ELIOT BERNSTEIN: There's no
3 beneficiary in that litigation.

4 THE COURT: Okay. You can't answer again.

5 MR. ELIOT BERNSTEIN: Oh.

6 THE COURT: Remember, you have got to ask
7 questions.

8 THE WITNESS: Defendant, Your Honor, wrong
9 term. He is not a named defendant at this
10 point due to a settlement.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Could the estate sue back a
13 counter-complaint to Ted Bernstein individually who
14 is alleged to have committed most of the egregious
15 acts against Mr. Stansbury? He is a defendant in
16 the action. Nobody settled with him yet from the
17 estate. Could you sue him and say that half of the
18 liability, at least half, if not all, is on Ted
19 Bernstein?

20 A. Anyone, of course, theoretically could sue
21 anyone for anything. What that would involve would
22 be someone presenting in this case me the facts,
23 the circumstances, the evidence that would support
24 a claim by the estate against Ted Bernstein. That
25 I haven't seen or been told.

1 Q. Okay. Mr. Stansbury's complaint, you see
2 Ted and Simon Bernstein were sued. So the estate
3 could meet the argument, correct, that Ted
4 Bernstein is a hundred percent liable for the
5 damages to Mr. Stansbury, correct?

6 A. I can't say that without having all the
7 facts, figures, documents --

8 Q. You haven't read this case?

9 A. -- in front of me. Not on that level.
10 Not to the point that you are -- not to the point
11 that you are --

12 Q. Let me ask you a question.

13 A. -- trying to.

14 MR. ROSE: Your Honor?

15 BY MR. ELIOT BERNSTEIN:

16 Q. Let me ask you a question.

17 THE COURT: Hold on one second, sir.

18 MR. ROSE: He is not going to finish in
19 two minutes and there are other things we need
20 to address, if we have two minutes left. So
21 can he continue his cross-examination at the
22 continuance?

23 THE COURT: March we have another hearing.

24 MR. ELIOT BERNSTEIN: Can we continue this
25 hearing?

1 THE COURT: Yes. But I am going to give
2 you a limitation. You get as much time as
3 everybody else has.

4 MR. ELIOT BERNSTEIN: That's fine.

5 THE COURT: You have about ten more
6 minutes when we come back.

7 MR. ELIOT BERNSTEIN: Okay. Can I submit
8 to you the binder that I filed late?

9 THE COURT: Sure.

10 MR. ELIOT BERNSTEIN: (Overspeaking).

11 THE COURT: As long as it has been -- has
12 it been filed with the Court and has everybody
13 gotten a copy?

14 MR. ELIOT BERNSTEIN: I sent them copies
15 and I brought them copies today.

16 THE COURT: As long as everybody else gets
17 a copy --

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: -- you can submit the binder.
20 Just give it to my deputy.

21

22 (Brian O'Connell excerpt concluded.)

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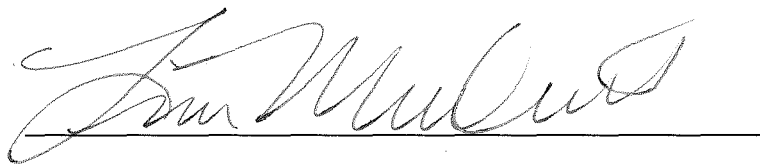
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The State of Florida
County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I
was authorized to and did stenographically report
the foregoing proceedings, and that the excerpted
transcript is a true record.

Dated February 21, 2017.



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