

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

IN RE:  
ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable  
ROSEMARIE SCHER

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

Reported by:  
Lisa Mudrick, RPR, FPR  
Notary Public, State of Florida

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3 BE IT REMEMBERED that the following  
4 proceedings were had in the above-styled and  
5 numbered cause in the Palm Beach County Courthouse  
6 north branch, City of Palm Beach Gardens, County of  
7 Palm Beach, in the State of Florida, by Lisa  
8 Mudrick, RPR, FPR, before the Honorable ROSEMARIE  
9 SCHER, Judge in the above-named Court, on  
10 February 16, 2017, to wit:

11 - - -

12 THE COURT: The first thing we are going  
13 to do, and this is more for the Court, starting  
14 to the left in the first pew behind, we are  
14:39:10 15 going to make our appearances and go around,  
16 and ending with Judge Lewis.

17 MR. FEAMAN: Thank you, Your Honor. Peter  
18 Feaman on behalf of the movant William  
19 Stansbury. With me today is Jeff Royer from my  
14:39:22 20 office and also Nancy Guffey.

21 THE COURT: Okay.

22 MR. ROSE: Good afternoon, Your Honor.  
23 Alan Rose. I represent Ted S. Bernstein as  
24 successor trustee of Simon's trust and  
14:39:37 25 Shirley's trust.

1 THE COURT: Okay.

2 MR. ROSE: I represent him as the movant  
3 seeking to be appointed as administrator ad  
4 litem to defend the estate in the independent  
14:39:47 5 action.

6 And Mr. O'Connell is here. And with me is  
7 Michael Kranz, my associate, at the end. And I  
8 will let Mr. O'Connell introduce himself.

9 MR. O'CONNELL: Good afternoon, Your  
14:39:58 10 Honor. Brian O'Connell, PR of the Simon  
11 Bernstein Estate.

12 JUDGE LEWIS: Diana Lewis, guardian ad  
13 litem for the Eliot Bernstein children.

14 THE COURT: Okay. A few ground rules. I  
14:40:18 15 have my order on this case management  
16 conference, and that's the order in which we  
17 will proceed, okay? Does everyone have a copy  
18 of that order? I also have an extra copy in  
19 case somebody needs it.

14:40:35 20 So we will begin with Stansbury's motion  
21 to vacate in part the Court's ruling on  
22 September 7, 2016, and/or any subsequent order  
23 permitting the Estate of Simon Bernstein to  
24 retain Alan Rose.

14:40:53 25 And I am just verifying the correct docket

1 entry. And it is noted on the case management  
2 conference as docket entry 497. That is  
3 incorrect. That's why I was double checking.  
4 It's 496. And I knew that because I just  
14:41:21 5 looked it up.

6 All right. In the order one of the things  
7 I had said was to get all materials to me by  
8 February 9th. Thank you. You can see I am  
9 surrounded by notebooks. I received a ton of  
14:41:35 10 materials. The only thing I would request is  
11 from now on when I say February 9th, I mean  
12 February 9th. I received two more -- from  
13 everybody, from both sides, just so everybody  
14 knows, I received documents Monday. From now  
14:41:51 15 on if you don't meet the deadline you will have  
16 to come into court with them and provide them  
17 and tell me why you didn't meet the deadline.

18 I am going to put some firm rules on these  
19 parties, and I don't think I will have to  
14:42:02 20 explain why, just going through some of this  
21 case.

22 Number two, from this point forward, and I  
23 plan to include this in any order I issue, in  
24 preparing for this it was very difficult to get  
14:42:16 25 a grasp as to when the pleadings to the same

1 thing ended. Because we've got the original  
2 motion or petition, then we've got the  
3 response, then we've got the reply, then we've  
4 got the supplement, then we've got the second  
14:42:28 5 supplement to the response. Then we have an  
6 answer to the second supplement. No more.

7 Petition or motion, response, reply, end.  
8 If you desperately feel that there must be  
9 something you must bring to the Court's  
14:42:40 10 attention prior to the hearing, come in and ask  
11 me for permission.

12 Because, quite frankly, the Court read as  
13 much as humanly possible given the fact that  
14 with all due respect it's not my only case.  
14:42:51 15 And I am very compulsive, so I read as much as  
16 I could. But some of it was -- if I thought  
17 every single new piece of paper had some gem of  
18 nuance that was different from all the other  
19 prior, I might not be putting this rule. But a  
14:43:05 20 lot of it was just repeating the same thing.

21 And I know a lot of it, which is why I  
22 completely understand, had to do with the fact  
23 that we need to get this judge up to speed,  
24 which I appreciate. Okay. From this point now  
14:43:18 25 I will be the original judge reading, all



1 sides, petition or motion, response, reply.

2 Okay.

3 Last and final housekeeping. I will make  
4 no -- how do I put this? You all know that the  
14:43:42 5 other half of my division is family and  
6 divorce, an area where people get truly bent  
7 out of shape as well and can be exceedingly  
8 nasty to each other because you are going  
9 through a horrible time.

14:44:01 10 You all are lawyers. I do not expect from  
11 this point forward to see any direct -- now, an  
12 appropriate motion is an appropriate motion. I  
13 am excluding in a motion something you feel  
14 justified to do. But in the pleadings, state  
14:44:19 15 the facts. I don't want the adjectives, okay?  
16 I can figure -- you know, state the facts, tell  
17 me what happened. And I don't want the  
18 adjectives that are following back and forth,  
19 which I won't deal with. Anyone who has  
14:44:35 20 practiced in front of me knows me. You can do  
21 anything on your position within the bounds of  
22 the law. I will not accept unprofessionalism  
23 even in pleadings, even though you are  
24 professional personally here.

14:44:45 25 Okay. That takes care of that. And

1 that's kind of a general rule I set forth in  
2 all of my box cases in family too. So don't  
3 anyone take it personally. That's something I  
4 say at the get-go because as things proceed  
14:44:57 5 people get mad. Remember, you are the lawyers,  
6 not the clients, although I do know we have  
7 some clients here.

8 Okay. So since it is, let me pull up on  
9 Cap, Mr. Feaman's motion to vacate, he will  
14:45:10 10 begin to have the floor.

11 MR. FEAMAN: Thank you, Your Honor.

12 THE COURT: Sorry, I just hit something  
13 bad on my computer. I do take notes on my  
14 computer. The reason we must end at 4:30 is  
14:45:24 15 because I do not look at my e-mail or my  
16 emergency motions, and I am signing judge,  
17 which must be sent in before 5:00, okay? So I  
18 give you my full attention, but we end prompt  
19 at 4:30 because I am signing judge. Yesterday  
14:45:37 20 I think I had four by the time I got back  
21 there.

22 So let me -- here it is. Perfect. Thank  
23 you again for the notebooks with the tab  
24 indexes. Truly a time saver for the Court.

14:45:48 25 You may proceed, Mr. Feaman, thank you.

1 MR. FEAMAN: Thank you, Your Honor. May  
2 it please the Court. Peter Feaman on behalf of  
3 William Stansbury. My remarks are by way of an  
4 opening statement at this time, Your Honor, in  
14:45:59 5 connection with Your Honor's order, case  
6 management conference and order specially  
7 setting hearings.

8 As Your Honor noted, we are dealing with  
9 Stansbury's motion, docket entry 496, and  
14:46:13 10 Stansbury's related motion to disqualify Alan  
11 Rose and his law firm, docket entry 508.

12 The story and premise, Your Honor, for  
13 this is that the personal representative of the  
14 Simon Bernstein estate, Brian O'Connell, has a  
14:46:37 15 fiduciary duty to all interested persons of the  
16 estate. And that's found in Florida Statute  
17 733.602(1) where it states a personal  
18 representative is a fiduciary, and in the last  
19 sentence, a personal representative shall use  
14:46:56 20 the authority conferred by this code, the  
21 authority in the will, if any, and the  
22 authority of any order of the Court, quote, for  
23 the best interests of interested persons,  
24 including creditors, close quote.

14:47:13 25 Mr. Stansbury is an interesting --

1 interested person to the Estate of Simon  
2 Bernstein as well as a claimant in this case.

3 Interesting -- interested persons -- yes,  
4 he is an interesting person. But interested  
14:47:28 5 persons is defined, Your Honor, in Florida  
6 Statute 731.201(23) which states that an  
7 interested person means, quote, any person who  
8 may reasonably be expected to be affected by  
9 the outcome of the particular proceeding  
14:47:51 10 involved.

11 The evidence will show that Mr. Stansbury  
12 clearly falls into that category.

13 The second part of our presentation, Your  
14 Honor, will then involve the presentation of  
14:48:04 15 evidence to show that in fact there is a  
16 conflict of interest. And then part three --  
17 of conflict of interest of Mr. Rose and his law  
18 firm representing the estate in this case.

19 And thirdly, that the conflict of  
14:48:21 20 interest, the evidence will show, is not  
21 waivable.

22 The parties' chart, which we did and  
23 submitted to Your Honor with our package last  
24 week, is the color chart, I have an extra copy  
14:48:33 25 if Your Honor does not have it.

1 THE COURT: I believe it is --

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

3 THE COURT: I believe it is in -- I know I  
4 have it. And I know I had it. Oh, got it. I  
14:49:06 5 knew it was in one of my notebooks. Thank you.

6 MR. FEAMAN: Thank you.

7 Now, the summation of the position of the  
8 parties in connection with what the evidence  
9 will show, Your Honor, shows that we are here  
10 obviously on the Estate of Simon Bernstein, and  
11 the proposed attorney is Alan Rose. That's the  
12 box at the top. The two proceedings that are  
13 engaged with regard to the estate right now is  
14 the Stansbury litigation against the estate  
14:49:17 15 which is wherein it is proposed that Mr. Rose  
16 and his law firm defend the estate in that  
17 case.

18 And more significantly, Your Honor,  
19 because it really wouldn't matter what the  
14:49:49 20 other litigation is that Mr. Rose is being  
21 asked to defend, because more significantly is  
22 the orange box on the right, which I will call  
23 for the purposes of this litigation the Chicago  
24 litigation. And in that action there are a  
14:50:05 25 number of plaintiffs, one of whom is Ted

1 Bernstein individually. And the evidence will  
2 show in this case that Alan Rose represents Ted  
3 Bernstein individually, not only in other  
4 matters, but he actually appeared in a  
14:50:27 5 deposition on behalf of Mr. Bernstein  
6 individually in that Chicago litigation, made  
7 objections to questions. And the evidence will  
8 show that he actually on a number of occasions  
9 instructed Mr. Bernstein not to answer certain  
14:50:47 10 questions that were directed to Mr. Bernstein  
11 by counsel for the Estate of Simon Bernstein.

12 In that Chicago litigation we will present  
13 to Your Honor certified copies of pleadings  
14 from the Chicago litigation that shows the  
14:51:04 15 following: That Ted Bernstein, among others,  
16 sued an insurance company to recover  
17 approximately \$1.7 million dollars of life  
18 insurance proceeds. Mr. Stansbury became aware  
19 that that litigation was going on, and moved to  
14:51:23 20 intervene in that lawsuit. Mr. Stansbury was  
21 denied.

22 So the evidence will show that he was able  
23 to prevail upon Ben Brown, and Ben Brown moved  
24 on behalf of the estate when he was curator to  
14:51:37 25 intervene. And in fact the Estate of Simon

1 Bernstein --

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

3 THE COURT: Legal objection?

4 MR. ROSE: That he is completely  
14:51:48 5 misstating the record of this Court and the  
6 proceedings before Judge Colin.

7 THE COURT: You will have an opportunity  
8 to respond and explain it to me.

9 MR. FEAMAN: Thank you, Your Honor.

14:51:56 10 And the evidence will show that the Estate  
11 of Simon Bernstein is now an intervenor  
12 defendant, and they filed their own intervenor  
13 complaint seeking to recover that same \$1.7  
14 million dollars that Ted Bernstein is seeking  
14:52:13 15 to recover as a plaintiff in that same action.

16 So the evidence will show that Mr. Rose  
17 represents Ted Bernstein. Ted Bernstein is  
18 adverse to the estate. And now Mr. Rose seeks  
19 to represent the estate to which his present  
14:52:35 20 client, Ted Bernstein, is adverse in the  
21 Stansbury litigation, which is why we are  
22 there. Now --

23 THE COURT: Wait. Slow down one second.

24 MR. FEAMAN: Sure.

14:52:44 25 THE COURT: That is something you repeated

1 several times in your motion, but I want you to  
2 state it one more time for me slowly.

3 MR. FEAMAN: Yes. The Chicago litigation  
4 one of the plaintiffs is Ted Bernstein  
14:52:54 5 individually. The Estate of Simon Bernstein  
6 has now intervened in that action. And Ted  
7 Bernstein as plaintiff is seeking to recover  
8 \$1.7 million dollars.

9 Adversely, the Estate of Simon Bernstein  
14:53:09 10 seeks to recover that same \$1.7 million dollars  
11 and is arguing up there that it should not go  
12 to the plaintiffs but should go to the estate.

13 So they are one hundred percent adverse,  
14 that would be Ted Bernstein and the Estate of  
14:53:27 15 Simon Bernstein.

16 And Mr. Rose represents Ted Bernstein, and  
17 now seeks to represent the estate in a  
18 similar -- in an action against the estate, and  
19 they are both going on at the same time. Thus,  
14:53:44 20 the conflict is an attorney cannot represent a  
21 plaintiff in an action, whether he is counsel  
22 of record in that action or not, that's adverse  
23 to the Estate of Simon Bernstein, and at the  
24 same time defend the Estate of Simon Bernstein  
14:54:03 25 when he has a client that is seeking to deprive



1 the estate of \$1.7 million dollars.

2 Now, if Ted Bernstein and the other  
3 plaintiffs in that case were monetary  
4 beneficiaries of the estate, I suppose it could  
14:54:21 5 be a waivable conflict. However, that's not  
6 the case.

7 That drops us to the third box on the --  
8 the fourth box on the chart, which is the green  
9 one, which deals with the Simon Bernstein  
14:54:33 10 Trust. The Simon Bernstein Trust is the  
11 residual beneficiary of the Simon Bernstein  
12 estate. And once the estate captures that  
13 money as a result of the Chicago litigation, if  
14 it does, then the trust will eventually accede  
14:54:54 15 to that money after payment of creditors, one  
16 of which would be or could be my client.

17 And who are the beneficiaries of the  
18 trust? So we have the one beneficiary of the  
19 Simon Bernstein estate, the Simon Bernstein  
14:55:06 20 Trust, and who are the beneficiaries of the  
21 trust? Not the children of Simon Bernstein.  
22 Not Ted Bernstein. But the grandchildren of  
23 Simon Bernstein, some of whom are adults and  
24 some of whom are minors in this case. Such  
14:55:22 25 that if the estate prevails in the Chicago

1 litigation, even assuming Mr. Stansbury wasn't  
2 around making his claim against the estate, if  
3 all of the distributions were finally made when  
4 the estate wins that Chicago litigation, none  
14:55:37 5 of it will ever end up in the hands of Ted  
6 Bernstein as plaintiff. The only way  
7 Mr. Bernstein can get that money is to prevail  
8 as a plaintiff in the Chicago litigation.  
9 Mr. Rose represents Mr. Bernstein, and  
14:55:54 10 therefore there's a conflict, and it's a  
11 non-waivable conflict.

12 And in my final argument when I discuss  
13 the law, I will suggest to the Court that the  
14 conflict that's presented before the Court is  
14:56:11 15 in fact completely non-waivable.

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

14:56:25 20 MR. FEAMAN: I filed it as soon as I  
21 became aware that there was a conflict. For  
22 example, when the order that we are seeking to  
23 set aside was entered, I was not aware that the  
24 Rose law firm represented Ted Bernstein in that  
14:56:40 25 Chicago action. My client then brought it to

1 my attention. And as soon as we did that, I  
2 moved to set aside the order because it became  
3 apparent that there was a clear conflict.

4 Because initially, as I told Brian  
14:56:54 5 O'Connell, Mr. Stansbury can't dictate who the  
6 estate wishes to hire as its attorneys unless,  
7 as it turns out, that attorney represents  
8 interests that are adverse to the estate. And  
9 that's when we filed our motion to set aside.

14:57:14 10 I got possession of the deposition that  
11 will be offered today. The deposition revealed  
12 to me what I have summarized here today, this  
13 afternoon, and then we moved to set aside the  
14 order. And then we thought that wasn't enough,  
14:57:30 15 we should do a formal motion to disqualify,  
16 which we did.

17 The chronology of the filings, the motion  
18 to vacate, I am not sure exactly when that was  
19 filed, but it wasn't too long after the entry  
14:57:46 20 of the September 7th order, and then the motion  
21 to disqualify came after that. And --

22 THE COURT: It was filed October 7th.

23 MR. FEAMAN: Pardon me?

24 THE COURT: It was filed October 7th.

14:57:56 25 MR. FEAMAN: Okay. The motion to vacate?

1 THE COURT: Yes.

2 MR. FEAMAN: Correct. We had to do our  
3 due diligence. We got the copy of the  
4 deposition, and moved. Because we don't get  
14:58:10 5 copies of things that go on up there on a  
6 routine basis.

7 THE COURT: Okay. I just wanted to ask  
8 what your position was. Okay. All right.  
9 Thank you.

14:58:21 10 Opening?

11 MR. ROSE: As a threshold matter, I think  
12 even though this is an evidentiary hearing, you  
13 are going to receive some documentary evidence,  
14 I don't think there's a real need for live  
14:58:34 15 testimony, in other words, from witnesses. No,  
16 no.

17 THE COURT: Okay.

18 MR. ROSE: I am advising you. I am not  
19 asking your opinion of it.

14:58:42 20 THE COURT: Thank you.

21 MR. ROSE: I am advising you. I have  
22 spoken to Mr. Feaman.

23 THE COURT: Okay.

24 MR. ROSE: So I don't know there's going  
14:58:53 25 to be live witnesses.

1 THE COURT: Okay.

2 MR. ROSE: He has seven documents or eight  
3 documents he would like to put in evidence, and  
4 I would be happy if they just went into  
14:58:59 5 evidence right now.

6 THE COURT: He can decide how he wants to  
7 do his case.

8 MR. ROSE: Okay.

9 THE COURT: You can do your opening.

14:59:05 10 MR. ROSE: I think we are going to be  
11 making one long legal argument with documents,  
12 so.

13 THE COURT: Okay. Well, let's do an  
14 opening and then.

14:59:14 15 MR. ROSE: Let me start from the beginning  
16 then.

17 THE COURT: Okay.

18 MR. ROSE: So we are here today, and there  
19 are three motions that you said you would try  
14:59:20 20 to do today. And I don't have any doubt you  
21 will get to do all three today given how much  
22 time we have and progress we are making and the  
23 amount of time Mr. Feaman and I think this will  
24 take.

14:59:31 25 THE COURT: Okay.

1 MR. ROSE: The three are completely  
2 related. They are all the same. They are  
3 three sides of the same coin.

4 Am I blocking you?

14:59:44 5 MR. O'CONNELL: Your Honor, could I step  
6 to the side?

7 THE COURT: Yes, absolutely.

8 MR. ROSE: You can have the chart.

9 MR. O'CONNELL: Okay.

14:59:53 10 THE COURT: Mr. Rose, I have to ask you.  
11 I received a, I think it was a flash drive, and  
12 it had proposed orders on matters that were not  
13 necessarily going to be heard today. I don't  
14 think I got a flash dive with a proposed order.  
15:00:07 15 I did receive Mr. Feaman's on these particular  
16 orders.

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

19 THE COURT: Okay. But I did on the other  
15:00:17 20 ones. That's what seemed odd to me.

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

22 THE COURT: Okay. That's okay. You may  
23 proceed.

24 MR. ROSE: There's three matters today and  
15:00:27 25 they are sort of related, and they involve how

1 are we going to deal with the claim by  
2 Mr. Stansbury against the Estate of Simon  
3 Bernstein.

4 And there are currently three separate  
15:00:40 5 proceedings. There's a proceeding in Illinois.  
6 It's all taking place in Illinois. There's the  
7 probate proceeding which we are here on which  
8 is the Estate of Simon Bernstein. And there's  
9 the Stansbury litigation that is pending in  
15:00:57 10 circuit court. It's just been reassigned to  
11 Judge Marx, so we now have a judge, and that  
12 case is going to proceed forward. It's set for  
13 trial, I believe, in July to September  
14 timeframe.

15:01:12 15 So the first thing you are asked to do  
16 today is to reconsider a valid court order  
17 entered by Judge Phillips on September the 7th.  
18 We filed our motion in August, and they had 30  
19 days, more than 30 days before the hearing to  
15:01:27 20 object or contest the motion to appoint us.

21 The genesis of the motion to appoint us  
22 was what happened at mediation. We had a  
23 mediation in the summer. The parties signed a  
24 written mediation settlement agreement. We  
15:01:43 25 have asked Your Honor at next week's hearing to

1 approve the mediation settlement agreement. It  
2 is signed by every single one of the ten  
3 grandchildren or their court-appointed guardian  
4 ad litem, Diana Lewis, who has now been  
15:02:02 5 approved by this Court, upheld by the 4th  
6 District, and upheld by the Supreme Court this  
7 week. So I think it's safe to say that she's  
8 going to be here.

9 So the settlement agreement is signed by  
15:02:12 10 all of those people. It's signed by my client  
11 as the trustee. It's also signed by four of  
12 the five children, excluding Eliot Bernstein.

13 And as part of this, once we had a  
14 settlement, there was a discussion of how do we  
15:02:29 15 get this relatively modest estate to the finish  
16 line. And the biggest impediment getting to  
17 the finish line is this lawsuit. Until this  
18 lawsuit is resolved, his client is something.  
19 We can debate what he is. He claims to be an  
15:02:46 20 interested person. I think technically under  
21 law he is a claimant. Judge, I think even  
22 Judge Colin ruled he was not a creditor and  
23 denied his motion to remove and disqualify Ted  
24 Bernstein as trustee. That was pending and  
15:03:03 25 there's an order that does that a long time



1 ago. If I could approach?

2 THE COURT: Sure.

3 MR. ROSE: I don't have the docket entry  
4 number. This is in the court file. This was  
15:03:12 5 Judge Colin on August 22nd of 2014.

6 THE COURT: I saw it.

7 MR. ROSE: He has been trying to remove me  
8 and Mr. Bernstein for like almost three or four  
9 years now. But that's only significant because  
15:03:24 10 he is not a creditor. He is a claimant. So  
11 what we want to do is we want to get his claim  
12 to the finish line.

13 So I am not talking about anything that  
14 happened at mediation. Mediation is now over.

15:03:35 15 We have a signed settlement agreement.

16 Mr. Stansbury participated in the mediation,

17 but we did not make a settlement with him.

18 Okay.

19 So as a result of the mediation, all the  
15:03:46 20 other people, everybody that's a beneficiary of  
21 this estate coming together and signing a  
22 written agreement, those same people as part of  
23 the written agreement said we want this case to  
24 finish, and how are we going to do that.

15:03:59 25 Well, let's see. Mr. Stansbury is the

1 plaintiff represented by Mr. Feaman. The  
2 estate was represented by -- do you?

3 THE COURT: No.

4 MR. ROSE: I can give you one to have if  
15:04:16 5 you want to make notes on.

6 THE COURT: I would like that. I would  
7 like that very much.

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

10 15:04:22 THE COURT: Thank you.

11 MR. ROSE: You will recall -- I don't want  
12 to talk out of school because we decided we  
13 weren't going to talk out of school. But I got  
14 Mr. Feaman's -- like I didn't have a chance to  
15:04:33 15 even get this to you because I hadn't seen his  
16 until after your deadline, but.

17 THE COURT: This is demonstrative.

18 MR. ROSE: Okay.

19 THE COURT: He can pull up something new  
15:04:39 20 demonstrative as well.

21 MR. ROSE: Mr. -- originally the defendant  
22 here originally was assigned when he was alive.

23 When he died his estate was substituted in. He

24 hired counsel. His counsel didn't do much in

15:04:54 25 the case because I did all the work because I

1 was representing the companies, Ted Bernstein  
2 and another trust. And in January of 2014 the  
3 PRs of the estate resigned totally unrelated to  
4 this.

15:05:13 5 So in the interim between the original PRs  
6 and the appointment of Mr. O'Connell, we had a  
7 curator. The curator filed papers, which I  
8 filed, it's in the file, but I have sent it to  
9 Your Honor, where he admits, he states that he  
10 wanted to stay the litigation but he states  
11 that I have been doing a great job representing  
12 him and he hasn't even had to hire a lawyer yet  
13 because he is just piggybacking on the work I  
14 am doing.

15:05:36 15 I represented in this lawsuit the very one  
16 that Mr. O'Connell wants to retain my firm to  
17 handle. And he wants it with the consent --  
18 and one thing he said was that there's some  
19 people that aren't here. Every single person  
15:05:47 20 who is a beneficiary of this estate wants my  
21 firm to handle this for the reasons I am about  
22 to tell you. And I don't think there's any  
23 dispute about it.

24 I was the lawyer that represented the main  
15:05:56 25 company LIC and AIM. Those are the shorthands

1 for the two companies. Mr. Stansbury was at  
2 one point a ten percent stockholder in these  
3 companies. He gave his stock back. Ted  
4 Bernstein who is my client, and the Shirley  
15:06:11 5 Bernstein trust, I represented all these people  
6 in the case for about 15 or 18 months before we  
7 settled. I could be off on the timing. But I  
8 did all the documents, the production,  
9 interviewed witnesses, interviewed everybody  
15:06:23 10 you could interview. Was pretty much ready to  
11 go to trial other than we had to take the  
12 deposition of Mr. Stansbury, and then he had  
13 some discovery to do.

14 We went and we settled our case. Because  
15:06:33 15 we had a gap, because we didn't have a PR at  
16 the time, we were in the curator period,  
17 Mr. Brown was unwilling to do anything, so we  
18 didn't settle the case.

19 So Mr. O'Connell was appointed, so he is  
15:06:45 20 now the personal representative. He doesn't  
21 know the first thing about the case. No  
22 offense. I mean, he couldn't. You know, it's  
23 not expected for him to know the first thing  
24 about it. I don't mean the first thing. But  
15:06:57 25 he doesn't know much about the case or the

1 facts.

2 We had discussions about hiring someone  
3 from his law firm to do it. I met someone from  
4 his law firm and provided some basic  
15:07:07 5 information, but nothing really happened. We  
6 were hopeful we'd settle in July. We didn't  
7 settle.

8 So they said the beneficiaries with

9 Mr. O'Connell's consent we want Mr. Rose to

15:07:19 10 become the lawyer and we want Mr. Ted Bernstein

11 to become the administrator ad litem.

12 Now, why is that important? That's the  
13 second motion you are going to hear, but it's  
14 kind of important.

15:07:28 15 THE COURT: That's the one Phillips  
16 deferred?

17 MR. ROSE: Well, what happened was  
18 Mr. Feaman filed an objection to it timely.  
19 And in an abundance of caution because it might  
15:07:39 20 require an evidentiary or more time than we  
21 had, Judge Phillips deferred. That was my  
22 order. And my main goal was I wanted to get  
23 into the case and so we could start going to  
24 the status conferences and get this case  
15:07:48 25 moving. And what happened was as soon as we

1 had the first status conference and we started  
2 the case moving, until we got the motion to  
3 disqualify, and stopped and put the brakes on.

4 And this is a bench trial, so there's  
15:08:00 5 not -- this is like maybe argument, but it's a  
6 little bit related. I believe that Mr. -- this  
7 is the case they want to happen first and  
8 they're putting the brakes on this case because  
9 they want this case to move very slowly.

15:08:13 10 Because the only way there's any money to  
11 pay --

12 MR. FEAMAN: Objection.

13 THE COURT: Legal objection?

14 MR. FEAMAN: What counsel believes is not  
15:08:18 15 appropriate for --

16 THE COURT: Sustained.

17 MR. ROSE: Okay. So this case -- so  
18 anyway. Mr. Bernstein, Ted Bernstein, Ted,  
19 Simon and Bill, that's Ted, the dead guy Simon  
15:08:36 20 and his client Bill, were the three main  
21 shareholders of a company.

22 THE COURT: I got it.

23 MR. ROSE: Ted and Simon started it. They  
24 brought Bill in and gave him some stock for a  
15:08:46 25 while. Bill is suing for two and a half

1 million dollars. The only person alive on this  
2 planet who knows anything about this case is  
3 Ted. He has got to be the representative of  
4 the estate to defend the case. He has got to  
5 be sitting at counsel table. If he is not at

6 counsel table, he is going to be excluded under  
7 the exclusionary rule and he will be out in the  
8 hallway the whole trial. And whoever is  
9 defending the estate won't be able to do it.

10 This guy wants Ted out and me out because we  
11 are the only people that know anything about  
12 this case.

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

20 THE COURT: I understand.

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

1           Now, Eliot and Mr. Stansbury will probably  
2           object to that. It's not for today. So we  
3           have a settlement with the lawyers, the ones  
4           that withdrew. So we got a little bit of money  
15:09:56 5           from that. But there's really not going to be  
6           enough money in the estate to defend his case,  
7           pay all, do all the other things you got to do.  
8           So this is critical for Mr. Stansbury.

9           So the original PR, the guys that  
15:10:10 10           withdrew, they refused to participate in this  
11           lawsuit because they knew the facts. They knew  
12           the truth. They met with Simon. They drafted  
13           his documents. So they were not participating  
14           in this lawsuit.

15:10:21 15           Mr. Feaman stated in his opening that his  
16           client tried to intervene. So Bill tried to  
17           intervene directly into Illinois, and the  
18           Illinois judge said, no thank you, leave.

19           So when these guys withdrew we got a  
15:10:38 20           curator. The curator I objected --

21           THE COURT: Mr. Brown?

22           MR. ROSE: Ben Brown. He was a lawyer in  
23           Palm Beach, a very nice man. He passed away in  
24           the middle of the lawsuit at a very young age.  
15:10:52 25           But he -- the important thing -- I interrupted,



1 and I apologize for objecting. I didn't know  
2 what to do. But Mr. Brown didn't say, hey, I  
3 want to get in this lawsuit in Illinois; let me  
4 jump in here. Mr. Feaman and Mr. Stansbury  
15:11:06 5 filed a motion to require Mr. Brown to  
6 intervene in the case.

7 THE COURT: In the federal case?

8 MR. ROSE: In the federal case in  
9 Illinois. Because it's critical for  
15:11:17 10 Mr. Stansbury, it's critical for Mr. Stansbury  
11 to get this money into the estate.

12 THE COURT: Into the estate, I understand.

13 MR. ROSE: Okay. So we had a hearing  
14 before Judge Colin, a rather contested hearing  
15:11:26 15 in front of Judge Colin. Our position was very  
16 simple -- one of the things you will see, my  
17 client's goals on every one of these cases are  
18 exactly the same. Minimize time, minimize  
19 expense, maximize distribution. So we have the  
15:11:43 20 same goal in every case.

21 All the conflict cases you are going to  
22 see all deal with situations where the lawyers  
23 have antagonistic approaches and they want --  
24 like in one case he has, it's one lawsuit the  
15:11:54 25 lawyer wants two opposite results inside the

1 same lawsuit for two different clients. That's  
2 completely different. And even that case,  
3 which is the Staples case, it was two to one.  
4 There was a judge that dissented and said,  
15:12:05 5 look, I understand what you are saying, but  
6 there's still not really a conflict there.

7 But our goals are those goals.

8 So what we said to Judge Colin is we think  
9 the Illinois case is a loser for the estate.  
15:12:20 10 We believe the estate is going to lose. The  
11 lawyer who drafted the testamentary documents  
12 has given an affidavit in the Illinois case  
13 saying all his discussions were with Simon.  
14 The judge in Illinois who didn't have that when  
15:12:31 15 he first ruled had that recently, and he denied  
16 their summary judgment in Illinois. So it's  
17 going to trial. But that lawyer was the  
18 original PR, so he wasn't bringing the suit.

19 Mr. Brown says, I am not touching this.  
15:12:45 20 So we had a hearing, and they forced Mr. Brown  
21 to intervene with certain conditions. And one  
22 of the conditions was very logical. If our  
23 goal is to save money and Mr. Stansbury,  
24 Mr. Feaman's client, is going to pay the cost  
15:12:59 25 of this, he will get it back if he wins, then

1 we got no objection anymore, as long as he is  
2 funding the litigation. He is the only guy who  
3 benefits from this litigation. None of the --  
4 the children and the grandchildren they don't  
15:13:12 5 really care.

6 Judge Lewis represents Eliot's three kids  
7 versus Eliot. The money either goes to Eliot  
8 or his three kids. She's on board with, you  
9 know, we don't want to waste estate funds on  
15:13:25 10 this. Our goal is to keep the money in the  
11 family. He wants the money.

12 This is America. He can file the lawsuit.  
13 That's great. But these people should be able  
14 to defend themselves however they choose to see  
15:13:36 15 fit. But the critical thing about this is  
16 Mr. Brown didn't do anything in here. Judge  
17 Colin said, you can intervene as long as he is  
18 paying the bills. And that's an order. Well,  
19 that order was entered a long time ago. It was  
15:13:48 20 not appealed.

21 So one of the things, the third thing you  
22 are being asked to do today is vacate that  
23 order, you know. And I did put in my motion,  
24 and I don't know if it was ad hominem toward  
15:13:58 25 Mr. Feaman, it really was his client, his

1 client is driving this pace. He is driving us  
2 to zero. I mean, we started this estate with  
3 over a million dollars. He has fought  
4 everything we do every day. It's not just

15:14:11 5 Eliot. Eliot is a lot of this. Mr. Stansbury  
6 is driving us to zero as quickly as possible.

7 So in the Illinois case the estate is  
8 represented by Stamos and Trucco. They are  
9 hired by, I think, Ben Brown but was in  
15:14:27 10 consultation with Mr. Feaman. They  
11 communicated -- the documents will come into  
12 evidence. I am assuming he is going to put the  
13 documents on his list in evidence.

14 You will see e-mails from Mr. Stamos from  
15:14:39 15 the Stamos Trucco firm, they e-mailed to  
16 Mr. O'Connell, and they copied Bill Stansbury  
17 and Peter Feaman because they are driving the  
18 Illinois litigation. I don't care. They can  
19 drive it. I think it's a loser. They think  
15:14:50 20 it's a winner. We'll find out in a trial.

21 They are supposed to be paying the bills.  
22 I think the evidence would show his client's in  
23 violation of Judge Colin's orders because his  
24 client hasn't paid the lawyer all the money  
15:15:00 25 that's due. And Mr. O'Connell, I think, can

1 testify to that. I don't think it's a disputed  
2 issue. But the lawyer's been paid 70 and he is  
3 owed 40, which means Mr. Feaman's client is  
4 right now technically in violation of a court  
15:15:12 5 order.

6 I have asked numerous times for them to  
7 give me the information. I just got it this  
8 morning. But I guess I can file a motion to  
9 hold him in contempt for violating a court  
15:15:21 10 order.

11 But in the Chicago case the plaintiff is  
12 really not Ted Bernstein, although he probably  
13 nominally at some point was listed as a  
14 plaintiff in the case. The plaintiff is the  
15:15:32 15 Simon Bernstein 1995 irrevocable life insurance  
16 trust. According to the records of the  
17 insurance company, the only person named as a  
18 beneficiary is a defunct pension plan that went  
19 away.

15:15:45 20 THE COURT: Net something net something,  
21 right?

22 MR. ROSE: Right. And then the residual  
23 beneficiary is this trust. And these are  
24 things Simon -- he filled out one designation  
15:15:53 25 form in '95 and he named the 95 trust.

1 THE COURT: But there's no paperwork,  
2 right?

3 MR. ROSE: We can't find the paperwork.

4 Not me. It was not me. I have nothing to do

15:16:01 5 with it. I said we. I wanted to correct the

6 record because it will be flown up to Illinois.

7 Whoever it is can't find the paperwork.

8 So there's a proceeding, and it happens in  
9 every court, and there's Illinois proceedings  
10 to determine how do you prove a lost trust.

11 This lawsuit is going to get resolved one  
12 way or the other. But in this lawsuit the 95

13 trust Ted Bernstein is the trustee, so he

14 allowed, though under the terms of the trust in

15:16:24 15 this case, and we cited it to you twice or

16 three times, under Section 4J of the trust on

17 page 18 of the Simon Bernstein Trust, it says

18 that you can be the trustee of my trust, Simon

19 said you can be the trustee of my trust even if

15:16:41 20 you have a different interest as a trustee of a

21 different trust. So that's not really an

22 issue. And up in Chicago Ted Bernstein is the

23 trustee of the 95 trust. He is represented by

24 the Simon law firm in Chicago.

15:16:52 25 I have never appeared in court. He is

1 going to put in all kinds of records. My name  
2 never appears -- I have the docket which he  
3 said can come into evidence. I don't appear on  
4 the docket.

15:17:02 5 Now, I have to know about this case though  
6 because I represent the trustee of the  
7 beneficiary of this estate. I've got to be  
8 able to advise him. So I know all about his  
9 case. And he was going to be deposed.

15:17:14 10 Guess who was at his deposition? Bill  
11 Stansbury. Bill Stansbury was at his  
12 deposition, sat right across from me. Eliot,  
13 who is not here today, was at that deposition,  
14 and Eliot got to ask questions of him at that  
15:17:27 15 deposition. He wanted me at the deposition.  
16 He is putting the deposition in evidence. If  
17 you study the deposition, all you will see is  
18 on four occasions I objected on what grounds?  
19 Privilege. Be careful what you talk about; you  
15:17:40 20 are revealing attorney/client privilege.

21 That's all I did. I didn't say, gee, don't  
22 give them this information or that information.  
23 And if I objected incorrectly, they should have  
24 gone to the judge in Illinois. And I guarantee  
15:17:50 25 you there's a federal judge in Illinois that if

1 I had objected improperly would have overruled  
2 my objections. I instructed him to protect his  
3 attorney/client privilege. That's what I was  
4 there for, to advise him and to defend him at  
15:18:00 5 deposition and to protect him. That's all I  
6 did in the Illinois case. And that is over.

7 Now, I am rooting like crazy that the  
8 estate loses this case in one sense because  
9 that's what everybody that is a beneficiary of  
15:18:18 10 my trust wants. But I could care less how that

11 turns out, you know, from a legal standpoint.  
12 I don't have an appearance in this case. And  
13 everyone up there is represented by lawyers.

14 So what we have now is we have this motion  
15:18:36 15 which seeks to disqualify my law firm. We  
16 still have the objection to Ted serving as the  
17 administrator ad litem. And I think those two  
18 kind of go hand in hand.

19 There's another component you should know  
15:18:50 20 about that motion. But as I told you, our  
21 goals are to reduce expense.

22 The reason that everybody wanted Ted to  
23 serve as the administrator ad litem, so he  
24 would sort of be the representative of the  
15:19:03 25 estate, because he said he would do that for



1 free.

2 THE COURT: I remember.

3 MR. ROSE: Mr. O'Connell is a  
4 professional. He is not going to sit there for  
15:19:13 5 free for a one-week, two-week jury trial and  
6 prepare and sit for deposition. That's enough  
7 money -- just his fees alone sitting at trial  
8 are enough to justify everything -- you know,  
9 it's a significant amount of money.

10 15:19:27 So that's what's at issue today.

11 But their motion for opening statement,  
12 and I realize this is going to overlap, my  
13 other will be --

14 THE COURT: Which motion?

15 15:19:40 MR. ROSE: The disqualification.

16 THE COURT: I wasn't sure.

17 MR. ROSE: I got you. That was sort of  
18 first up. All right. So I am back. That's  
19 the background. You got the background for the  
15:19:48 20 disqualification motion. This is an adversary  
21 in litigation trying to disqualify me.

22 I think it is a mean-spirited motion by  
23 Mr. Stansbury designed to create chaos and  
24 disorder and raise the expense, maybe force the  
15:20:04 25 estate into a position where they have to

1 settle, because now they don't have a  
2 representative or an attorney that knows  
3 anything about the case.

4 MR. FEAMAN: Objection.

15:20:11 5 THE COURT: Legal objection?

6 MR. FEAMAN: Comments on the motivation or  
7 intention of opposing counsel in opening  
8 statement is not proper.

9 THE COURT: I will allow it only -- mean  
15:20:25 10 spirited I will strike. The other comments I  
11 will allow because under Rule 4-1.7, and I may  
12 be misquoting, but it is one of the two rules  
13 we have been looking at under the Florida Bar,  
14 the commentary specifically talks about an  
15:20:42 15 adverse party moving to disqualify and the  
16 strategy may be employed. So I will allow that  
17 portion of his argument, striking mean  
18 spirited.

19 MR. ROSE: Okay. If you turn to tab 2 of  
15:20:53 20 the -- we, I think, sent you a very thin  
21 binder.

22 THE COURT: Yes, you did.

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

15:20:59 25 THE COURT: Yes.

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

3 THE COURT: In any other world this would  
4 have been a nice sized binder. In this  
15:21:06 5 particular case you are indeed correct, this is  
6 a very thin binder.

7 MR. ROSE: Okay. If you flip to page  
8 2240 --

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

15:21:15 10 MR. ROSE: -- which is about five or six  
11 pages in.

12 THE COURT: Yes.

13 MR. ROSE: This is where a conflict is  
14 charged by opposing party.

15:21:22 15 THE COURT: Yes.

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

18 And I would point for the record I did not  
19 say that Mr. Feaman was mean spirited. I  
15:21:32 20 specifically said mean spirited by his client.

21 THE COURT: Thank you.

22 MR. ROSE: So conflicts charged by the  
23 opponent, and this is just warning you that  
24 this can be used as a technique of harassment,  
15:21:40 25 and that's why I am tying that in.

1           But the important things are I have never  
2 represented Mr. Stansbury in any matter.  
3 Generally in a conflict of interest situation  
4 you will see I represented him. I don't have  
15:21:56 5 any confidential information from  
6 Mr. Stansbury. I have only talked to him  
7 during his deposition. It wasn't very  
8 pleasant. And if you disqualify me to some  
9 degree my life will be fine, because this is  
15:22:07 10 not the most fun case to be involved in. I am  
11 doing it because I represent Ted and we are  
12 trying to do what's right for the  
13 beneficiaries.

14           THE COURT: Appearance for the record.  
15:22:18 15 Someone just came in.

16           MR. ELIOT BERNSTEIN: Hi. Eliot Ivan  
17 Bernstein.

18           THE COURT: Thank you.

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

15:22:24 20           THE COURT: Thank you. You may proceed.  
21 I just wanted the court reporter to know.

22           MR. ELIOT BERNSTEIN: Thank you, Your  
23 Honor.

24           MR. ROSE: I don't have any confidential  
15:22:28 25 information of Mr. O'Connell. He is the PR of

1 the estate. I don't know anything about  
2 Mr. O'Connell that would compromise my ability  
3 to handle this case. I am not sure he and I  
4 have ever spoken about this case. But in  
5 either case, I don't have any information.

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

18 Who gets the insurance proceeds? Bill  
19 Stansbury is not even a witness in that case.  
20 It has nothing to do with the issue over here,  
21 how much money does Bill Stansbury get? So  
22 you've got wholly unrelated, and that's the  
23 other part of the Rule 4-1.9 and 4-1.7, it  
24 talks about whether the matters are unrelated.  
25 And I guess when I argue the statute I will

1 argue the statute for you.

2 At best what the evidence is going to show  
3 you -- and I am not trying to win this on a  
4 technicality. I want to win this like up or  
15:23:43 5 down and move on. Because this estate can't --  
6 this delay was torture to wait this long for  
7 this hearing.

8 But if I showed up at Ted's deposition,

9 and I promise you I will never show up again, I

15:23:57 10 am out of that case, this is a conflict of

11 interest with a former client. I have ceased

12 representing him at his deposition. He is  
13 never going to be deposed again. If it's a  
14 conflict of interest with a former client, all  
15:24:09 15 these things are the prerogative of the former  
16 client. They are not the prerogative of the  
17 new client. The new client it's not the issue.  
18 So if I represented Ted in his deposition, I  
19 cannot represent another person in the same or  
15:24:21 20 a substantially related matter.

21 So I can't represent the estate in this  
22 case because I sat at Ted's deposition, unless  
23 the former client gives informed consent. He  
24 could still say, hey, I don't care, you do the  
15:24:35 25 Illinois case for the estate. I wouldn't do

1 that, but that's what the rule says. Use  
2 information. There's no information. I am not  
3 even going to waste your time. Reveal  
4 information. So there's no information. If  
15:24:46 5 this is the rule we are traveling under, you  
6 deny the motion and we go home and move on and  
7 get back to litigation. If we are traveling  
8 under this rule, I cannot under 4-1.7 --

9 MR. FEAMAN: Excuse me, Your Honor, this  
15:25:00 10 sounds more like final argument than it does  
11 opening statement what the evidence is going to  
12 show.

13 THE COURT: Overruled.

14 MR. ROSE: So under 4-1.7, except as in b,  
15:25:17 15 and I am talking about b because that's maybe  
16 the only piece of evidence we may need is the  
17 waiver. I have a written waiver. I think it  
18 has independent legal significance. Because if  
19 I obtained his writing in writing, I think it's  
15:25:30 20 admissible just because Mr. O'Connell signed  
21 it. But they object, they may object to the  
22 admission of the waiver, so I may have to put  
23 Mr. O'Connell on the stand for two seconds and  
24 have him confirm that he signed the waiver  
15:25:40 25 document.

1           But except if it's waived, now let's put  
2           that aside. We never even get to the waiver.  
3           The representation of one client has to be  
4           directly adverse to another client. So  
15:25:53 5           representing Ted in his deposition is not --  
6           has nothing to do -- first of all, Ted had  
7           counsel representing him directly adverse. I  
8           was there protecting him as trustee, protecting  
9           his privileges, getting ready for a trial that  
15:26:07 10           we had before Judge Phillips where he upheld  
11           the validity of the documents, determined that  
12           Ted didn't commit any egregious wrongdoing.  
13           That's the December 15th trial. It's on appeal  
14           to the 4th District. That's what led to having  
15:26:23 15           Eliot determined to have no standing, to Judge  
16           Lewis being appointed as guardian for his  
17           children. That was the key. That was the only  
18           thing we have accomplished to move the thing  
19           forward was that, but we had that.

15:26:34 20           But that's why I was at the deposition,  
21           but it was not directly adverse to the estate.

22           Number two, there's a substantial risk  
23           that the representation of one or more clients  
24           will be materially limited by my  
15:26:52 25           responsibilities to another. I have asked them



1 to explain to me how might -- how what I want  
2 to do here, which is to defend these people  
3 that I have been doing -- I have asked  
4 Mr. Feaman to explain to me how what I am doing  
15:27:06 5 to defend the estate, like I defended all these  
6 people against his client, could possibly be  
7 limited by my responsibilities to Ted. My  
8 responsibilities to Ted is to win this lawsuit,  
9 save the money for his family, determine his  
15:27:19 10 father did not defraud Bill Stansbury. So I am  
11 not limited in any way.

12 So if you don't find one or two, you don't  
13 even get to waiver. But if you get to waiver,  
14 and this is evidence, it's one of the -- I only  
15:27:34 15 gave you three new things in the binder. One  
16 was the waiver. One was the 57.105 amended  
17 motion.

18 I think the significance of that is after  
19 I got the waiver, after I got a written waiver,  
15:27:46 20 I thought that changed the game a little bit.  
21 You know, if you are a lawyer and you file a  
22 motion to disqualify -- so when I got the  
23 written waiver --

24 MR. FEAMAN: Your Honor --

15:27:54 25 THE COURT: Legal objection.

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

3 THE COURT: Sustained.

4 MR. FEAMAN: -- that you haven't even seen  
15:28:01 5 yet.

6 THE COURT: Sustained.

7 MR. FEAMAN: Thank you.

8 THE COURT: Sustained.

9 MR. ROSE: I got a waiver signed by  
15:28:08 10 Mr. O'Connell. I had his permission, but I got  
11 a formal written waiver. And it was after our  
12 first hearing, and it was after -- so I sent it  
13 to Mr. Feaman.

14 But if you look under the rule, it's a  
15:28:21 15 clearly waivable conflict. Because I am not  
16 taking an antagonistic position saying like the  
17 work I did in the other case was wrong or this  
18 or that.

19 And if you look at the rules of  
15:28:31 20 professional conduct again, and we'll do it in  
21 closing, but I am the one who is supposed to  
22 decide if I have a material limitation in the  
23 first instance. That's what the rules direct.  
24 Your Honor reviews that. But in the first  
15:28:44 25 instance I do not have any material limitation

1 on my ability to represent the estate  
2 vigorously, with all my heart, with everything  
3 my law firm's resources, and with Ted's  
4 knowledge of the case and the facts to defend  
15:29:01 5 his case, there is no limitation and there's no  
6 substantial risk that I am not going to do the  
7 best job possible to try to protect the estate  
8 from this claim.

9 And I think we would ask that you deny the  
15:29:12 10 motion to disqualify on the grounds that  
11 there's no conflict, and the waiver for  
12 Mr. O'Connell would resolve it.

13 And we also would like you to appoint Ted  
14 Bernstein. There's no conflict of interest in  
15:29:25 15 him defending the estate as its representative  
16 through trial to try to protect the estate's  
17 money from Mr. Stansbury. It's not like Ted or  
18 I are going to roll over and help Mr. Stansbury  
19 or sell out the estate for his benefit. That's  
15:29:41 20 what a conflict would be worried about. We are  
21 not taking a position in -- we are not in the  
22 case yet, obviously. If you allow us to  
23 continue in this case, we are not going to take  
24 a position in this case which is different from  
15:29:53 25 any position we have ever taken in any case

1 because all --

2 THE COURT: Just for the record, for the  
3 record, I see you pointing. So you are not  
4 taking a position in the Palm Beach circuit  
15:30:02 5 court --

6 MR. ROSE: Case.

7 THE COURT: -- civil case --

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

9 THE COURT: -- that's different than  
15:30:07 10 probate or even the insurance proceeds?

11 MR. ROSE: Correct. Different from what  
12 we did in the federal case in Illinois,  
13 different from we are taking in the probate  
14 case. Or more importantly, in fact most  
15:30:17 15 importantly, we are not taking a position  
16 differently than we took when I represented  
17 other people in the same lawsuit.

18 You have been involved in lawsuits where  
19 there are eight defendants and seven settled  
15:30:27 20 and the last guy says, well, gee, let me hire  
21 this guy's lawyer, either he is better or my  
22 lawyer just quit or I don't have a lawyer. So  
23 but I am not taking a position like here we  
24 were saying, yeah, he was a terrible guy, he  
15:30:38 25 defrauded you, and now we are saying, oh, no,

1           it's not, he didn't defraud you. That would be  
2           a conflict. We have defended the case by  
3           saying that Mr. Stansbury's claim has no merit  
4           and we are going to defend it the same way.

15:30:49 5           And then that's what we'd like to do with  
6           the Florida litigation, and then time  
7           permitting we'd like to discuss the Illinois  
8           litigation, because we desperately need a  
9           ruling from Your Honor on the third issue you  
15:31:00 10          set for today which is are you going to vacate  
11          Judge Colin's order and free Mr. Stansbury of  
12          the duty to fund the Illinois litigation.

13           Judge Colin entered the order. The issue  
14          was raised multiple times before Judge  
15:31:14 15          Phillips. He wanted to give us his ruling one  
16          day, and we -- you know, he didn't. We were  
17          supposed to set it for hearing. We had  
18          numerous hearings set on that motion, the  
19          record will reflect, and those were all  
15:31:26 20          withdrawn. And now that they have a new judge,  
21          I think they are coming back with the same  
22          motion to be excused from that, and that's the  
23          third thing you need to decide today.

24           THE COURT: All right.

15:31:36 25          MR. ROSE: Unless you have any questions,

1 I'll --

2 THE COURT: Give me one second to finish  
3 my notes. Just one second, please. I have to  
4 clean things up immediately or I go back and  
15:33:38 5 look and sometimes my typos kill me. Just one  
6 more second.

7 Mr. Feaman, back to you.

8 MR. FEAMAN: Thank you.

9 THE COURT: Feaman, forgive me.

10 15:34:17 MR. FEAMAN: No problem.

11 I would offer first, Your Honor, as  
12 Exhibit 1 --

13 THE COURT: I am going to do a separate  
14 list so I will keep track of all the exhibits.  
15:34:31 15 So Exhibit 1, go ahead.

16 MR. FEAMAN: It's a --

17 THE COURT: Stansbury Exhibit 1?

18 MR. FEAMAN: Yes.

19 THE COURT: Go ahead.

20 15:34:41 MR. FEAMAN: May I approach, Your Honor?

21 THE COURT: You may. Has everybody seen a  
22 copy?

23 MR. FEAMAN: Yes.

24 MR. ROSE: I have seen a copy. Do you  
15:34:48 25 have an extra copy?

1 MR. FEAMAN: Sure. We have one for  
2 everybody.

3 THE COURT: It appears to be United States  
4 District Court Northern District of Illinois  
15:35:03 5 Eastern Division.

6 MR. FEAMAN: There's exhibit stickers on  
7 the back.

8 MR. ROSE: Just for the record, I have no  
9 objection to the eight exhibits he has given,  
15:35:13 10 and he can put them in one at a time.

11 THE COURT: Okay. Great.

12 MR. ROSE: But no objection.

13 THE COURT: Okay. This is the first one  
14 in the complaint.

15:35:27 15 MR. FEAMAN: And we offer Exhibit 1, Your  
16 Honor, for the purpose as shown on the first  
17 page of the body of the complaint where it  
18 lists the parties, that the plaintiffs are  
19 listed, and Ted Bernstein is shown individually  
15:35:43 20 as the plaintiff in that action.

21 THE COURT: Give me one second. I have to  
22 mark as Claimant Stansbury's into evidence  
23 Exhibit 1.

24 ///

25 ///

1 (Claimant Stansbury's Exb. No. 1,  
2 Complaint, United States District Court Northern  
3 District of Illinois.)

4 THE COURT: And you are saying on page  
15:35:57 5 two?

6 MR. FEAMAN: Yes. After the style of the  
7 case, the first page of the body under the  
8 heading Claimant Stansbury's First Amended  
9 Complaint, the plaintiff parties are listed.

10 THE COURT: Yes.

11 MR. FEAMAN: And it shows Ted Bernstein  
12 individually as a plaintiff in that action.

13 THE COURT: Okay.

14 MR. FEAMAN: May I approach freely, Your  
15:36:20 15 Honor?

16 THE COURT: Yes, absolutely, as long as  
17 you are no way mad.

18 MR. FEAMAN: And, Your Honor, William  
19 Stansbury offers as Exhibit 2 a certified copy  
15:36:41 20 of the motion to intervene filed by the Estate  
21 of Simon Bernstein in the same case, the United  
22 States District Court for the Northern District  
23 of Illinois, the Eastern Division.

24 THE COURT: So received.

25 ///



1 (Claimant Stansbury's Exb. No. 2, Motion  
2 to Intervene, United States District Court Northern  
3 District of Illinois.)

4 MR. FEAMAN: Thank you.

15:37:10 5 And the purpose for Exhibit 2, among  
6 others, is shown on paragraph seven on page  
7 four where it is alleged that the Estate of  
8 Simon Bernstein is entitled to the policy  
9 proceeds as a matter of law asserting the  
10 estate's interest in the Chicago litigation.

11 THE COURT: Okay.

12 MR. FEAMAN: Next, Your Honor, I would  
13 offer Stansbury's Exhibit 4.

14 THE COURT: We have gone past Exhibit 3.

15:38:17 15 MR. FEAMAN: I am going to do that next.

16 THE COURT: Okay.

17 MR. FEAMAN: I think chronologically it  
18 makes more sense to offer 4 at this point.

19 THE COURT: Sure.

15:38:25 20 MR. FEAMAN: Exhibit 4, Your Honor, is a  
21 certified copy again in the same case, United  
22 States District Court for the Northern District  
23 of Illinois Eastern Division. It's a certified  
24 copy of the federal court's order granting the  
15:38:41 25 motion of the estate by and through Benjamin

1 Brown as the curator granting the motion to  
2 intervene in that action.

3 And the purpose of this exhibit is found  
4 on page three under the analysis section where  
15:39:09 5 the court writes that why the estate should be  
6 allowed to intervene, showing that the setting  
7 up, I should say, a competing interest between  
8 the Estate of Simon Bernstein and the  
9 plaintiffs in that action, one of whom is Ted  
15:39:36 10 Bernstein individually.

11 THE COURT: All right.

12 (Claimant Stansbury's Exb. No. 4, Order  
13 Granting the Motion to Intervene, United States  
14 District Court Northern District of Illinois.)

15:39:59 15 THE COURT: You may proceed.

16 MR. FEAMAN: Thank you.

17 THE COURT: I generally do with everybody,  
18 I put all the evidence right here so if anybody  
19 wants to approach and look.

15:40:22 20 Okay. This is now 3?

21 MR. FEAMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. ELIOT BERNSTEIN: Excuse me, what did  
24 you say?

15:40:29 25 MR. FEAMAN: She puts them there so if you

1 want to look at them you can see them.

2 THE COURT: The ones that have been  
3 entered into evidence.

4 MR. ELIOT BERNSTEIN: Okay. He just gave  
15:40:38 5 me a copy of everything.

6 THE COURT: Yes.

7 MR. FEAMAN: Exhibit 3, Your Honor, is  
8 offered at this time it is a certified copy of  
9 the, again in the same court United States  
10 District Court Northern District of Illinois,  
11 it is actual intervenor complaint for  
12 declaratory judgment filed by Ben Brown as  
13 curator and administrator ad litem of the  
14 Estate of Simon Bernstein seeking the insurance  
15:41:12 15 proceeds that are at issue in that case and  
16 setting up the estate as an adverse party to  
17 the plaintiffs.

18 THE COURT: So received.

19 (Claimant Stansbury's Exb. No. 3,  
15:41:29 20 Complaint for Declaratory Judgement by Intervenor,  
21 United States District Court Northern District of  
22 Illinois.)

23 THE COURT: Thank you very much.

24 MR. FEAMAN: You are welcome.

15:41:47 25 Mr. Stansbury now offers as Exhibit 5 a

1 certified copy again for the United States  
2 District Court Northern District of Illinois,  
3 the answer to the intervenor complaint filed by  
4 the estate, which was Exhibit 3. Exhibit 5 is  
15:42:08 5 the answer filed by the plaintiffs.

6 And this is offered for the purpose as set  
7 forth at page three, the plaintiff Simon  
8 Bernstein -- excuse me -- the plaintiff's Simon  
9 Bernstein irrevocable trust which is different  
15:42:33 10 from the Simon Bernstein Trust that's the  
11 beneficiary of the Simon Bernstein estate down  
12 here, and Ted Bernstein individually and the  
13 other plaintiffs answering the complaint filed  
14 by the estate. And requesting on page seven in  
15:42:54 15 the wherefore clause that the plaintiffs  
16 respectfully request that the Court deny any of  
17 the relief sought by the intervenor in their  
18 complaint and enter judgment against the  
19 intervenor and award plaintiffs their costs and  
15:43:12 20 such other relief.

21 THE COURT: Just give me one second.

22 MR. FEAMAN: Thank you.

23 (Claimant Stansbury's Exb. No. 5, Answer  
24 to Intervenor Complaint, United States District  
15:43:56 25 Court Northern District of Illinois.)

1 THE COURT: I am sorry, I am having a  
2 problem with my computer again. Give me just  
3 one minute.

4 MR. FEAMAN: Exhibit 6 is a certified copy  
15:44:16 5 of the -- I am sorry, are you ready?

6 THE COURT: Yes, I am.

7 MR. FEAMAN: Thank you.

8 THE COURT: Exhibit 6 is a certified copy?

9 MR. FEAMAN: Of the deposition taken by  
15:44:34 10 the Estate of Simon Bernstein in the same  
11 action, United States District Court for the  
12 Northern District of Illinois of Ted Bernstein  
13 taken on May 6, 2015.

14 THE COURT: Okay.

15:45:00 15 (Claimant Stansbury's Exb. No. 6,  
16 Deposition of Ted Bernstein 5-6-15, United States  
17 District Court Northern District of Illinois.)

18 MR. FEAMAN: And the highlights of that  
19 deposition, Your Honor, are shown on the first  
15:45:10 20 page showing the style of the case and noting  
21 the appearances of counsel on behalf of Ted  
22 Bernstein in that action, Adam Simon of the  
23 Simon Law Firm, Chicago, Illinois, and Alan B.  
24 Rose, Esquire of the Mrachek Fitzgerald law  
15:45:31 25 firm of West Palm Beach, and James Stamos, the

1 attorney for the Estate of Simon Bernstein in  
2 Chicago, Illinois.

3 I will not read it into the record. I  
4 will just read three excerpts into the record  
15:45:48 5 in the interests of time, although I am  
6 offering the entire thing.

7 THE COURT: Okay.

8 MR. FEAMAN: So that we don't go back and  
9 forth with I will read this, you read that. So  
15:45:57 10 I am offering it entirely, but I would  
11 highlight three excerpts.

12 MR. ROSE: Just with respect to the  
13 documents coming into evidence, it has yellow  
14 highlighting. Can he represent that he has  
15:46:08 15 yellow highlighted everywhere where my name  
16 appears?

17 MR. FEAMAN: Yes.

18 MR. ROSE: And therefore we don't have to  
19 bother with places like searching the record.

15:46:15 20 MR. FEAMAN: That's correct. I  
21 highlighted everybody's copy.

22 MR. ROSE: I have no objection.

23 THE COURT: Okay.

24 MR. ROSE: I just wanted the record to be  
15:46:21 25 clear that the yellow highlighting reflects the

1 places where I either spoke or my name came up.

2 MR. FEAMAN: That's correct.

3 THE COURT: Okay.

4 MR. ROSE: Thank you, Your Honor.

15:46:28 5 MR. FEAMAN: The first subpart I was  
6 reading into the record would be beginning at  
7 page 63, line 20, statement by Mr. Rose. "This  
8 is Alan Rose, just for the record. Since I am  
9 Mr. Bernstein's personal counsel, he is not  
10 15:46:54 asserting the privilege as to communications of  
11 this nature as responded in your e-mail. He is  
12 asserting privilege to private communications  
13 he had one on one with Robert Spallina who he  
14 considered to be his counsel. That's the  
15 15:47:10 position for the record and that's why the  
16 privilege is being asserted."

17 The second -- although the ones I am going  
18 to read into the record are not all of them,  
19 but just three different examples. The second  
15:47:31 20 one would be at page 87, line six, statement by  
21 Mr. Rose. "I am going to object, instruct him  
22 not to answer based on communications he had  
23 with Mr. Spallina. But you can ask the  
24 question with regard to information that  
15:47:59 25 Spallina disseminated to third parties or."

1           The next item is found on page 93, line  
2 one, "Objection to form."

3           THE COURT:   Okay.

4           MR. FEAMAN:   Next I will offer Exhibits 7  
15:48:52 5 and 8 at the same time because they are  
6 related, and I will describe them for the  
7 record.

8           THE COURT:   Exhibit 7 is. Thank you. And  
9 8.

10          MR. FEAMAN:   You are welcome.

11          Exhibit 7 is an e-mail from  
12 TheodoreKuyper@StamosTrucco.com, attorneys for  
13 the estate in the Chicago action, to Brian  
14 O'Connell or BOConnell@CiklinLubitz.com, with a  
15:50:02 15 copy to Peter Feaman and William Stansbury,  
16 enclosing a court ruling, dated January 31st,  
17 2017, enclosing a court ruling. And in the  
18 last line saying in the interim, quote, we  
19 appreciate your comments regarding the Court's  
15:50:31 20 ruling.

21          And then Exhibit 8 is an e-mail from James  
22 Stamos, attorney for the estate in the Chicago  
23 action, sent Tuesday, February 14th, 2017, to  
24 Brian O'Connell, Peter Feaman, William  
15:50:53 25 Stansbury, saying, quote, See below. What is



1           our position on settlement?, close quote. I  
2           think he is right about the likely trial  
3           setting this summer.

4           The e-mail response to an e-mail from  
15:51:10 5           counsel for the plaintiffs in the Chicago  
6           action that solicits information concerning a  
7           demand for settlement.

8           And we'll save comment and argument on  
9           those exhibits for final argument, Your Honor.

15:51:52 10           THE COURT: Okay.

11           (Claimant Stansbury's Exb. No. 7, E-mail,  
12           1-31-2017, Theodore Kuyper to Brian O'Connell,  
13           etc.)

14           (Claimant Stansbury's Exb. No. 8, E-mail,  
15:51:57 15           2-14-2017, James Stamos to Brian O'Connell, etc.)

16           MR. ELIOT BERNSTEIN: Your Honor?

17           MR. FEAMAN: Next --

18           MR. ELIOT BERNSTEIN: Sorry, thought you  
19           were done.

15:52:02 20           MR. FEAMAN: Next I would call Brian  
21           O'Connell to the stand.

22           THE COURT: Okay.

23           - - -

24           Thereupon,

25           BRIAN O'CONNELL,

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

3 THE WITNESS: I do.

4 THE COURT: Have a seat. Thank you very  
15:52:20 5 much.

6 Before we start I need six minutes to use  
7 the restroom. I will be back in six minutes.

8 (A recess was taken.)

9 THE COURT: All right. Call  
15:58:54 10 Mr. O'Connell. I apologize. Let's proceed.

11 MR. FEAMAN: Thank you, Your Honor.

12 DIRECT (BRIAN O'CONNELL)

13 BY MR. FEAMAN:

14 Q. Please state your name.

15:58:59 15 A. Brian O'Connell.

16 Q. And your business address?

17 A. 515 North Flagler Drive, West Palm Beach,  
18 Florida.

19 Q. And you are the personal representative,  
15:59:09 20 the successor personal representative of the Estate  
21 of Simon Bernstein; is that correct?

22 A. Yes.

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

15:59:22 25 A. I do.

1 Q. Would you agree with me, Mr. O'Connell,  
2 that as personal representative of the estate that  
3 you have a fiduciary duty to all interested persons  
4 of the estate?

15:59:34 5 A. To interested persons, yes.

6 Q. Okay. Are you aware that Mr. Stansbury,  
7 obviously, has a lawsuit against the estate,  
8 correct?

9 A. Correct.

15:59:44 10 Q. And he is seeking damages as far as you  
11 know in excess of \$2 million dollars; is that  
12 correct?

13 A. Yes.

14 Q. Okay. And the present asset value of the  
15:59:55 15 estate excluding a potential expectancy in Chicago  
16 I heard on opening statement was around somewhere a  
17 little bit over \$200,000; is that correct?

18 A. Correct.

19 Q. And --

16:00:11 20 A. Little over that.

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

24 A. Yes.

16:00:21 25 Q. And if the estate is successful in that

1 lawsuit then that money would come to the Estate of  
2 Simon Bernstein, correct?

3 A. Correct.

4 Q. And then obviously that would quintuple,  
16:00:35 5 if my math is correct, the assets that are in the  
6 estate right now; is that correct?

7 A. They would greatly enhance the value of  
8 the estate, whatever the math is.

9 Q. Okay. So would you agree that  
16:00:45 10 Mr. Stansbury is reasonably affected by the outcome  
11 of the Chicago litigation if he has an action  
12 against the estate in excess of two million?

13 A. Depends how one defines a claimant versus  
14 a creditor. He certainly sits in a claimant  
16:01:04 15 position. He has an independent action.

16 Q. Right.

17 A. So on that level he would be affected with  
18 regard to what happens in that litigation if his  
19 claim matures into an allowed claim, reduced to a  
16:01:19 20 judgment in your civil litigation.

21 Q. So if he is successful in his litigation,  
22 it would -- the result of the Chicago action, if  
23 it's favorable to the estate, would significantly  
24 increase the assets that he would be able to look  
16:01:33 25 to if he was successful either in the amount of

1 300,000 or in an amount of two million?

2 A. Right. If he is a creditor or there's a  
3 recovery then certainly he would benefit from that  
4 under the probate code because then he would be  
16:01:48 5 paid under a certain priority of payment before  
6 beneficiaries.

7 Q. All right. And so then Mr. Stansbury  
8 potentially could stand to benefit from the result  
9 of the outcome of the Chicago litigation depending  
16:02:08 10 upon the outcome of his litigation against the  
11 estate?

12 A. True.

13 Q. Correct?

14 A. Yes.

16:02:13 15 Q. So in that respect would you agree that  
16 Mr. Stansbury is an interested person in the  
17 outcome of the estate in Chicago?

18 A. I think in a very broad sense, yes. But  
19 if we are going to be debating claimants and  
16:02:26 20 creditors then that calls upon certain case law.

21 Q. Okay.

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

24 Q. Okay. We entered into evidence Exhibits 7  
16:02:40 25 and 8 which were e-mails that were sent to you

1 first by an associate in Mr. Stamos's office and --

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

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

16:02:56 5 MR. FEAMAN: I think I do.

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

8 Does anyone object to me maintaining the  
9 originals so that I can follow along? If you  
16:03:03 10 don't --

11 MR. FEAMAN: I know we do.

12 MR. ROSE: If you need my copy to speed  
13 things up, here.

14 BY MR. FEAMAN:

16:03:24 15 Q. There's our copies of 7 and 8.

16 A. Which one did you want me to look at  
17 first?

18 Q. Take a look at the one that came first on  
19 January 31st, 2007. Do you see that that was an  
16:03:41 20 e-mail directed to you from is it Mr. Kuyper, is  
21 that how you pronounce his name?

22 A. Yes.

23 Q. Okay. On January 31st. Do you recall  
24 receiving this?

16:03:53 25 A. Let me take a look at it.

1 Q. Sure.

2 A. I do remember this.

3 Q. All right. And did you have any  
4 discussions with Mr. Kuyper or Mr. Stamos  
16:04:19 5 concerning your comments regarding the Court's  
6 ruling which was denying the estate's motion for  
7 summary judgment?

8 A. There might have been another e-mail  
9 communication, but no oral communication since  
16:04:31 10 January.

11 Q. Did you send an e-mail back in response to  
12 this?

13 A. That I don't recall, and I don't have my  
14 records here.

16:04:38 15 Q. Okay.

16 A. I am not sure.

17 Q. Why don't we take a look at Exhibit 8, if  
18 we could. That's the e-mail from Mr. Stamos dated  
19 February 14th to you and me and Mr. Stansbury. Do  
16:04:57 20 you see that?

21 A. Yes.

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

24 A. Correct.

16:05:04 25 Q. Okay. And that's because Mr. Stamos had

1 received an e-mail from plaintiff's counsel in  
2 Chicago soliciting some input on a possible  
3 settlement, correct?

4 A. Yes.

16:05:19 5 Q. And when you received this did you respond  
6 to Mr. Stamos either orally or in writing?

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

16:05:34 10 Q. So then you haven't had any discussions  
11 with Mr. Stamos concerning settlement --

12 A. No.

13 Q. -- since this?

14 A. Not -- let's correct that. Not in terms  
16:05:44 15 of these communications.

16 Q. Right.

17 A. I have spoken to him previously about  
18 settlement, but obviously those are privileged that  
19 he is my counsel.

16:05:53 20 Q. Okay. And you are aware that -- would you  
21 agree with me that Mr. Ted Bernstein, who is in the  
22 courtroom today, is a plaintiff in that action in  
23 Chicago?

24 A. Which action?

16:06:06 25 Q. The Chicago filed, the action filed by



1 Mr. Bernstein?

2 A. Can you give me the complaint?

3 Q. Sure.

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

16:06:14 5 THE COURT: Go ahead.

6 BY MR. FEAMAN:

7 Q. This is the --

8 MR. ROSE: We'll stipulate. The documents  
9 are already in evidence.

16:06:25 10 THE COURT: Same objection?

11 MR. ROSE: I mean, we are trying to save  
12 time.

13 BY MR. FEAMAN:

14 Q. Take a look at the third page.

16:06:33 15 (Overspeaking.)

16 THE COURT: Hold on. Hold on. Hold on.

17 I have got everybody talking at once. It's

18 Feaman's case. We are going until 4:30. I

19 have already got one emergency in the, we call

16:06:41 20 it the Cad, that means nothing to you, but I am

21 telling you all right now I said we are going

22 to 4:30.

23 THE WITNESS: Yes, sir, Ted Bernstein is a  
24 plaintiff.

25 ///

1 BY MR. FEAMAN:

2 Q. Individually, correct?

3 A. Individually and as trustee.

4 Q. And Mr. Stamos is your attorney who  
16:06:57 5 represents the estate, correct?

6 A. Correct.

7 Q. And the estate is adverse to the  
8 plaintiffs, including Mr. Bernstein, correct?

9 A. In this action, call it the Illinois  
16:07:09 10 action, yes.

11 Q. Correct.

12 A. Okay.

13 THE COURT: Hold on. One more time. Go  
14 back and say that again. You are represented  
16:07:16 15 by Mr. Stamos?

16 THE WITNESS: Right, in the Illinois  
17 action, Your Honor.

18 THE COURT: Right.

19 THE WITNESS: And Ted Bernstein  
16:07:22 20 individually and as trustee is a plaintiff.

21 THE COURT: Right, individually and as  
22 trustee, got it.

23 THE WITNESS: And the estate is adverse to  
24 Ted Bernstein in those capacities in that  
16:07:32 25 litigation.

1 BY MR. FEAMAN:

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

3 THE COURT: Thank you.

4 BY MR. FEAMAN:

16:07:37 5 Q. And are you aware that Mr. Rose represents  
6 Mr. Ted Bernstein in various capacities?

7 A. Yes.

8 Q. Generally?

9 A. In various capacities generally, right.

16:07:52 10 Q. Including individually, correct?

11 A. That I am not -- I know as a fiduciary,  
12 for example, as trustee from our various and sundry  
13 actions, Shirley Bernstein, estate and trust and so  
14 forth. I am not sure individually.

16:08:10 15 Q. How long have you been involved with this  
16 Estate of Simon Bernstein?

17 A. A few years.

18 Q. Okay. And as far as you know  
19 Mr. Bernstein has been represented in whatever  
16:08:23 20 capacity in all of this since that time; is that  
21 correct?

22 A. He is definitely -- Mr. Rose has  
23 definitely represented Ted Bernstein since I have  
24 been involved. I just want to be totally correct  
16:08:34 25 about exactly what capacity. Definitely as a

1 fiduciary no doubt.

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

16:08:53 5 A. Could I take a look at it?

6 Q. Sure. Have you seen that deposition  
7 before, Mr. O'Connell?

8 A. I am not sure. I don't want to guess.  
9 Because I know it's May of 2015. It's possible.  
16:09:20 10 There were a number of documents in all this  
11 litigation, and I would be giving you a guess.

12 Q. On that first page is there an appearance  
13 by Mr. Rose on behalf of Ted Bernstein in that  
14 deposition?

16:09:31 15 A. Yes.

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

19 A. Yes.

16:09:43 20 Q. Okay. And would you agree with me upon  
21 reviewing that deposition that Mr. Rose is  
22 representing Ted Bernstein there?

23 MR. ROSE: Objection, calls for a legal  
24 conclusion.

16:09:55 25 THE WITNESS: There's an appearance by

1 him.

2 THE COURT: Sustained.

3 BY MR. FEAMAN:

4 Q. There's an appearance by him? Where does  
16:09:59 5 it show that?

6 MR. ROSE: The objection is sustained.

7 THE COURT: I sustained the objection.

8 MR. FEAMAN: Oh, okay. Sorry.

9 BY MR. FEAMAN:

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

13 A. Yes. But I want to state my position  
14 precisely, which is as now has been pled that Ted  
16:10:35 15 Bernstein should be the administrator ad litem to  
16 defend that litigation. And then if he chooses,  
17 which I expect he would, employ Mr. Rose, and  
18 Mr. Rose would operate as his counsel.

19 Q. Okay. So let me get this, if I understand  
16:10:48 20 your position correctly. You think that Ted  
21 Bernstein, who you have already told me is suing  
22 the estate as a plaintiff in Chicago, it would be  
23 okay for him to come in to the estate that he is  
24 suing in Chicago to represent the estate as  
16:11:05 25 administrator ad litem along with his attorney

1 Mr. Rose? Is that your position?

2 A. Here's why, yes, because of events. You  
3 have an apple and an orange with respect to  
4 Illinois. Mr. Rose and Ted Bernstein is not going  
16:11:18 5 to have any -- doesn't have any involvement in the  
6 prosecution by the estate of its position to those  
7 insurance proceeds. That's not on the table.

8 THE COURT: Say it again, Ted has no  
9 involvement?

16:11:30 10 THE WITNESS: Ted Bernstein and Mr. Rose  
11 have no involvement in connection with the  
12 estate's position in the Illinois litigation,  
13 Your Honor. I am not seeking that. If someone  
14 asked me that, I would say absolutely no.

16:11:43 15 BY MR. FEAMAN:

16 Q. I am confused, though, Mr. O'Connell.  
17 Isn't Ted Bernstein a plaintiff in the insurance  
18 litigation?

19 A. Yes.

16:11:52 20 Q. Okay. And as plaintiff in that insurance  
21 litigation isn't he seeking to keep those insurance  
22 proceeds from going to the estate?

23 A. Right.

24 Q. Okay.

16:12:00 25 A. Which is why the estate has a contrary

1 position --

2 Q. So if the estate --

3 (Overspeaking.)

4 THE COURT: Let him finish his answer.

16:12:11 5 THE WITNESS: It's my position as personal  
6 representative that those proceeds should come  
7 into the estate.

8 BY MR. FEAMAN:

9 Q. Correct.

16:12:17 10 A. Correct.

11 Q. And it's Mr. Bernstein's position both  
12 individually and as trustee in that same action  
13 that those proceeds should not come into the  
14 estate?

16:12:25 15 A. Right.

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

18 A. As a trustee he is a beneficiary,  
19 residuary beneficiary of the estate. And then he  
16:12:41 20 would be a beneficiary as to tangible personal  
21 property.

22 Q. So on one hand you say it's okay for  
23 Mr. Bernstein to be suing the estate to keep the  
24 estate from getting \$1.7 million dollars, and on  
16:12:52 25 the other hand it's okay for him and his attorney

1 to defend the estate. So let me ask you this --

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

3 Q. Okay. Well, go back to Exhibit 8, if we  
4 could.

16:13:07 5 A. Which one is Exhibit 8?

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

8 A. The 31st?

9 Q. Right.

16:13:19 10 A. Well, actually the Stamos e-mail is  
11 February 14th.

12 Q. Sorry, February 14th. And Mr. Rose right  
13 now has entered an appearance on behalf of the  
14 estate, correct?

16:13:37 15 A. You have to state what case.

16 Q. Down here in Florida.

17 A. Which case?

18 Q. The Stansbury action.

19 A. The civil action?

16:13:44 20 Q. Yes.

21 A. Yes. You need to be precise because  
22 there's a number of actions and various  
23 jurisdictions and various courts.

24 Q. And Mr. Rose's client in Chicago doesn't  
16:13:56 25 want any money to go to the estate. So when you



1 are discussing settlement with Mr. Stamos, are you  
2 going to talk to your other counsel, Mr. Rose,  
3 about that settlement when he is representing a  
4 client adverse to you?

16:14:16 5 A. No.

6 Q. How do we know that?

7 A. Because I don't do that and have not done  
8 that.

9 Q. So you --

16:14:24 10 A. Again, can I finish, Your Honor?

11 THE COURT: Yes, please.

12 THE WITNESS: Thanks. Because there's a  
13 differentiation you are not making between  
14 these pieces of litigation. You have an  
16:14:33 15 Illinois litigation pending in federal court  
16 that has discrete issues as to who gets the  
17 proceeds of a life insurance policy. Then you  
18 have what you will call the Stansbury  
19 litigation, you represent him, your civil  
16:14:48 20 action, pending in circuit civil, your client  
21 seeking to recover damages against the estate.

22 BY MR. FEAMAN:

23 Q. So Mr. Rose could advise you as to terms  
24 of settlement, assuming he is allowed to be counsel  
16:15:02 25 for the estate in the Stansbury action down here,

1 correct?

2 A. About the Stansbury action?

3 Q. Right, about how much we should settle  
4 for, blah, blah, blah?

16:15:13 5 A. That's possible.

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

9 A. Depends on what the facts and  
16:15:24 10 circumstances are. Right now, as everyone knows I  
11 think at this point, there isn't enough money to  
12 settle, unless Mr. Stansbury would take less than  
13 what is available. There have been attempts made  
14 to settle at mediations and through communications  
16:15:42 15 which haven't been successful. So certainly I am  
16 not as personal representative able or going to  
17 settle with someone in excess of what's available.

18 Q. Correct. But the outcome of the Chicago  
19 litigation could make more money available for  
16:16:00 20 settlement, correct?

21 A. If it's successful it could.

22 Q. Okay. Maybe a number that would be  
23 acceptable to Mr. Stansbury, I don't know, that's  
24 conjecture, right?

16:16:08 25 A. Total conjecture.

1 Q. Okay.

2 A. Unless we are going to get into what  
3 settlement discussions have been.

4 Q. And at the same time Mr. Rose, who has  
16:16:16 5 entered an appearance at that deposition for  
6 Mr. Bernstein in the Chicago action, his client has  
7 an interest there not to let that money come into  
8 the estate, correct?

9 MR. ROSE: Objection again to the extent  
16:16:29 10 it calls for a legal conclusion as to what I  
11 did in Chicago. I mean, the records speak for  
12 themselves.

13 THE COURT: Could you read back the  
14 question for me?

15 (The following portion of the record was  
16 read back.)

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

22 THE COURT: I am going to allow it as the  
23 personal representative his impressions of  
24 what's going on, not as a legal conclusion  
16:17:03 25 because he is also a lawyer.

1 THE WITNESS: My impression based on  
2 stated positions is that Mr. Ted Bernstein does  
3 not want the life insurance proceeds to come  
4 into the probate estate of Simon Bernstein.

16:17:17 5 That's what he has pled.

6 BY MR. FEAMAN:

7 Q. Right. And you disagree with Mr. Ted  
8 Bernstein on that, correct?

9 A. Yes.

16:17:24 10 MR. FEAMAN: Thank you.

11 CROSS (BRIAN O'CONNELL)

12 BY MR. ROSE:

13 Q. And notwithstanding that disagreement, you  
14 still believe that --

16:17:29 15 MR. ROSE: I thought he was done, I am  
16 sorry.

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

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

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

16:17:36 20 THE COURT: That's okay. I didn't think  
21 that you were trying to.

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

23 THE COURT: All right.

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

16:17:55 25 MR. ELIOT BERNSTEIN: Excuse me, Your

1 Honor.

2 BY MR. ROSE:

3 Q. And notwithstanding the fact that in  
4 Illinois Ted as the trustee of this insurance trust  
16:18:02 5 wants the money to go into this 1995 insurance  
6 trust, right?

7 A. Right.

8 Q. And he has got an affidavit from Spallina  
9 that says that's what Simon wanted, or he's got  
16:18:14 10 some affidavit he filed, whatever it is? And you  
11 have your own lawyer up there Stamos and Trucco,  
12 right?

13 A. Correct.

14 Q. And notwithstanding that, you still  
16:18:21 15 believe that it's in the best interests of the  
16 estate as a whole to have Ted to be the  
17 administrator ad litem and me to represent the  
18 estate given our prior knowledge and involvement in  
19 the case, right?

16:18:30 20 A. It's based on maybe three things. It's  
21 the prior knowledge and involvement that you had,  
22 the amount of money, limited amount of funds that  
23 are available in the estate to defend the action,  
24 and then a number of the beneficiaries, or call  
16:18:48 25 them contingent beneficiaries because they are

1 trust beneficiaries, have requested that we consent  
2 to what we have just outlined, ad litem and your  
3 representation, those items.

4 Q. And clearly you are adverse to  
16:19:03 5 Mr. Stansbury, right?

6 A. Yes.

7 Q. But in this settlement letter your lawyer  
8 in Chicago is copying Mr. Stansbury and Mr. Feaman  
9 about settlement position, right?

16:19:13 10 A. Correct.

11 Q. Because that's the deal we have,  
12 Mr. Stansbury is funding litigation in Illinois and  
13 he gets to sort of be involved in it and have a say  
14 in it, how it turns out? Because he stands to  
16:19:23 15 improve his chances of winning some money if the  
16 Illinois case goes the way he wants, right?

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

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

16:19:33 20 A. Approximately, yes.

21 Q. And there's an order that's already in  
22 evidence, and the judge can hear that later, but --  
23 okay. So --

24 THE COURT: I don't have an order in  
16:19:46 25 evidence.

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

3 THE COURT: Oh, in the Illinois?

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

16:19:55 5 THE COURT: Oh, in the Illinois.

6 MR. ROSE: But it's in evidence now, Your  
7 Honor.

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

16:19:58 10 MR. ROSE: I am sorry.

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

12 MR. ROSE: I was going to save it for  
13 closing.

14 THE COURT: In the Illinois is the Florida  
16:20:05 15 order?

16 MR. ROSE: Yes.

17 THE COURT: Okay. That's the only thing I  
18 missed.

19 MR. ROSE: Right.

16:20:08 20 BY MR. ROSE:

21 Q. The evidence it says for the reasons and  
22 subject to the conditions stated on the record  
23 during the hearing, all fees and costs incurred,  
24 including for the curator in connection with his  
16:20:16 25 work, and any counsel retained by the administrator

1 ad litem will initially be borne by William  
2 Stansbury. You have seen that order before, right?

3 A. I have seen the order, yes.

4 Q. And the Court will consider a petition to  
16:20:26 5 pay back Mr. Stansbury. If the estate wins in  
6 Illinois, we certainly have to pay back  
7 Mr. Stansbury first because he has fronted all the  
8 costs, right?

9 A. Absolutely.

16:20:34 10 Q. Okay. So despite that order, you have  
11 personal knowledge that he is \$40,000 in arrears  
12 with the Chicago counsel?

13 A. I have knowledge from my counsel.

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

16:20:47 15 A. Yes. It's information everyone has.

16 Q. Okay.

17 A. Should have.

18 Q. Would you agree with me that you have  
19 spent almost no money defending the estate so far  
16:21:03 20 in the Stansbury litigation?

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

24 Q. Very minimal. Minimal?

16:21:15 25 A. Not a significant amount.



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

3 A. Yes.

4 Q. Have you had the time to study all the  
16:21:26 5 documents, the depositions, the exhibits, the tax  
6 returns, and all the stuff that is going to need to  
7 be dealt with in this litigation?

8 A. I have reviewed some of them. I can't say  
9 reviewed all of them because I would have to  
16:21:36 10 obviously have the records here to give you a  
11 correct answer on that.

12 Q. And you bill for your time when you do  
13 that?

14 A. Sure.

16:21:41 15 Q. And if Ted is not the administrator ad  
16 litem, you are going to have to spend money to sit  
17 through a two-week trial maybe?

18 A. Yes.

19 Q. You are not willing to do that for free,  
16:21:53 20 are you?

21 A. No.

22 Q. Okay. Would you agree with me that you  
23 know nothing about the relationship, personal  
24 knowledge, between Ted, Simon and Bill Stansbury,  
16:22:05 25 personal knowledge? Were you in any of the

1 meetings between them?

2 A. No, not personal knowledge.

3 Q. Were you involved in the business?

4 A. No.

16:22:11 5 Q. Do you have any idea who the accountant --  
6 well, you know who the accountant was because they  
7 have a claim. Have you ever spoken to the  
8 accountant about the lawsuit?

9 A. No.

16:22:17 10 Q. Have you ever interviewed any witnesses  
11 about the lawsuit independent of maybe talking to  
12 Mr. Stansbury and saying hello and saying hello to  
13 Ted?

14 A. Or talking to different parties, different  
16:22:29 15 family members.

16 Q. Now, did you sign a waiver, written waiver  
17 form?

18 A. Yes.

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

16:22:38 20 A. Yes.

21 Q. Did you edit it substantially and put it  
22 in your own words?

23 A. Yes.

24 Q. Much different than the draft I prepared?

16:22:45 25 A. Seven pages shorter.

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

4 MR. FEAMAN: Objection, it's cumulative  
16:22:54 5 and it's hearsay.

6 THE COURT: This is his affidavit, his  
7 sworn consent?

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

16:23:15 10 THE COURT: How is it cumulative? That's  
11 what I was going to say.

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

14 THE COURT: But a written consent is  
16:23:21 15 necessary under the rules, and that's been  
16 raised as an issue.

17 MR. FEAMAN: The rule says that --

18 THE COURT: I mean, whether you can waive  
19 is an issue, and I think that specifically  
16:23:30 20 under four point -- I am going to allow it.  
21 Overruled.

22 MR. ELIOT BERNSTEIN: Can I object?

23 THE COURT: Sure.

24 MR. ELIOT BERNSTEIN: That just came on  
16:23:39 25 February 9th to me.

1 THE COURT: Okay.

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

4 THE COURT: Okay.

16:23:43 5 MR. ELIOT BERNSTEIN: Which kind of  
6 actually exposes a huge fraud going on here.  
7 But I will get to that when I get a moment. It  
8 shouldn't be in. I hardly had time to review  
9 it. And I will explain some of that in a  
16:23:54 10 moment, but.

11 THE COURT: I am overruling that  
12 objection. All documents were supposed to be  
13 provided by the Court pursuant to my order by  
14 February 9th. This is a waiver of any  
16:24:04 15 potential conflict that's three pages. And if  
16 you got it February 9th you had sufficient  
17 time. So overruled.

18 I am not sure what to call this,  
19 petitioner's or respondent's, in this case. I  
16:24:30 20 am going to mark these as respondent's.

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

22 THE COURT: I could do that. Let me mark  
23 it.

24 (Trustee's Exb. No. 1, Personal  
16:24:39 25 Representative Position Statement.)

1 BY MR. ROSE:

2 Q. I think you alluded to it. But after the  
3 mediation that was held in July, there were some  
4 discussions with the beneficiaries, including Judge  
16:24:49 5 Lewis who's a guardian ad litem for three of the  
6 children, correct?

7 A. Yes.

8 Q. And you were asked if you would consent to  
9 this procedure of having me come in as counsel  
16:24:59 10 because --

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

14 MR. ROSE: Oh, I am sorry.

16:25:06 15 THE COURT: That's okay.

16 I have to add it to my exhibit list.

17 You may proceed, thank you.

18 BY MR. ROSE:

19 Q. You agreed to this procedure that I would  
16:25:43 20 become counsel and Ted would become the  
21 administrator ad litem because you thought it was  
22 in the best interests of the estate as a whole,  
23 right?

24 A. For the reasons stated previously, yes.

16:25:51 25 Q. And other than having to go through this

1 expensive procedure to not be disqualified, you  
2 still agree that it's in the best interests of the  
3 estate that our firm be counsel and that Ted  
4 Bernstein be administrator ad litem?

16:26:02 5 A. For the defense of the Stansbury civil  
6 action, yes.

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

9 A. Correct.

16:26:10 10 Q. Now, you were asked if you had a fiduciary  
11 duty to the interested persons including  
12 Mr. Stansbury, right?

13 A. I was asked that, yes.

14 Q. So if you have a fiduciary duty to him,  
16:26:20 15 why don't you just stipulate that he can have a two  
16 and a half million dollar judgment and give all the  
17 money in the estate to him? Because just because  
18 you have a duty, you have multiple duties to a lot  
19 of people, correct?

16:26:32 20 A. Correct.

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

24 A. Correct.

16:26:39 25 Q. And you have been a lawyer for many years?

1 A. Yes.

2 Q. Correct? And you have served as trustee  
3 as a fiduciary, serving as a fiduciary,  
4 representing a fiduciary, opposing fiduciary,  
16:26:51 5 that's been the bulk of your practice, correct?

6 A. Yes, yes and yes.

7 MR. ROSE: Nothing further.

8 THE COURT: Redirect?

9 MR. FEAMAN: Yes.

16:26:58 10 THE COURT: Wait a minute. Let me let  
11 Mr. Eliot Bernstein ask any questions.

12 MR. ELIOT BERNSTEIN: Can I ask him  
13 questions at one point?

14 THE COURT: You can.

16:27:10 15 MR. ELIOT BERNSTEIN: Your Honor, first, I  
16 just wanted to give you this and apologize for  
17 being late.

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

19 MR. ELIOT BERNSTEIN: Well, no, it's  
16:27:20 20 important so you understand some things.

21 I have got ten steel nails in my mouth so  
22 I speak a little funny right now. It's been  
23 for a few weeks. I wasn't prepared because I  
24 am on a lot of medication, and that should  
16:27:33 25 explain that. But I still got some questions

1 and I would like to have my....

2 MR. ROSE: I would just state for the  
3 record that he has been determined to have no  
4 standing in the estate proceeding as a  
16:27:43 5 beneficiary.

6 THE COURT: I thought that was in the  
7 Estate of Shirley Bernstein.

8 MR. ROSE: It's the same ruling --  
9 (Overspeaking.)

16:27:52 10 THE COURT: Please, I will not entertain  
11 more than one person.

12 MR. ROSE: By virtue of Judge Phillips'  
13 final judgment upholding the documents, he is  
14 not a beneficiary of the residuary estate. He  
16:28:02 15 has a small interest as a one-fifth beneficiary  
16 of tangible personal property, which is --

17 THE COURT: I understand.

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

16:28:13 20 THE COURT: Wouldn't that give him  
21 standing, though?

22 MR. ROSE: Well, I don't think for the  
23 purposes of the disqualification by Mr. Feaman  
24 it wouldn't.

16:28:19 25 THE COURT: Well, that would be your



1 argument, just like you are arguing that  
2 Mr. Stansbury doesn't have standing to  
3 disqualify you, correct?

4 MR. ROSE: Right.

16:28:26 5 THE COURT: So that's an argument you can  
6 raise.

7 You may proceed.

8 CROSS (BRIAN O'CONNELL)

9 BY MR. ELIOT BERNSTEIN:

16:28:31 10 Q. Mr. O'Connell, am I a devisee of the will  
11 of Simon?

12 MR. ROSE: Objection, outside the scope of  
13 direct.

14 THE COURT: That is true. Sustained.

16:28:40 15 That was not discussed.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Do I have standing in the Simon estate  
18 case --

19 MR. ROSE: Objection, calls for a legal  
16:28:46 20 conclusion.

21 BY MR. ELIOT BERNSTEIN:

22 Q. -- in your opinion?

23 MR. ELIOT BERNSTEIN: Well, he is a  
24 fiduciary.

16:28:51 25 THE COURT: He was asked regarding his

1 thoughts regarding a claimant, so I will allow  
2 it. Overruled.

3 THE WITNESS: You have standing in certain  
4 actions by virtue of your being a beneficiary  
16:29:01 5 of the tangible personal property.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Okay, so beneficiary?

8 A. Right.

9 Q. Okay. Thank you. Which will go to the  
16:29:09 10 bigger point of the fraud going on here, by the  
11 way.

12 Are you aware that Ted Bernstein is a  
13 defendant in the Stansbury action?

14 A. Which Stansbury action?

16:29:20 15 Q. The lawsuit that Mr. Rose wants Ted to  
16 represent the estate in?

17 A. I'd have to see the action, see the  
18 complaint.

19 Q. You have never seen the complaint?

16:29:30 20 A. I have seen the complaint, but I want to  
21 make sure it's the same documents.

22 Q. So Ted --

23 THE COURT: You must allow him to answer  
24 the questions.

16:29:37 25 MR. ELIOT BERNSTEIN: I am sorry, okay.

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

4 MR. ROSE: Well, I object. Mr. Feaman  
16:29:45 5 knows that he has dismissed the claims against  
6 all these people, and this is a complete waste.  
7 We have a limited amount of time and these are  
8 very important issues.

9 MR. ELIOT BERNSTEIN: Excuse me.

16:29:56 10 THE COURT: Wait.

11 MR. ROSE: These defendants they are  
12 dismissed, they are settled. Mr. Feaman knows  
13 because he filed the paper in this court.

14 THE COURT: Mr. Rose.

16:30:02 15 MR. ROSE: It's public record.

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

19 MR. ROSE: Okay.

16:30:09 20 THE COURT: Because I know that's why you  
21 are objecting, and you know I have to allow --

22 MR. ROSE: Okay.

23 THE COURT: All right? The legal  
24 objection is noted. Mr. O'Connell can respond.  
16:30:19 25 He asked to see a document.

1 BY MR. ELIOT BERNSTEIN:

2 Q. I would like to show you --

3 THE DEPUTY: Ask to approach, please.

4 MR. ELIOT BERNSTEIN: Oh, ask to.

16:30:28 5 BY MR. ELIOT BERNSTEIN:

6 Q. Can I approach you?

7 THE COURT: What do you want to approach  
8 with?

9 MR. ELIOT BERNSTEIN: I just want to show  
16:30:34 10 him the complaint.

11 THE COURT: Complaint? As long as you  
12 show the other side what you are approaching  
13 with.

14 MR. ELIOT BERNSTEIN: It's your second  
16:30:40 15 amended complaint.

16 MR. ROSE: No objection.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Is Ted Bernstein a defendant in that  
19 action?

16:30:46 20 A. I believe he was a defendant, past tense.

21 Q. Okay. Let me ask you a question. Has the  
22 estate that you are in charge of settled with Ted  
23 Bernstein?

24 A. In connection with this action?

16:31:01 25 MR. ROSE: Objection, relevance.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Yes, in connection with this action?

3 THE COURT: Which action?

4 MR. ELIOT BERNSTEIN: The Stansbury  
16:31:07 5 lawsuit that Ted wants to represent.

6 THE COURT: If he can answer.

7 MR. ELIOT BERNSTEIN: This is the conflict  
8 that's the elephant in the room.

9 THE COURT: No, no, no.

16:31:14 10 MR. ELIOT BERNSTEIN: Okay.

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

13 MR. ELIOT BERNSTEIN: Sorry.

14 THE COURT: Ask a question and move on.

16:31:18 15 MR. ELIOT BERNSTEIN: Got it.

16 THE COURT: Mr. O'Connell, if you can  
17 answer the question, answer the question.

18 THE WITNESS: Sure. Thanks, Your Honor.

19 I am going to give a correct answer. We have  
16:31:25 20 not had a settlement in connection with Ted  
21 Bernstein in connection with what I will call  
22 the Stansbury independent or civil action.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So that lawsuit --

16:31:37 25 A. The estate has not entered into such a

1 settlement.

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

16:31:52 5 A. The estate prior to -- I thought you were  
6 talking about me, my involvement. Prior to my  
7 involvement there was a settlement.

8 Q. With Shirley's trust, correct?

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

16:32:04 10 Q. Well, you just --

11 THE COURT: Wait. You have to let him  
12 answer.

13 MR. ELIOT BERNSTEIN: Sorry, okay.

14 THE WITNESS: I recall there being a  
16:32:08 15 settlement again prior to my involvement with  
16 Mr. Stansbury and Ted Bernstein.

17 BY MR. ELIOT BERNSTEIN:

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

16:32:24 20 A. The estate, the estate, my estate, when I  
21 have been personal representative, we are not in  
22 litigation with Ted. We are in litigation with  
23 Mr. Stansbury. That's where the disconnect is.

24 Q. In the litigation Ted is a defendant,  
16:32:41 25 correct?

1           A.     I have to look at the pleadings.  But as I  
2 recall the claims against Ted Bernstein were  
3 settled, resolved.

4           Q.     Only with Mr. Stansbury in the Shirley  
16:32:55 5 trust and individually.

6                     So let me ask you --

7           THE COURT:  You can't testify.

8           MR. ELIOT BERNSTEIN:  Okay.

9           BY MR. ELIOT BERNSTEIN:

16:33:03 10           Q.     Ted Bernstein, if you are representing the  
11 estate, there's a thing called shared liability,  
12 meaning if Ted is a defendant in the Stansbury  
13 action, which he is, and he hasn't been let out by  
14 the estate, then Ted Bernstein coming into the  
16:33:22 15 estate can settle his liability with the estate.

16           You following?  He can settle his liability by  
17 making a settlement that says Ted Bernstein is out  
18 of the lawsuit, the estate is letting him out, we  
19 are not going to sue him.  Because the estate  
16:33:40 20 should be saying that Ted Bernstein and Simon  
21 Bernstein were sued.

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

24           MR. ELIOT BERNSTEIN:  Okay.

16:33:47 25           THE COURT:  But is that a question?

1 MR. ELIOT BERNSTEIN: Yeah, okay.

2 THE COURT: I can't --

3 MR. ELIOT BERNSTEIN: I will break it  
4 down, because it is a little bit complex, and I  
16:33:54 5 want to go step by step.

6 THE COURT: Thank you. And we will be  
7 concluding in six minutes.

8 MR. ELIOT BERNSTEIN: Then I would ask for  
9 a continuance.

16:34:01 10 THE COURT: We will be concluding in six  
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Ask what you can.

14 MR. ELIOT BERNSTEIN: Okay.

16:34:08 15 BY MR. ELIOT BERNSTEIN:

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

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

16:34:23 20 Q. Okay.

21 A. At that point in time.

22 Q. So both those parties share liability if  
23 Stansbury wins, correct?

24 MR. ROSE: Objection.

16:34:30 25 THE WITNESS: No.



1 THE COURT: Hold on.

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

4 MR. ELIOT BERNSTEIN: Well, if  
16:34:38 5 Mr. Stansbury won his suit and was suing Ted  
6 Bernstein --

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

16:34:47 10 But his question in theory is appropriate.  
11 He says they are both defendants, they share  
12 liability. Mr. O'Connell can answer that. The  
13 record speaks for itself.

14 THE WITNESS: And the problem, Your Honor,  
16:34:57 15 would be this, and I will answer the question,  
16 but I am answering it in the blind without all  
17 the pleadings. Because as I -- I will give you  
18 the best answer I can without looking at the  
19 pleadings.

16:35:08 20 THE COURT: You can only answer how you  
21 can.

22 THE WITNESS: As I recall the state of  
23 this matter, sir, this is the independent  
24 action, the Stansbury action, whatever you want  
16:35:17 25 to call it, Ted Bernstein is no longer a

1 defendant due to a settlement.

2 BY MR. ELIOT BERNSTEIN:

3 Q. He only settled with Mr. Stansbury,  
4 correct? The estate, as you said a moment ago, has  
16:35:29 5 not settled with Ted Bernstein as a defendant. So  
6 the estate could be --

7 THE COURT: Mr. Bernstein, Mr. Bernstein.

8 MR. ELIOT BERNSTEIN: Uh-huh.

9 THE COURT: From the pleadings the Court  
16:35:38 10 understands there is not a claim from the  
11 estate against Ted Bernstein in the Stansbury  
12 litigation. Is the Court correct?

13 MR. ELIOT BERNSTEIN: The Court is  
14 correct.

16:35:50 15 THE COURT: Okay.

16 MR. ELIOT BERNSTEIN: But the estate, if  
17 Mr. O'Connell was representing the  
18 beneficiaries properly, should be suing Ted  
19 Bernstein because the complaint alleges that he  
16:36:00 20 did most of the fraud against Mr. Stansbury,  
21 and my dad was just a partner.

22 THE COURT: Okay. So that's your  
23 argument, I understand.

24 MR. ELIOT BERNSTEIN: Okay.

16:36:07 25 THE COURT: But please ask the questions

1           pursuant to the pleadings as they stand.

2           MR. ELIOT BERNSTEIN:   Okay.

3 BY MR. ELIOT BERNSTEIN:

4           Q.     Could the estate sue Ted Bernstein since  
16:36:15 5 he is a defendant in the action who has shared  
6 liability with Simon Bernstein?

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

9           THE COURT:   He can answer the question if  
16:36:24 10 he can.

11          MR. ROSE:   Okay.

12          THE WITNESS:   One of the disconnects here  
13 is that he is not a current beneficiary in the  
14 litigation as you just stated.

16:36:33 15          MR. ELIOT BERNSTEIN:   There's no  
16 beneficiary in that litigation.

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

18          MR. ELIOT BERNSTEIN:   Oh.

19          THE COURT:   Remember, you have got to ask  
16:36:40 20 questions.

21          THE WITNESS:   Defendant, Your Honor, wrong  
22 term.   He is not a named defendant at this  
23 point due to a settlement.

24 BY MR. ELIOT BERNSTEIN:

16:36:48 25          Q.     Could the estate sue back a

1 counter-complaint to Ted Bernstein individually who  
2 is alleged to have committed most of the egregious  
3 acts against Mr. Stansbury? He is a defendant in  
4 the action. Nobody settled with him yet from the  
16:37:05 5 estate. Could you sue him and say that half of the  
6 liability, at least half, if not all, is on Ted  
7 Bernstein?

8 A. Anyone, of course, theoretically could sue  
9 anyone for anything. What that would involve would  
16:37:19 10 be someone presenting in this case me the facts,  
11 the circumstances, the evidence that would support  
12 a claim by the estate against Ted Bernstein. That  
13 I haven't seen or been told.

14 Q. Okay. Mr. Stansbury's complaint, you see  
16:37:34 15 Ted and Simon Bernstein were sued. So the estate  
16 could meet the argument, correct, that Ted  
17 Bernstein is a hundred percent liable for the  
18 damages to Mr. Stansbury, correct?

19 A. I can't say that without having all the  
16:37:51 20 facts, figures, documents --

21 Q. You haven't read this case?

22 A. -- in front of me. Not on that level.  
23 Not to the point that you are -- not to the point  
24 that you are --

16:37:57 25 Q. Let me ask you a question.

1 A. -- trying to.

2 MR. ROSE: Your Honor?

3 BY MR. ELIOT BERNSTEIN:

4 Q. Let me ask you a question.

16:38:04 5 THE COURT: Hold on one second, sir.

6 MR. ROSE: He is not going to finish in  
7 two minutes and there are other things we need  
8 to address, if we have two minutes left. So  
9 can he continue his cross-examination at the  
16:38:12 10 continuance?

11 THE COURT: March we have another hearing.

12 MR. ELIOT BERNSTEIN: Can we continue this  
13 hearing?

14 THE COURT: Yes. But I am going to give  
16:38:15 15 you a limitation. You get as much time as  
16 everybody else has.

17 MR. ELIOT BERNSTEIN: That's fine.

18 THE COURT: You have about ten more  
19 minutes when we come back.

16:38:23 20 MR. ELIOT BERNSTEIN: Okay. Can I submit  
21 to you the binder that I filed late?

22 THE COURT: Sure.

23 MR. ELIOT BERNSTEIN: (Overspeaking).

24 THE COURT: As long as it has been -- has  
16:38:29 25 it been filed with the Court and has everybody

1 gotten a copy?

2 MR. ELIOT BERNSTEIN: I sent them copies  
3 and I brought them copies today.

4 THE COURT: As long as everybody else gets  
16:38:40 5 a copy --

6 MR. ELIOT BERNSTEIN: Okay.

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

9 MR. ROSE: Your Honor, we had a couple of  
16:38:45 10 other -- I mean, he can continue it but we have  
11 limited time. There is a summary judgment  
12 hearing set for next week in this case. So  
13 right now -- not this case, Your Honor, I mean  
14 the Stansbury case.

15 THE COURT: Oh, you did see the look in my  
16 face?

17 MR. ROSE: Right. No, I understand. So I  
18 am right now traveling under a court order that  
19 authorizes me to appear, but I would like to on  
16:39:04 20 the record I am not going to -- I think we need  
21 to cancel that hearing or advise Judge Marx,  
22 because I don't feel comfortable going forward  
23 in the light of this motion, no matter how  
24 frivolous I think it is, pending. That's why I  
16:39:16 25 would hope to get this concluded today.

1 THE COURT: I understand.

2 MR. ROSE: But it's not anyone's fault.

3 That's why I wanted to raise it in the minute  
4 we have. So I think we should either continue  
16:39:23 5 it or I would withdraw the motion without  
6 prejudice, whatever I need to do with Judge  
7 Marx. But I want Mr. Feaman's comment on the  
8 record.

9 MR. FEAMAN: I think it should be

16:39:31 10 continued until there's a disposition of this.

11 MR. ELIOT BERNSTEIN: Yeah.

12 MR. ROSE: And then --

13 MR. FEAMAN: And in fact, that judge or  
14 that division, sorry, I didn't mean to  
16:39:41 15 interrupt, stayed all discovery in that case  
16 until this motion was heard, so.

17 THE COURT: I am trying.

18 MR. ROSE: No, I understand.

19 MR. FEAMAN: No, we are not.

16:39:49 20 MR. ROSE: The other thing is Mr. Feaman  
21 has represented this is the last witness. So I  
22 would think we would finish this hearing in a  
23 half an hour, and we have a couple hours set  
24 aside. And you were going to just state what  
16:40:00 25 other matters you were going to address.

1           The one thing I wanted -- we had sent you  
2           in an order to -- at that same hearing if  
3           there's time to handle some just very mop-up  
4           motions in the Shirley Bernstein estate.

16:40:11 5           THE COURT: Let me see how long we have  
6           set for next time.

7           MR. ROSE: We have two hours on the 2nd.

8           THE COURT: All right. Here's what I want  
9           done. Within the first hour we are going to  
16:40:19 10          finish this motion. With all due respect, now  
11          I will have some time to review some of what  
12          you have given me, but I don't know if I will  
13          rule from the bench, so you are also going to  
14          have to give me time.

16:40:31 15          MR. ROSE: That's fine.

16          THE COURT: Thanks. I appreciate that.

17          MR. ROSE: I will tell Judge Marx that we  
18          need a continuance for let's say 45 days or  
19          something.

16:40:38 20          THE COURT: I need time to rule on that  
21          motion once I have everything. And we are just  
22          going to have to take things as they come. I  
23          mean, that's just how we'll have to do it. We  
24          have a lot of -- how can I put this --  
16:41:00 25          positions being presented. And so, like I



1 said, so, Mr. Eliot -- and I am only calling  
2 you that because there's a lot of Bernsteins in  
3 the room.

4 MR. ELIOT BERNSTEIN: That's okay.

16:41:08 5 THE COURT: It's not disrespectful, I am  
6 not trying to be, because I have two  
7 Bernsteins.

8 Mr. Eliot Bernstein.

9 MR. ELIOT BERNSTEIN: Yes.

16:41:14 10 THE COURT: So you will get ten more  
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Then Mr. Feaman will have his  
14 final say because it was his witness, on that  
16:41:22 15 witness.

16 MR. ELIOT BERNSTEIN: And then do I get to  
17 say something at some point?

18 THE COURT: You will get to say something  
19 at some point, yes.

16:41:30 20 MR. ELIOT BERNSTEIN: Thank you.

21 THE COURT: Okay. But we are going to  
22 wrap it all up within an hour.

23 MR. ELIOT BERNSTEIN: That one hearing?

24 THE COURT: Yes, the motion to disqualify  
16:41:36 25 and the motion to vacate.

1 MR. ELIOT BERNSTEIN: Okay.

2 THE COURT: So the first hour -- and you  
3 can see I am pretty militant, because if not we  
4 are not going to get anything done here. So we  
16:41:45 5 are -- no, not yet. Then we are going to move  
6 on to the administrator ad litem motion which  
7 would be the next consecutive motion.

8 Yes?

9 MR. ELIOT BERNSTEIN: What day is that on?

16:41:57 10 THE COURT: March 2nd. I can give you an  
11 extra copy of the scheduling order if you would  
12 like.

13 MR. ELIOT BERNSTEIN: Okay. All I want to  
14 make the Court aware of here is I am dealing  
16:42:06 15 with a serious medical issue that I am telling  
16 you I am bleeding talking to you. It's very  
17 serious, and it has been for three weeks. And  
18 I just want to say I will let you know if I --  
19 as soon as I can how long it's going to take.  
16:42:21 20 He has got to put in full. It's complicated.  
21 But I have had facial reconstruction and it  
22 takes time for the teeth to adjust once he  
23 puts. And I do not have teeth for three weeks,  
24 and these spikes are like nails in your mouth.  
16:42:37 25 So every talk tongue bite will hurt.

1 THE COURT: You can --

2 MR. ELIOT BERNSTEIN: I will let you know  
3 if it's going to take any longer than that by  
4 say a week before that hearing, okay? And I  
16:42:46 5 will give you a doctor's note that it's still  
6 ongoing, et cetera. Because I can't -- I mean,  
7 the last three weeks they've bombarded me with  
8 all this stuff, not saying I wasn't prepared  
9 for it. But I have been severely stressed, as  
16:42:59 10 the letter indicates. I am on severe  
11 narcotics, heavy muscle relaxers that would  
12 make you a jellyfish. So just appreciate that.

13 THE COURT: I do.

14 MR. ELIOT BERNSTEIN: Okay. I appreciate  
16:43:10 15 that.

16 THE COURT: The Court appreciates what you  
17 have represented. We'll deal with it. Do you  
18 need an extra copy of the scheduling order?

19 MR. ELIOT BERNSTEIN: Me?

16:43:19 20 THE COURT: You.

21 MR. ELIOT BERNSTEIN: Oh, for March 2nd?

22 THE COURT: Yes.

23 MR. ELIOT BERNSTEIN: Can I get one,  
24 please?

16:43:25 25 THE COURT: I am trying to find it. I

1 have so many papers.

2 MR. ELIOT BERNSTEIN: Did you serve it to  
3 me?

4 THE COURT: Me personally?

16:43:32 5 MR. ELIOT BERNSTEIN: Did somebody?

6 THE COURT: I have no idea. You should,  
7 actually yes.

8 MR. ELIOT BERNSTEIN: Is it today's order?

9 MR. FEAMAN: Yes, he is on the list.

16:43:39 10 THE COURT: He is on the service list. I  
11 double checked when you were late.

12 MR. ELIOT BERNSTEIN: I got it.

13 THE COURT: You did get it, okay. So you  
14 do have it. All right. Excellent.

16:43:44 15 Thank you everyone. I am taking -- you  
16 know what, Court's in recess. He has some of  
17 the exhibits in evidence. But I think he took  
18 Mr. Feaman's original e-mail.

19 MR. ROSE: We'll straighten it out, Your  
16:43:55 20 Honor.

21 THE COURT: Thank you. Court's in recess.

22 (Judge Scher exited the courtroom.)

23 MR. FEAMAN: Don't go off the record.

24 Stay on the record. We have got to have

16:44:11 25 custody of these original exhibits. We've got

1 to know who's going to get them and all that.

2 MR. ROSE: Mr. Feaman, would you please  
3 check these and determine if they are your  
4 copies or the Court's copies? Thank you, sir.

16:44:22 5 MR. FEAMAN: This looks like a copy, copy,  
6 copy, original.

7 THE DEPUTY: This is for the Court.

8 MR. FEAMAN: I just want to go through it  
9 and make sure the Court has all the originals.

16:45:25 10 MR. ROSE: Those are the eight -- I handed  
11 Mr. Feaman the eight exhibits that he put in  
12 and the one exhibit that was trustee's exhibit.

13 MR. FEAMAN: The Court has all the  
14 exhibits.

16:46:03 15

16 (The proceedings adjourned at 4:46 p.m.)

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25

1 C E R T I F I C A T E

2 - - -

3  
4 The State of Florida

5 County of Palm Beach

6  
7 I, Lisa Mudrick, RPR, FPR, certify that I  
8 was authorized to and did stenographically report  
9 the foregoing proceedings, pages 1 through 117, and  
10 that the transcript is a true record.

11  
12 Dated February 21, 2017.

13  
14  
15  
16  
17  
18 

19  
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