

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

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

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9
10 Proceedings before the Honorable
11 ROSEMARIE SCHER

12
13 [EXCERPT - OPENING STATEMENTS]

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

21 ORIGINAL

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

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P R O C E E D I N G S

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OPENING STATEMENTS

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

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

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

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

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

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

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

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

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

1 waivable.

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

6 THE COURT: I believe it is --

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

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

11 MR. FEAMAN: Thank you.

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

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

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

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

1 denied.

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

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

8 THE COURT: Legal objection?

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

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

14 MR. FEAMAN: Thank you, Your Honor.

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

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

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

3 THE COURT: Wait. Slow down one second.

4 MR. FEAMAN: Sure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to disqualify came after that. And --

2 THE COURT: It was filed October 7th.

3 MR. FEAMAN: Pardon me?

4 THE COURT: It was filed October 7th.

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

6 THE COURT: Yes.

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

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

15 Opening?

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

22 THE COURT: Okay.

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

25 THE COURT: Thank you.

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

3 THE COURT: Okay.

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

6 THE COURT: Okay.

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

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

13 MR. ROSE: Okay.

14 THE COURT: You can do your opening.

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

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

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

22 THE COURT: Okay.

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

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

5 THE COURT: Okay.

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

9 Am I blocking you?

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

12 THE COURT: Yes, absolutely.

13 MR. ROSE: You can have the chart.

14 MR. O'CONNELL: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: Sure.

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

11 THE COURT: I saw it.

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

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

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

23 Okay.

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

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

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

8 THE COURT: No.

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

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

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

15 THE COURT: Thank you.

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

22 THE COURT: This is demonstrative.

23 MR. ROSE: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 MR. FEAMAN: Objection.

18 THE COURT: Legal objection?

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

21 THE COURT: Sustained.

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

1 shareholders of a company.

2 THE COURT: I got it.

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

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

25 THE COURT: I understand.

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

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

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

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

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

1 THE COURT: Mr. Brown?

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

12 THE COURT: In the federal case?

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

17 THE COURT: Into the estate, I understand.

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

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

12 But our goals are those goals.

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Net something net something,

1 right?

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

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

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

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

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

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

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

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

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

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

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

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

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

1 goals are to reduce expense.

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

7 THE COURT: I remember.

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

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

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

19 THE COURT: Which motion?

20 MR. ROSE: The disqualification.

21 THE COURT: I wasn't sure.

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

1 in litigation trying to disqualify me.

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

9 MR. FEAMAN: Objection.

10 THE COURT: Legal objection?

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

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

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

1 binder.

2 THE COURT: Yes, you did.

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

5 THE COURT: Yes.

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

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

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

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

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

17 THE COURT: Yes.

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

20 THE COURT: Yes.

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

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

1 THE COURT: Thank you.

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

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

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

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

23 THE COURT: Thank you.

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

25 THE COURT: Thank you. You may proceed.

1 I just wanted the court reporter to know.

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

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

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

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

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

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

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

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

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

18 THE COURT: Overruled.

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

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

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

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

1 but it was not directly adverse to the estate.

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

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

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

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

4 MR. FEAMAN: Your Honor --

5 THE COURT: Legal objection.

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

8 THE COURT: Sustained.

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

11 THE COURT: Sustained.

12 MR. FEAMAN: Thank you.

13 THE COURT: Sustained.

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

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

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

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

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

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

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

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

11 MR. ROSE: Case.

12 THE COURT: -- civil case --

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

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

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

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

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

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

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

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

4 THE COURT: All right.

5 MR. ROSE: Unless you have any questions.

6

7 (Opening statements excerpt concluded.)

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C E R T I F I C A T E

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The State of Florida
County of Palm Beach

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

Dated February 21, 2017.



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

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

8
9
10 Proceedings before the Honorable
11 ROSEMARIE SCHER

12
13 [EXCERPT - BRIAN O'CONNELL TESTIMONY]

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

21 ORIGINAL

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

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P R O C E E D I N G S

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* * * * *

BRIAN O'CONNELL TESTIMONY

- - -

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

THE COURT: Okay.

- - -

Thereupon,

BRIAN O'CONNELL,

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

THE WITNESS: I do.

THE COURT: Have a seat. Thank you very much.

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

(A recess was taken.)

THE COURT: All right. Call Mr. O'Connell. I apologize. Let's proceed.

MR. FEAMAN: Thank you, Your Honor.

DIRECT (BRIAN O'CONNELL)

BY MR. FEAMAN:

Q. Please state your name.

1 A. Brian O'Connell.

2 Q. And your business address?

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

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

8 A. Yes.

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

11 A. I do.

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

16 A. To interested persons, yes.

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

20 A. Correct.

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

24 A. Yes.

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

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

4 A. Correct.

5 Q. And --

6 A. Little over that.

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

10 A. Yes.

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

14 A. Correct.

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

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

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

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

1 position. He has an independent action.

2 Q. Right.

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

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

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

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

23 A. True.

24 Q. Correct?

25 A. Yes.

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

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

7 Q. Okay.

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

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

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

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

16 MR. FEAMAN: I think I do.

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

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

22 MR. FEAMAN: I know we do.

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

25 ///

1 BY MR. FEAMAN:

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

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

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

9 A. Yes.

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

12 A. Let me take a look at it.

13 Q. Sure.

14 A. I do remember this.

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

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

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

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

1 records here.

2 Q. Okay.

3 A. I am not sure.

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

8 A. Yes.

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

11 A. Correct.

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

16 A. Yes.

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

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

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

24 A. No.

25 Q. -- since this?

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

3 Q. Right.

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

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

11 A. Which action?

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

14 A. Can you give me the complaint?

15 Q. Sure.

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

17 THE COURT: Go ahead.

18 BY MR. FEAMAN:

19 Q. This is the --

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

22 THE COURT: Same objection?

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

25 ///

1 BY MR. FEAMAN:

2 Q. Take a look at the third page.

3 (Overspeaking.)

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

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

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

13 BY MR. FEAMAN:

14 Q. Individually, correct?

15 A. Individually and as trustee.

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

18 A. Correct.

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

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

23 Q. Correct.

24 A. Okay.

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

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

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

5 THE COURT: Right.

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

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

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

13 BY MR. FEAMAN:

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

15 THE COURT: Thank you.

16 BY MR. FEAMAN:

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

19 A. Yes.

20 Q. Generally?

21 A. In various capacities generally, right.

22 Q. Including individually, correct?

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

1 forth. I am not sure individually.

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

4 A. A few years.

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

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

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

17 A. Could I take a look at it?

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

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

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

1 deposition?

2 A. Yes.

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

6 A. Yes.

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

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

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

14 THE COURT: Sustained.

15 BY MR. FEAMAN:

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

18 MR. ROSE: The objection is sustained.

19 THE COURT: I sustained the objection.

20 MR. FEAMAN: Oh, okay. Sorry.

21 BY MR. FEAMAN:

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

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

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

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

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

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

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

1 asked me that, I would say absolutely no.

2 BY MR. FEAMAN:

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

6 A. Yes.

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

10 A. Right.

11 Q. Okay.

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

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

16 THE COURT: Let him finish his answer.

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

20 BY MR. FEAMAN:

21 Q. Correct.

22 A. Correct.

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

1 estate?

2 A. Right.

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

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

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

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

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

17 A. Which one is Exhibit 8?

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

20 A. The 31st?

21 Q. Right.

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

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

1 estate, correct?

2 A. You have to state what case.

3 Q. Down here in Florida.

4 A. Which case?

5 Q. The Stansbury action.

6 A. The civil action?

7 Q. Yes.

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

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

17 A. No.

18 Q. How do we know that?

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

21 Q. So you --

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

23 THE COURT: Yes, please.

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

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

9 BY MR. FEAMAN:

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

14 A. About the Stansbury action?

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

17 A. That's possible.

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

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

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

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

8 A. It it's successful it could.

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

12 A. Total conjecture.

13 Q. Okay.

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

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

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

25 THE COURT: Could you read back the

1 question for me?

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

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

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

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

18 BY MR. FEAMAN:

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

21 A. Yes.

22 MR. FEAMAN: Thank you.

23 CROSS (BRIAN O'CONNELL)

24 BY MR. ROSE:

25 Q. And notwithstanding that disagreement, you

1 still believe that --

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

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

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

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

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

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

10 THE COURT: All right.

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

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

14 BY MR. ROSE:

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

19 A. Right.

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

25 A. Correct.

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

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

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

18 A. Yes.

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

22 A. Correct.

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

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

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

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

7 A. Approximately, yes.

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

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

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

15 THE COURT: Oh, in the Illinois?

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

17 THE COURT: Oh, in the Illinois.

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

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

22 MR. ROSE: I am sorry.

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

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

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

3 MR. ROSE: Yes.

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

6 MR. ROSE: Right.

7 BY MR. ROSE:

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

15 A. I have seen the order, yes.

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

21 A. Absolutely.

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

25 A. I have knowledge from my counsel.

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

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

3 Q. Okay.

4 A. Should have.

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

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

11 Q. Very minimal. Minimal?

12 A. Not a significant amount.

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

15 A. Yes.

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

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

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

1 A. Sure.

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

5 A. Yes.

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

8 A. No.

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

14 A. No, not personal knowledge.

15 Q. Were you involved in the business?

16 A. No.

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

21 A. No.

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

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

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

5 A. Yes.

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

7 A. Yes.

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

10 A. Yes.

11 Q. Much different than the draft I prepared?

12 A. Seven pages shorter.

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

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

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

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

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

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

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

4 MR. FEAMAN: The rule says that --

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

9 MR. ELIOT BERNSTEIN: Can I object?

10 THE COURT: Sure.

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

13 THE COURT: Okay.

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

16 THE COURT: Okay.

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

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

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

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

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

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

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

13 BY MR. ROSE:

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

19 A. Yes.

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

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

1 MR. ROSE: Oh, I am sorry.

2 THE COURT: That's okay.

3 I have to add it to my exhibit list.

4 You may proceed, thank you.

5 BY MR. ROSE:

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

11 A. For the reasons stated previously, yes.

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

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

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

21 A. Correct.

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

25 A. I was asked that, yes.

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

7 A. Correct.

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

11 A. Correct.

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

13 A. Yes.

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

18 A. Yes, yes and yes.

19 MR. ROSE: Nothing further.

20 THE COURT: Redirect?

21 MR. FEAMAN: Yes.

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

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

1 THE COURT: You can.

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

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

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

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

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

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

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

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

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

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

4 THE COURT: I understand.

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

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

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

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

16 MR. ROSE: Right.

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

19 You may proceed.

20 CROSS (BRIAN O'CONNELL)

21 BY MR. ELIOT BERNSTEIN:

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

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

1 THE COURT: That is true. Sustained.

2 That was not discussed.

3 BY MR. ELIOT BERNSTEIN:

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

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

8 BY MR. ELIOT BERNSTEIN:

9 Q. -- in your opinion?

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

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

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

18 BY MR. ELIOT BERNSTEIN:

19 Q. Okay, so beneficiary?

20 A. Right.

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

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

1 A. Which Stansbury action?

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

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

6 Q. You have never seen the complaint?

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

9 Q. So Ted --

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

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

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

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

21 MR. ELIOT BERNSTEIN: Excuse me.

22 THE COURT: Wait.

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

1 THE COURT: Mr. Rose.

2 MR. ROSE: It's public record.

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

6 MR. ROSE: Okay.

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

9 MR. ROSE: Okay.

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

13 BY MR. ELIOT BERNSTEIN:

14 Q. I would like to show you --

15 THE DEPUTY: Ask to approach, please.

16 MR. ELIOT BERNSTEIN: Oh, ask to.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Can I approach you?

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

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

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

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

3 MR. ROSE: No objection.

4 BY MR. ELIOT BERNSTEIN:

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

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

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

11 A. In connection with this action?

12 MR. ROSE: Objection, relevance.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Yes, in connection with this action?

15 THE COURT: Which action?

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

18 THE COURT: If he can answer.

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

21 THE COURT: No, no, no.

22 MR. ELIOT BERNSTEIN: Okay.

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

25 MR. ELIOT BERNSTEIN: Sorry.

1 THE COURT: Ask a question and move on.

2 MR. ELIOT BERNSTEIN: Got it.

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

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

10 BY MR. ELIOT BERNSTEIN:

11 Q. Okay. So that lawsuit --

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

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

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

20 Q. With Shirley's trust, correct?

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

22 Q. Well, you just --

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

25 MR. ELIOT BERNSTEIN: Sorry, okay.

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

4 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

18 So let me ask you --

19 THE COURT: You can't testify.

20 MR. ELIOT BERNSTEIN: Okay.

21 BY MR. ELIOT BERNSTEIN:

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

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

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

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: But is that a question?

13 MR. ELIOT BERNSTEIN: Yeah, okay.

14 THE COURT: I can't --

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

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

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

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

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: Ask what you can.

1 MR. ELIOT BERNSTEIN: Okay.

2 BY MR. ELIOT BERNSTEIN:

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

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

7 Q. Okay.

8 A. At that point in time.

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

11 MR. ROSE: Objection.

12 THE WITNESS: No.

13 THE COURT: Hold on.

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

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

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

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

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

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

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

14 BY MR. ELIOT BERNSTEIN:

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

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

20 MR. ELIOT BERNSTEIN: Uh-huh.

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

25 MR. ELIOT BERNSTEIN: The Court is

1 correct.

2 THE COURT: Okay.

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

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

11 MR. ELIOT BERNSTEIN: Okay.

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

14 MR. ELIOT BERNSTEIN: Okay.

15 BY MR. ELIOT BERNSTEIN:

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

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

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

23 MR. ROSE: Okay.

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

1 litigation as you just stated.

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

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

5 MR. ELIOT BERNSTEIN: Oh.

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

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

11 BY MR. ELIOT BERNSTEIN:

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

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

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

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

8 Q. You haven't read this case?

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

12 Q. Let me ask you a question.

13 A. -- trying to.

14 MR. ROSE: Your Honor?

15 BY MR. ELIOT BERNSTEIN:

16 Q. Let me ask you a question.

17 THE COURT: Hold on one second, sir.

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

23 THE COURT: March we have another hearing.

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

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

4 MR. ELIOT BERNSTEIN: That's fine.

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

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

9 THE COURT: Sure.

10 MR. ELIOT BERNSTEIN: (Overspeaking).

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

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

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

18 MR. ELIOT BERNSTEIN: Okay.

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

21

22 (Brian O'Connell excerpt concluded.)

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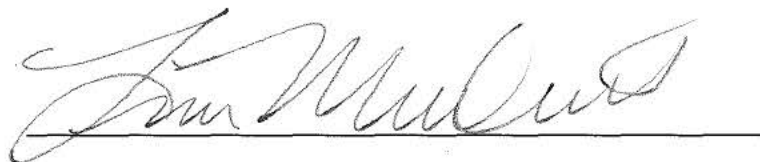
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I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, and that the excerpted transcript is a true record.

Dated February 21, 2017.



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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
Volume II

Thursday, March 2, 2017
3188 PGA Boulevard
North branch Palm Beach County Courthouse
Palm Beach Gardens, Florida 33410
1:35 - 3:39 p.m.

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

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I N D E X
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EXAMINATIONS Page

Witness:

BRIAN O'CONNELL

BY MR. ELIOT BERNSTEIN 145

BY MR. FEAMAN 170

ALAN B. ROSE

BY MR. FEAMAN 207

BY MR. ELIOT BERNSTEIN 214

EXHIBITS MARKED

No. Claimant Stansbury's

9 Pleading 214

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

2 - - -

3 BE IT REMEMBERED that the following
4 proceedings were had in the above-styled and
5 numbered cause in the north Branch Palm Beach
6 County Courthouse, City of Palm Beach Gardens,
7 County of Palm Beach, in the State of Florida, by
8 Lisa Mudrick, RPR, FPR, before the Honorable
9 ROSEMARIE SCHER, Judge in the above-named Court, on
10 March 2, 2017, to wit:

11 - - -

12 THE COURT: I have evidence in my office.
13 That's what I was looking for. One second.
14 All right.

13:37:58 15 First thing, please everyone place their
16 name on the record.

17 MR. FEAMAN: Good afternoon, Your Honor.
18 Peter Feaman on behalf of William Stansbury.
19 With me in the courtroom today is my paralegal
13:38:12 20 from my office Trish Roth and Jeff Royer who
21 was here last time.

22 THE COURT: All right.

23 MR. FEAMAN: Thank you.

24 MR. ELIOT BERNSTEIN: Your Honor, Eliot
13:38:22 25 Bernstein, pro se.

1 THE COURT: Thank you.

2 MR. ROSE: Good afternoon, Your Honor,
3 Alan Rose. With me is Michael Kranz from my
4 law firm. And we represent the Simon Bernstein
13:38:32 5 estate, Ted S. Bernstein as trustee. And in
6 other matters we represent Mr. Bernstein as
7 trustee and as personal representative of the
8 Shirley Bernstein Trust and estate.

9 MR. O'CONNELL: Brian O'Connell, Your
13:38:46 10 Honor. I am the personal representative of the
11 Estate of Simon Bernstein.

12 JUDGE DIANA LEWIS: Your Honor, I am Diana
13 Lewis. I represent the Eliot Bernstein
14 children in the capacity as guardian ad litem.

13:38:59 15 THE COURT: Thank you. Yes, ma'am?

16 MS. CANDACE BERNSTEIN: Candace Bernstein.

17 THE COURT: All right. My recollection is
18 Mr. Eliot, only to distinguish from all the
19 Bernsteins, it was his opportunity, I told him
13:39:15 20 he had ten more minutes, I had timed everybody,
21 and it was my recollection I think
22 Mr. O'Connell was still on the stand and it was
23 Mr. Eliot's time, only you know I am not being
24 disrespectful just for the record to establish
13:39:28 25 which Bernstein I am talking about, to continue

1 your cross-examination.

2 MR. ELIOT BERNSTEIN: Your Honor, before
3 we start that, I filed yesterday and Mr. Feaman
4 filed yesterday --

13:39:38 5 THE COURT: I didn't receive anything from
6 Mr. Feaman. I did receive -- I am just saying.
7 But go ahead, yes, sir.

8 MR. ELIOT BERNSTEIN: It appeared that he
9 mailed you a response.

13:39:52 10 THE COURT: I did not receive -- did you
11 e-mail my JA a response, Mr. Feaman?

12 MR. FEAMAN: Yes, Your Honor. We had no
13 opposition to his motion for continuance.

14 THE COURT: That I did receive.

13:40:01 15 MR. FEAMAN: And joined in it and said if
16 we could have some additional time to take some
17 discovery then we would be glad to avail
18 ourselves of that.

19 THE COURT: Thank you.

13:40:11 20 MR. ELIOT BERNSTEIN: And, Your Honor,
21 that discovery is essential because some of the
22 things we learned at the last hearing
23 contradicts this entire case, that I am not a
24 beneficiary, have no standing. It was a
13:40:24 25 compounding statement that Mr. Rose has told

1 over and over that ended up in orders here,
2 that ended up in Illinois. And now we have
3 absolute proof from Mr. O'Connell and Mr. Rose
4 that, well, he is calling me a tiny beneficiary
13:40:38 5 yesterday in the e-mail to you, but a
6 beneficiary. And that contradicts --

7 THE COURT: Don't assume that I received
8 like what my JA tells me. I received -- let me
9 tell you for the record.

13:40:48 10 MR. ELIOT BERNSTEIN: Okay.

11 THE COURT: Your motion was a formal
12 pleading, so I read that, of course, as a
13 formal pleading I read everything.

14 MR. ELIOT BERNSTEIN: Okay.

13:40:55 15 THE COURT: I said to my JA, please find
16 out everybody, ask them just for their
17 response. I do know Mr. Feaman did not object.
18 That's the extent of what I know.

19 Because those kinds of communications
13:41:06 20 aren't formal, and I had heard that Mr. Rose's
21 office did object. But I want you to know what
22 I know and what I don't know beyond that.

23 MR. ELIOT BERNSTEIN: Okay. I will help
24 you through it. I need time, as I have pled in
13:41:18 25 my motion to vacate that I filed on

1 February 16th, time to question these
2 witnesses. Because Mr. O'Connell's statement
3 to this Court in fact contradicts Mr. Rose's
4 filings and prior statements Mr. Rose has made
13:41:31 5 to sheriff's. So I am going to have to call
6 and subpoena the sheriff who he made statements
7 that I was a beneficiary of my mother's trust
8 on the record in an investigation. And then he
9 came to the Court and told this whole story I
13:41:45 10 am not a beneficiary of anything.

11 If you will look at the case management
12 omnibus motion he filed to Judge Phillips that
13 started this whole nonsense that I am not a
14 beneficiary of anything, it says in there the
13:41:56 15 overarching issue is Eliot is not a beneficiary
16 of anything. That false statement led to
17 orders that were never done on a construction
18 hearing. There was only a validity hearing.
19 Mr. Rose I will pull up and he can testify to
13:42:10 20 that.

21 Although he has told you that there's been
22 some kind of determinations, all of those
23 determinations were based on him misleading the
24 Court as an officer of the Court. And I put
13:42:22 25 most of that in my motion to vacate, and I will

1 be preparing proper responses for that.

2 But we need, Mr. Feaman and I, time to do
3 new discovery on certain people that will --
4 you know, you don't want to be rushing into a
13:42:37 5 decision here on this issue when new
6 information just came out February 9th was when
7 I first received it that contradicted the whole
8 statements in all these pleadings that are
9 forthcoming. And I think we'll be able to show
13:42:51 10 that there's been fraud on this Court. The
11 other date in that hearing if you look at the
12 transcript Mr. Rose claimed that I had no
13 standing, and you overruled that, or whatever
14 you call it, you did.

13:43:03 15 THE COURT: I did.

16 MR. ELIOT BERNSTEIN: Okay. Meaning you
17 allowed me to question Mr. O'Connell. Well,
18 every other time he said that before Judge
19 Phillips, it was whatever he said. They were
13:43:13 20 never litigated the matters that I was a
21 beneficiary or not, but it just got somehow
22 accepted the more he said it to that judge.

23 So now that completely contradicts the
24 orders that were issued that I am not a
13:43:27 25 beneficiary of anything whatsoever. Now it's I

1 am a little, I am a TPP beneficiary. But the
2 truth is I am a beneficiary of the will of
3 Simon Bernstein. And Mr. O'Connell on the
4 stand flipped his story as well that he was
13:43:43 5 putting into this Court that he had consent of
6 all the beneficiaries. Well, in fact they are
7 saying that Mrs. Lewis is a beneficiary, is
8 representing my children as parties here.

9 THE COURT: She's appointed as the
10 guardian on behalf of the children.

11 MR. ELIOT BERNSTEIN: Who are supposed to
12 be the beneficiaries.

13 THE COURT: Yes.

14 MR. ELIOT BERNSTEIN: Okay. Except my
13:44:04 15 children have never been notified by anybody,
16 PR, trustees, anything, that they are
17 beneficiaries of anything.

18 THE COURT: All right. I have to keep it
19 narrow to you want additional time to do
13:44:13 20 additional discovery?

21 MR. ELIOT BERNSTEIN: Totally.

22 MR. FEAMAN: And, Your Honor, if I just
23 may add?

24 THE COURT: Yes.

13:44:18 25 MR. FEAMAN: Thank you. What I said in my

1 joinder and consent was that we still had
2 outstanding objections to the subpoena that we
3 had served on Mr. Rose. Your Honor may
4 recall --

13:44:30 5 THE COURT: I recall that, I do, that you
6 wanted e-mails.

7 MR. FEAMAN: I said if the Court is
8 inclined to give more time then that is
9 something that we could handle. Thank you.

13:44:39 10 THE COURT: Thank you.

11 MR. ELIOT BERNSTEIN: Oh, Your Honor, one
12 more point.

13 THE COURT: Last point.

14 MR. ELIOT BERNSTEIN: There's an open
13:44:44 15 issue of production that I requested production
16 of Mr. O'Connell.

17 THE COURT: Not set for today.

18 MR. ELIOT BERNSTEIN: No, I know.

19 THE COURT: I understand.

13:44:50 20 MR. ELIOT BERNSTEIN: Very important
21 documents relating to this idea of my brother
22 representing the estate which he was denied
23 twice for by the Court. But I asked
24 Mr. O'Connell for production, and he actually
13:45:04 25 advised me to ask him, and then he objected to

1 it, and it's still not here, meaning it's never
2 been heard, correct, Mr. O'Connell?

3 MR. O'CONNELL: I would have to see the
4 item, Your Honor, that Mr. Eliot is referring
13:45:16 5 to.

6 MR. ELIOT BERNSTEIN: Well, the Court has
7 never heard it, and I need all those documents.
8 They are original documents. They are business
9 records that are all pertinent to this
13:45:23 10 settlement.

11 So can we have that also heard so that he
12 is either compelled to give me the documents or
13 he -- you know, whatever you do, you order one
14 way or the other?

15 THE COURT: Today's hearing, the first
16 hearing at issue is whether or not Mr. Rose is
17 on or off. That's the first matter. I put
18 that very simply. But the first matter we are
19 concluding is whether Mr. Rose on behalf of the
13:45:49 20 Mrachek law firm is allowed to proceed as the
21 attorney. That's the removal order that we are
22 here about today.

23 MR. ELIOT BERNSTEIN: And that's all
24 relevant, and we need to depose him now that
13:45:59 25 he's got contradictory statements.

1 THE COURT: Okay. The problem I am
2 having -- well, let me hear the response,
3 please.

4 MR. ROSE: Okay. And I just need a minute
13:46:06 5 to lay out a few of the facts and clear them.

6 The issue today is whether I can defend
7 the estate in the state court action.

8 THE COURT: Right.

9 MR. ROSE: It has nothing to do with my
13:46:19 10 serving as counsel for Ted Bernstein in these
11 proceedings.

12 THE COURT: Yes, I understand.

13 MR. ROSE: All the efforts to remove me
14 have been denied and dismissed long ago.

15 THE COURT: Let me ask you. The effort
16 it's only for the state court action, the civil
17 action in front of Judge Marx?

18 MR. ROSE: Correct.

19 THE COURT: Why is he not hearing this
13:46:38 20 then?

21 MR. ROSE: Because I was retained -- a
22 couple reasons, but --

23 THE COURT: Why is he not hearing the
24 motion to remove him?

13:46:44 25 MR. FEAMAN: Because it was Judge Phillips

1 who entered the order allowing Mr. Rose to
2 represent in that court.

3 THE COURT: But do you understand the
4 Court's -- I think this is something Judge Marx
13:46:55 5 should decide. Wait. Let me ask because then
6 I will let you finish. Tell me why it should
7 be me. I was clear last time, but it just hit
8 me at this moment, if here you represent Ted
9 Bernstein, correct?

13:47:13 10 MR. ROSE: Here I represent Ted Bernstein
11 as a trustee.

12 THE COURT: As a trustee. Your motion to
13 disqualify him has to do with the action in
14 front of Judge Marx?

13:47:23 15 MR. FEAMAN: That is correct, Your Honor.

16 THE COURT: Explain to me why that judge
17 shouldn't make the decision on whether to
18 remove Mr. Rose?

19 MR. FEAMAN: Our thinking was, Your Honor,
13:47:31 20 it was because Judge Phillips entered the order
21 allowing it. And therefore, we came back to
22 the Court that entered --

23 THE COURT: I see what you are saying.

24 MR. FEAMAN: -- the order allowing it to
13:47:41 25 begin with.

1 MR. ROSE: There's two aspects of the
2 motion. One is to appoint Ted Bernstein as
3 administrator ad litem to represent the
4 interests of the estate.

13:47:45 5 THE COURT: I understand that.

6 MR. ROSE: That's an issue for Your Honor.

7 THE COURT: That's me.

8 MR. ROSE: The other issue is whether,
9 Your Honor, whether the order that Judge
10 Phillips entered retaining me to represent the
11 estate should be vacated, and that's all before
12 Your Honor. We have spent I can't tell you how
13 much money to get to this point.

14 THE COURT: Oh, I understand.

13:48:02 15 MR. ROSE: And so I think you are the
16 correct judge because the issue isn't simply
17 disqualification. The interest deals -- the
18 issue deals with what's in the best interests
19 of the estate and its beneficiaries.

13:48:15 20 If I could just have one minute to give
21 you a little history briefly, just I think it
22 will be helpful and I would --

23 THE COURT: I very much remember this
24 chart. I very much remember the --

13:48:27 25 MR. ROSE: It's a new chart.

1 THE COURT: It's a new chart?

2 MR. ROSE: It's completely different.

3 THE COURT: Okay. But do you know what
4 I'm saying? Oh, that chart.

5 MR. ELIOT BERNSTEIN: (Inaudible).

6 MR. ROSE: Completely different.

7 THE COURT: Stop.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: I will let you know --

10 13:48:32 MR. ELIOT BERNSTEIN: I have not seen
11 that.

12 THE COURT: Nobody has seen this. So
13 before you show me -- put it back down. You
14 are going to stay quiet and you are going to
15 13:48:41 sit down. You know, I am very fair. I hear
16 from each one of you. I am sure I am going to
17 make someone very unhappy across the board with
18 a ruling. But I will not be accused of not
19 listening to everybody. All right.

20 13:48:54 MR. ROSE: Okay.

21 THE COURT: I am not seeing it. Do me one
22 favor and listen to me for one second. The
23 first response I have, before we get into the
24 background, is your response to their motion
25 13:49:05 that they need more time.

1 MR. ROSE: Okay.

2 THE COURT: Okay?

3 MR. ROSE: Okay. This started with a
4 motion filed in August of last year. We had a
13:49:15 5 hearing in September of last year. And then
6 there were objections filed. Mr. Bernstein
7 objected. He was unavailable for an extended
8 period of time. We got a hearing set before
9 Your Honor. We have waited for four or five
13:49:29 10 months to get this done.

11 I'd like to explain the issues that Eliot
12 Bernstein is suggesting that he needs discovery
13 for some farfetched thing, and I'd like to
14 explain to you his standing in a limited area
13:49:42 15 so that you understand what he is saying.

16 Mr. Feaman has served discovery that we
17 have objected to. But I think when you do this
18 hearing, you will understand that the discovery
19 he seeks is not relevant to the issue of
13:49:53 20 whether there's a conflict of interest under
21 Rule 4-1.9 or a conflict of interest under Rule
22 4-1.7.

23 And these estates again are very small.
24 We have spent a lot of money preparing. We are
13:50:06 25 all here. Everyone is ready to roll. We've

1 got two hours reserved. And we need to get
2 some progress made as to who's going to defend
3 the estate in the Stansbury case. And at the
4 same time there's other motions, who is going
13:50:18 5 to -- how are we handling the -- how is the
6 estate handling its Illinois litigation which
7 is -- and both of these matters are now set for
8 trial. So there's some urgency.

9 THE COURT: I remember the exact standing
13:50:26 10 of Mr. Eliot with regard to being a
11 beneficiary. There is a pour over trust from
12 the Simon estate where the children, the ten
13 grandchildren, are the beneficiaries, correct?

14 MR. ELIOT BERNSTEIN: No.

13:50:39 15 MR. ROSE: If you said there's a --

16 THE COURT: Pour over trust from the Simon
17 estate?

18 MR. ROSE: Pour over from the Simon trust.

19 THE COURT: Correct.

13:50:45 20 MR. ROSE: And the ten grandchildren are
21 the beneficiaries, correct.

22 MR. ELIOT BERNSTEIN: Incorrect.

23 THE COURT: No, it is correct. Wait for
24 me. Wait for me one second. Let me finish.

13:50:50 25 MR. ELIOT BERNSTEIN: Okay.

1 THE COURT: That does not change any
2 tangible property you would be a potential
3 beneficiary of, correct?

4 MR. ROSE: Correct.

13:50:59 5 THE COURT: See, I wasn't excluding you.
6 There's tangible property and there's a pour
7 over trust.

8 MR. ELIOT BERNSTEIN: That's the problem,
9 though. The ten grandchildren are not the
13:51:07 10 beneficiaries. That's never been determined.
11 There's been no construction hearings in any of
12 these cases yet. Right, Mr. Rose?

13 MR. ROSE: Totally incorrect.

14 MR. ELIOT BERNSTEIN: There have been
13:51:17 15 construction hearings? Can you give her the
16 date of those hearings?

17 THE COURT: I am not going there. I am
18 not letting you two litigate it. That's my
19 understanding from the pleadings right now.
13:51:25 20 It's not relevant for right this second.

21 MR. ELIOT BERNSTEIN: It doesn't say the
22 ten -- okay.

23 THE COURT: Okay?

24 MR. ELIOT BERNSTEIN: It's very relevant,
13:51:30 25 but okay.

1 THE COURT: Just trying to get to why we
2 are here today.

3 MR. ELIOT BERNSTEIN: Your Honor,
4 Mr. Stansbury's lawsuit they've said they don't
13:51:39 5 have enough money in the trust to pay it if he
6 wins so they would be coming to my tangible
7 personal property interests. So it does affect
8 me in this case in the retention of Ted, and I
9 will be able to show why.

13:51:55 10 THE COURT: You don't have to. You have
11 standing. You are sitting there. I have
12 allowed it. I have allowed it. You are a
13 tangible beneficiary whatever assets remain
14 outside of the Simon trust. I think everyone
13:52:08 15 is on the same page. If it's a dollar or if
16 it's ten dollars, that's where you have -- now,
17 I have no idea the dollar figures in any of
18 this.

19 MR. ELIOT BERNSTEIN: None of us do.

13:52:20 20 THE COURT: Go ahead, Mr. Rose.

21 MR. ROSE: I am sorry, and I keep --

22 THE COURT: Go ahead.

23 MR. ROSE: I am not engaging with
24 Mr. Eliot. He is engaging with me.

13:52:26 25 THE COURT: I am going to ask, Mr. Eliot,

1 to let him finish so we can at least move
2 forward to the next point. Go ahead.

3 MR. ROSE: Just for the record, I conceded
4 at the last hearing that he had limited
13:52:35 5 standing. I did not say that he did not have
6 standing.

7 THE COURT: I agree.

8 MR. ROSE: What I tried to get the
9 impression -- does the Court know -- it's your
13:52:41 10 next question which is the tangible personal
11 property consists of furniture and jewelry.

12 THE COURT: Yes.

13 MR. ROSE: The furniture is dwindling in
14 value. It's being stored. The jewelry -- this
13:52:51 15 is about a hundred thousand. And my point was
16 only that when you take a hundred thousand and
17 you divide it five ways, best case is 20,000.
18 And my point is --

19 THE COURT: It's not for right now. Let's
13:53:00 20 move on.

21 MR. ROSE: No, okay.

22 THE COURT: Okay? Do you see what I am
23 saying?

24 MR. ROSE: I got you. And I do, though,
13:53:06 25 think, since you are new to the case, I would

1 like to just clear up a couple things just if I
2 could briefly, very briefly?

3 THE COURT: Only if you think it's going
4 to help. I don't want to poke the bear. I
13:53:17 5 want to keep moving. I don't want everybody
6 yelling at each other. Do you see what I am
7 saying?

8 MR. ROSE: I do, absolutely.

9 THE COURT: Go ahead.

13:53:25 10 MR. ROSE: I just want -- we had a trust
11 construction trial in the Shirley Bernstein
12 Trust.

13 THE COURT: Yes. And I know that Judge
14 Phillips decided in the Shirley Bernstein.

13:53:36 15 MR. ELIOT BERNSTEIN: It was only a
16 validity hearing. The construction was
17 severed.

18 THE COURT: Mr. Bernstein?

19 MR. ELIOT BERNSTEIN: Okay, I am sorry.

13:53:42 20 THE COURT: You keep interrupting. You
21 can't do that.

22 MR. ELIOT BERNSTEIN: I am sorry.

23 THE COURT: Go ahead.

24 MR. ROSE: I would like to do, just so you
13:53:47 25 know.

1 THE COURT: Sure.

2 MR. ROSE: Eliot Bernstein was a
3 contingent beneficiary. This is Shirley's
4 side.

13:53:53 5 THE COURT: Yes.

6 MR. ROSE: Judge Phillips tried the case.

7 THE COURT: Yes.

8 MR. ROSE: Eliot is named in the will as a
9 contingent beneficiary if Simon died.

13:54:00 10 THE COURT: Okay.

11 MR. ROSE: Now, as soon as Simon --
12 Shirley dies when Simon is alive and survives
13 for 30 days, then that contingency disappears
14 and he is no longer a tangible beneficiary in
15 Shirley's estate. He was a contingent
16 beneficiary of the Shirley trust if Simon
17 didn't exercise a power of appointment.

18 So the trial we had on January -- the
19 trial we had on December 15th, 2015, was to
13:54:25 20 determine whether Simon's 2012 documents were
21 valid and whether his exercise of his power of
22 appointment was valid. Judge Phillips
23 determined -- the exercise of the power of
24 appointment was valid.

13:54:37 25 So now in the Shirley side the power of

1 appointment was exercised so Eliot is no longer
2 a beneficiary. So he had some standing in that
3 case as a potential beneficiary while we were
4 dealing with the trial.

13:54:50 5 THE COURT: I am relying on Judge
6 Phillips' order.

7 MR. ROSE: Then we have the trial.

8 THE COURT: I have to. That is the law.

9 MR. ROSE: The same thing -- the same
13:54:58 10 thing over here --

11 THE COURT: I am not going to do this. I
12 am going to make this very, very clear. Hold
13 on. Stop, please, Mr. Rose, please.

14 MR. ROSE: I am sorry.

13:55:06 15 THE COURT: I am going to use Mr. Feaman
16 as an example. I know he disagrees with a lot
17 of what you are saying. And I am using this
18 for Mr. Eliot and just because he is on the
19 other side. He is sitting there professional
13:55:18 20 as an attorney, not reacting. So I have no
21 idea if he is thinking I enjoyed my lunch or if
22 he is thinking I disagree with everything he
23 said. I am not saying favoritism. I used him
24 because I happened to look straight up. I need
13:55:32 25 everybody to have that kind of expression.

1 When it's your turn you are allowed to talk,
2 but I cannot have the constant -- what happens
3 is one of you reacts, the other one reacts, the
4 other one reacts. I am going to let everybody
13:55:45 5 do their presentation. I am going to make a
6 ruling, and we are going to move on.

7 Continue, please.

8 MR. ROSE: That's the end of the story.
9 He is clearly a beneficiary. We have never
13:55:52 10 denied he is a beneficiary for a very narrow
11 purpose. But based on the rulings it is
12 exactly that which is a very narrow purpose.

13 So we are here. Everyone is ready. I
14 think you can rule on the motion. If at the
13:56:05 15 end of hearing the evidence you think there's
16 some reason you need additional discovery,
17 which I don't think that the record and the
18 evidence and the law would require, you know,
19 we can address it at that point. But we are
13:56:16 20 here. We need to get -- move forward.

21 And just Judge Phillips had entered on
22 order, I am sorry, Judge Colin had entered an
23 order about a month after this lawsuit was
24 filed prohibiting Eliot from filing papers
13:56:32 25 without permission. Yesterday he filed about

1 4,000 pieces of paper. It's very hard for
2 everybody to follow, including his -- the
3 guardian for his children have to read the
4 pages and it's billing time. But we have spent
13:56:43 5 so many times in front of Judge Colin deciding
6 what hearings we are going to have and not
7 have, we waste so much time, that we are here,
8 everyone is ready, we are prepared, he has ten
9 minutes of cross-examination, we can make our
13:56:54 10 argument and then you can rule and we can go to
11 the next motion, and we have about six or eight
12 things. We have settlements we want to get
13 approved that are set for today, and they
14 should be -- it should be very routine. And I
13:57:07 15 think we should move forward today, and we'd
16 ask that you do so.

17 THE COURT: Thank you.

18 If you will give me a second, what
19 happened is I have so many notebooks I am
13:57:37 20 trying to find the one that I was looking for
21 something. That's what I was looking for.

22 At this time we are going to continue with
23 this hearing. Mr. O'Connell, please take the
24 stand.

13:58:50 25 MR. ELIOT BERNSTEIN: Your Honor?

1 THE COURT: No. I am denying the motion
2 to continue. Mr. O'Connell, take the stand.
3 You can complete your cross-examination.

4 - - -

5 Thereupon,

6 BRIAN O'CONNELL,
7 a witness, being by the Court duly sworn, was
8 examined and testified as follows:

9 THE WITNESS: I do.

10 THE COURT: Thank you. Please have a
11 seat. You may proceed.

12 CROSS (BRIAN O'CONNELL)

13 BY MR. ELIOT BERNSTEIN:

14 Q. Mr. O'Connell, can you please state your
15 full name and address for the record?

16 A. Brian O'Connell, 515 North Flagler Drive,
17 West Palm Beach, Florida.

18 Q. In what capacity are you testifying today?

19 A. As an individual.

20 Q. Not in a fiduciary capacity?

21 A. I am a fiduciary, but I have been called
22 as a witness. I am an individual witness.

23 Q. Okay. Are you also a practicing lawyer in
24 Florida?

25 A. Yes.

1 Q. And your bar number, please?

2 A. 308471.

3 Q. Okay. Mr. O'Connell, did you obtain all
4 of the LIC, LIC Life Insurance Concept financial
13:59:51 5 records from the beginning of the Stansbury's
6 lawsuit to the present to review as part of making
7 your recommendations to hire Alan Rose and appoint
8 Ted Bernstein?

9 A. I can't answer that sitting here today
14:00:04 10 because there was a volume of files of information
11 that we have collected. I couldn't give you an
12 accurate answer as to exactly what material I have,
13 over what timeframe. It's just impossible to do
14 that accurately.

14:00:16 15 Q. Okay. A yes or no to these questions if
16 you can. You want me to ask it again? Just
17 looking for a simple yes or no.

18 THE COURT: Do your best answer yes or no.
19 If he can't answer yes or no he doesn't have to
14:00:28 20 answer yes or no.

21 THE WITNESS: Could I explain, Your Honor,
22 after?

23 THE COURT: First answer yes or no, then
24 you will be allowed to explain.

14:00:34 25 THE WITNESS: I don't know on that

1 question. I don't know the answer.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay. Are these records they would be
4 relevant to the lawsuit in the claims of Stansbury
14:00:45 5 and the Estate of Simon Bernstein, yes or no?

6 A. I don't know.

7 Q. Okay. If you had the records when did you
8 obtain those records?

9 A. Since I am not sure what records I have, I
14:01:01 10 don't know if I have them. I don't know what they
11 say. And I certainly haven't reviewed them as of
12 the last few days.

13 Q. Okay. When I came to your offices in
14 August 2015 to pick up copies of Simon's business
14:01:21 15 records, did you produce those documents at that
16 time to me?

17 A. I produced documents to you. But again,
18 I'd have to go through my records to determine what
19 copies were made for you at that time. I have no
14:01:34 20 way of giving a precise answer today as to what was
21 given.

22 MR. ELIOT BERNSTEIN: Which, Your Honor,
23 might be reason for more discovery time and
24 whatnot.

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. Mr. O'Connell, did you obtain copies of
3 all the Arbitrage International records from the
4 beginning of the Stansbury lawsuit to the present
14:01:50 5 to review as part of making your recommendations to
6 hire Alan Rose and Ted Bernstein, appoint Ted
7 Bernstein, yes or no?

8 A. I don't know.

9 Q. Okay. If -- would you think those would
14:02:03 10 be relevant to this lawsuit and the claims in the
11 case?

12 A. I don't know because I'd have to see them.

13 Q. Okay.

14 A. If there are such records.

14:02:13 15 Q. Okay. And you don't know if you turned
16 those records over to me when I came to pick up
17 Simon's business records at your office in August
18 2015?

19 A. I don't recall.

14:02:23 20 Q. Okay. Did you obtain copies of the IRS
21 certified records from Simon and Shirley's
22 businesses and their personal tax returns?

23 A. We have certain tax records for Simon
24 Bernstein. But again, I couldn't tell you
14:02:45 25 precisely what they are, for what years.

1 Q. Are they Simon's? Are they certified?

2 A. I don't recall that, but I could tell you
3 generally tax returns typically aren't certified.

4 Q. Are they signed, the ones you've produced?

14:03:00 5 A. I am not sure.

6 Q. Were you produced -- did you order tax
7 returns?

8 A. We ordered tax returns.

9 Q. Did you receive them from the IRS?

14:03:06 10 A. We received certain information from the
11 IRS, because I do recall one item we got was a
12 letter that they didn't have records that old; I
13 know that.

14 Q. Yes or no would be simple. So did you get
14:03:17 15 the tax returns that you were ordering?

16 A. The problem is when you say the tax
17 returns, there are a number of years for which we
18 made a request. And I can't be precise in terms of
19 what exactly were produced and for what year it
14:03:31 20 relates.

21 MR. ELIOT BERNSTEIN: Again, this might
22 need more discovery time here to figure these
23 things out because they are all germane, but.
24 BY MR. ELIOT BERNSTEIN:

14:03:45 25 Q. Did you turn those records you got over to

1 any of the beneficiaries?

2 A. Again, I don't know what was furnished to
3 whom, if requests were made or not, I don't know.

4 Q. Okay. Right immediately before Ben Brown
14:03:57 5 died mysteriously, the prior curator to you, he had
6 alleged he received the tax returns from the IRS
7 and was transferring them to you.

8 MR. ROSE: Objection, hearsay and
9 relevance.

14:04:10 10 THE COURT: It is hearsay, so sustained.

11 MR. ELIOT BERNSTEIN: Okay.

12 BY MR. ELIOT BERNSTEIN:

13 Q. Do you recall receiving tax returns from
14 Mr. Ben Brown that were from the IRS?

14:04:20 15 A. Not with any specificity. And I don't
16 want to guess.

17 Q. Can you describe what the Stansbury
18 lawsuit is all about?

19 A. Well, there's a number of counts. Some
14:04:39 20 have been resolved. There have been dismissals,
21 for example, of Ted Bernstein. And there's --
22 without seeing it, I can probably give a better
23 answer, but there's several, there's some breach of
24 an oral contract. There's a claim for a fraudulent
14:04:54 25 misrepresentation. There's a conspiracy count.

1 These are just things I can recall sitting here.
2 But in terms of what the actual accounts are, it
3 would be best to look at the lawsuit itself.

4 Q. Have you looked at the lawsuit?

14:05:10 5 A. Yes.

6 Q. Okay. Because the last time and in your
7 pleadings you state that you have no knowledge of
8 the lawsuit; is that correct?

9 A. Well, I'd have to see what it is that you
14:05:20 10 are referring to. But I have a general knowledge
11 of the lawsuit because I have seen the complaint.
12 That would be the source of, one source of
13 information that I have.

14 Q. Okay. Because Mr. Rose has pled that you
14:05:32 15 have no knowledge, and I believe your statement
16 says you have no knowledge. But I will get to that
17 in a moment.

18 A. I'd have to see my statement.

19 Q. Okay. We are going to get that out.
14:05:42 20 We'll get that, circle back to that.

21 Is that all you have to say on the
22 Stansbury lawsuit that know of?

23 A. That the lawsuit speaks for itself.

24 Q. Have you spoken to me ever about the
14:05:53 25 lawsuit?

1 A. I don't recall.

2 Q. Do you recall a three-hour conversation
3 with my wife and me regarding the Stansbury
4 litigation?

14:06:02 5 A. I remember a lengthy conversation with you
6 and your wife about estate issues. Not too long
7 after I took over, yes, you came to the office.
8 Again, I'd have to refresh my recollection as to
9 what exactly we covered. But I recall that much.
14:06:17 10 It was pending issues involving estate matters that
11 were of concern to you. And then I think we even
12 talked about was there a way to resolve the issues
13 that you had. So those were sort of the
14 generalities that I recall.

14:06:29 15 Q. Okay. Because your bill mainly says that
16 it was regarding the Stansbury lawsuit --

17 A. I'd have to see the bill.

18 Q. -- for three hours. But -- and let me ask
19 you another question. Did you bill for that three
14:06:41 20 hours?

21 A. Again, without seeing the bill to be sure.

22 Q. Okay.

23 A. But I am going to take an assumption that
24 I did.

14:06:47 25 Q. Okay. Okay. And after I just heard you,

1 you said there was some breach of contract issues,
2 some conspiracy issues, some fraud issues, and the
3 defendants we know were Ted Bernstein that was sued
4 and Simon Bernstein and their companies, correct?

14:07:19 5 A. Originally.

6 Q. Okay.

7 A. And there's been some dismissals
8 principally of Ted Bernstein and some of the
9 entities.

14:07:24 10 Q. Okay. And I was looking for yes or no,
11 but okay.

12 Okay. So is it possible that some of the
13 issues involved in the Stansbury claims could
14 involve negligence, yes or no?

14:07:39 15 A. I don't recall a negligence claim or count
16 in the complaint. And there's a second amended
17 complaint. That would be what one would need to
18 look to answer that for sure. But sitting here
19 without looking at it, I don't recall a negligence
14:07:54 20 claim.

21 Q. Are you aware of Florida Statute 768.1,
22 yes or no?

23 A. 768.01 perhaps?

24 Q. 768.81.

14:08:23 25 A. 81?

1 Q. Yes.

2 MR. ELIOT BERNSTEIN: Your Honor, can I
3 approach?

4 THE DEPUTY: I will bring it to the
14:08:29 5 witness.

6 THE COURT: Thank you.

7 MR. ELIOT BERNSTEIN: Do you want one,
8 Your Honor?

9 THE COURT: I have my statute book. I am
14:08:32 10 looking it up right now.

11 MR. ELIOT BERNSTEIN: Okay. Okay. Let me
12 get back to where I was.

13 THE COURT: The comparative fault statute?

14 MR. ELIOT BERNSTEIN: Yes.

14:09:04 15 BY MR. ELIOT BERNSTEIN:

16 Q. Can you read subdivision C for the record,
17 Mr. O'Connell?

18 MR. ROSE: I am going to object. I mean,
19 the statute is the statute. They can make
14:09:15 20 whatever argument they want to make in the
21 argument, but he doesn't have to read the
22 statute.

23 MR. ELIOT BERNSTEIN: Well --

24 THE COURT: Just let him read it.
14:09:23 25 Overruled.

1 THE WITNESS: "Negligence action means,
2 without limitation, a civil action for damages
3 based upon a theory of negligence, strict
4 liability, products liability, professional
14:09:33 5 malpractice whether couched in terms of
6 contract or tort, or breach of warranty and
7 like theories. The substance of an action, not
8 conclusory terms used by a party, determines
9 whether an action is a negligence action."

14:09:48 10 BY MR. ELIOT BERNSTEIN:

11 Q. And then can you just read real quick
12 number three short?

13 A. Sure. "Apportionment of damages. In a
14 negligence action, the court shall enter judgment
14:09:57 15 against each party liable on the basis of such
16 party's percentage of fault and not on the basis of
17 the doctrine of joint and several liability."

18 Q. Okay. And both Ted and my father were
19 sued in the Stansbury action, correct?

14:10:17 20 A. Yes, originally.

21 Q. Okay. And so it could be that Ted
22 committed, and according to Mr. Stansbury's
23 complaint, most of the egregious acts of fraud on
24 Mr. Stansbury, checking account fraud, et cetera,
14:10:40 25 and that my father was more of a passive partner in

1 this thing who might not have even known what was
2 going on with Ted?

3 So would there be the ability to say that
4 there was an apportionment of damages that could
14:11:04 5 result that where Ted is found maybe a hundred
6 percent liable for the damages to Mr. Stansbury?

7 A. Well, at this point, I will give you a no
8 at this point. Because what you would have to do
9 is -- and look the complaint, because everyone has
14:11:23 10 to travel under the complaint and what's been
11 alleged in that and what legal theories are being
12 claimed.

13 Again, like I mentioned, negligence I
14 don't recall being a count within that particular
14:11:33 15 complaint. Then you have to couple that with the
16 fact that you had a dismissal of Ted in certain
17 entities as a defendant. Then on top of that you'd
18 have to have, which I certainly don't have and not
19 been given, facts to support that type of a I will
14:11:49 20 call it apportionment claim as you have alluded to
21 it. So someone would have to have that information
22 to make that assessment after considering
23 everything else that I just said.

24 Q. And so since you didn't know if there was
14:12:03 25 a negligence and we'd have to circle back to that

1 with more discovery because you need to check your
2 records, we could find that there's a negligence
3 theory here that establishes that there's shared
4 fault in the action, correct?

14:12:19 5 MR. ROSE: Objection. And may I be heard?

6 THE COURT: Give me just one second.

7 MR. ROSE: Okay.

8 THE COURT: All right. I just reviewed
9 the complaint at issue in the Stansbury case.
10 There does not appear to be a negligence
11 action. Am I missing it?

12 MR. FEAMAN: There is not a negligence
13 action per se, Your Honor.

14 THE COURT: Okay. Thank you.

14:12:50 15 So let's move on. Don't forget, I said
16 you had ten minutes.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: I have already given you ten.
19 I am going to give you five more.

14:12:58 20 MR. ELIOT BERNSTEIN: Well, I am going to
21 need more just based on the fact that there's
22 some certain things that are germane --

23 THE COURT: Okay. I understand your
24 objection.

14:13:05 25 (Overspeaking.)

1 MR. ELIOT BERNSTEIN: -- consideration.

2 Thank you.

3 THE COURT: I understand your objection.

4 MR. ELIOT BERNSTEIN: Okay.

14:13:07 5 THE COURT: And wait. And you put it on

6 the record so it's preserved.

7 MR. ELIOT BERNSTEIN: Okay.

8 THE COURT: But you get six more minutes.

9 BY MR. ELIOT BERNSTEIN:

14:13:13 10 Q. Mr. O'Connell, when did you -- did you

11 perform a due diligence investigation into Ted

12 Bernstein's potential liability in the Stansbury

13 lawsuit?

14 A. I have not. I have never been presented

14:13:24 15 with any facts by anyone or even an allegation to

16 suggest that such a liability might exist.

17 Q. Well, the complaint actually alleges that

18 Ted committed the frauds?

19 A. And then, as I have mentioned, Ted was

14:13:35 20 dismissed as a defendant by Mr. Stansbury.

21 Q. Yeah, that's okay. Whether Mr. Stansbury

22 in the estate would have to determine if Ted had

23 liability in this, correct?

24 A. No.

14:13:47 25 MR. ROSE: Objection, again.

1 THE COURT: Go ahead, place your legal
2 objection on the record.

3 MR. ROSE: Well, my legal objection is a
4 lack of relevancy under the two statutes that
14:13:59 5 are relevant to these issues. But he can
6 finish.

7 THE COURT: Thank you.

8 You may proceed.

9 BY MR. ELIOT BERNSTEIN:

10 Q. Did you do a due diligence investigation
11 to check out if Ted had any liability in this
12 lawsuit?

13 A. Not the way you've phrased it. I mean, we
14 examined the lawsuit and determined the defendant
14:14:25 15 initially. And, of course, we are here today for a
16 different form of defense. But I have no
17 information specifically relates to the topics that
18 you are raising that Ted has some type of a
19 contribution, I think would be your theory for
14:14:40 20 that, or a portion you have also used that term.

21 Q. But if you did find that out through due
22 diligence that Ted had liability, you would be able
23 to take action on behalf of the beneficiaries to
24 have Ted sued or charged with that, correct?

14:14:57 25 A. If, yes, if that information exists, if

1 someone provides us with that information, then, of
2 course, we could.

3 Q. Okay.

4 A. That begs the issue of --

14:15:09 5 Q. That's good.

6 A. -- us needing the information after the
7 years that have gone by that this litigation has
8 been pending that I have never been provided.

9 Q. Okay. Okay. So but you just said that as
14:15:19 10 the estate could do that after reviewing to see if
11 Ted had liability. And my question is this, do you
12 think that Ted, if he is in your chair right there
13 right now representing the estate on behalf of
14 Stansbury, will file a lawsuit against Ted saying
14:15:38 15 that he committed most of the egregious acts and he
16 should be apportioned the damages?

17 A. I wouldn't --

18 MR. ROSE: Again, I will object. Legal
19 ground is that the estate has no claim against
14:15:49 20 Ted Bernstein under any circumstances. And for
21 the record, under Section 768.31(c) and
22 768.31(b)(5), which states that when a party
23 has been dismissed and given a release, there's
24 no claim for contribution, it discharges the
14:16:09 25 tort-feasor to whom it is given from all

1 liability for contribution to any other
2 tort-feasor.

3 Mr. Feaman is in the courtroom, and he can
4 confirm that there's a settlement agreement
14:16:18 5 that includes a release of Mr. Ted Bernstein.

6 And under 768.81, just for the record,
7 there's no liability if there's apportionment
8 of fault. The jury could award him a billion
9 dollars, put a hundred percent on Ted
14:16:29 10 Bernstein, and the estate pays nothing under
11 781 --

12 MR. ELIOT BERNSTEIN: Your Honor --

13 (Overspeaking.)

14 THE COURT: I understand the legal
14:16:33 15 implications of 768.81. Next question.
16 Mr. Eliot has approximately three more minutes,
17 and I want him to have his time.

18 MR. ELIOT BERNSTEIN: Well, that's not
19 enough time, I mean literally. I have
14:16:46 20 requested and shown the reasons why. But okay.
21 And I will say this is more infringement on my
22 due process right, but.

23 THE COURT: I have absolutely --

24 MR. ELIOT BERNSTEIN: Okay.

14:16:56 25 THE COURT: Wait. Wait. I want to say

1 this. I have always -- I will never be upset
2 by you establishing your record, so that's
3 fine, go on.

4 BY MR. ELIOT BERNSTEIN:

14:17:05 5 Q. When did you first read the will of Simon
6 Bernstein, the 2012 will?

7 A. Shortly after I was appointed as the
8 personal representative.

9 Q. Did you read a copy or the original?

14:17:16 10 A. I believe it was a copy.

11 Q. Why didn't you read the original?

12 A. Well, the original would be in the court
13 file, and we rely on copies.

14 Q. Okay. When did you first see the
14:17:36 15 paragraph in the alleged valid will of my father
16 that makes me a beneficiary as devisee?

17 A. When I would have read the will I would
18 have seen the children as beneficiaries as to
19 tangible personal property.

14:17:49 20 Q. So how long have you let Ted Bernstein and
21 Alan Rose falsely claim in the court that I have no
22 standing?

23 MR. ROSE: Objection, argumentative.

24 THE COURT: Overruled. You can answer.

14:17:59 25 THE WITNESS: And I haven't let them do

1 anything.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Well, did you object at the validity
4 hearing when it was said I wasn't a beneficiary of
14:18:08 5 the estate?

6 A. I am not sure which hearing you are
7 referring to and whether or not I was present.

8 Q. You weren't present. But the estate, you
9 left and abandoned the estate at that validity
14:18:17 10 hearing, in fact, and left it unrepresented. But
11 you would have, obviously, opposed any statements
12 like the ones that are full in these pleadings
13 before the Court right now where Mr. Rose is
14 claiming Eliot is not a beneficiary of anything
14:18:29 15 whatsoever? That's incorrect, correct?

16 A. Sort of a compound question, but I will
17 try to answer it the best I can. Based on what
18 Mr. Rose just said in open court, I am not aware
19 that he is contesting that you are beneficiary of
14:18:44 20 the Simon Bernstein estate as to tangible personal
21 property.

22 Q. He said he conceded, which means he
23 changed his entire pleadings, the pleadings before
24 Judge Phillips --

14:18:53 25 THE COURT: Okay, question. You ask a

1 question. You don't stand there and --

2 MR. ELIOT BERNSTEIN: I got you.

3 (Overspeaking.)

4 THE COURT: Last question.

14:19:00 5 MR. ELIOT BERNSTEIN: Well, I have got a
6 few more.

7 THE COURT: Last question.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Have you negotiated a signed settlement
14:19:09 10 between Stansbury and the estate?

11 A. No. You mean is there a signed settlement
12 agreement between Mr. Stansbury and the estate?

13 Q. That Mr. Stansbury signed that you sent to
14 him that you negotiated a settlement between the
14:19:26 15 estate and Mr. Stansbury?

16 A. At this point to get some clarity here,
17 because we have had exchanges of correspondence
18 about trying to settle the case. But if you are
19 saying do I have a signed settlement agreement
14:19:39 20 that's been approved by the Court that's been --

21 Q. No, I didn't say -- I just asked do you
22 have a signed one by Mr. Stansbury?

23 A. Again, I'd have to look through my file
24 because I remember exchanging proposals. Whether
14:19:51 25 or not Mr. Stansbury signed off on one of those,

1 because we did have a hearing before Judge Colin
2 about approving a settlement. But that was
3 objected to by counsel for the grandchildren,
4 therefore it wasn't approved. So it's possible
14:20:04 5 there could be something that was signed in that
6 era. But I'd want to look at the file to be sure,
7 if that's what you are referring to.

8 Q. Okay. So --

9 THE COURT: All right. That was the last
14:20:16 10 question.

11 MR. ELIOT BERNSTEIN: Can I finish that
12 question?

13 THE COURT: You can finish one more.

14 MR. ELIOT BERNSTEIN: Okay.

14:20:20 15 BY MR. ELIOT BERNSTEIN:

16 Q. In Shirley's trust construction case in
17 relation to Simon's trust you were served a
18 complaint in Shirley's trust, you entered and
19 intervened on behalf of the estate. Did you not at
14:20:35 20 that time answer your first affirmative defense
21 that Ted Bernstein was not a validly serving
22 trustee of the Simon Bernstein Trust?

23 A. I'd need to see that. It's possible. I'd
24 need to see the pleading itself.

14:20:47 25 Q. Okay.

1 MR. ELIOT BERNSTEIN: I can get that if
2 you'd like, Your Honor.

3 THE COURT: If you want to hand it to him.

4 MR. ELIOT BERNSTEIN: Okay. Hold on.

14:20:57 5 THE COURT: Does anyone have that pleading
6 handy?

7 MR. ROSE: If I could enlighten you?

8 THE COURT: Yes. Which pleading are you
9 referencing?

14:21:13 10 MR. ROSE: No, in the trust --

11 MR. ELIOT BERNSTEIN: (Inaudible).

12 (Overspeaking.)

13 THE COURT: No, I asked which pleading you
14 are referencing, and he was just trying to tell
14:21:20 15 me.

16 MR. ELIOT BERNSTEIN: Okay.

17 THE COURT: Do you have the pleading,
18 Mr. Eliot?

19 MR. ELIOT BERNSTEIN: I am looking for it.

14:21:25 20 THE COURT: I was just going to ask him if
21 he had the pleading he can show you the
22 pleading if he can get it. Do you know which
23 pleading?

24 MR. ROSE: I can tell you what it is.

14:21:31 25 THE COURT: What is it?

1 MR. ROSE: In the trust construction case
2 Judge Colin ordered that we try the validity of
3 five documents.

4 THE COURT: Yes, I remember.

14:21:42 5 MR. ROSE: One of them affected
6 Mr. O'Connell --

7 THE COURT: I might be able to pull it up
8 from the court file.

9 MR. ROSE: -- which was the will. So
14:21:46 10 Mr. O'Connell filed an answer in the case. But
11 then we entered into a stipulation and an order
12 that Mr. O'Connell would abide by whatever
13 Judge Phillips ruled at the trial so that he
14 wouldn't have to sit through a trial and incur
14:21:57 15 the expense.

16 THE COURT: Got it.

17 MR. ROSE: So I think he withdrew his --
18 he entered into an agreement and he did not
19 pursue any defenses, and the documents were
14:22:04 20 upheld as valid. It would be his answer filed
21 in, not in the Estate of Simon Bernstein, but I
22 think it's the 2014 3698 case.

23 MR. ELIOT BERNSTEIN: It's Mr. O'Connell's
24 answer. It's his only affirmative defense,
14:22:22 25 Your Honor, if you want to look it up. It's

1 his answer to the Shirley Bernstein Trust,
2 construction complaint on behalf of the estate.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Mr. O'Connell, what made you say that?

14:22:34 5 A. Originally?

6 Q. Yes.

7 A. Before it was settled? My review of the
8 Shirley Bernstein Trust.

9 Q. You said the Simon Bernstein Trust he
14:22:46 10 wasn't validly serving under?

11 A. Sorry, Simon Bernstein Trust, correct.

12 Q. Okay. So now what was it?

13 A. My review -- originally when that
14 affirmative defense was entered based on my review
14:22:55 15 of the Simon Bernstein Trust.

16 Q. You claimed that Ted wasn't validly
17 serving. On what grounds? On what basis?

18 MR. ROSE: Objection, Your Honor. Under
19 the statute -- it's not relevant. But under
14:23:06 20 the statute Mr. O'Connell has no, would have
21 had no standing, just like Mr. Bernstein had no
22 standing, and Mr. Feaman has no standing --

23 THE COURT: Sustained.

24 MR. ROSE: -- because only the settlor or
14:23:17 25 the co-trustee or the beneficiary trust can

1 seek removal.

2 THE COURT: All right. Let's wrap it up.

3 MR. ELIOT BERNSTEIN: Well, you are not
4 going to let me ask any more questions?

14:23:23 5 THE COURT: I am not.

6 MR. ELIOT BERNSTEIN: Okay. Again, my --

7 THE COURT: Your objection is so noted for
8 the record.

9 Okay. Redirect.

14:23:34 10 MR. FEAMAN: Thank you, Your Honor.

11 THE COURT: You are welcome, thank you.

12 MR. ELIOT BERNSTEIN: Oh, excuse me, Your
13 Honor?

14 THE COURT: Yes, sir.

14:23:42 15 MR. ELIOT BERNSTEIN: Just one last thing.
16 Do I get to make an opening statement and stuff
17 at this proceeding?

18 THE COURT: We are way past that.

19 MR. ELIOT BERNSTEIN: Well, I was late
14:23:52 20 last time.

21 THE COURT: And that's why you waived it.

22 MR. ELIOT BERNSTEIN: So I waived it?

23 THE COURT: You waived it by being late.

24 MR. ELIOT BERNSTEIN: Oh, okay.

14:23:58 25 THE COURT: Okay? Thank you.

1 MR. FEAMAN: May it please the Court?

2 THE COURT: Absolutely, thank you.

3 REDIRECT (BRIAN O'CONNELL)

4 BY MR. FEAMAN:

14:24:05 5 Q. Good afternoon, Mr. O'Connell.

6 A. Good afternoon.

7 Q. Mr. Eliot actually brought this up when we
8 were here the first time concerning the counts of
9 the Stansbury lawsuit, and I actually thought about
10 what he had to say. So I would like to follow up
11 and ask you some more questions on the Stansbury
12 lawsuit. If I could hand you a copy of the second
13 amended complaint?

14 A. Sure.

14:24:38 15 Q. Okay.

16 A. I have got it.

17 Q. And this is the second amended complaint
18 in the lawsuit that is pending where Mr. Rose seeks
19 to become counsel for the estate, correct?

14:24:55 20 MR. ROSE: If I could, just a brief
21 objection for the record?

22 THE COURT: For the record.

23 MR. ROSE: To the extent we are going to
24 argue that we should be disqualified because of
14:25:02 25 some potential contribution, I would just note

1 it's not in the papers --

2 MR. FEAMAN: Move to strike.

3 THE COURT: I get to hear his entire
4 argument before you get to move to strike
14:25:11 5 anything.

6 MR. FEAMAN: Yes, ma'am.

7 THE COURT: I don't know what you are
8 striking.

9 MR. ROSE: The grounds -- those grounds
14:25:17 10 aren't in the motion to disqualify our firm as
11 valid or the objection to our retention that's
12 the basis of vacating your order.

13 THE COURT: Continue.

14 MR. ELIOT BERNSTEIN: Excuse me, I just
14:25:31 15 missed that piece. Can somebody read that
16 back? I am sorry.

17 THE COURT: Sure, I can have the court
18 reporter read back his objection. Thank you.

19 MR. ELIOT BERNSTEIN: I am sorry.

14:25:38 20 THE COURT: No, that's all right.

21 MR. ELIOT BERNSTEIN: I was out there for
22 just a second.

23 MR. FEAMAN: Response, Your Honor.

24 THE COURT: I was just waiting to hear the
14:25:48 25 question. He asked that Mr. Rose's objection

1 be read back, and I said sure, and I was giving
2 the court reporter the opportunity to read it
3 back.

4 MR. ELIOT BERNSTEIN: I am sorry, Your
14:25:58 5 Honor.

6 THE COURT: That's quite all right. Thank
7 you.

8 (The following portion of the record was
9 read back.)

10 "MR. ROSE: Those grounds aren't in the
11 motion to disqualify our firm as valid or the
12 objection to our retention that's the basis of
13 vacating your order."

14 THE COURT: Mr. Feaman, you wanted a
14:26:50 15 response?

16 MR. FEAMAN: My response is we allege that
17 Mr. Rose has a conflict of interest.

18 THE COURT: I think that's broad enough.
19 We are talking about the lawsuit he is saying
14:27:01 20 he has a conflict. Let's move on. Overruled.

21 MR. FEAMAN: Thank you.

22 BY MR. FEAMAN:

23 Q. So the lawsuit is case number 13933 in the
24 general jurisdiction division, correct?

14:27:11 25 A. Correct.

1 Q. And this is not the first time you are
2 looking at this, correct?

3 A. Correct.

4 Q. In fact, you have looked at it in somewhat
14:27:20 5 detail because you and I carried on some serious
6 settlement negotiations, did we not?

7 A. Yeah, we have over a span of time, yes.

8 Q. Okay. Let me then first draw your
9 attention to paragraph 26 on page six. Let me know
14:27:41 10 when you are there.

11 A. I am there.

12 THE COURT: Hold on. The Court is not
13 there yet. I assume you want the Court to
14 follow along? Does anyone have an objection to
14:27:48 15 me pulling up the complaint?

16 MR. ELIOT BERNSTEIN: No, ma'am.

17 MR. FEAMAN: It's public record.

18 THE COURT: Just for the record.

19 MR. ROSE: That's fine, or you can have my
14:27:56 20 copy.

21 THE COURT: Just give me one second. I
22 have got the docket up. And just tell me when
23 it was filed, the amended complaint.

24 MR. FEAMAN: The amended complaint was
14:28:04 25 served and filed on or about September 3rd,

1 2013.

2 THE COURT: Thank you. Got it.

3 You may proceed, thank you.

4 BY MR. FEAMAN:

14:28:21 5 Q. Now, it's alleged there that LIC Holdings
6 and Arbitrage became the alter ego of Simon
7 Bernstein and Ted Bernstein; is that correct?

8 A. I see that, yes, that language.

9 Q. Now, LIC Holdings and Arbitrage were two
14:28:36 10 corporate defendants before -- in this action
11 before they were settled out; is that correct?

12 A. Correct.

13 Q. And that was the corporations under which
14 Mr. Stansbury and Mr. Simon Bernstein and Mr. Ted
14:28:48 15 Bernstein did business, correct?

16 A. Well, that's what's alleged in here.

17 Q. Okay. And it says that the allegations
18 are against both Simon Bernstein and Ted Bernstein,
19 correct?

14:29:01 20 A. Yes, in 26.

21 Q. And then the last sentence of page six
22 says, "The wrongful action of Simon Bernstein and
23 Ted Bernstein in diverting and converting corporate
24 assets rendered LIC and possibly Arbitrage
14:29:18 25 insolvent," correct?

1 A. That's what it says. That's the
2 allegation.

3 Q. Right. And now you are aware that Mr. Ted
4 Bernstein's deposition has not been taken in this
14:29:27 5 case, correct?

6 A. I am not sure.

7 THE COURT: Can I ask you to clarify which
8 case?

9 MR. FEAMAN: Sorry.

14:29:36 10 THE COURT: The civil case?

11 MR. FEAMAN: The Stansbury action.

12 THE COURT: Thank you.

13 MR. FEAMAN: Refer to it that way for the
14 record.

14:29:40 15 THE COURT: Thank you.

16 THE WITNESS: I don't know either way.

17 BY MR. FEAMAN:

18 Q. In fact, are you aware that other than the
19 beginning of the deposition of Mr. Stansbury, that
14:29:48 20 in the Stansbury action no depositions have yet
21 been taken in that case; are you aware of that?

22 A. I recall Mr. Stansbury's deposition, but I
23 am not sure what other depositions may or may not
24 have been taken.

14:30:01 25 Q. If I told you that no other depositions

1 have been taken, that wouldn't surprise you, would
2 it? You wouldn't have any reason to disagree with
3 that?

4 A. I don't sitting here without again looking
14:30:11 5 at some more material.

6 Q. All right. And then could I draw your
7 attention to paragraph 27?

8 A. Sure.

9 Q. It says, "Throughout 2009 Simon Bernstein
14:30:21 10 and Ted Bernstein continued to make false
11 statements to Stansbury to hide the fact that LIC
12 and/or Arbitrage was their alter ego in that they
13 converted corporate property and corporate assets
14 of LIC," correct?

14:30:34 15 A. That's what it says.

16 Q. Now, assume for me for a moment that
17 discovery shows that in fact most of that conduct
18 was performed by Ted Bernstein. Would you agree
19 that then possibly the Estate of Simon Bernstein
14:30:48 20 could have a third party complaint against Ted
21 Bernstein?

22 MR. ROSE: Objection, under the same
23 grounds as before. I mean, first of all, the
24 statute prohibits the claim for contribution
14:31:02 25 which would be a third party claim for

1 contribution.

2 THE COURT: That's not a legal objection.

3 MR. ROSE: Also, he is the opposing party
4 in the lawsuit that's pending. I really object
14:31:11 5 to him asking him his opinion about strategy in
6 the case, which is -- I mean, it's a delicate
7 balance, I understand, but, you know.

8 THE COURT: Which is why I asked you first
9 if you think Judge Marx should hear this. So
14:31:24 10 if you want me to hear it, I've got to know
11 what's going on.

12 MR. ROSE: And I want you to hear it. It
13 would be the same issue in front of Judge Marx.
14 I am saying he is asking him trial strategy. I
14:31:32 15 understand what they are getting at with this
16 contribution thing. And the reason why I
17 suggest it's completely irrelevant is there
18 is --

19 THE COURT: Wait a minute. Are you
14:31:39 20 objecting trial strategy is work product as
21 between attorney and client? Do you see what I
22 am saying? I need a basis.

23 MR. ROSE: My basis for the record is this
24 is completely irrelevant because it's
14:31:49 25 undisputed in this record that there's no claim

1 for contribution which exists. So to ask about
2 a third party claim that doesn't exist I think
3 is an improper question and the objection
4 should be sustained.

14:31:59 5 THE COURT: I am overruling it. It goes
6 to the weight of the evidence and me deciding
7 overall whether or not there's a conflict. I
8 am going to let him explore his theory, but it
9 all goes to whether or not there's a conflict
14:32:12 10 that exists.

11 You may continue.

12 MR. FEAMAN: And with Your Honor's
13 permission I would just like to state for the
14 record that there's nothing in this record to
14:32:20 15 support what Mr. Rose has said. Thank you.

16 BY MR. FEAMAN:

17 Q. Now, so my question was --

18 THE COURT: Do you want it read back?

19 MR. FEAMAN: Yes.

20 (The following portion of the record was
21 read back.)

22 "Q. Now, assume for me for a moment that
23 discovery shows that in fact most of that
24 conduct was performed by Ted Bernstein. Would
25 you agree that then possibly the Estate of

1 Simon Bernstein could have a third party
2 complaint against Ted Bernstein?"

3 THE WITNESS: I don't know enough to make
4 that analysis sitting here right now because it
14:33:06 5 would have to go through -- actually it would
6 be two contribution statutes, related statutes
7 in Chapter 768 I can think of that one would
8 have to review besides the one that I have been
9 provided.

14:33:18 10 BY MR. FEAMAN:

11 Q. Okay.

12 A. And obviously then take that against what
13 the facts are that you are referencing that might
14 be disclosed in discovery, apply that against the
14:33:26 15 dismissal, release, look at the settlement
16 agreement that was signed, and take an analysis of
17 all of those items, to give you a correct answer to
18 your question.

19 Q. And you haven't seen the release even,
14:33:38 20 have you?

21 A. I have talked to Mr. Rose about it. I
22 haven't -- I don't have it in my hands. It's not
23 part of my files.

24 Q. You haven't made an independent
14:33:48 25 determination outside of what Mr. Rose may have

1 told you that there might be something in that
2 release which would somehow keep the Estate of
3 Simon Bernstein from suing Ted Bernstein out of the
4 Stansbury lawsuit, correct?

14:34:01 5 A. I don't know that. I understood it was a
6 confidential settlement.

7 Q. Okay. So then you don't know; is that
8 correct?

9 A. It is because, as I just said, I was told
14:34:10 10 it was a confidential settlement. I inquired of
11 Mr. Rose generally what the terms and conditions
12 was. I looked at the docket. I see the dismissal
13 with prejudice of the parties you referred to
14 before.

14:34:21 15 Q. And so going back to what the facts might
16 develop, you really don't know yet whether the
17 Estate of Simon Bernstein could sue Ted Bernstein
18 arising out of the conduct alleged in the Stansbury
19 lawsuit, correct?

14:34:35 20 A. Right. I think I have answered that, but
21 I will say it again. I don't have enough
22 information to apply case law. There's a Supreme
23 Court decision I can think of that deals with
24 contribution that would be relevant here, yeah, a
14:34:50 25 number of items. But I would have to start with

1 some sort of a factual basis, looking at documents,
2 what's the nature of the tort, what's the
3 contribution, if it's a contract claim, if there's
4 no contribution, all of those items would have to
14:35:05 5 be looked at because this complaint has contractual
6 claims and it has tort claims.

7 Q. Right. And assume for me, if you would,
8 that the release would not bar an action by the
9 estate. And assume for me that the facts would
14:35:18 10 support a jury's conclusion as to the truthfulness
11 of what's alleged in paragraphs 26, 27, 28 and 29.
12 Isn't it true that in that event, and I am
13 admitting now that you don't know this yet, but
14 that the estate could have an action against Ted
14:35:36 15 Bernstein?

16 A. Then I would --

17 MR. ROSE: I am going to object for the
18 record on multiple grounds, first of which is I
19 can't believe a lawyer in this courtroom who's
14:35:46 20 negotiated a general release --

21 MR. FEAMAN: Move to strike.

22 THE COURT: Hold on. One second, please.

23 MR. FEAMAN: He can object, Your Honor,
24 but he can't make statements like that.

14:35:55 25 THE COURT: I indicated at the very

1 beginning, remember point one, that no one was
2 to take a strike at the lawyer. If you want to
3 put on the law, put on the law.

4 MR. ROSE: Okay.

14:36:06 5 THE COURT: I am looking at 768.81.

6 You may proceed with your objection.

7 MR. ROSE: Can I clarify the point since
8 this is not pled and we are traveling --

9 THE COURT: Sure.

14:37:01 10 MR. ROSE: Is there a position taken in

11 this case by the movant that there is not a
12 mediation settlement agreement signed that
13 includes a general release negotiated by
14 counsel at a mediation, including Mr. Feaman

14:37:14 15 who was the lead counsel for the plaintiff,
16 that includes a general release of all

17 defendants? And if that's an issue, I need to
18 know that just to be on notice of what the
19 issues are in the case so I can be prepared to

14:37:26 20 meet the evidence that's going to be presented

21 today. I don't think it's too much to ask if
22 that's actually a disputed issue of fact today.

23 And if it is, I would submit to the Court that

24 when we prove the opposite it should reflect on

14:37:39 25 the credibility of the movant.

1 MR. FEAMAN: Move to strike --

2 MR. ROSE: And I have a legal objection
3 after I --

4 THE COURT: Mr. Feaman, it's the Court's
14:37:47 5 understanding there was a dismissal and a
6 settlement with regards to Ted individually
7 from the Stansbury lawsuit; is that correct?

8 MR. FEAMAN: That is correct.

9 THE COURT: All right. Move on, Mr. Rose.
14:37:58 10 That was the basis of your issue, correct?

11 MR. ROSE: But that included a release.
12 The settlement agreement that was signed
13 included a general release. I didn't know that
14 was a disputed issue of fact.

14:38:08 15 THE COURT: I don't think it's been raised
16 as a disputed issue of fact.

17 MR. ROSE: Okay. Then my legal objection
18 is --

19 THE COURT: I did not believe there was an
14:38:18 20 issue raised that it was a disputed issue. Was
21 in fact I believe there was a release executed
22 in the Stansbury litigation?

23 MR. FEAMAN: Right.

24 THE COURT: With regards to Ted Bernstein?

14:38:28 25 MR. FEAMAN: Correct. Now, there may be a

1 legal issue as to whether the terms of that --

2 THE COURT: I was going to say I am not
3 going there.

4 MR. FEAMAN: Correct.

14:38:35 5 THE COURT: The question is is there a
6 release?

7 MR. ROSE: So that's a stipulated fact for
8 the purposes of the hearing?

9 THE COURT: There are. A release has been
14:38:42 10 executed. The effect of that release to the
11 Court on this day is not making any
12 determination.

13 MR. ELIOT BERNSTEIN: Your Honor?

14 MR. ROSE: And then my legal objection is
14:38:48 15 the same as it was before under 768.81, 31,
16 sorry.

17 THE REPORTER: I'm sorry, what?

18 THE COURT: 768.31.

19 THE REPORTER: 768.31?

14:38:58 20 MR. ELIOT BERNSTEIN: Your Honor?

21 THE COURT: Is that correct? That was off
22 the top of my head. Is that correct?

23 MR. ROSE: Yes, Your Honor. I apologize,
24 I am not trying to disrupt the proceedings.

14:39:03 25 THE COURT: That's okay.

1 MR. ROSE: But I appreciate the
2 clarification.

3 THE COURT: Very spirited proceedings.
4 That's all right.

14:39:09 5 Yes, Mr. Eliot?

6 MR. ELIOT BERNSTEIN: Well, Your Honor, on
7 that settlement in Shirley's estate all parties
8 didn't enter into that settlement.

9 THE COURT: We are not -- that wasn't --
14:39:16 10 it was just --

11 MR. ELIOT BERNSTEIN: Oh, okay.

12 THE COURT: The only thing was whether or
13 not Stansbury had released Ted.

14 MR. ELIOT BERNSTEIN: Okay.

14:39:24 15 THE COURT: That was the only question.

16 MR. ELIOT BERNSTEIN: None of the
17 beneficiaries know about it.

18 THE COURT: I kept it very clear --

19 MR. ELIOT BERNSTEIN: Okay.

14:39:28 20 THE COURT: -- because I know there's a
21 lot of disputes within that one statement if I
22 go too far.

23 MR. ELIOT BERNSTEIN: Okay.

24 THE COURT: You may proceed.

14:39:35 25 MR. FEAMAN: Thank you, Your Honor.

1 THE COURT: Mr. Feaman, you may proceed.

2 MR. FEAMAN: Can you read back my last
3 question?

4 (The following portion of the record was
5 read back.)

6 "Q. And assume for me, if you would, that
7 the release would not bar an action by the
8 estate. And assume for me that the facts would
9 support a jury's conclusion as to the
10 truthfulness of what's alleged in paragraphs
11 26, 27, 28 and 29. Isn't it true that in that
12 event, and I am admitting now that you don't
13 know this yet, but that the estate could have
14 an action against Ted Bernstein?"

14:40:15 15 MR. ROSE: I object also on the grounds I
16 don't think you ask a fact witness to make
17 assumptions that aren't supported by the
18 record.

19 THE COURT: I am going to say he is
14:40:32 20 proposing a hypothetical which is often the
21 case even in medical malpractice and things of
22 that nature. So I will allow it.

23 Mr. Feaman, go ahead.

24 BY MR. FEAMAN:

14:40:40 25 Q. You may answer, sir.

1 A. Sure. Let's see if we can get to the
2 bottom of this by looking at 768.31(b)(5).

3 Q. Sure. What's the title of that statute?

4 A. Contribution Among Tort-Feasors.

14:40:50 5 Q. Okay. Does it relate to negligence?

6 A. Actually I think the Florida Supreme Court
7 has ruled in a 1970s case that it applies to all
8 tort actions.

9 Q. Okay.

14:41:10 10 A. But I'd have to have that case in front of
11 me.

12 Q. Well, take a look at Count II, if you
13 would, at page ten. That's a breach of an oral
14 contract against LIC Holdings, Arbitrage, Simon
15 Bernstein and Ted Bernstein, correct?

14:41:38

16 A. Right, a contract claim.

17 Q. Okay. And take a look, if you would, as
18 to Count III.

19 A. Count III, fraud in the inducement again
14:41:57 20 as to a contract.

21 Q. Right. That's an employment agreement
22 against Simon Bernstein and Ted Bernstein, correct?

23 A. Correct.

24 Q. Okay. Take a look at Count V. It's page
14:42:10 25 15.

1 A. I am sorry, did you say page five or
2 Count V?

3 Q. Count V. I am sorry, I may have
4 misspoken. Page 15, Count V, that's a civil
14:42:20 5 conspiracy against Simon Bernstein and Ted
6 Bernstein, right?

7 A. It incorporates Counts III and IV.

8 Q. Okay. And then take a look at Count VIII,
9 that's unjust enrichment, on page 18, again,
14:42:40 10 against all four defendants, including Simon
11 Bernstein and Ted Bernstein, correct?

12 A. That's what it says.

13 Q. Okay. And you cannot say with certainty
14 as you sit here today that under no circumstances
14:42:55 15 would the estate ever have a claim against Ted
16 Bernstein arising out of this Stansbury action, can
17 you?

18 A. I can't say with a hundred percent
19 certainty. But based on if there's a release,
14:43:11 20 there's a settlement, under the statute that I have
21 given you, there's no contribution, which I believe
22 is the topic we are debating here.

23 Q. Well, let's move on from contribution to
24 allowing a jury to apportion percentages of fault.
14:43:28 25 That certainly would be allowed, would it not, on a

1 jury verdict form --

2 MR. ROSE: Objection.

3 BY MR. FEAMAN:

4 Q. -- without a claim for contribution?

14:43:34 5 THE COURT: Legal objection?

6 MR. ROSE: Legal objection is that that
7 statute does not impose liability on the
8 person based on the percentages of fault.
9 Specifically that statute, as Your Honor is
10 well aware, liability is only apportioned on
11 the defendant. In the non-party defendants
12 they can be a hundred percent liable that
13 there's no --

14 THE COURT: I know, but your objection is
14:43:56 15 interpreting the statute. Do you have a
16 different legal objection?

17 MR. ROSE: It's a completely irrelevant
18 question as to this line of questioning is
19 irrelevant on that basis. It's a fiction. We
14:44:07 20 are doing this whole hearing based on a fiction
21 that there's some claim that doesn't exist,
22 based on negligence that doesn't exist under
23 the statute.

24 MR. FEAMAN: Goes to weight, not
14:44:19 25 admissibility, Your Honor.

1 THE COURT: I got to agree it goes to the
2 weight whether or not it could actually be
3 added as a nonparty defendant under the various
4 claims, whether -- I am not going to say
14:44:33 5 anything else. Based on the objection as you
6 have raised it I will overrule it.

7 MR. FEAMAN: Could you read it back,
8 please?

9 (The following portion of the record was
10 read back.)

11 "Q. Well, let's move on from contribution
12 to allowing a jury to apportion percentages of
13 fault. That certainly would be allowed, would
14 it not, on a jury verdict form without a claim
14:45:11 15 for contribution?"

16 THE WITNESS: And are you talking about
17 what's -- I assume you are talking about what's
18 pled in the second amended complaint?

19 BY MR. FEAMAN:

14:45:17 20 Q. Yes.

21 A. I think the problem there is you don't
22 have a negligence count.

23 Q. You've got an unjust enrichment count,
24 correct?

14:45:25 25 A. I don't count that as a negligence count.

1 THE COURT: Mr. --

2 MR. FEAMAN: Okay. I will move on, Your
3 Honor.

4 THE COURT: Thank you.

14:45:34 5 BY MR. FEAMAN:

6 Q. Now, the reference to LIC Holdings and
7 Arbitrage, those are two entities that during
8 Mr. Simon Bernstein's lifetime and that of Ted
9 Bernstein they each owned at least 45 percent each
10 and possibly 50 percent each at the time of
11 Mr. Simon Bernstein's death, correct?

12 A. That I am not sure what the exact
13 ownership percentage was at that point.

14 Q. Okay.

14:46:02 15 A. That would be a guess, and I am not going
16 to guess.

17 Q. And have you investigated whether Mr. Ted
18 Bernstein, who kept running the corporations after
19 Simon Bernstein's death, made any payments to the
14:46:16 20 estate as a result of renewal commissions that
21 might have been paid --

22 MR. ROSE: Objection.

23 BY MR. FEAMAN:

24 Q. -- to Simon Bernstein?

14:46:25 25 THE COURT: Before you object I need to

1 hear the whole question.

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

4 MR. FEAMAN: Okay.

14:46:31 5 THE COURT: I need you to say it again. I
6 lost it.

7 MR. FEAMAN: Sure. Read it back again.

8 (The following portion of the record was
9 read back.)

10 "Q. And have you investigated whether
11 Mr. Ted Bernstein, who kept running the
12 corporations after Simon Bernstein's death,
13 made any payments to the estate as a result of
14 renewal commissions that might have been paid
14:47:05 15 to Simon Bernstein?"

16 MR. ROSE: Objection as to relevancy and
17 materiality. It's beyond the scope of
18 examination.

19 THE COURT: Sustained. Next question.

14:47:11 20 BY MR. FEAMAN:

21 Q. Now, Mr. Rose represents Mr. Ted
22 Bernstein, correct?

23 A. In different capacities in different
24 proceedings.

14:47:21 25 Q. Okay.

1 A. In the call it the Bernstein matters, yes.

2 Q. Okay. And you are aware that both Simon
3 and Ted were running Arbitrage and LIC at the time
4 that Mr. Simon passed away, correct?

14:47:38 5 A. I know these entities involved the father
6 and son at various and sundry times.

7 Q. Okay.

8 A. I don't have any, of course, personal
9 knowledge of that. A lot of what I have been told
14:47:53 10 is that.

11 Q. Did you make an investigation as to
12 whether as a result of money that came in to LIC or
13 Arbitrage after Mr. Simon Bernstein's death should
14 have been payable to Mr. Simon Bernstein, but now
14:48:08 15 that he would be dead the estate, such that the
16 estate if those monies weren't paid would then have
17 a claim against Ted Bernstein?

18 MR. ROSE: Objection, same relevancy and
19 materiality, beyond the scope.

14:48:21 20 THE COURT: Sustained.

21 MR. FEAMAN: May I respond, Your Honor?

22 THE COURT: Sure.

23 MR. FEAMAN: If there's a potential that
24 the estate could have a claim against Ted
14:48:30 25 Bernstein for corporate misconduct after

1 Mr. Bernstein dies, because the corporations
2 may owe Mr. Simon Bernstein some money, that's
3 also potential conflict of interest between
4 Mr. Rose and now representing the estate.

14:48:43 5 THE COURT: Okay. That's argument. What
6 you just said that's your argument, but it is
7 beyond.

8 MR. FEAMAN: That's my respectful response
9 to your ruling.

14:48:55 10 THE COURT: No, I understand.

11 MR. FEAMAN: Okay.

12 BY MR. FEAMAN:

13 Q. Do you know what happened to the
14 commissions that Simon Bernstein was to receive
14:49:06 15 after his death?

16 MR. ROSE: Objection, same objection.

17 THE COURT: I don't want to try that
18 lawsuit now, okay? Thank you.

19 MR. FEAMAN: May I approach, Your Honor,
14:49:18 20 to grab an exhibit?

21 THE COURT: Absolutely. They are all up
22 here for you.

23 MR. ROSE: While he is doing that, for
24 scheduling purposes how much time do we have
14:49:31 25 for today?

1 THE COURT: Until 4:30.

2 MR. ROSE: Thank you.

3 MR. ELIOT BERNSTEIN: Your Honor, did you
4 get my exhibit list that I gave you last time?

14:49:35 5 THE COURT: I have your binder. But these
6 are exhibits entered into evidence he is
7 looking through. These were entered at the
8 last --

9 MR. ELIOT BERNSTEIN: Already.

14:49:44 10 THE COURT: Yes. They've already been
11 entered. The Court was holding them.

12 MR. ELIOT BERNSTEIN: My confusion, thank
13 you.

14 THE COURT: No.

14:49:50 15 MR. ELIOT BERNSTEIN: Just didn't see it
16 there.

17 THE COURT: Here's your book.

18 MR. ELIOT BERNSTEIN: Oh, no, don't lift
19 it.

14:50:00 20 THE COURT: It's got the colored tabs.

21 MR. ELIOT BERNSTEIN: Yes.

22 MR. FEAMAN: Your Honor, let the record
23 reflect that I am handing Your Honor a copy of
24 Exhibit 1, Rose Exhibit 1, so that you can read
14:50:08 25 along.

1 THE COURT: Thank you.

2 MR. ROSE: That's Trustee Exhibit 1 for
3 the record.

4 THE COURT: I can look at my exhibit list.

14:50:17 5 MR. ROSE: I don't want the record to
6 suggest there was a Rose exhibit that wasn't in
7 evidence.

8 THE COURT: I have this as Stansbury.
9 Stansbury entered all of these 1 through 8 are
14:50:33 10 without objection. The trustee --

11 MR. FEAMAN: This would be -- it's marked
12 as Trustee's Exhibit 1.

13 THE COURT: The PR waiver?

14 MR. FEAMAN: Yes.

14:50:43 15 THE COURT: That was Trustee's Number 1.

16 MR. FEAMAN: Yes. I am handing that to
17 the witness, Your Honor.

18 THE COURT: Thank you. I was just
19 checking my exhibit list.

14:50:50 20 MR. FEAMAN: Okay.

21 BY MR. FEAMAN:

22 Q. Now, the Trustee's Exhibit 1 was that
23 prepared by you?

24 A. My office, yes.

14:51:03 25 Q. Was there a draft prepared for you by

1 Mr. Rose?

2 A. Yes.

3 Q. And --

4 A. I made extensive revisions to it.

14:51:15 5 Q. I would like to draw your attention to
6 page two of Trustee's Exhibit 1. In the middle of
7 the page, the third paragraph that begins with "I
8 have been advised," do you see that?

9 A. Yes.

14:51:30 10 Q. Okay. And it says, "I have been advised
11 that Mrachek --" and you are referring for the
12 record that's Alan Rose's firm, correct?

13 A. Correct.

14 Q. Okay. "I have been advised that Mrachek
14:51:43 15 represented those defendants."

16 What defendants are you referring to
17 there?

18 A. That would be the defendants with whom the
19 I will call it the settlement was reached with
14:51:55 20 regard to this matter.

21 Q. With regard to the Stansbury litigation?

22 A. Stansbury litigation.

23 Q. Is that what you were referring to there?

24 A. Stansbury litigation, yes.

14:52:05 25 Q. Okay. "And the position taken is not in

1 conflict or adverse to the estate's position;" do
2 you see that?

3 A. I see that.

4 Q. Okay. So that's what they told you?

14:52:16 5 A. Well, that was part of the discussion that
6 I had with Mr. Rose. And, of course, from looking
7 at the lawsuit itself the interest of the estate is
8 to pay as little as possible to your client, which
9 is also the position that's being advocated by
14:52:32 10 Mr. Rose. And was his position when he was
11 representing the defendants who were dismissed as a
12 result of your settlement.

13 Q. Would you agree with me in this waiver
14 that there's nowhere that you take that position,
14:52:47 15 but the only place you make reference to there not
16 being in conflict with at least the ongoing lawsuit
17 that Stansbury has with the Mrachek firm
18 representing the estate is that one sentence?

19 A. Just give me one moment just to look at
14:53:07 20 page three.

21 Q. Sure.

22 A. That's the primary section that would deal
23 with conflict or uses the terminology of
24 conflict --

14:53:20 25 Q. All right.

1 A. -- besides the last sentence.

2 Q. All right. And would you agree with me
3 that your statement here makes absolutely no
4 reference to Mrachek's, the Mrachek firm's activity
14:53:36 5 on behalf of Ted Bernstein in what we call the
6 Chicago litigation, whereas you saw there was a
7 deposition admitted into evidence in this
8 proceeding that shows Mr. Rose representing Mr. Ted
9 Bernstein in that deposition in the Chicago action?
14:53:54 10 Would you agree with me that your statement here
11 makes no reference to any potential conflict that
12 might create between the Mrachek law firm and the
13 estate?

14 A. Well, the language here doesn't make any
14:54:08 15 reference to the Chicago litigation and the estate,
16 that's correct. But there's no involvement either
17 past, present or future contemplated by Mr. Rose
18 representing the estate in connection with the
19 Chicago litigation.

14:54:26 20 Q. No involvement --

21 MR. ROSE: I would object before -- I
22 waited until he finished the question. This
23 has now vastly exceeded the length of his
24 direct examination and it's very --

14:54:34 25 THE COURT: You do need to wrap it up.

1 MR. ROSE: -- argumentative.

2 THE COURT: I am not handling the
3 argument.

4 MR. ROSE: I know.

14:54:39 5 THE COURT: We need to --

6 MR. FEAMAN: Thank you. Just one
7 follow-up on that.

8 THE COURT: Absolutely.

9 BY MR. FEAMAN:

14:54:46 10 Q. You said no involvement past. Okay. But
11 are you not aware of the deposition that Mr. Rose
12 attended and appeared on behalf of Ted Bernstein in
13 that Chicago litigation where he made objections
14 and even instructed Mr. Bernstein not to answer a
14:55:02 15 question in that litigation?

16 A. I think you might not have heard my whole
17 answer.

18 Q. Okay.

19 A. Regarding representing the estate. I am
14:55:10 20 talking about Mr. Rose not having any involvement
21 in the Chicago litigation representing the estate.

22 Q. But he certainly had involvement in the
23 Chicago litigation representing Ted Bernstein who
24 is suing the estate, correct?

14:55:23 25 MR. ROSE: Objection, cumulative.

1 THE COURT: I will allow it. Just answer
2 the question.

3 THE WITNESS: I just recall that based on
4 this deposition that, yes, went into evidence
14:55:33 5 earlier he represented Ted Bernstein as a
6 witness in a deposition.

7 THE COURT: This is the Court being just
8 particular about the exhibits. Is this an
9 extra copy for me that you gave me or was it
14:55:42 10 the actual exhibit?

11 MR. FEAMAN: The actual exhibit is in
12 front of the witness.

13 THE COURT: Okay. Thank you. I just
14 wanted to make sure before I put it with my
14:55:51 15 notes. Thank you.

16 MR. FEAMAN: I am almost done, Your Honor.

17 THE COURT: Thank you.

18 BY MR. FEAMAN:

19 Q. Now, going back to your statement that's
14:56:00 20 Trustee's Exhibit 1.

21 A. Okay.

22 Q. Right here.

23 A. Got it.

24 Q. I want to draw your attention to the third
14:56:14 25 paragraph of page two.

1 A. Yes, I am there.

2 Q. You state that "Some of the direct and
3 indirect beneficiaries of the estate I am
4 administering advise me," and then continuing on,
14:56:37 5 "the beneficiaries wanted Mrachek to represent the
6 estate in the Stansbury lawsuit."

7 So that gets me to ask the question, if
8 only some of them, who is not consenting?
9 Obviously we know Mr. Eliot Bernstein who we have
14:56:55 10 already established is a beneficiary of the Simon
11 Bernstein estate. Who else in addition to
12 Mr. Bernstein if only some want Mr. Rose and his
13 firm to come in?

14 A. I am not aware of any objections from
14:57:09 15 anyone other than Mr. Eliot.

16 Q. Do you have any in writing, any consents
17 in writing from anybody?

18 A. I am not sure. There could be e-mail
19 correspondence on this. That I am not positive.

14:57:24 20 Q. You didn't actually take the time to have
21 people sign consents, did you?

22 A. Not formal consents.

23 Q. Okay.

24 A. That's why my best recollection this was
14:57:34 25 discussions, perhaps e-mails, but probably more

1 likely telephonic discussions with the various
2 counsel.

3 Q. And when you say indirect beneficiary,
4 would you be referring to one of the grandchildren?

14:57:47 5 A. Correct, contingent type beneficiaries.

6 Q. Eliot's?

7 A. Yes, that's the reference.

8 Q. All right. Now, have you ever made an
9 investigation as to whether any of Eliot's children
14:57:56 10 have actually reached the age of capacity and are
11 no longer minors?

12 A. Again, I'd need to look at the file. He
13 might have one child who is an adult.

14 Q. Okay. So if he has one child that's an
14:58:13 15 adult, then a consent from the guardian ad litem
16 as to his position would no longer be valid, would
17 it?

18 MR. ROSE: Objection, I think it calls for
19 a legal conclusion.

14:58:21 20 THE COURT: Sustained.

21 MR. ROSE: I'd like to be heard.

22 THE COURT: Sustained.

23 MR. ROSE: Thank you.

24 MR. FEAMAN: No further questions.

14:58:25 25 THE COURT: Thank you. All right.

1 MR. ROSE: I only have one redirect.

2 THE COURT: Well, you would be allowed to
3 call him in your case in chief.

4 MR. ROSE: That's fine.

14:58:35 5 THE COURT: Mr. O'Connell, let me ask that
6 you get off the stand at this time.

7 THE WITNESS: Yes, Your Honor.

8 MR. ELIOT BERNSTEIN: Can I redirect a
9 question or two?

14:58:50 10 THE COURT: I didn't let him do it, so,
11 no, I am not letting you do it. I did not let
12 Mr. Rose do the same thing you are asking me to
13 do. That's what he asked me to do.

14 MR. ELIOT BERNSTEIN: He is allowed to
14:58:58 15 call him back up as part of the proceeding, you
16 said?

17 THE COURT: No, we are done with this
18 witness now. So we are going to proceed to the
19 next witness in Mr. Feaman's case. But we are
14:59:07 20 going to take six minutes because I have to use
21 the restroom. Thank you.

22 (Witness excused.)

23 (A recess was taken.)

24 THE COURT: Mr. Feaman, are you ready to
15:04:39 25 proceed with the next witness?

1 MR. FEAMAN: I have a few questions of
2 Mr. Rose.

3 THE COURT: Okay.

4 MR. ROSE: I guess I can't object to being
15:04:48 5 called as a witness.

6 THE COURT: I think in this proceeding for
7 the very limited purpose of his representation,
8 I think that if we keep it limited to that,
9 which is what the motion is about, clearly I
10 don't expect or anticipate that Mr. Feaman will
11 be asking about strategy or anything like that.
12 It would be for the limited purposes of
13 representation. If we go beyond then you are
14 going to have to object on your own behalf.

15:05:17 15 MR. ROSE: I'd like permission to object
16 on my own behalf.

17 THE COURT: That's what I said, you have
18 to. I don't know how else to proceed.

19 MR. FEAMAN: I have no objection.

15:05:24 20 THE COURT: Okay.

21 MR. ROSE: And then I also -- just to be
22 very -- you know, I'd object to Eliot being
23 able to cross-examine me or at least request
24 that the Court give him very narrow latitude.

15:05:36 25 THE COURT: He will have the same latitude

1 as Mr. Feaman. It will be strictly related to
2 whether or not he represents various parties,
3 the extent of his representation of parties.
4 That is the limits of Mr. Rose being allowed to
15:05:50 5 be questioned, because he is still counsel, and
6 the only issue is representation. You don't
7 have to believe him. You don't have to like
8 it. But it's limited to that. Fair enough?

9 MR. ROSE: Fair enough.

15:06:02 10 THE COURT: Fair enough, Mr. Feaman?

11 MR. FEAMAN: Yes.

12 THE COURT: Fair enough, Mr. Eliot?

13 MR. ELIOT BERNSTEIN: I am not sure.

14 THE COURT: Okay. That's honest.

15 - - -

16 Thereupon,

17 ALAN B. ROSE,

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

15:06:10 20 THE WITNESS: I do.

21 THE COURT: Have a seat. Again, see, the
22 Court's a little nervous about this one, so go
23 ahead.

24 ///

25 ///

1 DIRECT (ALAN B. ROSE)

2 BY MR. FEAMAN:

3 Q. Please state your name.

4 A. Alan Rose.

15:06:20 5 Q. By whom are you employed?

6 A. I am employed by the law firm Mrachek,
7 Fitzgerald, Rose, Konopka, Thomas and Weiss.

8 Q. And for how long?

9 A. Sixteen years plus.

15:06:33 10 Q. Okay. Now, you are aware that in the
11 Chicago litigation that the Estate of Simon
12 Bernstein was not originally a party to that
13 litigation, correct?

14 A. Correct.

15:06:50 15 Q. And you are aware that at some point the
16 estate, as shown by the exhibits here today,
17 intervened in that litigation, correct?

18 A. Yes, but if I can explain?

19 MR. FEAMAN: It's just yes or no so we can
15:07:07 20 move on, Your Honor.

21 THE COURT: I know the facts.

22 THE WITNESS: Okay.

23 MR. FEAMAN: Okay. Just want to set a
24 predicate.

15:07:12 25 THE COURT: Yes.

1 BY MR. FEAMAN:

2 Q. And would you agree with me, Mr. Rose,
3 that when a motion was filed to allow the estate,
4 Ben Brown was the curator then, do you recall that,
15:07:23 5 to allow the estate to intervene and Ben Brown was
6 the curator, and there was a motion filed in front
7 of Judge Colin, correct?

8 A. Technically I think what happened was you
9 filed a motion to appoint an administrator ad litem
15:07:41 10 for the Chicago action, and the judge appointed Ben
11 Brown as the administrator ad litem.

12 Q. Okay.

13 A. And I objected on behalf of the trustee.

14 Q. And you objected on behalf of the trustee
15:07:53 15 when there was a motion filed to obtain the Court's
16 permission to in fact intervene in the Chicago
17 lawsuit, correct?

18 A. I don't understand exactly. What I did
19 was on behalf of the trustee we did not want the
15:08:12 20 estate's money being spent in Illinois in a
21 lawsuit. We had a hearing, and Judge Colin allowed
22 the intervention conditioned on Mr. Stansbury
23 paying it. And once Mr. Stansbury was paying the
24 expenses, so therefore there's no risk to the
15:08:26 25 estate, it is a great deal and I am in favor of it,

1 and I have not been involved beyond that.

2 Q. So on behalf of the trustee, you are
3 talking about Ted Bernstein as the trustee which is
4 the pour over trust to the Simon Bernstein estate,
15:08:41 5 correct?

6 A. Correct, Ted Bernstein as the trustee of
7 the trust which is the sole residuary beneficiary
8 of this estate.

9 Q. Right. So on behalf of Ted Bernstein
15:08:49 10 trustee you did not want the estate to intervene to
11 make a claim toward the \$1.7 million dollars in
12 Chicago in that case where Ted Bernstein is an
13 individual plaintiff on his own in that case,
14 correct?

15:09:03 15 A. I disagree.

16 Q. He is not an individual plaintiff in the
17 Chicago lawsuit?

18 A. No, that's not the part I disagreed with.
19 The part I disagreed with was I disagree with the
15:09:12 20 what you called the intent. My concern is the
21 person who's a witness of material information in
22 the Illinois case, who I had spoken with and whose
23 testimony I believe convinced me that the estate
24 has a non-winning case, which is free to pursue so
15:09:29 25 long as it doesn't deprive the beneficiaries of

1 their remaining limited assets, which is not
2 happening now that Mr. Stansbury is funding the
3 litigation.

4 So I don't agree that the motive of why we
15:09:42 5 objected is what you did. We did not object to
6 them intervening per se. Only we objected to the
7 further drain of the very limited resources of this
8 estate.

9 Q. Sure. And now in fact, though, you are
15:09:54 10 aware that the attorney up in Chicago representing
11 the estate is now even willing to take it on a
12 contingency, isn't he?

13 A. I don't understand -- I don't know the
14 answer to that.

15:10:08 15 Q. Okay.

16 A. And I didn't understand the question
17 because it had a double negative.

18 Q. Well, you said it was a non-winner of a
19 case. Are you aware that the attorney in Chicago
15:10:16 20 now wants to take the case on a contingency whereby
21 nobody would risk any money?

22 A. I am aware that Mr. O'Connell has filed a
23 motion asking for that relief, which we oppose.

24 Q. Okay. And you oppose on behalf of the
15:10:29 25 trustee?

1 A. Correct, and the beneficiaries.

2 Q. Okay. And that's the same person that you
3 represent is the same person who is the plaintiff
4 in Chicago, correct?

15:10:37 5 A. Well, that's the next motion we are going
6 to decide after this hearing, but -- and the judge
7 will decide the issue.

8 Q. I just want to establish and then I am
9 done. I just want to establish that you
10 represented Ted Bernstein as the successor trustee
11 to the pour over trust, not wanting the estate to
12 intervene in a case where that same client that you
13 represent was a plaintiff opposing the estate in
14 Chicago; is that correct?

15:11:03 15 A. I don't think that's an accurate
16 statement. And I think Mr. O'Connell was aware of
17 all that when he consented to our representation.

18 Q. And one more thing. You were here in the
19 court when Mr. O'Connell said that Mr. Bernstein,
15:11:19 20 Eliot, Mr. Eliot was a beneficiary of the Estate of
21 Simon Bernstein, correct? Correct? It's a
22 perfunctory. You heard him say that?

23 A. I didn't -- I blanked out on the question.

24 THE COURT: That's okay.

15:11:35 25 THE WITNESS: I apologize.

1 THE COURT: That's okay. We'll just have
2 it read back.

3 THE WITNESS: I was thinking about
4 something else.

15:11:38 5 THE COURT: That's okay. Let's have the
6 question read back.

7 BY MR. FEAMAN:

8 Q. You were here when Mr. O'Connell said that
9 Mr. Eliot is a beneficiary of the Simon Bernstein
10 estate, correct?
15:11:47

11 A. I was here when he said it. I have said
12 it. I don't dispute it. I have told the judge
13 that. I don't understand. For tangible personal
14 property.

15:11:55 15 Q. Okay.

16 THE COURT: What am I being handed?

17 BY MR. FEAMAN:

18 Q. I am handing you a pleading that you filed
19 in September 2015 entitled Trustee's Omnibus Status
15:12:08 20 Report and Request for Case Management Conference.
21 And the very first page you said, relating to
22 Mr. Eliot, he is not a named -- he is not named as
23 a beneficiary of anything. And it's in the Estate
24 of Simon Bernstein. So my question is when did you
15:12:25 25 suddenly become aware that he is a beneficiary of

1 the estate?

2 A. That sentence is -- I now see that
3 sentence is technically wrong. It's not -- I am
4 talking about where the money is and the money is
15:12:37 5 in the trust. He is not a beneficiary of the
6 trust. I may have made a misstatement.

7 THE COURT: Are you asking me to take this
8 into evidence?

9 MR. FEAMAN: Yes.

15:12:45 10 THE COURT: Objection?

11 MR. ROSE: No. It's in the court file.

12 THE COURT: I know. Let me just mark it.

13 MR. FEAMAN: No further questions.

14 THE COURT: All right.

15:12:55 15 MR. ELIOT BERNSTEIN: Can I?

16 THE COURT: Not yet. I can only mark and
17 think in small little doses.

18 And am I missing any exhibits up here,
19 Mr. Feaman?

15:13:09 20 MR. FEAMAN: I don't believe so, Your
21 Honor.

22 THE COURT: You had given Mr. O'Connell an
23 original. I just want to make sure it's
24 returned. I am very particular. I make myself
15:13:18 25 nuts. But nonetheless, we are stuck with me.

1 It was Number 1, the waiver. Did the original
2 waiver come back?

3 MR. FEAMAN: Yes, Your Honor.

4 THE COURT: Okay. Thank you. All right.

15:13:38 5 So Number 9 is entered into evidence.

6 (Claimant Stansbury's Exb. No. 9,
7 Pleading.)

8 THE COURT: Limited to what he discussed,
9 Mr. Eliot.

15:13:49 10 MR. ELIOT BERNSTEIN: Your Honor, I kind
11 of object that I didn't have time to prepare.
12 I didn't know this would be a witness today.
13 It wasn't on the witness list.

14 THE COURT: So noted.

15:13:56 15 MR. ELIOT BERNSTEIN: No time to prepare
16 proper questioning.

17 THE COURT: Okay.

18 MR. ELIOT BERNSTEIN: So I am just going
19 to wing it for a moment.

15:14:00 20 CROSS (ALAN B. ROSE)

21 BY MR. ELIOT BERNSTEIN:

22 Q. Mr. Rose, can you state your name and
23 address for the record.

24 THE COURT: We already had that.

15:14:06 25 MR. ELIOT BERNSTEIN: Oh, okay.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Your Florida Bar number?

3 A. It's in evidence in every paper I file.

4 Q. You don't know it?

15:14:19 5 A. I do know it, 961825.

6 Q. Thank you.

7 You said to the Court today that Judge
8 Phillips entered an order from the validity hearing
9 stating that I was not a beneficiary and had no
10 standing; is that correct?
15:14:37

11 A. The validity trial resulted in a final
12 judgment. Thereafter there were a series of
13 hearings before Judge Phillips where he made what I
14 would call follow-on rulings that would implement
15 the result of the final judgment dated December 15,
16 2015.
15:14:53

17 Q. Well, you actually claimed to the Court
18 repeatedly that Judge Phillips on December 15th
19 ruled that, and you actually led the judge to
20 believe that and she said, oh, I am relying on that
15:15:10 21 order.

22 MR. ELIOT BERNSTEIN: I urge you, Your
23 Honor, to look up on that order on that
24 validity hearing --

15:15:17 25 THE COURT: We are going past --

1 (Overspeaking.)

2 MR. ELIOT BERNSTEIN: Oh, it's very
3 central to this, meaning that he made a
4 statement to the Court today --

15:15:23 5 THE COURT: Please, next question. Next
6 question.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Has there been a construction hearing of
9 who the beneficiaries are in any of these cases?

15:15:32 10 A. There was a final judgment that
11 resolved --

12 Q. Yes or no to the question. Was there a
13 construction hearing in any of these cases?

14 A. The construction matter that's in Count I
15:15:45 15 has been settled by agreement of all the
16 beneficiaries.

17 Q. And I am a beneficiary?

18 A. You are not a beneficiary of the trust,
19 the Shirley Bernstein Trust, which was the sole
15:15:57 20 subject of the construction proceeding. The only
21 thing relevant to the estate that was tried in this
22 case number 3698 was the narrow issue of whether
23 Simon Bernstein's will dated July 25, 2012, was
24 valid and enforceable according to its terms.

15:16:13 25 Q. So there has been no formal construction

1 hearing? You are basing it off of a validity
2 hearing?

3 A. There's nothing to construe with the will.
4 The will has never been challenged. Well, you have
15:16:25 5 challenged that the will is valid, but no one has
6 said that the will needed any construction. And
7 the only issue that needed some construction was
8 inside the Shirley Bernstein Trust. Before Judge
9 Colin would allow that issue to be heard, he wanted
15:16:38 10 a narrow issue tried, which is which documents were
11 valid so that we didn't construe a trust that he
12 later determined was invalid. And once he ruled
13 that and we had a guardian ad litem appointed to
14 protect the trust interests of all the
15:16:52 15 beneficiaries who were being represented by you,
16 then everyone entered into a mediated settlement
17 agreement that is one of the motions we are going
18 to seek approval for later today, including the
19 court-appointed guardian ad litem.

15:17:06 20 Q. Is your answer no, there was no
21 construction hearing in any of these cases?

22 A. I think I have answered your question.

23 Q. You haven't.

24 THE COURT: Okay. Let's move on because
15:17:15 25 this is about whether or not --

1 MR. ELIOT BERNSTEIN: Well, can I get an
2 answer to the question or show that he is
3 nonresponsive?

4 THE COURT: He did answer.

15:17:19 5 MR. ELIOT BERNSTEIN: Well, he didn't. He
6 answered something else.

7 THE COURT: Don't argue with me, please.
8 I understood. Certain things have been
9 determined and certain things haven't been
10 determined.

11 MR. ELIOT BERNSTEIN: Well, he is
12 misrepresenting what was determined, and that's
13 a serious problem.

14 THE COURT: Mr. Eliot?

15:17:31 15 MR. ELIOT BERNSTEIN: And it's exactly
16 moved to --

17 THE COURT: Mr. Eliot? Mr. Eliot?

18 MR. ELIOT BERNSTEIN: Yes, ma'am.

19 THE COURT: Remember I said you don't have
15:17:36 20 to like his answers?

21 MR. ELIOT BERNSTEIN: Oh, okay.

22 THE COURT: You don't have to like them.

23 MR. ELIOT BERNSTEIN: I just want the
24 truth. Okay.

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. At that validity hearing was the estate
3 represented by counsel?

4 A. As I explained earlier, Mr. O'Connell
15:17:59 5 entered into a stipulation that was, I think,
6 approved by Judge Colin or Judge Phillips that he
7 did not need to attend the hearing; he would abide
8 by the ruling to conserve resources.

9 So Mr. O'Connell was not technically
15:18:12 10 there. But what I was doing and what Ted Bernstein
11 as trustee was doing, we were advocating the
12 validity of the documents. So we were asserting
13 the position that Mr. O'Connell would have wanted
14 to assert, which is that the will was valid. So he
15:18:25 15 wasn't -- technically the estate wasn't represented
16 but their interests were being pushed by the
17 movant, the complainant, the plaintiff.

18 Q. Did you have a construction hearing in
19 Simon Bernstein's estate to determine the
15:18:36 20 beneficiaries?

21 A. It was not necessary.

22 Q. Okay. To your knowledge has Ted Bernstein
23 ever notified who you claim the beneficiaries are,
24 the grandchildren, that they are beneficiaries?

15:18:51 25 A. Under the terms of Simon Bernstein's trust

1 and also under his power of appointment, he
2 appointed the assets of the Shirley Bernstein Trust
3 into his trust to be distributed on the same terms.
4 The beneficiaries, technically ten trusts, none of
15:19:06 5 the grandchildren are individually beneficiaries.
6 There are ten trusts created. Each trust needs a
7 beneficiary. And because we don't have a
8 beneficiary for three of the trusts that Eliot
9 refused to serve, there's a guardian ad litem
15:19:18 10 appointed. But none of the grandchildren are
11 individually beneficiaries. They are indirect
12 beneficiaries through trusts created under Simon's
13 testamentary documents.

14 THE COURT: Understand.

15:19:27 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. Under those testamentary documents
17 do you have those trusts for each of the
18 grandchildren?

19 THE COURT: Mr. Bernstein?

15:19:34 20 MR. ELIOT BERNSTEIN: Yes.

21 THE COURT: Mr. Eliot, I am sorry, this is
22 about whether we remove him or not. It's not
23 -- it's like, in other words, you are getting
24 into bigger issues and fights that are for a
15:19:44 25 later day.

1 MR. ELIOT BERNSTEIN: Okay. Okay. I got
2 it.

3 THE COURT: We've got to stay on
4 Mr. Feaman's, Mr. William Stansbury, he
15:19:50 5 shouldn't represent.

6 MR. ELIOT BERNSTEIN: Okay.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Were you party to the negotiated
9 settlement with Mr. Stansbury?

15:20:02 10 A. I am aware that there --

11 Q. Yes or no?

12 A. I am not a party to it.

13 Q. Were you a party to the settlement? Were
14 you there at the settlement with Mr. Stansbury?

15:20:11 15 A. Well, I am saying -- I was answering I am
16 not a party to it. But I am aware there were
17 settlement discussions. I have encouraged
18 settlement discussions that Mr. Stansbury has. He
19 entered into, I think, one agreement that was --

15:20:26 20 MR. FEAMAN: Objection. If the question
21 talks of -- the settlement was at a mediation.
22 So if the settlement with regard to
23 Mr. Bernstein and some of the other defendants
24 by Mr. Stansbury in the Stansbury action, if
15:20:39 25 it's questions about what happened at the

1 mediation, I would object because that's
2 confidential.

3 THE COURT: Let me --

4 MR. ELIOT BERNSTEIN: I am just asking if
15:20:46 5 he was there.

6 THE COURT: Whether or not he was there is
7 not confidential. Let me clarify something
8 that may be kicking up a little. He is not a
9 party. He might be an attorney for a party.

10 MR. ELIOT BERNSTEIN: A person, sorry.

11 THE COURT: No, I am only saying because
12 some of what you may interpret as being
13 defensive is just he is not a party, just like
14 no other lawyer is a party to a lawsuit.

15 MR. ELIOT BERNSTEIN: Right.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Were you a person at the settlement?

18 THE COURT: And also let me also tell you
19 Mr. Feaman is correct and on point that you can
15:21:17 20 ask if he was present. Those negotiations are
21 confidential under law.

22 MR. ELIOT BERNSTEIN: I am not going to
23 ask that.

24 THE WITNESS: I think my answer does not
15:21:26 25 involve anything that happened at mediation.

1 If Mr. Bernstein would just step slightly to
2 the side, Mr. Feaman can correct me if I am
3 wrong. But I believe there was a written
4 settlement agreement between Mr. Stansbury and
15:21:38 5 Mr. O'Connell as the personal representative
6 that was presented to the Court that has
7 nothing to do with the mediation.

8 BY MR. ELIOT BERNSTEIN:

9 Q. No, I am talking about the Shirley trust
15:21:47 10 settlement, not the Simon settlement that you also
11 negotiated?

12 A. Was I present? I attended a mediation.

13 THE COURT: Okay.

14 BY MR. ELIOT BERNSTEIN:

15:21:54 15 Q. Did you represent any parties at that
16 mediation?

17 THE COURT: Settlement discussions and who
18 he represented -- I am --

19 MR. ELIOT BERNSTEIN: I just need to know
15:22:08 20 which parties he represented --

21 THE COURT: I know, but --

22 MR. ELIOT BERNSTEIN: -- to show a
23 conflict, Your Honor.

24 THE COURT: Not at the mediation. You can
15:22:13 25 pick another thing. If he is in court, if he

1 is at a discovery.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Did you represent any parties in the
4 settlement?

15:22:21 5 THE COURT: Place your objection on the
6 record.

7 MR. ROSE: I am concerned that --

8 THE COURT: He could also violate
9 attorney/client privilege.

15:22:30 10 MR. ELIOT BERNSTEIN: I am not going to
11 ask him any questions about the settlement.

12 THE COURT: I know. But the -- I
13 understand you are not trying to go outside the
14 bounds. I am going to ask you to ask another
15:22:39 15 question because I don't want to put him in a
16 position of violating.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: But at the same time I am
19 trying to have your --

15:22:47 20 MR. ELIOT BERNSTEIN: Got you.

21 THE COURT: And if you could stick to
22 things that happened in court, because things
23 that happened in court are public record.

24 BY MR. ELIOT BERNSTEIN:

15:22:57 25 Q. Do you represent Ted Bernstein as a

1 defendant in the Stansbury action?

2 A. I do not. I did at one point in time.

3 Q. Did you also simultaneously represent Ted
4 Bernstein as the trustee for the Shirley Bernstein
15:23:18 5 Trust?

6 A. I did represent Ted Bernstein as the
7 trustee of the Shirley Bernstein Trust in the
8 Stansbury litigation defending the interests of the
9 trust, just as we proposed to defend the interests
15:23:33 10 of the estate. And I represented Ted Bernstein as
11 trustee of the Shirley Bernstein Trust in
12 proceedings in the probate court, various
13 proceedings.

14 Q. Okay. You stated today that you had
15:23:45 15 consent of all the beneficiaries. And Mr. Feaman
16 adequately asked you, am I a beneficiary of the
17 Simon estate? Yes or no? I don't need an
18 explanation.

19 A. The question has a --

15:24:09 20 MR. FEAMAN: Objection, asked and
21 answered.

22 MR. ELIOT BERNSTEIN: (Inaudible).

23 (Overspeaking.)

24 THE REPORTER: Excuse me.

25 MR. ELIOT BERNSTEIN: Sorry.

1 MR. FEAMAN: Object, asked and answered.

2 THE WITNESS: I did not --

3 THE COURT: Sustained. It's been
4 established that you are a tangible beneficiary
15:24:16 5 of the Simon Bernstein estate.

6 MR. ELIOT BERNSTEIN: Actually I don't
7 think there's a term tangible beneficiary. I
8 am a beneficiary of tangible property; is that
9 correct, for the record?

10 THE COURT: That is correct, you actually
11 did correct me.

12 MR. ELIOT BERNSTEIN: Got to be careful,
13 because that's -- there's a misinterpretation
14 going on.

15:24:34 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. You said you had consent of all
17 beneficiaries to move forward on this settlement or
18 to have Ted come into this case. Do you have my
19 consent as a beneficiary?

15:24:48 20 A. I think what we said was they had the
21 consent of the direct and indirect beneficiaries of
22 the trust. I think what it actually says is that
23 Mr. O'Connell has the consent of the beneficiary,
24 which is Ted Bernstein as trustee, who is the
15:25:05 25 residuary beneficiary. And then all the indirect

1 beneficiaries who are the trustees of the ten
2 trusts, which is there are seven trusts for
3 grandchildren whose trustee is their parent who
4 have consented, and there are three trusts for
15:25:22 5 Eliot's children whose guardian has consented.

6 So the statement was intended to state
7 that consent was obtained from the direct
8 beneficiary -- residuary beneficiary, all of the
9 indirect beneficiaries. And in addition -- well,
15:25:44 10 that's....

11 Q. Were you aware at the time of the
12 guardianship hearings that gave Diana Lewis
13 guardianship power of my children that one of the
14 children was an adult child over the age of 18?

15:26:00 15 A. As I have explained, Your Honor, our view
16 of the interests and who are technically the
17 beneficiaries being trusts, it's also that issue
18 was appealed and the appeals have been dismissed at
19 the Fourth and at the Supreme Court. So I don't
15:26:14 20 think we are relitigating the issue of guardian ad
21 litem.

22 THE COURT: Okay. I want you to wrap up
23 this line of questioning because it was very
24 limited. One more question.

15:26:21 25 MR. ELIOT BERNSTEIN: Okay.

1 BY MR. ELIOT BERNSTEIN:

2 Q. So are you saying unequivocally that you
3 have consent of all the beneficiaries to Ted
4 Bernstein representing the estate of Simon, not the
15:26:34 5 trusts, the estate of Simon?

6 A. Well, I don't have your -- of everyone,
7 you would be the one person if we needed your --

8 Q. Yes or no, do you have consent of all?

9 THE COURT: Do not raise your voice. Do
15:26:51 10 not raise your voice.

11 MR. ELIOT BERNSTEIN: I am sorry, it's
12 getting difficult with these side tracks.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Please, simple, do you have consent of all
15:26:58 15 the beneficiaries of the Simon estate, yes or no?

16 MR. ELIOT BERNSTEIN: Sorry.

17 THE COURT: That's okay.

18 MR. ELIOT BERNSTEIN: I am just
19 passionate.

15:27:07 20 THE WITNESS: To the extent that you are a
21 beneficiary, no.

22 BY MR. ELIOT BERNSTEIN:

23 Q. Okay.

24 THE COURT: Okay?

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. So that would be a no, correct?

3 THE COURT: He said no.

4 MR. ELIOT BERNSTEIN: Okay. Quantified it
15:27:17 5 or something.

6 THE COURT: That's it. Okay.

7 MR. ELIOT BERNSTEIN: Oh, can I ask one
8 last question?

9 THE COURT: One last question.

10 15:27:23 BY MR. ELIOT BERNSTEIN:

11 Q. Are you aware that two of my children are
12 adults and that there's never been a competency
13 hearing on either of them?

14 A. Well, I have testified to the structure of
15 15:27:34 the documents, and so I don't think I can answer
16 the question.

17 Q. So have you contacted my children --

18 THE COURT: All right.

19 BY MR. ELIOT BERNSTEIN:

20 15:27:44 Q. -- regarding settlement?

21 THE COURT: That's enough. Stop.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Do you have your own --

24 MR. ROSE: No questions.

25 15:27:50 THE COURT: You are good? Okay.

1 Mr. Feaman, any other witnesses?

2 MR. FEAMAN: I rest, Your Honor.

3 THE COURT: All right.

4 (Witness excused.)

15:27:56 5 MR. ELIOT BERNSTEIN: And I reserve my
6 rights to, you know, challenge this whole
7 hearing as part of a sham. I didn't have time.

8 THE COURT: Okay.

9 MR. ELIOT BERNSTEIN: You knew I was
15:28:03 10 medically unfit for three weeks. You have
11 medical evidence of that. And I am really
12 sorry you moved this way instead of you
13 allowing all this fraud to come out first. We
14 have wasted a lot of time and money, as they've
15:28:14 15 done all along with this nonsense.

16 THE COURT: Okay.

17 MR. ELIOT BERNSTEIN: By the way, Your
18 Honor, we are here all these years later
19 because Ted Bernstein's counsel committed fraud
15:28:25 20 and forgery to this Court, fraud on this Court.

21 THE COURT: All right.

22 MR. ELIOT BERNSTEIN: And Mr. Rose was one
23 of the people brought in by those people.

24 THE COURT: That's enough of a statement.
15:28:33 25 That was totally --

1 MR. ELIOT BERNSTEIN: Well, I didn't get
2 an opening so I am sorry to try to --

3 THE COURT: But you were late. But you
4 were late.

15:28:40 5 MR. ELIOT BERNSTEIN: I was sick.

6 THE COURT: Either way.

7 MR. ELIOT BERNSTEIN: And I petitioned.
8 It seems to have no compassion of this Court.

9 THE COURT: If -- I will not, if you
15:28:49 10 noticed, I don't tolerate disrespect from
11 anyone else. You have been very kind until
12 now. Let's not change it.

13 MR. ELIOT BERNSTEIN: Yes. Oh, and, Your
14 Honor, we have to go at the appointed time. I
15:29:08 15 thought that it was 3:30. But we have
16 commitments that we have to walk out this door
17 at 3:30, if that's okay?

18 THE COURT: Whatever you feel is
19 appropriate. I am going to continue until
15:29:16 20 4:30.

21 MR. ELIOT BERNSTEIN: Didn't you schedule
22 only for two hours? I am confused. Because
23 that would totally kill me.

24 THE COURT: Let me look at the order.

15:29:23 25 MR. ELIOT BERNSTEIN: Okay. Thank you.

1 THE COURT: I have it right here.

2 MR. ELIOT BERNSTEIN: Okay.

3 THE COURT: It says the continuation
4 hearing being held -- oh, this was just that
15:29:37 5 one. Does anybody have -- I do. Hold on. It
6 does indicate two hours were reserved.

7 MR. ELIOT BERNSTEIN: I am really sorry,
8 and I am going to have to go at the exact
9 minute. I have a child that is in need. And I
15:29:59 10 have been really sorry about that. But if you
11 want to continue without me, that's your
12 prerogative.

13 THE COURT: I did schedule this for two
14 hours.

15:30:10 15 MR. ELIOT BERNSTEIN: Yes, that was my
16 understanding.

17 THE COURT: This Court is very aware of
18 what needs to be done with regards to appellate
19 purposes. I scheduled this for two hours. I
15:32:06 20 will stick to that commitment. In two weeks we
21 will come back. Unless you have a trial or you
22 are having surgery, you will be here on the
23 date I am going to announce. Do we all
24 understand each other?

15:32:17 25 MR. FEAMAN: Yes, Your Honor.

1 THE COURT: We understand each other? I
2 am going to move something to make sure that we
3 come back in two weeks. And I am going to give
4 you a two-hour block. We are going to
15:32:28 5 conclude, if nothing else, this particular
6 matter on whether or not the part -- because it
7 will be too prejudicial to the parties to
8 continue beyond two hours.

9 Mr. Eliot is correct, I scheduled this for
15:32:41 10 two hours. He was within his rights. If a
11 lawyer asked me and said, I had this exact
12 circumstance occur yesterday, and I ended at
13 4:30 because someone had told me I had only
14 discussed 'til 4:30. So I am giving you the
15:32:56 15 same courtesy --

16 MR. ELIOT BERNSTEIN: I appreciate that.

17 THE COURT: -- I would extend to a lawyer.

18 MR. ROSE: Just briefly, Judge.

19 THE COURT: Yes.

15:33:01 20 MR. ROSE: I would suggest since the
21 evidence is closed we could submit written
22 final argument and --

23 THE COURT: You don't intend on calling
24 any other parties?

15:33:11 25 MR. ROSE: I mean, I don't think they've

1 made their case, and I have -- I mean, I would
2 move for involuntary denial of their motion
3 without having to put on evidence which in a
4 bench trial is a procedure. I don't know if
15:33:22 5 you want to hear evidence from me. I think you
6 have heard the evidence. But, you know, my
7 goal is to get beyond this because we have --

8 THE COURT: I would do that. I would
9 receive written closings from everyone, and I
10 will issue an order.

11 MR. ROSE: That's fine. And then we can
12 still set the other matters if you have two
13 hours --

14 THE COURT: I will give it to you.

15:33:40 15 MR. ELIOT BERNSTEIN: If that's the case,
16 then I would rather not schedule some
17 indiscriminate date. I don't know all of my
18 kids' schedules.

19 THE COURT: No, that's not how it works.
15:33:50 20 Sorry, I wouldn't give --

21 MR. ELIOT BERNSTEIN: I can't look at my
22 schedule?

23 THE COURT: You can look at your schedule
24 right now.

15:33:53 25 MR. ELIOT BERNSTEIN: I can't.

1 THE COURT: Well, then that's an
2 obligation. This Court --

3 MR. ELIOT BERNSTEIN: I have three kids
4 with obligations. I've got games --

15:34:00 5 THE COURT: If you can imagine if I let
6 everybody do that to me I would never get
7 anything set.

8 MR. ELIOT BERNSTEIN: Can't we agree on a
9 time when we get back like we always do for a
15:34:09 10 hearing?

11 THE COURT: No, we don't always do that.
12 I tell you a date.

13 MR. ELIOT BERNSTEIN: I thought that's how
14 we have been doing it.

15:34:15 15 THE COURT: I am going to -- I am not
16 promising you I will have an order done,
17 though, that's the problem, on this case by the
18 time you come back. How can I --

19 MR. ROSE: This is a very narrow issue. I
15:34:33 20 mean, there's no issue with I am going to be
21 involved in the estate proceedings either way.

22 THE COURT: Okay.

23 MR. ROSE: It's just a question of whether
24 I am going to be handling --

15:34:39 25 THE COURT: Okay. We can do that.

1 MR. ROSE: We can do everything else.

2 THE COURT: All right. March 16th, 2:00
3 o'clock, from 2:00 to 4:00.

4 MR. ELIOT BERNSTEIN: And, Your Honor, can
15:34:47 5 I ask? I put in a motion to vacate that we
6 haven't heard that would solve having any of
7 these hearings, based on the fraud that you
8 have seen in this court already, with him
9 changing statements that I am not a
10 beneficiary, beneficiary, not.
15:34:58

11 THE COURT: These have been -- we'll
12 decide when that will be heard next. These
13 have been rescheduled and rescheduled and
14 rescheduled on the docket.

15:35:06 15 MR. ELIOT BERNSTEIN: But that fraud issue
16 that you are not aware of in that motion to
17 vacate would preclude them from even
18 representing, because they've been misleading
19 this Court in fraud.

15:35:17 20 THE COURT: I have made my ruling.

21 MR. ELIOT BERNSTEIN: Thank you. Have a
22 good day.

23 THE COURT: I will have written rulings --
24 but I have to give you a date --

15:35:22 25 MR. ELIOT BERNSTEIN: Oh.

1 THE COURT: -- because you need to know
2 when I need the closing. March 16th, 2:00
3 o'clock, my JA will send out an order on things
4 that were not heard today. And I have that
15:35:32 5 order here. So --

6 MR. ROSE: I think we need to clarify too
7 because your case management order --

8 MR. FEAMAN: I didn't think Her Honor was
9 done.

15:35:40 10 THE COURT: I am not. I am not. Sit down
11 for a second. Thank you.

12 All right. I am looking at the order I am
13 relying on which ending this now that gave two
14 hours. The attorneys will submit written
15:35:53 15 closings on -- ready? And I am giving you,
16 they can be no more than ten pages in total,
17 written closings limited to ten pages double
18 spaced. Do not give me a single spaced ten
19 page, 25 page. Ten pages, single spaced --

15:36:18 20 MR. FEAMAN: Double spaced.

21 THE COURT: I am sorry, thank you, double
22 spaced. And that is on Stansbury's motion to
23 vacant, don't forget I have been briefed and
24 re-briefed, and Stansbury's motion to
15:36:30 25 disqualify. Okay? I would like those within

1 two weeks. So by March 16th the closings.

2 MR. ELIOT BERNSTEIN: Your Honor, could I
3 put in a pleading then? I mean, I was out.
4 You have a medical doctor saying that I was out
15:36:47 5 for three weeks heavily medicated. I still am
6 recovering.

7 THE COURT: Mr. Eliot?

8 MR. ELIOT BERNSTEIN: Yes, ma'am.

9 THE COURT: You are going to let me
15:36:54 10 finish.

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: And you keep interrupting me
13 and telling me --

14 MR. ELIOT BERNSTEIN: Pardon.

15:36:58 15 THE COURT: No. You keep telling me why I
16 can't do what I am going to do.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: And I am going to do it.

19 MR. ELIOT BERNSTEIN: Okay.

15:37:02 20 THE COURT: And then you can put
21 everything you want on the record, all right?

22 MR. ELIOT BERNSTEIN: All right.

23 THE COURT: Give me a second.

24 MR. ELIOT BERNSTEIN: Sure.

15:37:07 25 THE COURT: Written closings actually I am

1 only making it a week. I want them before
2 then. I want them by March 9th. Written
3 closings by March 9th, ten pages, double
4 spaced.

15:37:19 5 Our next hearing will be March 16th which
6 will be the trustee's motion to approve
7 retention of counsel and the trustee's ominous
8 response and reply, will be March 16th for two
9 hours.

15:37:34 10 MR. ROSE: I am going to interrupt. I
11 think technically I have one clarification. I
12 don't want to speak to Mr. Feaman directly. If
13 there's not going to be any additional evidence
14 on the motion to appoint Ted as guardian ad
15:37:48 15 litem, I mean as administrator ad litem, it's
16 the same issue with the conflict and all that,
17 we could submit written closings --

18 MR. FEAMAN: I concur.

19 MR. ROSE: -- on both of those.

15:37:55 20 THE COURT: No.

21 MR. ROSE: If not, then that's the next
22 motion.

23 THE COURT: That's the next motion.

24 That's what I am saying, the trustee's motion
15:38:03 25 to -- it's the administrator ad litem.

1 MR. ROSE: Yes.

2 MR. FEAMAN: Right.

3 THE COURT: Right. That's 3/16 I said,
4 March 16th.

15:38:10 5 MR. FEAMAN: Okay.

6 THE COURT: And we have the omnibus reply,
7 and Stansbury's motion for credit or discharge
8 will be 3/16. That's all I am setting for 3/16
9 because I have got two hours, and I have
10 watched how things have proceeded. Everything
11 else will be handled in due course. All right?
12 Thank you.

13 MR. O'CONNELL: Your Honor, could I just
14 make a statement on the record about the 16th,
15 not to change the date? But I personally
16 wouldn't be able to appear. So I just want
17 everyone to know that. If you want to call me
18 as a witness I am happy to be deposed.

19 THE COURT: Fair enough. They all know he
15:38:56 20 is not available and they can depose him if he
21 is not going to be here.

22 MR. O'CONNELL: And I will have someone
23 from my office here on behalf of the estate.

24 THE COURT: All right. Thank you.

15:39:03 25 MR. O'CONNELL: Just so the Court is

1 aware.

2 MR. ELIOT BERNSTEIN: I don't think we
3 need him as witness, do we?

4 THE COURT: I can't make that decision.

15:39:08 5 All right. Court is in recess.

6 MR. ROSE: Thank you, Your Honor.

7 THE COURT: Thank you.

8

9 (The proceedings adjourned at 3:39 p.m.)

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C E R T I F I C A T E

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The State of Florida
County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I
was authorized to and did stenographically report
the foregoing proceedings, pages 119 through 241,
and that the transcript is a true record.

Dated March 8, 2017.



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