

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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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  
13:46:26 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  
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  
14:41:38 15 Bernstein and Ted Bernstein, correct?

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  
20 Report and Request for Case Management Conference.  
15:12:08

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.

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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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