

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

IN RE:
ESTATE OF SIMON L. BERNSTEIN,
Deceased.

/

Deposition of BRIAN O'CONNELL

Monday, March 13, 2017
515 North Flagler Drive, 20th Floor
West Palm Beach, Florida 33401
1:18 - 4:15 p.m.

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

1 APPEARANCES:

2 On behalf of William E. Stansbury:
3 PETER M. FEAMAN, P.A.
4 3695 West Boynton Beach Boulevard
5 Suite 9
6 Boynton Beach, Florida 33436
7 BY: PETER M. FEAMAN, ESQUIRE
8 (Mkoskey@feamanlaw.com)

9 On behalf of Ted Bernstein:
10 MRACHEK FITZGERALD ROSE KONOPKA
11 THOMAS & WEISS, P.A.
12 505 South Flagler Drive, Suite 600
13 West Palm Beach, Florida 33401
14 BY: ALAN B. ROSE, ESQUIRE
15 (Arose@mrachek-law.com)

16 On behalf of the Personal Representative of the
17 Estate of Simon Bernstein & the Witness:
18 CIKLIN LUBITZ MARTENS & O'CONNELL
19 515 North Flagler Drive, 19th Floor
20 West Palm Beach, Florida 33401
21 BY: ASHLEY CRISPIN, ESQUIRE
22 (Acrispin@ciklinlubitz.com)

23 On behalf of Eliot Bernstein's minor children:
24 ADR & MEDIATION SERVICES, LLC
25 2765 Tecumseh Drive
West Palm Beach, Florida 33409
BY: THE HONORABLE DIANA LEWIS
(Dzlewis@aol.com)

On behalf of himself:
ELIOT I. BERNSTEIN, pro se
(Iviewit@iviewit.tv)
[Telephonically]

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EXAMINATIONS Page

Witness:

BRIAN O'CONNELL

BY MR. FEAMAN	6
BY MR. ELIOT BERNSTEIN	27
BY MR. ROSE	88
BY MR. FEAMAN	98
BY MR. ELIOT BERNSTEIN	100

EXHIBITS MARKED

No.	Claimant Stansbury's	
1	Successor PR's Petition for Authorization to Enter into Contingency Agreement with Illinois Counsel in Pending Life Insurance Litigation	7
2	Successor PR's Amended Petition for Authorization to Enter into Contingency Agreement or Hourly Fee Agreement with Illinois Counsel in Pending Life Insurance Litigation	11
3	Objection to Accounting of Simon Bernstein Trust by Ted S. Bernstein, Successor Trustee, for the Time Period of Feb. 3, 2014 Through Mar. 15, 2015	25

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P R O C E E D I N G S

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Deposition of BRIAN O'CONNELL, a witness,
taken by William E. Stansbury for the purpose of
discovery and for use as evidence in the
above-entitled cause, pursuant to notice heretofore
filed, before LISA MUDRICK, RPR, FPR, and Notary
Public in and for the State of Florida at large, at
515 North Flagler Drive, West Palm Beach, Florida,
on March 13, 2017, commencing at 1:18 p.m.

- - -

Thereupon,

BRIAN O'CONNELL,

being by the undersigned Notary Public first duly
sworn, was examined and testified as follows:

THE WITNESS: I do.

MR. FEAMAN: I think because we have
somebody on the phone I think we ought to go
around the room and announce.

THE WITNESS: Okay. Brian O'Connell.

MS. CRISPIN: Ashley Crispin for Brian
O'Connell.

MR. ROSE: Alan Rose for Ted S. Bernstein
as trustee.

JUDGE LEWIS: Diana Lewis, guardian ad

12:18:34
12:18:42

1 litem for the Eliot Bernstein children.

2 MR. FEAMAN: Peter Feaman.

3 MR. ELIOT BERNSTEIN: Eliot Bernstein,
4 pro se.

12:18:53 5 MR. FEAMAN: Okay. All right. We are
6 here today for the limited purpose of taking
7 your sworn testimony as a witness in connection
8 with the two hearings that are set for
9 Thursday, one, Mr. Stansbury's motion to be
12:19:08 10 discharged from liability from funding the
11 estate's participation in the litigation in
12 Chicago, and, number two, the petition by the
13 trustee or motion to appoint Ted Bernstein as
14 administrator ad litem for the Stansbury
12:19:31 15 litigation. Is that your understanding --

16 THE WITNESS: Yes.

17 MR. FEAMAN: -- of why we are here today?

18 THE WITNESS: From what you have told me,
19 yes.

12:19:37 20 MR. ROSE: And before you start, just for
21 the record, I think I have discussed with
22 Mr. Feaman that the testimony you gave in open
23 court before Judge Scher on February 16th and
24 March 2nd of this year can be used for the
12:19:49 25 purposes of these hearings, so we don't have to

1 repeat those questions today.

2 MR. FEAMAN: Yes, no objection.

3 MR. ROSE: Okay.

4 MR. ELIOT BERNSTEIN: Will I be able to
12:19:59 5 ask questions of Mr. O'Connell?

6 MR. FEAMAN: Yes. This is Mr. Feaman.

7 MR. ELIOT BERNSTEIN: Okay, good. All
8 right.

9 MR. ROSE: Subject to limitation by
12:20:07 10 Mr. Feaman of the scope.

11 MS. CRISPIN: We agree on that.

12 MR. FEAMAN: Okay.

13 DIRECT (BRIAN O'CONNELL)

14 BY MR. FEAMAN:

12:20:17 15 Q. Just for the record state your name.

16 A. Brian O'Connell.

17 Q. And you are here in what capacity today?

18 A. Personal representative of the Estate of
19 Simon Bernstein.

12:20:26 20 Q. And you have been the personal
21 representative since approximately when?

22 A. Let's see. Little over two years now.
23 I'd have to look at the letters of administration
24 to be a hundred percent sure.

12:20:43 25 Q. Okay. And let me start then by asking,

1 you were not in the case when Mr. Stansbury first
2 moved to have the estate intervene in the Chicago
3 litigation; is that correct?

4 A. That's correct, I was not.

12:21:06 5 Q. That's when Mr. Ben Brown was acting as
6 the, I think, curator; is that correct?

7 A. Correct.

8 Q. Okay. And then did you come in -- at what
9 point in the history of the estate's intervention
10 did you come in? Had the motion been granted for
11 the estate to intervene by the time you came in?

12 A. It had.

13 MS. CRISPIN: Form.

14 BY MR. FEAMAN:

12:21:33 15 Q. It had? Okay. Good.

16 (Claimant Stansbury's Exb. No. 1,
17 Successor PR's Petition for Authorization to Enter
18 into Contingency Agreement with Illinois Counsel in
19 Pending Life Insurance Litigation.)

12:21:35 20 MR. FEAMAN: Let me hand you what's been
21 marked as Exhibit 1 to this deposition which
22 is -- I handed you mine. Let me switch,
23 Ashley. Otherwise, I will forget what
24 questions to ask because I have my copy
12:21:55 25 highlighted.

1 Eliot, you are not here so I can't give
2 you a copy, but I will just state what's been
3 marked as Exhibit 1 is a copy of the Successor
4 Personal Representative's Petition for
12:22:12 5 Authorization to Enter Into Contingency
6 Agreement with Illinois Counsel and Pending
7 Life Insurance Litigation.

8 BY MR. FEAMAN:

9 Q. Is that correct, Mr. O'Connell?

12:22:22 10 A. That's what Exhibit 1 is, correct, that
11 petition you just recited.

12 Q. Okay. And it appears to have been e-filed
13 by your office on December 2nd, 2015?

14 A. Correct.

12:22:33 15 Q. Is that correct?

16 And is that your signature on the third
17 page of Exhibit 1?

18 MS. CRISPIN: That's it.

19 THE WITNESS: That's it.

12:22:46 20 MS. CRISPIN: No, you were on the page.

21 You were on the page right there.

22 THE WITNESS: Yes.

23 BY MR. FEAMAN:

24 Q. And when you signed this then you
12:22:55 25 obviously agreed and approved to the paragraphs

1 contained within Exhibit 1 in your allegations one
2 through nine in the wherefore clause; is that
3 correct?

4 A. Yes.

12:23:07 5 Q. Okay. And do you still agree with the
6 allegations contained in paragraphs one through
7 nine?

8 A. I do with, of course, a predicate that
9 exists with regard to a particular motion that was
12:23:22 10 filed, which was if Mr. Stansbury, your client, was
11 no longer obligated to make the payments to fund
12 the Illinois litigation, then we didn't want there
13 to be a void or a gap where nobody was able to fund
14 and proceed with that litigation. So that's why we
12:23:39 15 put this motion together in 2015 in response to a
16 motion I believe you had filed in 2014 to be
17 relieved of that obligation.

18 Q. Right.

19 A. So I just wanted to paint the whole
12:23:52 20 context for Judge Scher when this is being
21 discussed.

22 Q. All right. And in paragraph seven you
23 state in your motion that the successor personal
24 representative, that would be you, believes it is
12:24:06 25 in the best interests of the estate to continue

1 with the life insurance litigation, correct?

2 A. Correct.

3 Q. And do you still subscribe to that today?

4 A. Yes.

12:24:15 5 Q. Okay. And in paragraph nine you were
6 requesting court authorization to enter into a
7 contingency agreement with the estate's counsel in
8 Chicago; is that correct?

9 A. Again, predicated on the ruling of Judge
12:24:34 10 Scher which you are trying to obtain that your
11 client would no longer be required to fund that
12 litigation on an hourly basis. So it has that as a
13 subject to, a condition, if you will.

14 Q. Okay. And let me draw your attention to
12:24:50 15 the last two pages of Exhibit 1, which is Exhibit B
16 to your motion.

17 A. Actually there's another --

18 Q. I know, I am going to get to that.

19 A. Yeah, there's another motion after this
12:25:05 20 one.

21 Q. Correct.

22 A. Right. This was a position back in '15 is
23 a later motion.

24 Q. Right. My question was let me draw your
12:25:14 25 attention to the last two pages of Exhibit 1 which

1 is Exhibit B to your motion.

2 A. Okay. Let's find Exhibit B. Here's
3 Exhibit B, yes.

4 Q. Okay. And can you identify Exhibit B?

12:25:32 5 A. That is a letter, proposed fee letter from
6 Mr. Stamos, Mr. Stamos being the attorney handling
7 the so-called Illinois litigation, of
8 November 25th, 2015.

9 Q. All right. And this is the contingency
12:25:51 10 fee representation offered by Stamos and Trucco to
11 the estate in connection with the Chicago
12 litigation; is that correct?

13 A. Right, at that point in time, yes.

14 Q. And at that point in time and subject to
12:26:06 15 the conditions that you have already put on it, you
16 were in agreement with that offer; is that correct?

17 A. Right, subject to that condition, correct.

18 Q. Okay.

19 (Claimant Stansbury's Exb. No. 2,
20 Successor PR's Amended Petition for Authorization
21 to Enter into Contingency Agreement or Hourly Fee
22 Agreement with Illinois Counsel in Pending Life
23 Insurance Litigation.)

24 BY MR. FEAMAN:

12:26:22 25 Q. Let me hand you what's been marked as

1 Exhibit 2 to this deposition.

2 A. Thank you.

3 MR. FEAMAN: Sorry, you guys will have to
4 share.

12:26:40 5 MS. CRISPIN: Here.

6 BY MR. FEAMAN:

7 Q. Now, Exhibit 2 appears to be a copy of
8 your Successor Personal Representative's Amended
9 Petition for Authorization to Enter Into
10 Contingency Agreement or Hourly Fee Agreement with
11 Illinois Counsel and Pending Life Insurance
12 Litigation; is that correct?

13 A. Correct.

14 Q. Okay. And is that your signature on page
15 three of Exhibit 2?

16 A. Yes.

17 Q. And you filed, your office filed this on
18 December 4th, 2015; is that correct?

19 A. Correct.

12:27:24 20 Q. And this petition now says that there are
21 two possible fee arrangements going forward with
22 Stamos and Trucco in the representation of the
23 estate in the Chicago litigation; is that correct?

24 A. Correct.

12:27:49 25 Q. Okay. And in your motion in paragraph

1 seven you state that you believe it's in the best
2 interests of the estate to continue with the life
3 insurance litigation, correct?

4 A. That's correct.

12:28:09 5 Q. Why do you say that?

6 A. Because of my review of the case, my
7 discussions with Mr. Stamos about the merits of the
8 case, how the case has progressed to date, that I
9 believe it's in the best interests of the estate to
10 try to recover this asset or these assets into the
11 estate. And that has to be done, of course,
12 through pursuing the litigation.

13 Q. Right. And you still believe that today?

14 A. Yes.

12:28:36 15 Q. Okay. And I just need to go back to
16 Exhibit 1 briefly, if I could.

17 A. Sure.

18 Q. Take a look at the certificate of service
19 of your motion, which is page four.

12:28:51 20 A. I am there.

21 Q. Service list. Is Alan Rose shown as a
22 receiver of this, a copy of this petition marked as
23 Exhibit 1?

24 MS. CRISPIN: Form.

12:29:04 25 THE WITNESS: Yes.

1 BY MR. FEAMAN:

2 Q. And where is that in the box?

3 A. Top left-hand corner.

4 Q. Okay. All right. And now getting back to
12:29:15 5 Exhibit 2, if we could.

6 A. Yes.

7 Q. You state that in paragraph eight,
8 "Illinois counsel has agreed to waive the
9 outstanding balance currently due and enter into a
10 contingency agreement (contingency agreement), in
11 which Illinois counsel receives a percentage of
12 recovery, in lieu of charging on an hourly basis.
13 The contingency agreement is attached hereto as
14 Exhibit B." Did I read that correctly?

12:29:48 15 A. Yes.

16 Q. Was that true at the time that you wrote
17 that?

18 A. Yes, because that's what Exhibit B says.

19 Q. Is that still true today?

12:29:58 20 A. It's true insofar as Mr. Stamos would be
21 willing under certain conditions to enter into a
22 contingency fee agreement. And we have -- I have
23 an e-mail available that states that which, of
24 course, would be the best way to explain it because
12:30:17 25 it's his words.

1 Q. Okay. Do you have a copy of that with
2 you?

3 A. If we don't have it, we may not. We'll
4 get that brought up.

12:30:24 5 Q. Okay. All right. Now, turn to Exhibit B
6 of your motion, which is the fourth page from the
7 end.

8 A. Yes.

9 Q. Is that the same Exhibit B that you
12:30:34 10 identified on your motion marked as Exhibit 1?

11 A. It is.

12 Q. All right. And Exhibit C, can you
13 identify Exhibit C that's attached to your motion
14 marked as Exhibit 2?

12:30:57 15 A. Yes. That is a proposed call it fee
16 agreement for Mr. Stamos for him to proceed on an
17 hourly basis in connection with the Illinois
18 litigation.

19 Q. Okay. Based on your knowledge of the
12:31:14 20 estate's position vis-à-vis Mr. Stamos today, are
21 both of these fee agreements still, for lack of a
22 better word, good?

23 A. Generally yes. I just want to make sure
24 we've got the exact bells and whistles on what
12:31:32 25 happens with regard -- principally any unpaid fees

1 and costs. That's what I want to verify through
2 the most recent correspondence.

3 Q. Okay.

4 A. So you get an accurate answer on that.

12:31:41 5 Q. And are you okay with either fee
6 arrangements for the representation of the estate
7 if Mr. Stansbury is discharged as shown by either B
8 or C?

9 A. Conditioned on Mr. Stansbury being
12:31:58 10 discharged, I would be accepting of A or B or B or
11 C in this case, vis-à-vis the fact that we do have
12 this exchange of some correspondence with him about
13 how much time he might have to spend on an hourly
14 basis. Because we do have a limited amount of
12:32:18 15 assets in the estate, so we have to be mindful of
16 that as to what's available.

17 Q. Okay. If Mr. Stansbury was discharged, if
18 his motion was granted, which fee agreement are you
19 inclined to go with?

12:32:43 20 A. The fee agreement -- so Mr. Stansbury --
21 let me make sure I have got this correct. So
22 Mr. Stansbury is out, he no longer has an
23 obligation to pay, that would be my assumed fact,
24 Mr. Feaman?

12:32:56 25 Q. Yes, sir.

1 A. Then the beneficiaries have indicated that
2 they would prefer to have it, the litigation
3 handled on an hourly basis, which again to the
4 extent that we could accomplish that with the
12:33:13 5 amount of assets of the estate we have, I would be
6 accepting of that. If we could not achieve that,
7 because again if there weren't enough assets to
8 fund the litigation on an hourly basis, then I
9 would go for the contingency arrangement.

12:33:28 10 So I give you my thinking in terms of
11 priorities.

12 Q. Okay. And when you say the beneficiaries,
13 to whom are you referring to?

14 A. I know Mr. Rose, his clients have said
12:33:39 15 that. Mr. Morrissey has indicated that. And I
16 don't know what Judge Lewis' position is precisely.
17 We can ask her later.

18 Q. And who are Mr. Rose's clients?

19 A. Well, I know Ted Bernstein. And whether
12:33:54 20 they are his clients or not, I know a number of
21 other family members speak to him, and he will pass
22 on from time to time his conversations that he has
23 had with them to us.

24 Q. Right. Now, you are aware that Mr. Rose's
12:34:08 25 client Ted Bernstein is obviously a plaintiff in

1 the Chicago litigation, correct?

2 A. Correct.

3 MR. ROSE: Object to the form.

4 BY MR. FEAMAN:

12:34:20 5 Q. But you think it's okay for Mr. Rose to
6 give you Mr. Ted Bernstein's opinion on what fee
7 agreement the estate should be represented by in
8 the very action that Mr. Bernstein is suing the
9 estate of Ted Bernstein?

12:34:37 10 MR. ROSE: I would object to the form, and
11 also misstates my client, which is Ted S.
12 Bernstein as trustee. And I am speaking to
13 Mr. O'Connell in the context of that role and
14 that role only.

12:34:50 15 THE WITNESS: And I think I'd have to draw
16 back in terms of your use of the word okay. In
17 this estate, of course, we try to listen and we
18 see pleadings and positions by all parties. So
19 to the extent Mr. Rose on behalf of his client
12:35:07 20 is seeking to share a position, a thought, of
21 course we listen. We don't necessarily adopt
22 it, but we listen.

23 BY MR. FEAMAN:

24 Q. Okay. So are you listening to Mr. Rose as
12:35:22 25 he represents Mr. Bernstein as the successor

1 trustee or as he represents Mr. Bernstein
2 individually?

3 A. Well, I don't think we have -- I am not
4 drawing that distinction. It's Alan Rose on behalf
12:35:34 5 of Ted Bernstein that we are listening, not being
6 directed by.

7 Q. And who does Mr. Morrissey represent?

8 A. Some of the grandchildren.

9 Q. All right. Have you ever heard of a
12:35:54 10 situation in other cases, because I know you've
11 been doing this for a lot of years representing
12 estates and that sort of thing, of a claimant being
13 ordered by a court to pay fees on behalf of an
14 estate?

12:36:08 15 A. Well, I am not familiar with a situation
16 where a claimant has been ordered to do this. But
17 it's my understanding that your client offered to
18 do it if he could be reimbursed if he was
19 successful. That's what I recall the order of
12:36:24 20 events being here.

21 Q. And your motion marked as Exhibit 2, I
22 believe, also attaches the order of Judge Colin,
23 does it not?

24 A. It does.

12:36:44 25 Q. Can you find it?

1 A. Yes.

2 Q. Do you have it there in front of you?

3 A. Right. This one?

4 Q. And let me call your attention to
12:36:52 5 paragraph two. And Judge Colin said that in
6 paragraph two that the fees and costs incurred in
7 connection with the curator's work as administrator
8 ad litem and any counsel retained by the
9 administrator ad litem. Is that referring to
12:37:29 10 Chicago?

11 A. As I understand it.

12 Q. Okay.

13 A. It also says you have to look, of course,
14 for all the reasons and subject to the conditions
12:37:38 15 stated on the record.

16 Q. Okay.

17 A. But that's my interpretation he is talking
18 about the Chicago litigation.

19 Q. All right. And he said that will
12:37:48 20 initially be borne by Mr. Stansbury, correct?

21 A. That's what the language says.

22 Q. And then Mr. Stansbury, after the estate
23 successfully intervened, Mr. Stansbury initially
24 moved to be discharged shortly after that in
12:38:06 25 December of 2014, did he not?

1 MR. ROSE: Object to the form. I think
2 that's the wrong date.

3 THE WITNESS: There was, I know there was
4 a petition, and I am not a hundred percent sure
12:38:20 5 of the date.

6 BY MR. FEAMAN:

7 Q. Sure. What's your best recollection?

8 A. 2014.

9 Q. Yeah.

12:38:31 10 A. Maybe December.

11 MR. ROSE: How about Exhibit 1, which is
12 your exhibit, Mr. Feaman, says October 13,
13 2014, is when you filed the motion.

14 MR. FEAMAN: Okay.

12:38:43 15 BY MR. FEAMAN:

16 Q. So does that refresh your recollection of
17 when he first moved to be discharged?

18 A. It does.

19 Q. Okay. And was that shortly after the
12:38:54 20 federal court in Chicago granted the estate's
21 motion to intervene in the lawsuit, if you recall?

22 A. It was after that motion was granted. The
23 interval of time I am not certain of.

24 Q. Okay. Paragraph eight of the motion of
12:39:22 25 Mr. Stansbury to be discharged, which is Exhibit A

1 to Exhibit 1 or Exhibit 2, either one, paragraph
2 eight says that the Northern District of Illinois
3 granted the estate's motion to intervene on
4 July 28th, 2014. Do you see that?

12:39:44 5 A. I do.

6 Q. Does that refresh your recollection --

7 A. Yes.

8 Q. -- as to when that took place?

9 A. It does.

12:39:49 10 Q. All right. And then a little, about two
11 and a half months later then Mr. Stansbury's motion
12 to be discharged was filed; is that correct?

13 A. Right.

14 Q. Okay. All right. Now, we are also here
12:40:18 15 today on a case you would be asked to give
16 testimony in the motion of the trust, successor
17 trustee to the Simon Bernstein Trust in Florida,
18 revocable trust, now irrevocable, to be appointed
19 administrator ad litem in the Stansbury litigation,
12:40:41 20 correct?

21 A. Right.

22 Q. Okay.

23 A. I believe that's the next motion the court
24 would be considering.

12:40:45 25 Q. Okay. Now, do you know how long Mr. Ted

1 Bernstein has been successor trustee?

2 A. I don't without looking at some documents.

3 Q. Okay.

4 A. I need to take a look at.

12:41:02 5 Q. All right. Well, let me ask you this.

6 Were you the successor personal representative

7 after Mr. Ted Bernstein had already become

8 successor trustee?

9 A. That I would have to guess about. I
12:41:22 10 believe in my own mind that's the right sequence,

11 but that's why I mentioned wanting to look at

12 documents --

13 Q. Okay.

14 A. -- to be a hundred percent sure. But as I
12:41:31 15 recall it, yes, that was the flow of time.

16 Q. Okay.

17 A. That Ted Bernstein was already the
18 successor trustee when I became the successor
19 personal representative.

12:41:43 20 Q. And do you recall having a hearing before
21 Judge Colin concerning the validity of Mr. Ted
22 Bernstein's position as successor trustee?

23 A. I know there was a hearing where that
24 issue came up. Whether that was the subject of the
12:42:03 25 hearing or somehow got drawn into that, that I am a

1 little fuzzy about.

2 Q. Okay.

3 A. But I remember it being teed up,
4 discussed, there was argument about it, and then it
12:42:17 5 for whatever reason didn't conclude, it stopped.

6 Q. Do you recall advising Judge Colin that
7 Ted Bernstein is facially not qualified to be
8 successor trustee of the Simon Bernstein Trust by
9 the express language of the trust?

12:42:35 10 MR. ROSE: Object to the form.

11 THE WITNESS: Yes. And I have a general
12 recollection of either argument to the court or
13 discussion with the court as pointing out
14 certain paragraphs of the trust that led to
12:42:47 15 that conclusion, yes.

16 BY MR. FEAMAN:

17 Q. Right.

18 A. But we'd have to have the transcript to
19 say exactly what I said, but I remember it
12:42:54 20 generally.

21 Q. You do? Do you still hold that position
22 in your legal thinking?

23 A. I think -- well, couple of things. Based
24 on the wording of the trust language with the
12:43:06 25 situation now --

1 MR. ROSE: Object to the form.

2 THE WITNESS: -- has progressed where
3 you've had several legal proceedings before
4 Judge Phillips, on appeal, there have been
12:43:16 5 other matters before the court that could
6 affect that, which I am not opining about
7 because nobody has asked me to.

8 BY MR. FEAMAN:

9 Q. Okay.

12:43:24 10 A. But you are correct, I was drawing off the
11 wording of the trust just the way you said it.

12 Q. Okay. All right.

13 (Claimant Stansbury's Exb. No. 3,
14 Objection to Accounting of Simon Bernstein Trust by
12:43:31 15 Ted S. Bernstein, Successor Trustee, for the Time
16 Period of Feb. 3, 2014 Through Mar. 15, 2015.)

17 BY MR. FEAMAN:

18 Q. Handing you what's been marked as
19 Exhibit 3. Can you identify that for the record,
12:43:40 20 please?

21 A. That's an objection that I filed as the
22 personal representative of the Estate of Simon
23 Bernstein to an accounting that was prepared and
24 served by Ted Bernstein as trustee of the Simon
12:43:58 25 Bernstein Trust.

1 Q. All right. And is that your signature on
2 page three --

3 A. Yes.

4 Q. -- on Exhibit 3? Or is that Joy
12:44:11 5 Foglietta's? Is that yours or is that Joy's
6 initials for you?

7 MS. CRISPIN: They have all been hers.

8 MR. FEAMAN: They've all been hers?

9 MS. CRISPIN: They have all been hers.

12:44:18 10 BY MR. FEAMAN:

11 Q. Will you stipulate that Joy signed on your
12 behalf with your full knowledge and consent?

13 A. Certainly.

14 Q. Okay. And this appears that it was filed
12:44:28 15 by your office on September 30th, 2015; is that
16 correct?

17 A. That's correct.

18 Q. Okay. These objections to the accounting,
19 was there ever a hearing on these objections?

12:44:43 20 A. No.

21 Q. These objections are they still pending?

22 A. Still pending.

23 Q. Okay. Do you know if there was a revised
24 accounting ever done in response to the objection
12:45:01 25 that you filed on behalf of the estate?

1 A. I am not sure.

2 MR. FEAMAN: All right. No further
3 questions.

4 THE WITNESS: Mr. Eliot, you are up.

12:45:22 5 MR. ELIOT BERNSTEIN: Okay.

6 CROSS (BRIAN O'CONNELL)

7 BY MR. ELIOT BERNSTEIN:

8 Q. First, Brian, I'd just like to ask you
9 what proceedings before Judge Phillips are on
10 appeal have anything to do with the actual language
11 in the trust considering that previous --
12 (inaudible)

13 THE REPORTER: Excuse me, what?

14 BY MR. ELIOT BERNSTEIN:

12:45:47 15 Q. What proceedings before Judge Phillips are
16 on appeal possibly, you know, had anything to do
17 with the actual language in the trust?

18 MS. CRISPIN: Form.

19 MR. ELIOT BERNSTEIN: Okay.

12:46:00 20 THE WITNESS: The proceedings that I am
21 referring to had to do with the validity of the
22 trust.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So that's not a construction
12:46:08 25 hearing where the terms of the trust were

1 construed, correct?

2 MS. CRISPIN: Form.

3 THE WITNESS: I did not attend the
4 hearings, so I am basing it on knowledge that I
12:46:20 5 have from reading various and sundry, I guess,
6 orders and the appellate proceedings that have
7 emanated from that. So I don't recall there
8 being a per se construction provision. That's
9 why I am giving the answer that there was an
12:46:36 10 order that upheld the validity of the trust.

11 And whether or not that encompasses the
12 identify of the trustee, I think, is another
13 issue probably for another day that would take
14 me at least, I'd have to examine the testimony,
12:46:51 15 what Judge Phillips heard, what he ruled. And
16 that I, of course, haven't done, not for this
17 purpose as we are sitting here now certainly.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Okay. So you actually don't know is the
12:47:05 20 answer?

21 A. Again, all I know, and I will try to
22 explain, I guess, what I do know. There was the
23 hearing and then the appeal after the order was
24 entered upholding the validity of the trust. But
12:47:18 25 to say the scope and breadth of that as it relates

1 to the identity of the trustee, I don't know
2 without doing more work than I have done to date,
3 and I don't want to do that if I don't have to,
4 avoid expense to the estate.

12:47:30 5 Q. Okay. And are you aware of language in
6 the Simon trust that has Ted Bernstein --
7 (inaudible)

8 THE REPORTER: Excuse me?

9 BY MR. ELIOT BERNSTEIN:

12:47:44 10 Q. Are you aware of any of the terms of the
11 trust, of the Simon trust, that state that Ted
12 Bernstein is considered predeceased for all
13 purposes of the Simon trust?

14 A. Yes.

12:48:00 15 MR. ROSE: Object to the form. Give me a
16 second.

17 THE WITNESS: So we have an objection and
18 then a yes.

19 MR. ELIOT BERNSTEIN: Okay. I heard the
12:48:11 20 objection.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Okay. And then are you aware of a
23 February 2014 court order by Judge Colin ordering
24 all record documents, including originals held by
12:48:23 25 -- (inaudible)

1 THE REPORTER: Excuse me?

2 BY MR. ELIOT BERNSTEIN:

3 Q. -- Donald Tescher and Robert Spallina to
4 be turned over?

12:49:17 5 MS. CRISPIN: I think this is outside the
6 scope of the direct, so I am going to object to
7 this line of testimony.

8 MR. ELIOT BERNSTEIN: Okay. He can
9 answer, though.

12:49:27 10 MS. CRISPIN: Actually I don't think he
11 can.

12 MR. ELIOT BERNSTEIN: Well, we'll reserve
13 it to take it up with the judge.

14 MS. CRISPIN: Eliot, this is Ashley
12:49:37 15 Crispin. Did you cross notice this deposition?

16 MR. ELIOT BERNSTEIN: I just got notice of
17 it that it was going on.

18 MS. CRISPIN: Okay.

19 MR. ROSE: Are you on a speaker phone, by
12:49:47 20 the way?

21 BY MR. ELIOT BERNSTEIN:

22 Q. Can you answer the question, please?

23 MS. CRISPIN: He will answer this
24 question, but I will still preserve my
12:49:57 25 objection that it's outside the scope, so it's

1 without waiver of that.

2 THE WITNESS: And I don't recall. I need
3 to see the order itself to give a precise
4 answer that you are referring to.

12:50:13 5 BY MR. ELIOT BERNSTEIN:

6 Q. Okay. Do you have all of Simon's original
7 business records and records from -- that mandated
8 Tescher and Spallina to turn over all the records
9 to the curator Benjamin Brown?

12:50:27 10 MS. CRISPIN: Same objection. You can go
11 ahead and answer.

12 THE WITNESS: Yeah, I will try to give the
13 best answer. I have some records, of course,
14 some business records of Simon Bernstein. I
12:50:38 15 couldn't tell anyone that I have all because I
16 would have no basis to give a complete answer
17 because I wouldn't have the personal knowledge
18 as to whether I have all such records.

19 BY MR. ELIOT BERNSTEIN:

12:50:51 20 Q. Okay. Were you ordered by the court to go
21 to Simon Bernstein's place of business at the time
22 and inventory his business records and equipment,
23 et cetera?

24 MS. CRISPIN: Same objection.

12:51:05 25 THE WITNESS: I don't recall a court order

1 that you are referring to that mandated that.
2 Of course, as part of inventorying the assets
3 of the estate we have gone to a warehouse, not
4 me personally, Joy Foglietta did that. And Joy
12:51:24 5 Foglietta has been to Simon Bernstein's home as
6 part of the inventory process. So those things
7 have occurred.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Okay. That order you are referring to --
12:51:32 10 (inaudible)

11 THE REPORTER: Excuse me, I'm sorry, start
12 over.

13 BY MR. ELIOT BERNSTEIN:

14 Q. That court order that you are referring
12:51:41 15 to, that order that we inventory of Simon's assets,
16 also contained a provision for you to inventory his
17 business office address at, I believe, 950
18 Technology Way. Did you ever go to his place of
19 business and copy his records?

12:52:05 20 MS. CRISPIN: Same objection. And I think
21 at this point we have gone so far afield, I am
22 going to instruct him not to answer.

23 MR. ELIOT BERNSTEIN: Okay.

24 MS. CRISPIN: You can ask your next
12:52:17 25 question.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Has there ever been a discovery compliance
3 hearing in any of the cases before any of the
4 judges you are aware of?

12:52:27 5 MR. ROSE: Object to the form.

6 MS. CRISPIN: Form.

7 THE WITNESS: I am not sure what you are
8 referring to as to a discovery compliance
9 hearing. There's been discovery. Whether or
10 not there have been hearings about discovery, I
11 would have a general recollection that there
12 may have been. But again, the best way to
13 answer that would be for me to be able to look
14 at a docket to see what's been filed in the way
12:52:49 15 of discovery and then what objections have been
16 made and whether there have been court orders
17 entered with regard to that discovery, in this
18 particular case. Because I am restricting this
19 now to the Simon Bernstein estate as opposed to
12:53:03 20 the other Bernstein items of litigation.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Have you ever sought to have Tescher and
23 Spallina deposed about missing records and
24 documents?

12:53:14 25 MS. CRISPIN: Form, outside the scope of

1 direct.

2 THE WITNESS: We'd have to --

3 MS. CRISPIN: Go ahead and answer.

4 THE WITNESS: Yeah, I'd have to look to
12:53:21 5 give a hundred percent correct answer on that.
6 I would have to look at our pleading index to
7 see what we had filed in the way of formal
8 discovery with regard to Tescher and Spallina
9 in particular. And that I don't have anything
12:53:38 10 with me to do that right now.

11 BY MR. ELIOT BERNSTEIN:

12 Q. No, I am asking you about a deposition.
13 Have you deposed Tescher or Spallina?

14 MS. CRISPIN: Same objection.

12:53:47 15 THE WITNESS: No.

16 MS. CRISPIN: Go ahead and answer.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Okay. Wouldn't these records be relevant
19 to the Chicago litigation?

12:53:57 20 A. I am not aware of any such relevance to
21 the extent the records exist.

22 Q. Have you instructed the litigation counsel
23 in Chicago to depose Tescher and Spallina about any
24 missing records from Simon Bernstein?

12:54:15 25 MS. CRISPIN: Wait one second.

1 THE WITNESS: Yeah, attorney/client
2 privilege.

3 MS. CRISPIN: Yes, that's attorney/client
4 privilege. He won't be answering.

12:54:26 5 THE WITNESS: That's privileged.

6 MR. ELIOT BERNSTEIN: Okay.

7 MR. ROSE: While you are on a break, are
8 you on a speaker phone?

9 MR. ELIOT BERNSTEIN: Yes.

12:54:34 10 MR. ROSE: Is anyone present with you in
11 the room that's attending the deposition as
12 well as yourself?

13 MR. ELIOT BERNSTEIN: No.

14 BY MR. ELIOT BERNSTEIN:

12:54:41 15 Q. Are you familiar with the discovery sought
16 by Stamos in the Chicago litigation?

17 A. Generally.

18 Q. Okay. Can you describe what you are
19 familiar with?

12:54:52 20 A. That I'd have to look at my file to be a
21 hundred percent sure. But I can remember a request
22 to produce at some point in time that he did.

23 Q. Okay. Do you know what Chicago litigation
24 counsel deposed Tescher and Spallina about missing
12:55:10 25 records from Simon Bernstein?

1 A. Not that I recall.

2 Q. Alan Rose has suggested in recent papers
3 filed with Judge Scher that both William Stansbury
4 and his counsel, Mr. Feaman, have been copied on
12:55:30 5 communications from Chicago counsel Stamos and have
6 been at least, quote, driving the bus on the
7 Chicago litigation up to now. Is that true?

8 MS. CRISPIN: Form.

9 THE WITNESS: Yeah, I'd have to look at, I
12:55:45 10 guess, what the exact communication is that you
11 are referring to. But to try to answer your
12 question, there definitely is what I would call
13 information sharing. In other words, I know
14 that Mr. Feaman has from time to time
12:55:58 15 communicated about Mr. Stamos. And I think
16 that's consistent with the proceedings before
17 Judge Colin that emanated in the order that's
18 now going to be the subject of the hearing
19 before Judge Scher. So I am just trying to be
12:56:14 20 helpful with regard to your question.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Okay. Are you familiar with the admitted
23 forgeries by Tescher and Spallina employee Kimberly
24 Moran in the Shirley Bernstein trust case that were
12:56:27 25 deposited with the court by their law firm while

1 Ted Bernstein was acting as fiduciary and they were
2 acting as his counsel?

3 MR. ROSE: Object to form.

4 MS. CRISPIN: Form and outside the scope
12:56:37 5 of direct.

6 MR. ROSE: Misstates the record, misstates
7 the evidence, misstates the final judgment
8 entered by Judge Colin, I mean by Judge
9 Phillips, beyond the scope.

10 MS. CRISPIN: He is not going to answer.
11 Can you move on to your next question?

12 BY MR. ELIOT BERNSTEIN:

13 Q. Are you familiar with admitted forgeries
14 by Tescher and Spallina employee Kimberly Moran in
12:57:06 15 the Shirley Bernstein trust case?

16 MS. CRISPIN: Again, outside the scope and
17 form. This is a limited purpose this
18 deposition. Mr. Feaman kept his questions as
19 it related to the petitions that are set for
12:57:16 20 March 16th. These questions are outside the
21 scope. And so for this deposition for today he
22 won't be answering, so if you can move on.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Are you familiar with Robert Spallina's
12:57:37 25 attempt to have life insurance proceeds paid to

1 himself as trustee of the Simon Bernstein
2 irrevocable insurance trust?

3 A. I am not personally aware of that, but I
4 have seen, I think, and specifically with regard to
12:57:52 5 your pleadings that that was raised by you. But I
6 don't have any personal knowledge of him doing that
7 one way or the other.

8 Q. Were you sent those documents by me
9 showing that Robert Spallina's name was on an
12:58:09 10 insurance application ordered by Mr. Feaman?

11 A. Again, I am not sure who sent it to me.
12 But again, I have a general recollection of an
13 application for the payment of insurance proceeds.
14 But when it was, what exactly it said, I can just
12:58:27 15 give you a very generalized recollection.

16 Q. Are you aware if Ted Bernstein or Alan
17 Rose has ever deposed Tescher and Spallina about
18 missing records and the forgeries?

19 MS. CRISPIN: Same objection, but you can
12:58:51 20 answer.

21 THE WITNESS: I am not aware that they
22 have.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Are you aware that Robert Spallina
12:59:01 25 admitted to falsifying part of the Shirley

1 Bernstein trust?

2 MS. CRISPIN: Outside the scope and form.
3 He is not going to answer that today.

4 MR. ELIOT BERNSTEIN: Okay. Relevance is
12:59:13 5 broad, and I will note that as the objection
6 here.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Are you aware of LaSalle National Trust
9 being the primary beneficiary claimed by the
12:59:28 10 insurance carrier Heritage?

11 MS. CRISPIN: Form.

12 THE WITNESS: No. I'd have to have, in
13 terms of the beneficiary designation have to
14 have that in front of me to answer that
12:59:42 15 question as to who the -- I know on the
16 complaint I think the allegation was that the
17 claimed beneficiary was a trust of Simon
18 Bernstein. I don't recall who the trustee of
19 it was, whether it was LaSalle Bank, an
12:59:59 20 individual, whoever. So that's why I am being
21 cautious in trying to answer your question as
22 best that I can. But I would need more
23 documents to be able to give an exact answer.

24 BY MR. ELIOT BERNSTEIN:

13:00:15 25 Q. Are you aware that the Simon Bernstein

1 Trust, N.A. is alleged by the carrier Heritage to
2 be contingent benefit of the policy?

3 MR. ROSE: Object to the form.

4 MS. CRISPIN: Form.

13:00:32 5 THE WITNESS: Well, again, to be exact,
6 I'd have to see the documents that you are
7 referring to. I know the position of the
8 estate, if this helps explain it, is that
9 there's no correctly designated primary or
13:00:47 10 contingent beneficiary or the funds should pass
11 to the estate, if that helps clarify things.

12 BY MR. ELIOT BERNSTEIN:

13 Q. So at this point you haven't seen any
14 documents from the carrier that showed that Simon
13:01:08 15 Bernstein Trust, N.A. was the contingent
16 beneficiary and LaSalle National Trust was the
17 primary beneficiary?

18 A. Again, I have seen -- let me let the
19 attorneys give their objections.

13:01:18 20 MR. ROSE: Object to the form.

21 THE WITNESS: I know in connection with I
22 will call it the Illinois litigation there's a
23 dispute over whether a beneficiary designation
24 was correctly done for a trust, alleged trust
13:01:36 25 of Simon Bernstein. The estate's position is

1 that that trust is not correctly designated as
2 a beneficiary, nor are there correctly
3 designated contingent beneficiaries.
4 Therefore, it goes to the estate.

13:01:51 5 And to kind of proceed further as to who
6 might have been designated or not, I would need
7 the actual documents themselves if there are
8 any.

9 BY MR. ELIOT BERNSTEIN:

13:02:00 10 Q. What efforts have your firm or Stamos'
11 firm, litigation counsel in Chicago, have you done
12 to contact LaSalle National Trust or successor
13 regarding their being named by the carrier as the
14 primary beneficiary according to the carrier's
13:02:19 15 records?

16 MS. CRISPIN: Form and attorney/client
17 privilege to the extent you are asking for
18 communications between counsel and
19 Mr. O'Connell.

13:02:26 20 MR. ROSE: And for the record, we are not
21 here to litigate the case in Illinois. We are
22 just here to decide whether Mr. Stansbury's
23 motion for discharge will be granted. So I
24 object to this as a complete waste of the time
13:02:40 25 and the precious resources that are remaining

1 in the trust and the estate.

2 MR. ELIOT BERNSTEIN: Yeah, well, that's
3 your opinion, Mr. Rose, since we have no
4 accounting fully yet, so limited versus, so
13:02:56 5 we'll get to some of that in a moment. But I
6 am not deposing you yet.

7 BY MR. ELIOT BERNSTEIN:

8 Q. So are you going to answer that question?

9 A. Well --

13:03:06 10 MS. CRISPIN: To the extent it calls for
11 communications, don't answer.

12 THE WITNESS: Yeah, I am not going to
13 answer, of course, I won't based on that. But
14 again, I think our position is clear and
13:03:13 15 consistent that there is no correctly done
16 beneficiary designation for the proceeds of the
17 policy in issue. All the proceeds should go to
18 the estate.

19 BY MR. ELIOT BERNSTEIN:

13:03:23 20 Q. Okay. Have you contacted LaSalle National
21 Trust regarding the policy?

22 MS. CRISPIN: Hold on. To the extent that
23 this is asking for what would otherwise be work
24 product, I mean, we are allowing a lot of
13:03:34 25 questions to go through because obviously some

1 of these things are relevant to the pleadings
2 that are scheduled for Thursday. But we are
3 not giving up any our work product, whether
4 it's fact or otherwise. So I think at this
13:03:45 5 point we are getting into that and so I am
6 going to object on work product.

7 BY MR. ELIOT BERNSTEIN:

8 Q. What do you know about LaSalle National
9 Trust?

13:03:58 10 MS. CRISPIN: Form.

11 THE WITNESS: I guess the way it's asked,
12 I mean, I know there is a -- I recall the name
13 of a Chicago based bank with that name. But
14 beyond that I couldn't tell you.

13:04:19 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. And as of this date you are not
17 answering questions if you are aware of anybody
18 contacting LaSalle; is that correct?

19 MS. CRISPIN: Yes, that's work product.

13:04:37 20 Because you asked whether he did or whether his
21 counsel did with respect to pending litigation,
22 so, yes, work product.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Are you aware of any construction hearing,
13:04:51 25 actual construction hearing meaning the document

1 that was scheduled, was scheduled with proper due
2 process and notice that had the terms of any of the
3 Simon or Shirley trust or estate documents legally
4 construed at this point?

13:05:11 5 MS. CRISPIN: Form.

6 THE WITNESS: I will try to -- I know
7 there have been proceedings and I guess this is
8 going to get down to how someone defines
9 construction. There have been proceedings to
10 declare the validity of the documents that you
11 reference that were presided over by Judge
12 Phillips.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Okay. So a validity hearing but not a
13:05:29 15 construction hearing?

16 A. Again, it goes back to how one, I guess,
17 defines construction.

18 Q. Right. There were two counts in the
19 complaint by Ted; one was for validity, one was for
13:05:43 20 construction. Are you aware that the second count
21 was properly heard and there was construction
22 hearings regarding the construction, the terms of
23 the wills and the trusts of Simon and Shirley?

24 MS. CRISPIN: Form. I think we are
13:05:57 25 getting a little far afield here, so I am going

1 to say it's outside the scope of direct, but
2 you can answer.

3 THE WITNESS: Yeah, and I need to see, to
4 be a hundred percent sure, I need to see that
13:06:06 5 pleading. I looked at it for the last time
6 months, could have even been a year ago, as to
7 how many counts there were and so forth. I
8 just don't recall.

9 BY MR. ELIOT BERNSTEIN:

13:06:16 10 Q. Okay. Have you been notified of a
11 potential conflict of interest that both Simon and
12 Eliot Bernstein have with your law firm and your
13 partner Gerald Beer?

14 MS. CRISPIN: Form, and if you understand
13:06:32 15 the question. Do you understand the question?

16 THE WITNESS: Not a hundred percent.

17 MS. CRISPIN: Okay.

18 THE WITNESS: Could you rephrase it?

19 BY MR. ELIOT BERNSTEIN:

13:06:36 20 Q. Have you been notified by any party of a
21 potential conflict of interest that both Simon and
22 Eliot Bernstein have with your law firm in regard
23 to your partner Gerald Beer?

24 MS. CRISPIN: Objection to form. And I am
13:06:50 25 not sure he can answer as it relates to Simon

1 Bernstein.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay. Eliot Bernstein?

4 A. No, I am not aware of that. But if there
13:06:58 5 is something, send it to me.

6 Q. I have already.

7 A. We are all looking around the table at
8 each other, the various counsels, but I don't think
9 any of us have seen it.

10 Q. Okay. Are you aware that Eliot and Simon
11 Bernstein have alleged that your partner Gerald
12 Beer was instrumental in keeping technologies from
13 Simon and Eliot Bernstein?

14 MS. CRISPIN: Form. If you know you can
13:07:30 15 answer.

16 THE WITNESS: Yeah, I am not aware of
17 that.

18 BY MR. ELIOT BERNSTEIN:

19 Q. I will restate.

13:07:34 20 A. Mr. Eliot, are we talking about -- you are
21 saying Simon Bernstein, your deceased father, sent
22 us something?

23 Q. Correct.

24 A. Recently?

13:07:45 25 Q. No. This is over several years. But

1 Gerald Beer is a central suspect in a RICO
2 complaint and several ongoing state and federal
3 investigations as one of the people who
4 participated in RICO related crimes to steal
13:08:05 5 technology from both me and my father.

6 A. Okay.

7 MR. ROSE: Are those the claims that were
8 dismissed with prejudice by the federal judge
9 in New York that you are talking about?

13:08:16 10 MR. ELIOT BERNSTEIN: Those are part of
11 the claims, but those are also part of ongoing
12 state and federal investigations at the moment.

13 MS. CRISPIN: Well, he has testified that
14 he doesn't know anything about it.

13:08:25 15 THE WITNESS: I don't know anything about
16 it, and you are going to resend it.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Okay. Are you aware that Simon Bernstein
19 owned 30 percent interest in technologies that I
13:08:35 20 developed and companies were formed around them
21 that he also held a similar 30 percent interest in?

22 MS. CRISPIN: Okay. Form. And we are
23 getting again far afield. It's outside the
24 scope of direct. If you can itemize what
13:08:49 25 technology you are talking about so if it

1 actually has a name then I will allow him to
2 answer.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Okay. Brian, I sent you the technology,
13:08:59 5 the list of patents; is that correct?

6 A. You have sent a number of items of
7 correspondence. Whether there's within those
8 specific things about patents, I'd have to look at
9 it to be sure. I can't answer that one way or the
13:09:16 10 other. I couldn't say yes or no. That would call
11 for a file review of a pretty intense file.

12 Q. Okay. Are you aware in a recent pleading
13 of Alan Rose that he alleges that the technologies
14 are worth a trillion dollars?

15 MS. CRISPIN: Form. And again, we are
16 getting outside the scope of direct, but you
17 can answer if you recall that.

18 MR. ROSE: Object to the form.

19 THE WITNESS: I am not aware of that
13:09:46 20 pleading by Mr. Rose.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Okay. Are you aware of the technologies
23 at all that we are talking about?

24 MS. CRISPIN: Again, objection to form,
13:09:56 25 outside the scope of direct. You've got to

1 itemize what technologies you are talking
2 about.

3 MR. ELIOT BERNSTEIN: Okay. I am going
4 to.

13:10:01 5 BY MR. ELIOT BERNSTEIN:

6 Q. Brian, I sent you this list. United
7 States patent 09,630,939, system and method for
8 providing an enhanced digital image file. Patent
9 application number 09,630,9 -- hold on one second.
13:10:34 10 That's the one I just gave you.

11 MS. CRISPIN: How about we start with that
12 one. What was the question with respect to
13 that one?

14 BY MR. ELIOT BERNSTEIN:

13:10:43 15 Q. Well, let me give them all to him, it's
16 the same question. 09,522,721, apparatus and
17 method for producing enhanced digital images.
18 09,587,734, system and method for providing an
19 enhanced digital video file. 09,587,026, system
13:11:12 20 and method for playing a digital video file.
21 09,587,730, system and method for streaming an
22 enhanced digital video file. 60,223,344, zoom and
23 pan using a digital camera. 60,233,341, zoom and
24 pan imaging design tool. 60,169,559, apparatus and
13:12:10 25 method for producing enhanced video images and/or

1 video files. 60,149,737, apparatus and method for
2 producing enhanced digital images and/or digital
3 imaging files. And then 60,141,440, apparatus and
4 method for providing and/or transmitting video data
13:12:56 5 and/or information in a communication network.

6 MS. CRISPIN: Why don't we stop there. So
7 what is your question with respect to those
8 particular items that you described?

9 BY MR. ELIOT BERNSTEIN:

13:13:10 10 Q. Are you aware of Simon Bernstein's
11 interest in those technologies?

12 A. And as a general answer I am not. And I
13 would have to consult my file to see if I have any
14 information concerning them.

13:13:24 15 Q. Are you claiming that you and I have --
16 have you and I ever spoken about those
17 technologies?

18 A. I don't recall ever speaking with you
19 about those technologies.

13:13:34 20 Q. Okay. Have you received correspondence
21 from me regarding those technologies?

22 A. And I don't sitting here recall the
23 correspondence, which is why I'd have to look at
24 the files and determine if they exist.

13:13:45 25 MR. ROSE: Just so the record is clear,

1 are these technologies that you are saying are
2 owned by a company called Iviewit that Simon
3 was a stockholder in, or are you saying these
4 are technologies that exist independent of
13:13:59 5 Iviewit Technologies?

6 MS. CRISPIN: He says himself and Simon,
7 that was what the question was.

8 MR. ELIOT BERNSTEIN: Simon is on the
9 patent as an owner and he is also an owner of
13:14:11 10 shares in companies that were formed around the
11 technologies, to be clear.

12 MR. ROSE: Can you explain the relevance
13 of what any of this has to do with --

14 (Overspeaking)

15 MR. ELIOT BERNSTEIN: -- limited --

16 THE REPORTER: Eliot, one a time, please.
17 You interrupted Mr. Rose. Please let him
18 finish.

19 MR. ROSE: Just for the record, to assist
13:14:34 20 us and me in deciding whether this is relevant
21 to the two hearings that are coming up this
22 Thursday, can you explain how these questions
23 about technologies are relevant to whether
24 Mr. Stansbury should be discharged from funding
13:14:50 25 the Illinois litigation or whether Ted

1 Bernstein should be appointed administrator
2 ad litem?

3 MR. ELIOT BERNSTEIN: Yeah. They have to
4 do with if Brian O'Connell should continue to
13:15:01 5 represent the estate or he should resign, based
6 on his testimony the other day which implicates
7 both you and him in some more major frauds
8 going on. So, yeah, I find it to be highly
9 relevant to the proceeding, and if either you
13:15:18 10 or him should be moving the estate forward
11 have, you know, seems like he has no
12 information about a trillion dollar technology
13 possibly that you pled is a trillion dollar
14 technology that Simon Bernstein has a 30
13:15:33 15 percent interest, but yet shows up nowhere
16 missing with so many other millions upon
17 millions of dollars that Mr. O'Connell has been
18 made aware of. And so his furthering any
19 pleadings in this is this just more fraud on
13:15:46 20 fraud. But I don't mind reporting it all for
21 state and federal authorities.

22 MR. ROSE: Just for the record --

23 MR. ELIOT BERNSTEIN: Just so you know.

24 MR. ROSE: Okay. For the record, I might
13:15:56 25 have put in a pleading that you, Eliot

1 Bernstein, have claimed in a federal lawsuit,
2 which has been dismissed with prejudice, that
3 the technologies were worth a trillion dollars.
4 From everything I understand, the technologies
13:16:07 5 are absolutely worthless as would be your
6 interest in them.

7 MR. ELIOT BERNSTEIN: Well --

8 MR. ROSE: But if you have an interest in
9 technologies that are worth a trillion dollars,
13:16:15 10 then you should reconsider your filings with
11 the court that indicate you are --

12 MR. ELIOT BERNSTEIN: Simon Bernstein has
13 an interest in them, Mr. Rose, and I am asking
14 him and I am talking to him. I don't know what
13:16:25 15 you are putting on the record here, but I
16 object to you, you know, putting all this
17 nonsense on. You have no idea what -- have you
18 done an investigation, are you saying, into the
19 technologies and their values; is that what you
13:16:37 20 are saying?

21 MS. CRISPIN: Okay. Mr. O'Connell is here
22 to have his deposition taken, so if you'd ask
23 him the questions. I now understand that the
24 questions that you are asking are not relevant
13:16:46 25 for the purposes of March 16th, so I'd

1 appreciate --

2 MR. ELIOT BERNSTEIN: Well, they are
3 relevant.

4 MS. CRISPIN: Hold on. Hold on. So I
13:16:52 5 appreciate the explanation. But I'd ask you to
6 please ask your next question.

7 MR. ELIOT BERNSTEIN: Yeah, well, these
8 questions are very relevant if Mr. O'Connell is
9 fit to be a fiduciary and do anything with any
10 13:17:04 party in this case.

11 MS. CRISPIN: Next question, please.

12 MR. ELIOT BERNSTEIN: So we will leave
13 that on the record.

14 MS. CRISPIN: Next question, please.

15 13:17:10 MR. ELIOT BERNSTEIN: Yes.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Who are the beneficiaries of the Simon
18 Bernstein Trust to the best of your knowledge?

19 MS. CRISPIN: Again, outside the scope of
13:17:26 20 direct, and form.

21 MR. ELIOT BERNSTEIN: Well, it has a lot
22 to do with the hearing, so.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Who are the beneficiaries of the Simon
13:17:35 25 trust?

1 MS. CRISPIN: How does it have to do with
2 the hearing?

3 MR. ELIOT BERNSTEIN: Well, who the
4 beneficiaries they are saying they have consent
13:17:41 5 of all the beneficiaries, so time to find out
6 who they've got consent on.

7 MS. CRISPIN: Is that the question that
8 you are asking?

9 MR. ELIOT BERNSTEIN: Yeah.

10 BY MR. ELIOT BERNSTEIN:

11 Q. Who are the beneficiaries of the Simon
12 Bernstein Trust to the best of your knowledge?

13 MS. CRISPIN: Same objection, but go ahead
14 and answer.

15 THE WITNESS: As to the trust, there's a
16 series of trusts within the trust that are the
17 beneficiaries or the trustees are beneficiaries
18 for grandchildren. They have a trust,
19 sub-trusts for the benefit of grandchildren.

20 BY MR. ELIOT BERNSTEIN:

21 Q. Okay.

22 A. And then, of course, if you look at the,
23 you can look at the trust itself for more
24 specifics, which we don't have here as to exact
13:18:29 25 names and so forth.

1 Q. Okay. Are you in possession of the
2 sub-trusts?

3 MS. CRISPIN: Form.

4 THE WITNESS: Well, they are contained
13:18:38 5 within the trust itself.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Are they created?

8 A. Created by the trust.

9 Q. Have they been created?

10 MS. CRISPIN: Objection to form. I don't
11 know if you can answer that.

12 THE WITNESS: Well, they've been created
13 because the trust, the base trust let's call
14 it, the revocable trust itself creates them.

13:18:58 15 BY MR. ELIOT BERNSTEIN:

16 Q. Have they been created is my question?

17 MS. CRISPIN: Unfortunately, Eliot, the
18 way you are asking the question he has answered
19 to the best of his ability. If you have
13:19:05 20 another question please ask it and he will
21 answer it.

22 BY MR. ELIOT BERNSTEIN:

23 Q. Okay. So as of today you do not have
24 separate trusts for the grandchildren?

13:19:15 25 MR. ROSE: Object to the form.

1 MS. CRISPIN: Form.

2 THE WITNESS: There are separate trusts
3 that are created under the revocable trust for
4 the benefit of grandchildren.

13:19:22 5 BY MR. ELIOT BERNSTEIN:

6 Q. Okay. Are you in possession of a Simon
7 Bernstein Trust dated 9/13/12, the day Simon
8 Bernstein passed away?

9 A. Again, I have copies of various documents.
13:19:34 10 That one doesn't -- that date doesn't ring a bell
11 so to speak to me, so I'd have to have a copy of
12 it. I'd have to see it. And I'd have to again go
13 through our files to determine the dates of the
14 documents that we do have. But that one, something
13:19:50 15 as of the date of his death itself, I don't recall
16 such a document.

17 MR. ROSE: For the record, and you have
18 been told this numerous times, Mr. Eliot
19 Bernstein --

13:20:00 20 MR. ELIOT BERNSTEIN: Wait. Wait. I
21 object to you putting anything on the record.
22 I am deposing him.

23 MR. ROSE: The ten trusts were formed and
24 they exist and they are dated as of the date of
13:20:08 25 death.

1 MR. ELIOT BERNSTEIN: -- (inaudible) and
2 interrupting the deposition, Mr. Rose. I know
3 you want to fill the record with a lot of
4 nonsense, but please let's stay focused on this
13:20:20 5 deposition.

6 BY MR. ELIOT BERNSTEIN:

7 Q. So as of today you are not in possession,
8 to the best of your knowledge, of a trust that
9 Simon Bernstein did on the day he died in the two
13:20:31 10 hours that he was code blue on that day in the
11 hospital?

12 MS. CRISPIN: Form.

13 MR. ROSE: Relevance.

14 THE WITNESS: I would have to see the
13:20:40 15 document that you are referring to, A, to
16 determine if I have seen it before, B, to
17 compare it to documents that I know that I do
18 have. So I can't tell you definitively that I
19 am aware of the document that you are
13:20:55 20 describing.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Okay. Just so you know, the parties sued
23 in the Shirley Bernstein trust case that there was
24 a validity hearing involving Simon's case. The
13:21:16 25 grandchildren's trusts, sub-trusts you refer to,

1 are created under that trust not dated 9/13/12.

2 Are you aware of that?

3 MS. CRISPIN: Form.

4 THE WITNESS: As to the date of the trust
13:21:31 5 that I am referring to, I don't have it in
6 front of me. Again, sort of glancing around,
7 nobody seems to have a copy of it to say is
8 that the day that you have been giving as to
9 the date of the creation of the trust whether
13:21:47 10 validity has been upheld by the court.

11 BY MR. ELIOT BERNSTEIN:

12 Q. So are you saying your firm doesn't have a
13 copy of the trust right now?

14 MS. CRISPIN: Form.

13:21:53 15 THE WITNESS: Oh, we would have a copy in
16 another office.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Would you like me to send you a copy?

19 MS. CRISPIN: No, that's okay, unless you
13:22:01 20 have it here.

21 THE WITNESS: Yeah, you have given us the
22 date.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So as of this date you are not sure
13:22:08 25 if you have a Simon Bernstein Trust dated 9/13/12

1 or any sub-trusts under that created for any party?

2 MS. CRISPIN: Form.

3 THE WITNESS: Yeah, I definitely have a
4 Simon Bernstein Trust that contains sub-trusts.

13:22:23 5 I am just not sure what the date of it is.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Okay. And are you aware that the parties
8 sued in the Shirley Bernstein trust construction
9 case that you are a party to are parties that are
10 under the Simon Bernstein Trust dated 9/13/12?

13:22:37

11 MS. CRISPIN: Form. Again, we are getting
12 really far afield here. So to the extent that
13 you can answer without the documents, go ahead.
14 If you need the documents, indicate that.

13:22:51 15 THE WITNESS: I need the documents.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Okay. Let's get that then. So you can
18 get the original complaint in this Shirley trust
19 construction that you are a party to, correct?

13:23:05 20 MS. CRISPIN: He is not going to do it
21 right now.

22 MR. ELIOT BERNSTEIN: Okay. Then I
23 suggest we continue this when he gets the
24 records.

13:23:12 25 MS. CRISPIN: No. You need to have those

1 documents available for him right now if you
2 want him to consider it. Otherwise --

3 MR. ELIOT BERNSTEIN: I said I will send
4 it over.

13:23:20 5 BY MR. ELIOT BERNSTEIN:

6 Q. The question is -- I don't have a copy of
7 it and I personally don't believe it exists. So
8 the question is do you have a copy?

9 Plus also sidetracked there on your
13:23:34 10 affirmative defense to the Shirley Bernstein
11 corrupt construction case you claim that Ted
12 Bernstein lacks standing, that he wasn't a validly
13 serving trustee of the Simon trust, he is not a
14 beneficiary of the Simon trust, and he is not
13:23:50 15 representing his minor child as a beneficiary of
16 the trust.

17 MS. CRISPIN: Hold on. There's not a
18 question pending.

19 BY MR. ELIOT BERNSTEIN:

13:23:59 20 Q. To your knowledge is Ted Bernstein validly
21 serving today?

22 MS. CRISPIN: Of what?

23 MR. ROSE: Object to the form.

24 BY MR. ELIOT BERNSTEIN:

13:24:11 25 Q. Is he validly serving as trustee of the

1 Simon trust?

2 MR. ROSE: Object to the form. And it's
3 not an issue for the hearings on Friday, on
4 Thursday, and it's been determined by Judges
13:24:21 5 Colin and Phillips.

6 MR. ELIOT BERNSTEIN: Okay, Alan, you are
7 asking -- filling the record again. Are you
8 objecting or trying to face the record with
9 more false statements?

10 MS. CRISPIN: Okay. Hold on. I had an
11 objection. It was form and outside the scope
12 of direct.

13 If you understand the question you can
14 answer.

15 THE WITNESS: Yeah, let me try to answer
16 it as best I can. You've had a judicial
17 proceeding and appellate proceedings related to
18 that where there was a declaration as to the
19 validity of the Shirley revocable trust and the
13:24:42 20 Simon revocable trust.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Well, I am asking if Ted is a validly
23 serving trustee of the Simon trust? Because your
24 statement, your affirmative defense to the
13:25:08 25 construction/validity hearing, which was only a

1 validity hearing, you stated Ted is not validly
2 serving as trustee of the Simon trust.

3 A. And as I tried to explain before, we filed
4 the pleading that I think you are reading from.

13:25:28 5 And then subsequent to that there was a trial on
6 the validity of the trust, the two trusts, and
7 appellate proceedings with regard to that, and
8 the --

9 Q. Okay. Okay. So under that valid, let's
13:25:43 10 call it valid for the moment before we vacate that
11 order. But under that valid document is Ted a
12 validly serving trustee of that, quote, unquote,
13 valid trust?

14 MS. CRISPIN: Form, asked and answered and
13:26:00 15 outside the scope of direct.

16 MR. ELIOT BERNSTEIN: He hasn't answered
17 it.

18 THE WITNESS: Well, that's what the court
19 order says.

13:26:06 20 BY MR. ELIOT BERNSTEIN:

21 Q. No, the court order says that it's a valid
22 trust. It doesn't say anything about Ted Bernstein
23 is a validly serving trustee of the Simon trust.

24 MS. CRISPIN: He has answered. That's
13:26:17 25 your opinion and you have stated it, but you

1 have asked him a question.

2 BY MR. ELIOT BERNSTEIN:

13:26:27 3 Q. So as of today are you aware of any reason
4 Ted Bernstein shouldn't be serving as trustee of
5 the Simon Bernstein Trust?

6 A. I am not.

7 Q. Okay. Did you contact Alan Rose in order
8 to try and secure over 300,000 for the estate to
9 pay a settlement claim to Mr. Stansbury?

13:26:55 10 MS. CRISPIN: Form. I think these are
11 confidential settlement negotiations. To the
12 extent that that even occurred they would be
13 protected.

14 MR. ELIOT BERNSTEIN: Well, it's part of
13:27:08 15 the court records, so it's pretty public at
16 this point.

17 MS. CRISPIN: So you want to know if
18 there's something in the court records that
19 Mr. O'Connell placed in the court records that
13:27:16 20 discusses a \$300,000 settlement offer to
21 Mr. Stansbury?

22 MR. ELIOT BERNSTEIN: Yeah.

23 MR. ROSE: Just to speed things up, I
24 think there was a motion to approve a
13:27:24 25 settlement --

1 (Overspeaking)

2 MR. ELIOT BERNSTEIN: Alan Rose, I am not
3 asking you. I am not asking the question for
4 people --

13:27:30 5 (Overspeaking)

6 MR. ROSE: (Inaudible)

7 THE WITNESS: Let me try to answer it so
8 we can stop torturing the court reporter.

9 We did file a motion, meaning me, the
10 estate, the PR, filed a motion, and this was
11 years ago now, to approve a settlement 340,000
12 -- actually -- let's see -- Mr. Stansbury's
13 counsel had it. So it was filed December of
14 '14 that we did ask permission of the court to
15 settle with Mr. Stansbury in connection with
16 the estate.

17 So is that what you are referring to,
18 Mr. Eliot?

19 BY MR. ELIOT BERNSTEIN:

13:28:09 20 Q. Correct. Has Mr. Feaman sent you a binder
21 notifying you of problems with Ted Bernstein acting
22 as a fiduciary?

23 MS. CRISPIN: Form.

24 THE WITNESS: I know Mr. Feaman has filed
13:28:31 25 pleadings with regard to if you want to call

1 them problems or issues that he has with Ted
2 Bernstein serving as trustee. Again, I have
3 that sort of general recollection of those
4 types of pleadings.

13:28:45 5 MR. ROSE: I am going to terminate the
6 deposition with respect to any questions
7 concerning this issue that --

8 (Overspeaking)

9 MR. ELIOT BERNSTEIN: -- (inaudible)

13:28:53 10 MR. ROSE: The trial court has determined
11 the proper beneficiaries of the Simon Bernstein
12 Trust, and all the persons with standing to
13 object to Ted Bernstein's service are not
14 objecting and in fact have consented. So I am
13:29:07 15 going to terminate the deposition as to this
16 line of questioning. You can move on to
17 another topic.

18 MR. ELIOT BERNSTEIN: (Inaudible)

19 MR. ROSE: At the same time, at the same
13:29:15 20 time I want to take a five minute break for
21 everyone. And I want to ask you, how much
22 longer do you think you have questioning of
23 Mr. O'Connell in relation to the two issues
24 that are set for a two-hour hearing on
13:29:27 25 Thursday?

1 MR. ELIOT BERNSTEIN: As long as it takes
2 him to answer the questions. I can't get him
3 to answer anything so we have to keep re-asking
4 the questions here.

13:29:40 5 MR. ROSE: Okay.

6 MS. CRISPIN: How long do you think you
7 have?

8 MR. ROSE: Five minutes, ten minutes.

9 MS. CRISPIN: Okay. Because I need to
13:29:45 10 take a break between 2:30 and 3:00. I was
11 hoping we'd be done by then.

12 MR. ROSE: I'd like to know how much
13 longer. Do you think you have like two or
14 three days worth of questions?

13:29:54 15 MR. ELIOT BERNSTEIN: I don't know yet,
16 but I have got some more questions, so at least
17 an hour or so or two.

18 MS. CRISPIN: Can we take -- is it all
19 right to take a 30-minute break right now?

13:30:07 20 MR. ROSE: You have to.

21 THE WITNESS: She's got to meet with
22 another client.

23 MS. CRISPIN: Yeah, I thought we'd be
24 done. I will go very speedy.

13:30:14 25 MR. ROSE: We are taking a break.

1 MR. ELIOT BERNSTEIN: Brian, if you can
2 try to find your copy of the Simon Bernstein
3 Trust dated 9/13/12, that would be great,
4 during that time.

13:30:25 5 THE WITNESS: Okay.

6 MS. CRISPIN: If you send it to him he
7 will look at it.

8 THE WITNESS: Yeah, send it to me.

9 MR. ELIOT BERNSTEIN: I don't have a copy.
10 It doesn't exist as far as my records show.

11 MS. CRISPIN: Okay. Well, I don't know
12 why you are asking him to look for something
13 you don't think exists.

14 MR. ELIOT BERNSTEIN: That's to the two
15 beneficiaries.

16 MR. ROSE: We are going to take a break
17 for approximately 30 minutes until the other
18 matter is concluded and Mr. O'Connell's counsel
19 can return.

13:30:47 20 MR. ELIOT BERNSTEIN: I will call back at
21 3:00.

22 MR. ROSE: Well, no, why don't you stay on
23 line because maybe she'll come back sooner.

24 (A recess was taken.)

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. Brian, did you review most of the
3 pleadings in the Simon and Shirley cases and the
4 appeals at the 4th DCA; is that correct?

14:24:53 5 A. Definitely as to Simon. I don't know if I
6 see all the pleadings or not has to do with
7 Shirley.

8 Q. Okay. And in any of those pleadings have
9 you seen the name Gerald Beer?

14:25:06 10 A. I have not.

11 Q. Okay. Are you aware of a settlement
12 between Stansbury and Ted Bernstein individually as
13 a defendant in the Stansbury lawsuit?

14 A. Yes.

14:25:18 15 Q. Are you aware that Ted Bernstein
16 negotiated that settlement individually and
17 simultaneously negotiated as the trustee for the
18 Shirley Bernstein trust negotiating as a fiduciary
19 on behalf of her beneficiaries which he is not one
14:25:34 20 of?

21 A. I don't have any personal knowledge on
22 that, so that would be an I don't know if that
23 occurred.

24 Q. Are you aware that Shirley Bernstein's
14:25:42 25 trust has settled with Mr. Stansbury and is no

1 longer a party to the litigation?

2 A. Yes.

3 MR. FEAMAN: Objection to the form.

4 MR. ROSE: What's your form objection?

14:25:54 5 MR. FEAMAN: Mischaracterizes the record.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Are you aware that Ted Bernstein settled
8 with Stansbury as trustee of the Shirley trust to
9 have Shirley's trust dismissed from the complaint
10 along with himself individually?
14:26:09

11 A. I don't know as to the Shirley trust sort
12 of the ins and outs. What I am basing any answers
13 that I am giving you now on are the fact that the
14 Shirley trust, of course, has been dropped as a
15 defendant with prejudice. There's pleadings in the
14:26:24 16 so-called Stansbury litigation to that effect.

17 Q. Okay. So are you aware that Ted Bernstein
18 effectively through that settlement removed himself
19 from liability and Shirley's trust leaving a
14:26:40 20 hundred percent of the damage claim against the
21 Simon Bernstein estate and trust beneficiaries?

22 MR. ROSE: Object to the form.

23 THE WITNESS: I am just aware of the fact
24 that there's been the dropping of parties with
14:26:53 25 prejudice. As to the whys and wherefores of

1 the Shirley trust and what positions were taken
2 by whom, negotiations, and so forth, I just
3 wouldn't have any knowledge of that.

4 BY MR. ELIOT BERNSTEIN:

14:27:06 5 Q. Okay. Well, are you aware that Ted
6 Bernstein settled to remove himself leaving a
7 hundred percent of the damages claimed now against
8 the Simon Bernstein estate and trust beneficiaries?

9 MR. ROSE: Object to the form.

14:27:21 10 THE WITNESS: Yeah, I am not aware of
11 that. I am just aware of the, I guess, the
12 position of the case now, where you have the
13 Simon estate and then a Simon entity as the
14 sole defendants because everybody else has been
14:27:36 15 dismissed with prejudice.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Right. Okay. So Ted Bernstein got
18 himself dismissed and Shirley's trust, because he
19 is the acting fiduciary over there. And so you are
14:27:48 20 aware that now the only defendant left is the Simon
21 Bernstein estate and trust beneficiaries, correct?

22 A. Not exactly. Of course I am aware that
23 there's been these dismissals that are part of the
24 record, and then I am aware that the Simon estate
14:28:06 25 is a beneficiary. And then there's a Simon entity

1 that's still a beneficiary. I am looking around
2 for the complaint to see if anyone had it I could
3 give you the name. Those would be the two
4 remaining defendants.

14:28:17 5 Q. Okay. So effectively Ted Bernstein who
6 was a defendant has negotiated himself out of the
7 complaint, correct?

8 A. I don't know that because that's what I
9 mentioned before, I don't know what the
14:28:32 10 negotiations were. I just know the result.

11 Q. Do you have a copy of the settlement
12 agreement? Have you reviewed it?

13 A. I don't have a copy.

14 Q. You don't? Okay.

14:28:48 15 Are you aware that Ted was the main party
16 alleged to have committed the bad faith acts
17 including fraud against Mr. Stansbury?

18 A. All I know on probably the Stansbury
19 litigation again would be what's in the complaint.

14:29:04 20 Q. Okay. So you read the complaint; that's
21 good. And you know what's in it; that's good. Is
22 Ted Bernstein alleged to have done the bad faith
23 acts to Mr. Stansbury?

24 A. Well, there's a multiplicity of
14:29:16 25 defendants, and I don't have it in front of me

1 right now. But they are alleged either, mostly
2 together, there's general allegations addressed to
3 defendants. And I think there are some instances
4 where it may say that there were certain things
14:29:30 5 done by Simon Bernstein or Simon and Ted Bernstein.
6 And again, I am just going from recollection. But
7 I couldn't parse it out now sort of as to who was
8 alleged to do what. Just the complaint speaks for
9 itself.

14:29:42 10 Q. Okay. So you are aware that both Ted and
11 Simon are alleged to have done acts against
12 Mr. Stansbury?

13 A. I recall that. And then the various
14 entities that were mentioned, of course, were also
14:29:57 15 implicated in different counts of the complaint or
16 meaning there are allegations against them.

17 Q. And are you aware of any assets of Simon
18 Bernstein that may have been used in the settlement
19 of that -- in that settlement to take off
14:30:17 20 Mr. Stansbury?

21 A. I am not aware of that, that any such
22 assets were used to do that.

23 Q. Okay. Are you aware of what assets were
24 used to pay the claim?

14:30:28 25 A. I don't know if any were used.

1 Q. Oh, okay. So they settled for nothing to
2 your knowledge?

3 A. I don't know. I have to answer it that
4 way because I don't know what the, sort of the
14:30:39 5 terms and conditions were of the settlement of
6 which the estate was not a party.

7 Q. Okay. Are you aware that Ted Bernstein
8 has no interest personally in the Simon and Shirley
9 trusts?

14:30:53 10 A. Yes, I know in regard to the Simon trust,
11 which we were discussing before, there's the
12 sub-trusts within the Simon trust. And then I am
13 trying to recall who the beneficiaries were because
14 there was a power of appointment in connection with
14:31:11 15 the Shirley Bernstein estate as to who would
16 actually be the ultimate beneficiaries, if anyone,
17 under that document. And again, these are things I
18 don't have in front of me.

19 Q. Oh, that's the Simon Bernstein will that
14:31:24 20 you are acting under right now?

21 A. Yes, just the will.

22 Q. So that has the power of appointment, and
23 we'll take a sidetrack there for a second. That
24 power of appointment for Shirley's trust, are you
14:31:38 25 aware that that's only effective for the marital

1 and family trusts created under the Shirley trust?

2 A. I just remember that there was a power of
3 appointment under the Shirley trust. As to where
4 it goes and who it goes to, that would be a total
14:31:55 5 guess right now. I would need to look at the
6 document again.

7 Q. Have you been in any construction hearings
8 where the terms of that power of appointment has
9 been construed?

14:32:04 10 A. I have not if there have been any.

11 Q. You are the personal representative, so
12 hopefully you would know of any hearing that
13 construed the will, right?

14 A. That construed the Shirley will?

14:32:16 15 Q. No, the Simon will and the power of
16 appointment thereunder?

17 A. Right. I think if there was something
18 construing those, at least when I was serving,
19 since I have been serving, I believe I would get
14:32:26 20 notice, be entitled to notice. But I -- what I
21 know of in connection with the Simon estate is that
22 there was the litigation involving the Simon trust
23 where there was an order entered by Judge Phillips,
24 and that's now on appeal. So I am aware that
14:32:43 25 that's gone on with regard to that trust.

1 Q. So, no, I am asking under the Simon
2 Bernstein will that you are operating under,
3 there's a power of appointment. Has that power of
4 appointment been construed, to the best of your
14:32:56 5 knowledge?

6 MR. ROSE: I object to the form, because
7 the power of appointment has nothing to do with
8 Mr. --

9 THE WITNESS: O'Connell.

14:33:01 10 MR. ROSE: -- O'Connell's service in this
11 case because the power of appointment solely --
12 (inaudible)

13 (Overspeaking)

14 MR. ELIOT BERNSTEIN: Are you --

14:33:03 15 MR. ROSE: -- power of appointment --

16 (Overspeaking)

17 MR. ELIOT BERNSTEIN: Are you answering
18 for him or what are you trying to do, pepper
19 the record again with these nonsensical
14:33:14 20 statements? I am asking him a question. Are
21 you objecting or are you answering for him? I
22 am confused.

23 MR. ROSE: The power of appointment
24 relates solely to the Shirley Bernstein trust,
14:33:25 25 which does not concern Mr. O'Connell.

1 MR. ELIOT BERNSTEIN: Who is answering
2 that right now? Is it Mr. Rose answering that?

3 THE WITNESS: There's an easy way to
4 answer it. Shirley Bernstein, of course,
14:33:36 5 predeceased Simon Bernstein. So any power of
6 appointment in connection with Simon's estate
7 has no effect when it comes to Shirley
8 Bernstein because she died first.

9 So does that help clarify the order of
14:33:52 10 events here?

11 BY MR. ELIOT BERNSTEIN:

12 Q. Well, Shirley died first and she had an
13 irrevocable class of beneficiaries at that point,
14 obviously. And it's your claim that there's a
14:34:03 15 power of appointment that changed that class of
16 beneficiaries through a power of appointment that
17 Simon executed through his will?

18 MR. ROSE: I am going to object --

19 BY MR. ELIOT BERNSTEIN:

14:34:16 20 Q. Is that correct, Mr. O'Connell?

21 MR. ROSE: I am objecting because that has
22 nothing to do with Mr. O'Connell, and he has
23 already testified it has nothing to do with his
24 role.

14:34:25 25 MR. ELIOT BERNSTEIN: (Inaudible)

1 MR. ROSE: Wait. Wait. Wait.

2 MR. ELIOT BERNSTEIN: Are you his counsel?
3 Are you acting as his counsel right now?

4 MR. ROSE: So what I said was --

14:34:34 5 MR. ELIOT BERNSTEIN: No, what I asked was
6 are you acting as his counsel for the record,
7 please?

8 MR. ROSE: I am not representing
9 Mr. O'Connell.

14:34:42 10 MR. ELIOT BERNSTEIN: Okay.

11 MR. ROSE: But I am going to -- I am
12 objecting because the issues concerning the
13 power of appointment only involve the assets in
14 the Shirley Bernstein trust and have nothing to
14:34:58 15 do with the assets in the Simon Bernstein
16 estate, as Mr. O'Connell has just stated.

17 MR. ELIOT BERNSTEIN: You are leading the
18 witness, and I don't understand why you are
19 answering questions. I am asking him. If you
14:35:10 20 are not his counsel I don't get why you are
21 trying to fill the statement, the record with
22 more false statements. So I will continue on.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Mr. O'Connell, by the way, did you receive
14:35:21 25 Mr. Feaman's closing statement?

1 MR. FEAMAN: Feaman.

2 MR. ELIOT BERNSTEIN: Mr. Feaman. Sorry,
3 Peter.

4 THE WITNESS: I received it, but I was out
14:35:28 5 of the country last week so I haven't had a
6 chance to read them, anyone's closing
7 statements actually.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Oh, okay. Are you aware that he alleges
14:35:37 10 that, has he informed you that he alleges that
11 Mr. Rose has been misleading the court on numerous
12 occasions in the proceedings?

13 A. Nobody has mentioned that to me.

14 Q. Okay.

14:35:46 15 A. But again, I haven't had a chance to -- I
16 am trying to catch up on anything that came into my
17 office the last week or so.

18 Q. And you are not aware of any claims that
19 you might have misled the court?

14:35:57 20 A. No, I am not aware of any.

21 Q. Okay.

22 A. It didn't happen.

23 Q. Okay. So back to my question. So you are
24 aware that the complaint alleges that Simon and Ted
14:36:11 25 committed acts against Mr. Stansbury, correct?

1 A. Yes, there's various allegations again
2 that involve one, both of them, but we'd have to
3 look at the allegations to be more specific as to
4 who was alleged to have done what.

14:36:31 5 Q. Okay. So in these things that we are
6 talking both Ted and Simon would have had liability
7 to Mr. Stansbury individually, correct?

8 MR. ROSE: Object to the form.

9 THE WITNESS: Well, if the complaint -- I
14:36:49 10 guess you are asking me to speculate here.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Prior to any settlement?

13 A. Well, they were both alleged to have
14 done -- breached contractual obligations or
14:36:59 15 committed torts.

16 Q. Okay. And so both could have been liable
17 for the damages, correct?

18 A. In theory, yes.

19 Q. Okay. So Ted Bernstein negotiating on
14:37:11 20 behalf of Ted Bernstein and Ted Bernstein
21 negotiating on behalf of Shirley's trust has
22 negotiated himself out of the lawsuit, negotiated
23 Shirley's trust to be dismissed, according to your
24 interpretation, and has left the Simon Bernstein
14:37:33 25 estate and Simon Bernstein Trust beneficiaries with

1 potentially a hundred percent of the damages,
2 correct?

3 A. I don't know what the problem is, to
4 answer the question, was I don't know what the
14:37:45 5 negotiations were with regard to the Shirley estate
6 or trust. I just know the results, which are these
7 various and sundry dismissals. That's all I can
8 tell you. I wasn't involved. I didn't
9 participate.

10 Q. Okay. So currently today the estate and
11 trust of Simon is the one that's being looked at
12 for a hundred percent of the damages --

13 A. The estate --

14 Q. -- to Mr. Stansbury, correct?

14:38:14 15 A. The estate, yes.

16 Q. Okay. And have you done anything to
17 investigate Ted Bernstein's culpability, any
18 apportionment of damages that might be responsible
19 to him?

14:38:29 20 A. I am not aware of any.

21 Q. Oh, okay. And would you say that if Ted
22 successfully negotiated individually and as a
23 trustee to a trust -- well, in Simon's trust as
24 well is negotiating -- on trust beneficiaries'
14:38:51 25 behalf where he has no interest, that he could,

1 through a conflict, effectively shift the liability
2 from himself to those beneficiaries?

3 MR. ROSE: Object to the form.

4 THE WITNESS: Yeah, I don't understand the
14:39:06 5 question.

6 BY MR. ELIOT BERNSTEIN:

7 Q. It's a simple conflict question with
8 adverse interests as well at play. Ted Bernstein
9 as a defendant individually negotiating
14:39:28 10 simultaneously as a trustee of trust has no
11 interest in, can affectively shift the liability of
12 the lawsuit from himself and leave it to the estate
13 in trust of Simon Bernstein where he has no
14 interest?

14:39:45 15 MR. ROSE: Object to the form, and
16 misstates the record and misstates Ted's role.

17 THE WITNESS: I don't have the
18 information, if it exists, to draw that
19 conclusion.

14:39:58 20 And I just wanted to mention that as some
21 of the objections were before, and I am without
22 a lawyer right now, were to the effect that we
23 had a narrow scope in terms of today's
24 deposition, and we are well beyond the scope of
14:40:12 25 direct with regard to what was being asked and

1 answered.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay.

4 A. And we are really retreading the ground of
14:40:19 5 the proceedings before Judge Scher. We are now, as
6 you mentioned, we have had closing arguments
7 submitted.

8 Q. Well, we are also trying to establish some
9 bases for frauds going on here. And I believe
14:40:29 10 Mr. Feaman's closing argument that the court is
11 being misled is also a fraud, and I am sure aware
12 of obstruction and false process charges. So we
13 are trying to clear up how the conflicts are
14 working and the adverse interests are at play here
14:40:45 15 between Ted acting per his -- for his own
16 self-interest.

17 And that's what I was just getting to.
18 Has Ted Bernstein acted in his own self-interest by
19 shifting the liabilities of the several million
14:41:00 20 dollar lawsuit from himself to the beneficiaries
21 you represent?

22 A. And I will mention it again, I don't know
23 the ins and outs of the negotiations --

24 Q. Okay.

14:41:11 25 A. -- that might have occurred. I just know

1 where the case sits today, that's all, the
2 Stansbury litigation.

3 Q. Who's your firm's liability carrier?

4 A. I don't know who it is now.

14:41:27 5 Q. Are you insured?

6 A. Yes, but I don't know the name of the
7 company.

8 Q. Can we find that out?

9 A. Well, I am sure there's a way to find out.

14:41:40 10 MR. ROSE: I would think you should ask
11 your next question because I don't think that's
12 a proper question.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Okay. Are you aware in a September 2nd,
14:41:51 15 2016 hearing before Judge Phillips in an even up
16 order hearing in Simon's estate that Mr. Feaman
17 alleged to the court --

18 MR. FEAMAN: Feaman. My name is
19 pronounced Feaman.

14:42:15 20 MR. ELIOT BERNSTEIN: Feaman, Feaman,
21 sorry.

22 BY MR. ELIOT BERNSTEIN:

23 Q. -- alleged to the court that there are
24 missing and stolen and unaccounted for assets in
14:42:23 25 the Shirley and Simon estate and trust cases?

1 A. And the answer is I am aware of a petition
2 and order entered by Judge Phillips with regard to
3 the tangible personal property of the Simon
4 Bernstein estate. But again, that's far afield of
14:42:44 5 the issues of today and the matter before the court
6 pursuant to which my deposition is supposedly being
7 taken. So I am not going to answer any further on
8 that. That's an apple. This is an orange.

9 Q. Well, it's not. Are you aware of stolen
14:43:03 10 and unaccounted for assets that Mr. Feaman brought
11 up to the court in his September 2nd, 2016 hearing?

12 A. The file here speaks for itself. But I
13 have gone, I think, farther than probably I should
14 have timing wise with what was sketched out as to
14:43:21 15 this deposition, the questions that were asked on
16 direct examination.

17 Q. Did you do anything to verify the validity
18 of the Simon Bernstein 2012 will that you are
19 operating under?

14:43:42 20 A. The court has determined that the will is
21 valid.

22 Q. No, I asked you did you do anything, any
23 work, your firm?

24 A. I and my firm are unaware of any grounds
14:43:55 25 under which that will would be invalid.

1 Q. Were you made aware that the notary
2 publics were not properly done?

3 MR. ROSE: I am going to terminate the
4 deposition on this area because this is the
14:44:09 5 subject of a final judgment which is on appeal,
6 and the trial court lacks jurisdiction to
7 address this issue.

8 MR. ELIOT BERNSTEIN: Are you acting as
9 his counsel? Whose counsel are you acting as?

14:44:17 10 MR. ROSE: Okay. So I am terminating the
11 deposition as to that line of questioning and
12 asking you to ask a different question. Or if
13 you are finished I will ask my questions and
14 then we can all go home.

14:44:28 15 MR. ELIOT BERNSTEIN: Okay.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Well, you are aware that the former co-PRs
18 and co-trustees admitted to fraudulently altering
19 documents, correct?

14:44:40 20 A. Again, beyond the scope of direct, and I
21 am not going to answer any further on that
22 particular.

23 Q. You are refusing to answer questions?

24 A. As to that, because I will state it again,
14:44:53 25 it's beyond the scope of direct. It's beyond what

1 conceivably could be brought up at the pending
2 hearings before Judge Scher on the motions that are
3 to be heard. If we are going to reread everything
4 that's happened --

14:45:10 5 Q. Well, these are relevant questions about
6 fraud and your knowledge of those fraud and you are
7 taking the appropriate steps to preclude the fraud
8 or if you are in fact aiding and abetting.

9 A. I am not going to get into an argument
14:45:23 10 with you.

11 Q. Okay.

12 A. But those are issues for another day.
13 They are not before the court.

14 Q. So you are refusing to answer any
14:45:32 15 questions that are coming your way basically?

16 A. No, that's not what I said. That we need
17 to stick to what Mr. Feaman has asked and
18 cross-examination as it relates to what Mr. Feaman
19 has asked, even though we have exceeded that
14:45:50 20 greatly in a number of events. But we'll never
21 finish.

22 Q. Okay. Are you aware of a Shirley
23 Bernstein family trust or Shirley Bernstein marital
24 trust created under the Shirley Bernstein trust?

14:46:03 25 MR. ROSE: I am going to terminate the

1 deposition as to that line of questioning
2 because it has absolutely nothing to do with
3 what we are here to take Mr. O'Connell's
4 deposition. So I am terminating the
14:46:14 5 deposition. I am moving for protective order
6 on that issue.

7 MR. ELIOT BERNSTEIN: Who are you
8 representing?

9 MR. ROSE: Ask your next question. And if
14:46:20 10 you are finished with questions, I will ask my
11 questions.

12 MR. ELIOT BERNSTEIN: My objections are on
13 the record to all questions not previously
14 answered. I reserve my rights for proper
14:46:28 15 depositions with proper notice. And we'll
16 leave it at that.

17 MR. ROSE: Okay. So you are done?

18 CROSS (BRIAN O'CONNELL)

19 BY MR. ROSE:

14:46:41 20 Q. Mr. O'Connell, I will take the two issues
21 in the same order Mr. Feaman took the issues, which
22 is the discharge of liability for funding the
23 litigation in Illinois first, and then I will talk
24 about the administrator ad litem issue second. Is
14:46:59 25 that okay?

1 A. That's fine.

2 Q. Now, you are aware there's a court order
3 that Mr. Feaman showed you that speaks for itself
4 but which imposes some obligation on Mr. Stansbury
14:47:13 5 to initially fund the litigation in Illinois?

6 A. Yes.

7 Q. Are you aware has that order ever been
8 modified by any court?

9 A. No.

14:47:21 10 Q. Have you ever advised Mr. Stansbury that
11 in your view he need not comply with the order?

12 A. No.

13 Q. Do you believe that if -- I will withdraw
14 that.

14:47:57 15 With respect to the situation in Illinois,
16 if the 1995 insurance trust is the prevailing
17 party, do you understand that the proceeds will go
18 directly or indirectly to Simon Bernstein's five
19 children?

14:48:17 20 A. Yes.

21 Q. And none of the proceeds will go to anyone
22 outside of the Bernstein family?

23 A. None would go outside of the individuals
24 that you are describing.

14:48:26 25 Q. Correct. Five members of the Bernstein

1 family, including the adult married women who have
2 changed their name?

3 A. That's to the claimed beneficiaries of
4 that trust, that's who the funds would go to, if,
14:48:43 5 if the trust is successful.

6 Q. Okay. And if the estate is the winner in
7 that lawsuit and the money comes into the estate,
8 it's possible for Mr. Stansbury to be paid some of
9 that money if he succeeds in his independent
14:48:59 10 action?

11 A. Correct.

12 Q. And if he doesn't succeed in his
13 independent action, all the money will then go to
14 administrative expenses and otherwise members of
14:49:08 15 the Bernstein family?

16 A. Well, it would go then administrative
17 expenses first come off the top, a creditor claim
18 if Mr. Stansbury is successful would be next, and
19 then it would be distributed to the Simon Bernstein
14:49:23 20 Trust, and then further along the line according to
21 the terms of that trust.

22 Q. So the only -- the money that is sitting
23 in the court registry in Illinois that's the
24 subject of an interpleader action will either go to
14:49:37 25 Mr. Stansbury under certain circumstances or

1 otherwise essentially will go to members of Simon
2 Bernstein's family?

3 A. Or administrative expenses. Those would
4 be your kind of universe of where the funds could
14:49:51 5 go in whole or in part.

6 Q. The only person other than administrative
7 expenses to benefit from the money in Chicago other
8 than a family member would be Mr. Stansbury?

9 MR. FEAMAN: Objection to the form.

14:50:03 10 THE WITNESS: Will be --

11 MS. CRISPIN: Form.

12 THE WITNESS: -- administrative expenses,
13 then it would be creditor's claims if his claim
14 is successful, and then the Simon Bernstein
14:50:24 15 Trust.

16 BY MR. ROSE:

17 Q. And for the purposes of what I think you
18 testified under questioning by Mr. Feaman that if
19 the court discharges Mr. Stansbury, that you will
14:50:38 20 be prepared to hire the lawyer in Chicago on an
21 hourly rate basis?

22 A. Or the contingency basis. And my
23 preference would be to do it on the hourly basis if
24 we have enough funds to do so. I'd have to loop
14:50:51 25 back again to Mr. Stamos to try to firm that up.

1 Q. Okay. Now let's talk about the second
2 issue, which is the administrator ad litem. Is it
3 accurate that you would like Ted Bernstein to be
4 appointed the administrator ad litem just to
14:51:12 5 oversee the litigation on the defense of the claim
6 by Mr. Stansbury?

7 A. Yes, I think that's the best course of
8 action. We filed a response with the court that
9 gives sort of all our reasoning. So obviously I
14:51:25 10 stand on that. I am not going to repeat and I
11 don't have it in front of me to repeat it, but it's
12 in there.

13 Q. And you want Ted and you expect would hire
14 my law firm to defend the estate against
14:51:39 15 Mr. Stansbury's claim?

16 A. Well, at that point the distinction would
17 be it would actually be your law firm if he so
18 hires your law firm would be defending Ted as the
19 ad litem. That would be the distinction. You
14:51:51 20 wouldn't be -- it would be defending the ad litem
21 of the estate.

22 Q. But ultimately defending Simon Bernstein
23 in trying to prove that Simon Bernstein did not
24 commit the tortious or other breaches that -- the
14:52:05 25 tortious acts or other breaches that are alleged by

1 Mr. Stansbury in his complaint?

2 A. Correct.

3 Q. Now, for the purposes of that, I think you
4 have already testified at the prior hearing as to
14:52:19 5 why you wanted it structured that way, would you
6 agree that you would be handling all issues
7 concerning settlement of the claims if they were to
8 be settled?

9 A. Yes.

14:52:27 10 Q. And the Ted and my law firm's structure
11 would be the people litigating the claim with
12 Mr. Stansbury?

13 A. Correct.

14 Q. And do you recall that Mr. Stansbury at
14:52:39 15 one point complained that you were not available
16 for hearings and depositions and the case was
17 moving too slowly, had filed a motion for a status
18 conference?

19 MS. CRISPIN: Form.

14:52:50 20 MR. FEAMAN: Join.

21 THE WITNESS: I am not a hundred percent
22 sure of that. I don't want to guess.

23 BY MR. ROSE:

24 Q. Okay. Have you ever read Mr. Stansbury's
14:53:05 25 deposition that was taken in the independent

1 action?

2 A. Early on I might have glanced at it, but I
3 don't have a specific recollection of the details
4 of it.

14:53:22 5 Q. Are you aware that during the deposition
6 on several occasions Mr. Stansbury indicated that
7 his discussions had been with Simon Bernstein and
8 he could not recall any discussions with Ted
9 Bernstein about his compensation?

14:53:39 10 MR. FEAMAN: Objection to the form.

11 MS. CRISPIN: Form.

12 THE WITNESS: At the most general level
13 that sounds familiar, but I couldn't go beyond
14 that at this point without looking at it again.

14:53:55 15 BY MR. ROSE:

16 Q. Now, do you know anybody alive other than
17 Bill Stansbury who has more knowledge of the facts
18 and circumstances surrounding the independent
19 action than Ted Bernstein?

14:54:12 20 MS. CRISPIN: Form.

21 THE WITNESS: Not that I can think of. It
22 would be the two of them would seem to have the
23 most knowledge of their dispute with one
24 another, most personal knowledge at least.

25 ///

1 BY MR. ROSE:

2 Q. Now, if the court did not want to appoint
3 Ted Bernstein as administrator ad litem, would you
4 still want the court to appoint someone else as
14:54:41 5 administrator ad litem?

6 MS. CRISPIN: Form.

7 THE WITNESS: I haven't given that any
8 consideration. But probably in the interests
9 of trying to move the case along I would have
14:54:51 10 to have sort of an internal discussion to see
11 who could advance that defense the quickest,
12 in-house, getting an ad litem involved, getting
13 another law firm involved. So those are the
14 things I am just giving you the conditions I
14:55:04 15 would have to weigh if that happened. But we
16 would do something to keep the case going.

17 BY MR. ROSE:

18 Q. And we did discuss at the prior trial
19 testimony that you would bill for your time if you
14:55:18 20 had to be the corporate representative -- or not
21 the corporate representative. Strike that.

22 A. Estate representative.

23 Q. We had discussed at your prior testimony
24 at the hearing that if you were to sit at the trial
14:55:34 25 or sit at a deposition or be involved in

1 negotiations or whatever you would do in connection
2 with the independent action, you would be billing
3 for your time?

4 A. Yes.

14:55:46 5 Q. And anything that Ted Bernstein would be
6 doing, attending a deposition or reviewing
7 documents or meeting with witnesses, he would not
8 be charging?

9 MR. FEAMAN: Form.

14:55:54 10 THE WITNESS: That's my understanding of
11 the setup.

12 BY MR. ROSE:

13 Q. And that would result in lower costs to
14 the estate?

14:55:59 15 MR. FEAMAN: Form.

16 THE WITNESS: It should.

17 BY MR. ROSE:

18 Q. Which would be not only in the best
19 interests of the beneficiaries, but also really in
14:56:04 20 the best interests of Mr. Stansbury, because it
21 would lower the amount of money that would be
22 drained from the estate to defend his claim?

23 A. True.

24 Q. I will represent that there was a motion
14:56:17 25 filed by Mr. Stansbury asking for a status

1 conference before the trial judge in the
2 independent action because you had filed a notice
3 of unavailability and he was having difficulty
4 scheduling some hearings. Do you dispute that?

14:56:33 5 MS. CRISPIN: Form.

6 MR. FEAMAN: Form.

7 THE WITNESS: I'd have to look at it. I
8 don't want to guess.

9 BY MR. ROSE:

14:56:36 10 Q. What's your schedule like generally for
11 the next three to six months?

12 MS. CRISPIN: Form.

13 THE WITNESS: I'd have to pull it out to
14 be absolutely sure. I mean, there's various
14:56:46 15 and sundry hearings, depositions, some trials.

16 BY MR. ROSE:

17 Q. Are you fairly busy?

18 A. We are busy.

19 Q. Okay. You are fairly busy individually?

14:56:56 20 A. Yes, which is good, no complaints.

21 Q. Now, having been asked questions at two
22 evidentiary hearings and today, is it still your
23 belief in your professional judgment that it's in
24 the best interests of the estate to appoint Ted
14:57:26 25 Bernstein as the administrator ad litem?

1 A. Yes.

2 MR. ROSE: Nothing further.

3 MR. FEAMAN: I have got a couple on
4 redirect.

14:57:33 5 MR. ELIOT BERNSTEIN: I'd like to ask some
6 further questions.

7 MR. FEAMAN: Well, it's not your turn yet.

8 MR. ELIOT BERNSTEIN: Oh, I was just
9 saying, Mr. Feaman.

14:57:41 10 THE WITNESS: Mr. Feaman.

11 REDIRECT (BRIAN O'CONNELL)

12 BY MR. FEAMAN:

13 Q. All right. Now, in response to a question
14 asked by Mr. Rose you said that you, Mr. O'Connell,
14:57:58 15 would be handling any settlement discussions
16 arising out of the independent action by
17 Mr. Stansbury against the estate, correct?

18 A. Correct. Because that's what you have and
19 I have actually done that.

14:58:09 20 Q. But if the case got rolling and discovery
21 was taken, depositions were taken, documents were
22 produced, all of which has not taken place yet, you
23 would have to speak to Mr. Rose and Ted Bernstein
24 to get their opinion on how the case is going,
14:58:30 25 wouldn't you?

1 A. Well, I'd speak to them and I'd take a
2 look at the discovery or motions. I know there's a
3 motion for summary judgment that was pending, for
4 example. So I would speak and then take a look at
14:58:41 5 the record. I would do both.

6 Q. Okay. And how many lawyers do you
7 presently have in your law firm, sir?

8 A. Approximately 32.

9 Q. Okay. And of those how many are
14:58:56 10 commercial or business litigators?

11 A. Primarily? Because some people --

12 Q. Primarily?

13 A. -- there's some overlap.

14 Q. Yes, of course.

14:59:06 15 A. Even our own department. So there's --
16 I'd say principally two for sure.

17 Q. Okay.

18 A. But that's primarily what they do.

19 Q. Do you think that they are in your opinion
14:59:23 20 competent and capable of defending the estate in
21 connection with Mr. Stansbury's claims in his
22 independent action?

23 MR. ROSE: That's beyond -- we are not
24 talking about counsel. We are talking about
14:59:37 25 the administrator ad litem, but.

1 MR. FEAMAN: You can object to the form.

2 MR. ROSE: That's my objection.

3 BY MR. FEAMAN:

4 Q. You can answer.

14:59:41 5 A. Yes, I think they have the skill set to do
6 that. It's the other instances that I don't want
7 to repeat because they are already sort of in our
8 pleading as to why we chose this course of action.

9 MR. FEAMAN: All right. No further
14:59:56 10 questions.

11 MR. ELIOT BERNSTEIN: My turn?

12 MS. CRISPIN: Yes.

13 RECROSS (BRIAN O'CONNELL)

14 BY MR. ELIOT BERNSTEIN:

15:00:06 15 Q. Okay. Mr. O'Connell, if Ted were to
16 become representing the estate would Ted raise the
17 defense or file suit against Ted for the damages?

18 MS. CRISPIN: Form. Do you understand the
19 question?

15:00:24 20 THE WITNESS: I am not sure because --

21 BY MR. ELIOT BERNSTEIN:

22 Q. Well, Ted was alleged to have done bad
23 faith action complaint with the estate, would Ted
24 representing it file, raise a defense that Ted is
15:00:48 25 responsible for let's say a hundred percent of the

1 damages, or would he file suit against Ted for a
2 hundred percent of the damages?

3 A. Yeah, this came up before, but I will try
4 to say it succinctly. This was raised at one of
15:01:03 5 the prior hearings.

6 Among joint tort-feasors when one is
7 dismissed there's not by statute a right of
8 contribution by one joint tort-feasor against
9 another, which is the scenario which you are laying
10 out.

11 Q. Well, the estate could also raise that the
12 first settlement was done in bad faith with unclean
13 hands with Ted negotiating himself out and shifting
14 the liability, would Ted raise that defense? Would
15:01:32 15 Ted allege that Ted acted in bad faith in settling
16 himself out and shifting liability to parties
17 through conflict and adverse interests?

18 A. Again, I think we are going beyond the
19 scope of direct and cross.

15:01:46 20 Q. Well, no.

21 A. But to try and get through this.

22 Q. This is directly related to Ted, you are
23 recommending Ted to represent the estate. In your
24 prior testimony to the court you answered this
15:01:57 25 question basically by saying, no, Ted wouldn't

1 raise those defenses. Obviously, I believe, and I
2 am asking you is that because Ted would be
3 conflicted and adverse to the beneficiaries?

4 MS. CRISPIN: Form. I am not sure you can
15:02:13 5 answer this question or is that more properly
6 directed towards Ted? I don't know how
7 Mr. O'Connell can answer what --

8 MR. ELIOT BERNSTEIN: Mr. O'Connell is
9 recommending Ted. So if Ted could effectively
15:02:25 10 shift liability from himself to the estate
11 beneficiaries with no one raising objection
12 because he is conflicted and adverse to the
13 beneficiaries, I think that's pretty relevant
14 to everything going on.

15:02:37 15 BY MR. ELIOT BERNSTEIN:

16 Q. So, Mr. O'Connell, would Ted raise any
17 defense for the beneficiaries of the estate that
18 allege that Ted acted improperly perhaps in
19 conflict and adversity to shift the liability from
15:02:53 20 himself to the estate beneficiaries where he has no
21 interest?

22 MS. CRISPIN: Form. And if you don't
23 understand the question or it's too compound or
24 assumes too many facts in order for you to
15:03:05 25 answer, then so say and ask him to rephrase.

1 THE WITNESS: Right. If we could break
2 this down, please.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Okay.

15:03:11 5 A. I believe you are asking me to speculate
6 as to what Ted may or may not do which, of course,
7 I don't know what Ted may or may not do.

8 Q. Well, you are recommending Ted --

9 A. I am not recommending Ted.

15:03:24 10 Q. -- to replace yourself. So let me ask it
11 this way first. Could you raise an argument that
12 Ted acted conflicted and with adverse interests in
13 settling with Stansbury?

14 MS. CRISPIN: Form.

15:03:40 15 THE WITNESS: I am not aware -- again we
16 went through this before. I am not aware of
17 the facts and circumstances of the settlement.
18 And I am not aware either just sitting here
19 right now of a cause of action that would exist
15:03:54 20 because someone entered into a settlement.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Well, Ted is a defendant and Simon was a
23 defendant, now his estate is a defendant. And
24 could the estate state that by Ted Bernstein
15:04:23 25 negotiating himself out personally beyond

1 negotiating Shirley's trust out, which we have
2 already established, that that act right there was
3 acting in conflict with adverse interests to the
4 beneficiaries of both the Simon trust and the
15:04:45 5 Shirley trust where he has no interest, and thereby
6 he didn't raise a defense on behalf of the
7 beneficiaries of the trust stating, wait a minute,
8 Ted Bernstein is liable for the damages here?

9 Does the estate have a claim to state that
15:05:05 10 Ted Bernstein improperly negotiated himself out
11 through conflict and adverse interests?

12 MS. CRISPIN: Objection to form. I can't
13 have him answer because your question assumes
14 so many different things and it was so
15:05:20 15 compound.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Okay. Would Ted sue himself if he is the
18 representative for the estate?

19 A. I don't know if he would sue himself and I
15:05:29 20 don't know on what grounds he would have to sue
21 himself.

22 Q. Okay. On the grounds that he committed
23 all of the acts, on behalf of the estate would sue
24 Ted Bernstein claiming that he is the responsible
15:05:44 25 party for the damages to Mr. Stansbury?

1 A. I don't know what he would do, but he
2 would have a -- there would be a problem again
3 statutorily if it comes on the ambit of
4 contribution from a dismissed joint tort-feasor
15:06:01 5 because there's a statutory prohibition.

6 Q. I am just asking a simple question. Would
7 Ted as an estate representative sue Ted as being a
8 responsible party in a lawsuit in whatever?

9 MS. CRISPIN: He already answered.

15:06:14 10 MR. ELIOT BERNSTEIN: I didn't get the
11 answer. What was the answer?

12 THE WITNESS: Same answer. Do you want to
13 read it back? We'll read it back for you.

14 MR. ROSE: No, don't read it back.

15:06:27 15 THE WITNESS: Okay. The problem -- of
16 course, first, I don't know what Ted would do.
17 I can't speculate on what actions Ted would or
18 wouldn't take. But the problem that I see in
19 the scenario that you sketched out is the
15:06:40 20 violation of the statute that a dismissed or
21 released joint tort-feasor can't sue another
22 joint tort-feasor for contribution.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Would the estate claim that the settlement
15:06:54 25 that released Ted and gave him that release was

1 done with adverse interests and conflict? Would he
2 raise that --

3 MS. CRISPIN: Form.

4 BY MR. ELIOT BERNSTEIN:

15:07:03 5 Q. -- against himself?

6 MS. CRISPIN: Form.

7 THE WITNESS: A, again, I can't speculate
8 on what Ted would or would not do. And I would
9 also question what standing he would have to
10 make that sort of a claim or what any standing
11 somebody would have.

12 BY MR. ELIOT BERNSTEIN:

13 Q. Okay. Well, you as the estate PR, would
14 you make that claim if you found that Ted had
15 negotiated in bad faith with unclean hands in the
16 Shirley settlements and his personal settlements
17 and found out that he had shifted the liabilities
18 off himself through conflict and adversity? Would
19 you file a lawsuit trying to vacate that
15:07:24 20 settlement?

21 MS. CRISPIN: Form. Again, it's so
22 compound I can't have him answer.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. Would you file a lawsuit as the
15:07:52 25 estate PR claiming that Ted acted in bad faith with

1 unclean hands and tried to vacate the Stansbury
2 settlement?

3 MS. CRISPIN: Form. Would you?

4 THE WITNESS: I don't see a cause --
15:08:06 5 sitting here right now, I don't see a cause of
6 action that the estate would have to vacate
7 that settlement, including standing.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Okay. But you also claim that you don't
15:08:18 10 know anything. So once you find out and you see
11 that there may be, would you at that point file, if
12 you found out that Ted acted in adverse interests
13 and conflicts to settle himself out, could you file
14 a complaint to vacate or a motion to vacate that
15:08:39 15 settlement?

16 MS. CRISPIN: Okay. So now it was would
17 you and now the question is could you. Form.

18 THE WITNESS: Well, I think as I answered
19 at the prior hearing anyone can sue anyone for
15:08:52 20 anything. But the threshold issue here and
21 what you sketch out is one of standing. And
22 again, my quick analysis would be the estate
23 doesn't have, the estate of Simon doesn't have
24 the standing to overturn a settlement reached
15:09:03 25 by Ted Bernstein, Ted Bernstein as the Shirley

1 estate or PR, the trustee with Mr. Stansbury.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Again, could you file to vacate it if you
4 became aware of conflict and adverse interests in
15:09:28 5 the settlement process?

6 MS. CRISPIN: Okay. He has answered that
7 one. Next question.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Well, let's answer it yes or no.

10 MS. CRISPIN: No, he has answered it the
11 best that he could.

12 MR. ELIOT BERNSTEIN: Oh, okay.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Are you on behalf of the estate adverse to
15:09:43 15 William Stansbury's interests currently?

16 MS. CRISPIN: Form.

17 THE WITNESS: No, not the way -- no, not
18 the way that you've stated it. We have a
19 difference of opinion as to whether or not the
15:10:00 20 estate is liable to Mr. Stansbury. We are
21 taking the legal position that the estate is
22 not liable to Mr. Stansbury. But your question
23 is something different it sounds like to me.

24 BY MR. ELIOT BERNSTEIN:

15:10:13 25 Q. Okay. And then how are you letting him

1 drive the bus on the Chicago litigation for the
2 estate?

3 MS. CRISPIN: Form.

4 BY MR. ELIOT BERNSTEIN:

15:10:20 5 Q. Isn't that a conflict?

6 MS. CRISPIN: Form.

7 THE WITNESS: He is not driving the bus as
8 it comes to the Chicago litigation.

9 BY MR. ELIOT BERNSTEIN:

15:10:28 10 Q. Okay. Are you aware Judge Blakey
11 dismissed the motions to dismiss filed by the
12 estate and claimed that there are still unresolved
13 issues of the beneficiaries?

14 MS. CRISPIN: Form.

15:10:46 15 THE WITNESS: I am not aware of that. I
16 am aware that the case is set for trial this
17 summer. I am not aware of any undisposed of
18 outstanding motions other than, of course, the
19 complaint, the answer, and that's why it's set
15:11:02 20 for trial.

21 BY MR. ELIOT BERNSTEIN:

22 Q. So you haven't read the memorandum that
23 dismissed the estate's motion for summary judgment?

24 A. Yeah, I have read the order denying the
15:11:14 25 estate's motion for summary judgment. That's why

1 I --

2 Q. Are you aware that part of Judge Blakey's
3 ruling on triable issues of fact were that there
4 are still unresolved issues of who the
15:11:28 5 beneficiaries are?

6 MS. CRISPIN: Form.

7 THE WITNESS: I remember that --

8 MS. CRISPIN: If you know.

9 THE WITNESS: I remember that there is a
15:11:34 10 question of fact that the district court could
11 not rule on in a summary judgment, ergo the
12 case is going to trial on who the beneficiaries
13 are.

14 BY MR. ELIOT BERNSTEIN:

15:11:44 15 Q. Okay. Are you aware that in his order he
16 includes LaSalle National Trust as a primary
17 beneficiary and Simon Bernstein Trust, N.A. as a
18 contingent beneficiary?

19 MR. ROSE: Object to the form.

15:11:59 20 MS. CRISPIN: Form.

21 THE WITNESS: I don't have the order in
22 front of me. I know there's pleadings, of
23 course, on going both directions as to who the
24 beneficiaries are. That's where the dispute
15:12:09 25 is. Plaintiffs say one thing. Defendants

1 intervenors say another.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay. So your statement to the -- in this
4 deposition was that, you know, if the five children
15:12:22 5 didn't get these benefits, the estate would. But
6 my question is are you aware and have you done any
7 due diligence to find out if LaSalle National
8 Trust, the named primary beneficiary of the
9 insurance company, has a claim to the policy?

15:12:42 10 MS. CRISPIN: Again, that's work product.
11 There's ongoing litigation. He won't be
12 responding.

13 MR. ROSE: It's also an improper question
14 because they are not a party to the lawsuit and
15:12:51 15 there are only two --

16 MR. ELIOT BERNSTEIN: I am not asking Alan
17 Rose questions.

18 MR. ROSE: Well, I am stating my objection
19 for the record.

15:12:58 20 MR. ELIOT BERNSTEIN: Well, then state an
21 objection and that. Don't be answering
22 questions that I am asking a witness.

23 MR. ROSE: Well, I am stating an objection
24 and I am trying advise you as to the --

15:13:10 25 MR. ELIOT BERNSTEIN: You are not my

1 counsel. Don't ever advise me. Thank you for
2 that. I would never hire you.

3 BY MR. ELIOT BERNSTEIN:

4 Q. But okay. So as of today could you
15:13:27 5 definitively say that LaSalle or the Simon
6 Bernstein Trust, N.A. is not a potential
7 beneficiary?

8 MS. CRISPIN: Again, he won't be answering
9 that question. There's pending litigation.
15:13:38 10 You are asking him to, I guess, say what the
11 merits of the litigation are --

12 MR. ELIOT BERNSTEIN: No, I am not.

13 MS. CRISPIN: -- in your hypothetical.

14 MR. ELIOT BERNSTEIN: I am asking him to
15:13:46 15 clarify his prior statements. He said that the
16 only beneficiaries he was aware of were the
17 five children or the estate.

18 BY MR. ELIOT BERNSTEIN:

19 Q. I am asking are you aware of the potential
15:13:58 20 of LaSalle National Trust, N.A. and Simon Bernstein
21 Trust, N.A. being potential beneficiaries in the
22 litigation?

23 MR. ROSE: Object to the form.

24 MS. CRISPIN: Form, outside the scope.
15:14:09 25 And to the extent he asked a different question

1 now, are you aware that there's potentially
2 LaSalle Bank?

3 THE WITNESS: Yeah, based on my reading,
4 analysis, what have you, without divulging
15:14:22 5 attorney/client privilege, the only outcome of
6 the present estate, and I believe the outcome
7 should be that the funds go back to the estate,
8 whether they go to the estate or they go to a
9 trust of Simon Bernstein. Those are the
15:14:36 10 outcomes.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Are you aware of the Simon Bernstein
13 irrevocable insurance trust done in 2000 that named
14 the policy as a beneficiary -- the trust being the
15:14:51 15 beneficiary of that policy?

16 MS. CRISPIN: Form.

17 THE WITNESS: Yeah, without looking at --
18 I think what you are asking me is to who has
19 assigned the policy to who as a beneficiary?
15:15:04 20 And that is the subject of the litigation as to
21 who is the beneficiary. So I'd have to look,
22 if you are asking a document dated a certain
23 date, I'd have to look at the document to see
24 how that fits in the overall argument. I don't
15:15:17 25 have it in front of me. I don't have an

1 independent recollection of dates.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Okay. Have you prepared for this
4 deposition with any parties?

15:15:25 5 A. No.

6 Q. Have you prepared with Alan or Ted?

7 A. No, I have not.

8 MR. ELIOT BERNSTEIN: I am done.

9 THE WITNESS: Read.

15:15:39 10

11 (The deposition concluded at 3:15 p.m.)

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CERTIFICATE OF OATH

STATE OF FLORIDA
COUNTY OF PALM BEACH

In my capacity as a Notary Public of the State of Florida, I certify that on March 13, 2017, at 1:18 p.m., BRIAN O'CONNELL, personally appeared before me and took an oath (or affirmation) for the purpose of giving testimony in the matter: Estate of Simon L. Bernstein.

Identification:

Personally Known

SWORN TO and SUBSCRIBED before me this March 15, 2017, in the City of West Palm Beach, County of Palm Beach, State of Florida.

Lisa Mudrick, Notary Public
State of Florida at Large.

1 CERTIFICATE OF REPORTER

2
3 STATE OF FLORIDA

4 COUNTY OF PALM BEACH

5
6 I, LISA MUDRICK, RPR, FPR, do hereby
7 certify that I was authorized to and did
8 stenographically report the deposition of BRIAN
9 O'CONNELL; that a review of the transcript WAS
10 requested; and that the foregoing transcript, pages
11 from 1 through 114, inclusive, are a true and
12 correct record of my stenographic notes.13
14 I further certify that the said deposition
15 was taken at the time and place hereinabove set
16 forth and that the taking of said deposition was
17 commenced and completed as hereinabove set out.18
19 I further certify that I am not an
20 attorney or counsel of any of the parties, nor am I
21 a relative or employee of any attorney or counsel
22 or party connected with the action, nor am I
23 financially interested in the action.24
25 The foregoing certification of this
transcript does not apply to any reproduction of
the same by any means unless under the direct
control and/or direction of the certifying
reporter.

DATED March 15, 2017.

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W I T N E S S C E R T I F I C A T E

- - -

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

IN RE:
ESTATE OF SIMON L. BERNSTEIN,
Deceased.

/

I, BRIAN O'CONNELL, hereby state that I have read the foregoing transcript of the testimony given by me at my deposition on March 13, 2017, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition, except as I have so indicated on the errata sheet provided herein.

Dated this ____ day of _____, 2017.

BRIAN O'CONNELL

No Corrections: (Please initial) _____

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ERRATA SHEET

Style: Estate of Simon L. Bernstein

Dep: Brian O'Connell, taken March 13, 2017

Pursuant to Rule 1.310(e) of the Florida Rules of Civil Procedure, this deposition is being submitted to you for examination, reading and signing. Please DO NOT WRITE on the transcript. Any changes in form or substance you desire to make should be entered upon this sheet as follows:

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Under penalties of perjury, I declare that I have read my deposition, and that it is true and correct subject to any changes in form or substance entered here.

Date: _____ Signature: _____

1 March 15, 2017

2 Brian O'Connell, Esquire
(Boconnell@ciklinlubitz.com)
3 C/o Ashley Crispin, Esquire
(Acrispin@ciklinlubitz.com)
4 Ciklin Lubitz Martens & O'Connell
515 North Flagler Drive, 20th Floor
5 West Palm Beach, Florida 33401

6 Re: Estate of Simon L. Bernstein

7 Please take notice that on March 13, 2017,
8 you gave your deposition in the above referred
9 matter. At that time you did not waive signature.
10 It is now necessary that you sign your deposition.

11 Please call 561-615-8181 to set up an
12 appointment to read your deposition at 1615 Forum
13 Place, Suite 500, West Palm Beach, Florida, 33401.

14 If you do not appear to sign your
15 deposition within twenty (20) days, the original
16 transcript, which has already been forwarded to the
17 ordering attorney, may be filed with the Clerk of
18 the court. If you wish to waive your signature,
19 sign your name at the bottom of this page, and
20 return this page to us at the above address.

21 Very truly yours,
22 MUDRICK COURT REPORTING, INC.

23 NOTARY PUBLIC

24 I do hereby waive my signature:

25 _____
BRIAN O'CONNELL

cc: Peter M. Feaman, Esquire

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

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

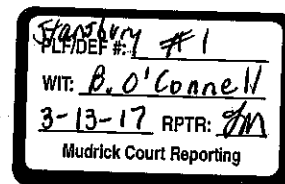
**SUCCESSOR PERSONAL REPRESENTATIVE'S PETITION FOR AUTHORIZATION
TO ENTER INTO CONTINGENCY AGREEMENT WITH ILLINOIS COUNSEL IN
PENDING LIFE INSURANCE LITIGATION**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative," "Estate" and "Decedent," respectively), petitions this Court for Authorization to Enter into Contingency Agreement with Illinois Counsel in Pending Life Insurance Litigation, and as grounds, therefore, states as follows:

1. By Order dated May 23, 2014, pursuant to a Petition filed by William Stansbury this Court authorized then-acting Curator, Benjamin Brown, to intervene on behalf of the Estate in litigation pending in the United States District Court for the Northern District Illinois (hereinafter "District Court" and the "Life Insurance Litigation," respectively). *See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 cv 3643 (N.D. Ill., E. Div.).

2. This Court ordered that all fees and cost incurred in the Life Insurance Litigation be borne by William Stansbury.

3. On June 5, 2014, the Estate, by and through counsel in Illinois, James J. Stamos, Esq. of Stamos & Trucco LLP (hereinafter "Illinois Counsel"), filed a Motion to Intervene, which the District Court granted on July 28, 2014.



4. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative.

5. The legal fees to date in the Life Insurance Litigation have been paid by William Stansbury ("Mr. Stansbury"), however, Mr. Stansbury has filed a Motion for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate ("Motion for Discharge"). The Motion for Discharge is attached hereto as Exhibit "A".

6. The value of the life insurance policy at issue in the Life Insurance Litigation is approximately \$1,700,000.00.

7. The Successor Personal Representative believes it is in the best interest of the Estate to continue with the Life Insurance Litigation.

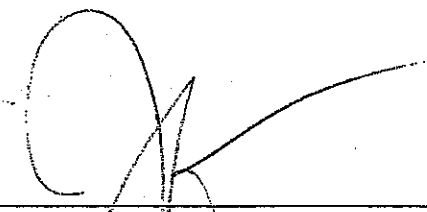
8. Illinois Counsel has agreed to waive the outstanding balance currently due and enter into a contingency agreement ("Contingency Agreement"), in which Illinois Counsel receives a percentage of recovery, in lieu of charging on an hourly basis. The Contingency Agreement is attached hereto as Exhibit "B".

9. Given the above, the Successor Personal Representative requests authorization to enter into the Contingency Agreement.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order authorizing Successor Personal Representative to enter into the Contingency Agreement with Illinois Counsel, and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXSB

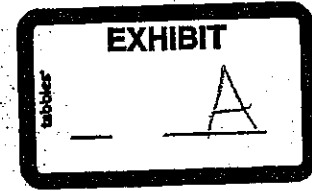
I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service
or U.S. Postal Service on the 2 day of December, 2015 to the parties on the attached
Service List.



BRIAN M. O'CONNELL
Florida Bar No: 308471
ASHLEY N. CRISPIN
Florida Bar No: 37495
JOELLE A. FOGLIETTA
Florida Bar No: 94238
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900
Facsimile: 561-833-4209
primary e-mail: service@ciklinlubitz.com
secondary e-mail: slobdell@ciklinlubitz.com

SERVICE LIST

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, PA. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@mrachek-law.com mchandler@mrachek-law.com Attorney for Ted S. Bernstein</p>	<p>John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com Attorney for Molly Simon et al</p>	<p>Donald R. Tescher, Esq. Robert L. Spallina, Esq. 925 S. Federal Highway, Suite 500 Boca Raton, FL 33432 Dtescher@tescherlaw.com ddustin@tescherlaw.com rspallina@tescherspallina.com kmoran@tescherspallina.com</p>
<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Bld., Suite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com</p>	<p>Shendell & Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.com grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>		



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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IV

**MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE
FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S
PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR
ASSUMPTION OF RESPONSIBILITY BY THE ESTATE**

COMES NOW, William E. Stansbury ("Stansbury"), Creditor of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and moves this Court for an Order discharging Stansbury from further responsibility for the funding of the Estate's participation in the "Chicago life insurance litigation", and for the Estate to assume responsibility for funding the Chicago life insurance litigation, and states:

1. At the time of Simon Bernstein's death it was determined that there existed a life insurance policy on the life of Simon Bernstein issued by Heritage Union Insurance Company ("Heritage"). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the "Insurance Trust").

2. The alleged Insurance Trust submitted a death claim to Heritage and demanded that Heritage pay the policy proceeds to the so-called "trustee" of the Insurance Trust. If paid to the Insurance Trust, the death benefit would not be included as an asset of the Estate. However, neither the original nor a copy of the "Insurance Trust" exists.

3. As a result, Heritage refused to pay the death benefit of \$1.7 million to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois. The case was subsequently removed to Federal Court. (The "Life Insurance Litigation") See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) A copy of the Amended Complaint filed in U.S. District Court is attached as Exhibit "1."

4. The Estate of Simon Bernstein was not made a party to the Life Insurance Litigation, even though the Estate will clearly be affected by the outcome of the litigation.

5. The original co-personal representatives of the Estate, Donald Tescher and Robert Spallina, failed or refused to intervene on behalf of the Estate.

6. After they resigned, Stansbury brought the Life Insurance Litigation to the attention of the Curator of the Estate and this Court. By Order dated May 23, 2014, pursuant to a Petition filed by Stansbury, this Court appointed the then-acting Curator, Benjamin Brown ("Brown"), as Administrator Ad Litem to pursue intervention in the Life Insurance Litigation in order to protect the interests of the Estate. This Court also ordered that all fees and costs incurred in the Life Insurance Litigation, "including for the Curator in connection with this work as Administrator Ad Litem and any counsel retained by Administrator Ad Litem, will initially be borne by William Stansbury." A copy of the May 23, 2014 Order is attached as Exhibit "2."

7. On June 5, 2014, the Estate, by and through counsel in Chicago, James J. Stamos, Esq., filed a Motion to Intervene.

8. On July 28, 2014, the United States District Court for the Northern District of Illinois granted the Estate's Motion to Intervene. In granting the Motion, the court stated at page 3 of the Order:

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the policy proceeds must be paid to the Estate as a matter of law. (*citing Harris v. Byard*, 501 So.2d 730, 734 (Fla. App. 1st DCA, 1987) (“Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than the decedent’s estate for administration and distribution.”))

The Court concluded that the Estate demonstrated a sufficient interest justifying intervention. A copy of the Order of the District Court Order is attached as Exhibit “3.”

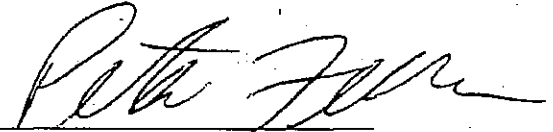
9. Additionally, James J. Stamos, the attorney in Chicago hired by the Estate to represent it in the Life Insurance Litigation, has stated that the Estate has a meritorious case, has a reasonable likelihood of success on the merits, and recommends that the Estate continue to participate.

10. As a result of the foregoing, Stansbury respectfully submits that due to his actions on behalf of the Estate, he has enabled the Estate to intervene and advance a meritorious position in the pending Life Insurance Litigation. There is now created a realistic expectation that the assets in the Estate could be more than doubled should the Estate’s position prevail. As such, Stansbury should be discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation, and the responsibility to pay attorney fees and costs in the case should henceforth be assumed by the Estate.

WHEREFORE, Petitioner, William E. Stansbury, requests that this Court issue an Order stating that: a) Stansbury is hereby discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation; and, b) the responsibility to pay future attorney fees and costs in the case are hereby to be assumed by

the Estate and the Estate is hereby authorized to proceed.

Respectfully submitted,



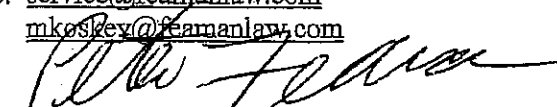
Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, bocconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com, on this 13 day of October, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoske@feamanlaw.com

By: _____



Peter M. Feaman
Florida Bar No. 0260347

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

-----)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

EXHIBIT 1

Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually and
as alleged Trustee of the Simon Bernstein
Irrevocable Insurance Trust Dtd, 6/21/95

Cross-Defendant

and,

PAMELA B. SIMON, DAVID B. SIMON,
both Professionally and Personally
ADAM SIMON, both Professionally and
Personally, THE SIMON LAW FIRM,
TESCHER & SPALLINA, P.A.,
DONALD TESCHER, both Professionally
and Personally, ROBERT SPALLINA,
both Professionally and Personally,
LISA FRIEDSTEIN, JILL IANTONI
S.B. LEXINGTON, INC. EMPLOYEE
DEATH BENEFIT TRUST, S.T.P.
ENTERPRISES, INC. S.B. LEXINGTON,
INC., NATIONAL SERVICE
ASSOCIATION (OF FLORIDA),
NATIONAL SERVICE ASSOCIATION
(OF ILLINOIS) AND JOHN AND JANE
DOES

Third-Party Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Elliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Elliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party
Defendants
*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

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

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB
PROBATE DIV.

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that

1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.

EXHIBIT 2

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.


MARTIN COLIN
Circuit Court Judge

Copies to:

Alan Rose, Esq., PAGE, MRACIEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mehaudler@pm-law.com;
John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, court@jpankouskilawfirm.com;
Peter M. Forman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@pfeamanlaw.com;
Elliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, ewb@elbersteinllp.com;
William H. Glanko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, hgl@palmettobaylaw.com;
John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, john@jpmorrisseylaw.com;
Benjamin R. Brown, Esq., Matwiczok & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matwiczoklaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant.)

Case No. 13 C 3643

Judge Amy St. Eve

ORDER

The Court grants Benjamin P. Brown's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court's diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust ("Bernstein Trust") alleged a breach of contract claim against Heritage based on Heritage's failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown's ("Brown") motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown's motion brought pursuant to Rule 24(a)(2).

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

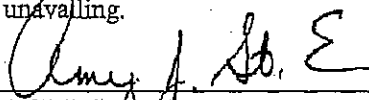
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). See *Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

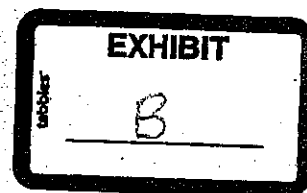
Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. See *Walker*, 705 F.3d at 658; see also *Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. See *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014



AMY J. ST. EVE
United States District Court Judge



STAMOS & TRUCCO LLP

Attorneys at Law

One East Wacker Drive, Third Floor, Chicago, Illinois 60601

James J. Stamos
jstamos@stamostrucco.com

TELEPHONE
(312) 630-7979

FACSIMILE
(312) 630-1183

November 25, 2015

Brian O'Connell
Ciklin Lubitz & O'Connell
515 North Flagler Drive
20th Floor
West Palm Beach, FL 33401

Re: Revised Retention Agreement
*Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable Trust DTD
6/21/95 v. Heritage Mutual Life Insurance Company*
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)

Dear Mr. O'Connell:

This will confirm that, in your capacity as Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action, already underway in federal court in Chicago, on a contingent fee basis. Our fees to date have been paid directly by Mr. William Stansbury, a claimant against the Estate. The outstanding balance of our fees and costs is currently \$15,164.78.

Upon execution of this retention agreement, and its approval by the Probate Court, we will waive the outstanding balance and our fee agreement going forward will be as follows:

- (1) We will receive as a fee 1/3 of the gross amount recovered by settlement of the above-captioned matter at any time prior to the completion of the final pretrial conference or, if none, prior to the morning of the first day upon which trial actually commences, plus any costs incurred including, but not limited to, filing fees, travel costs, copying, telefax, court reporting fees and online research.
- (2) We will receive as a fee forty (40) percent of the gross amount recovered, by settlement or otherwise, at any point after the completion of the final pretrial

Brian O'Connell
October 19, 2015
Page 2 of 2

conference or, if none, at any time beginning on the morning of the first day upon which trial actually commences, plus any costs incurred as defined in paragraph 1.

- (3) Upon your execution of this Agreement and its approval by the Probate Court, Mr. Stansbury will be relieved of his obligation to pay any further litigation costs and/or fees.
- (4) In the event you instruct us to dismiss the case prior to final adjudication such that we are deprived of the opportunity to earn a fee based upon an amount paid in judgment or settlement, the Estate agrees to pay us immediately upon dismissal an amount equal to the number of hours we will have worked on the case through dismissal, multiplied by the hourly rates of \$420 for my time, \$210 for time billed by my associates, including Kevin Horan, other partner time at \$325 and paralegal time at \$105, in addition to any costs incurred as defined in paragraph 1, plus the current outstanding balance of \$15,164.78. It is further understood that any amounts paid under this paragraph 4 will be subject to the usual requirement that all fees charged in litigation be reasonable.

If you agree to these terms, please print this page, sign where indicated and return it to me along with a copy of the court's Order approving your entry into this Agreement on behalf of the Estate.

I look forward to hearing from you.

Very truly yours.



James J. Starnos

JJS:kph

AGREED AND ACCEPTED

Brian M. O'Connell, as Personal Representative
of the Estate of Simon Bernstein

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

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/TH

Deceased.

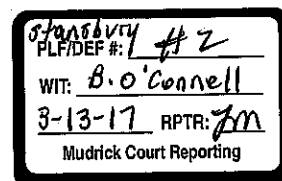
SUCCESSOR PERSONAL REPRESENTATIVE'S AMENDED PETITION FOR
AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT OR HOURLY
FEE AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE
LITIGATION

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative," "Estate" and "Decedent," respectively), petitions this Court for Authorization to Enter into Contingency Agreement or Hourly Fee Agreement with Illinois Counsel in Pending Life Insurance Litigation, and as grounds, therefore, states as follows:

1. By Order dated May 23, 2014, pursuant to a Petition filed by William Stansbury this Court authorized then-acting Curator, Benjamin Brown, to intervene on behalf of the Estate in litigation pending in the United States District Court for the Northern District Illinois (hereinafter "District Court" and the "Life Insurance Litigation," respectively). *See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 cv 3643 (N.D. Ill., E. Div.).

2. This Court ordered that all fees and cost incurred in the Life Insurance Litigation be borne by William Stansbury.

3. On June 5, 2014, the Estate, by and through counsel in Illinois, James J. Stamos, Esq. of Stamos & Trucco LLP (hereinafter "Illinois Counsel"), filed a Motion to Intervene, which the District Court granted on July 28, 2014.



4. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative.

5. The legal fees to date in the Life Insurance Litigation have been paid by William Stansbury ("Mr. Stansbury"), however, Mr. Stansbury has filed a Motion for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate ("Motion for Discharge"). The Motion for Discharge is attached hereto as Exhibit "A".

6. The value of the life insurance policy at issue in the Life Insurance Litigation is approximately \$1,700,000.00.

7. The Successor Personal Representative believes it is in the best interest of the Estate to continue with the Life Insurance Litigation.

8. Illinois Counsel has agreed to waive the outstanding balance currently due and enter into a contingency agreement ("Contingency Agreement"), in which Illinois Counsel receives a percentage of recovery, in lieu of charging on an hourly basis. The Contingency Agreement is attached hereto as Exhibit "B".

9. Alternatively, the Successor Personal Representative could enter into an hourly fee agreement with Illinois Counsel, attached hereto as Exhibit "C" (hereinafter "Hourly Fee Agreement").

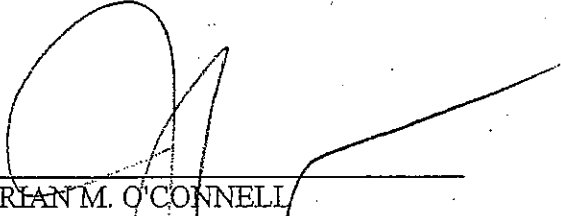
10. The Successor Personal Representative requests authorization to enter into the Contingency Agreement or the Hourly Fee Agreement with Illinois Counsel.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order authorizing Successor Personal Representative to enter into the Contingency

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXSB

Agreement or the Hourly Fee Agreement with Illinois Counsel, and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 4th day of December, 2015 to the parties on the attached Service List.



BRIAN M. O'CONNELL
Florida Bar No: 308471
ASHLEY N. CRISPIN
Florida Bar No: 37495
JOIELLE A. FOGLIETTA
Florida Bar No: 94238
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900
Facsimile: 561-833-4209
primary e-mail: service@ciklinlubitz.com
secondary e-mail: slobdell@ciklinlubitz.com

SERVICE LIST

<p>Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 S. Flagler Dr., Suite 600 West Palm Beach, FL 33401 (561) 355-6991 arose@mrachek-law.com mchandler@mrachek-law.com Attorney for Ted S. Bernstein</p>	<p>John P. Morrissey, Esq. 330 Clematis St., Suite 213 West Palm Beach, FL 33401 john@jmorrisseylaw.com Attorney for Molly Simon et al</p>	<p>Donald R. Tescher, Esq. Robert L. Spallina, Esq. 925 S. Federal Highway, Suite 500 Boca Raton, FL 33432 Dtescher@tescherlaw.com ddustin@tescherlaw.com rspallina@tescherspallina.com kmoran@tescherspallina.com</p>
<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 pfeaman@feamanlaw.com</p>	<p>Shendell & Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.com grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com grs@shendellpollock.com Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34th St. Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 psimon@stpcorp.com</p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 Lisa@friedsteins.com Lisa.friedstein@gmail.com Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents & Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>		

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXSB



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

IN RE:

Case No.: 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

**MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE
FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S
PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR
ASSUMPTION OF RESPONSIBILITY BY THE ESTATE**

COMES NOW, William E. Stansbury ("Stansbury"), Creditor of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and moves this Court for an Order discharging Stansbury from further responsibility for the funding of the Estate's participation in the "Chicago life insurance litigation", and for the Estate to assume responsibility for funding the Chicago life insurance litigation, and states:

1. At the time of Simon Bernstein's death it was determined that there existed a life insurance policy on the life of Simon Bernstein issued by Heritage Union Insurance Company ("Heritage"). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the "Insurance Trust").

2. The alleged Insurance Trust submitted a death claim to Heritage and demanded that Heritage pay the policy proceeds to the so-called "trustee" of the Insurance Trust. If paid to the Insurance Trust, the death benefit would not be included as an asset of the Estate. However, neither the original nor a copy of the "Insurance Trust" exists.

3. As a result, Heritage refused to pay the death benefit of \$1.7 million to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois. The case was subsequently removed to Federal Court. (The "Life Insurance Litigation") See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) A copy of the Amended Complaint filed in U.S. District Court is attached as Exhibit "1."

4. The Estate of Simon Bernstein was not made a party to the Life Insurance Litigation, even though the Estate will clearly be affected by the outcome of the litigation.

5. The original co-personal representatives of the Estate, Donald Tescher and Robert Spallina, failed or refused to intervene on behalf of the Estate.

6. After they resigned, Stansbury brought the Life Insurance Litigation to the attention of the Curator of the Estate and this Court. By Order dated May 23, 2014, pursuant to a Petition filed by Stansbury, this Court appointed the then-acting Curator, Benjamin Brown ("Brown"), as Administrator Ad Litem to pursue intervention in the Life Insurance Litigation in order to protect the interests of the Estate. This Court also ordered that all fees and costs incurred in the Life Insurance Litigation, "including for the Curator in connection with this work as Administrator Ad Litem and any counsel retained by Administrator Ad Litem, will initially be borne by William Stansbury." A copy of the May 23, 2014 Order is attached as Exhibit "2."

7. On June 5, 2014, the Estate, by and through counsel in Chicago, James J. Stamos, Esq., filed a Motion to Intervene.

8. On July 28, 2014, the United States District Court for the Northern District of Illinois **granted** the Estate's Motion to Intervene. In granting the Motion, the court stated at page 3 of the Order:

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the policy proceeds must be paid to the Estate as a matter of law. (*citing Harris v. Byard*, 501 So.2d 730, 734 (Fla. App. 1st DCA, 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than the decedent's estate for administration and distribution."))

The Court concluded that the Estate demonstrated a sufficient interest justifying intervention. A copy of the Order of the District Court Order is attached as Exhibit "3."

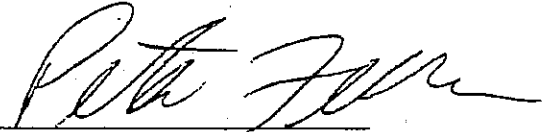
9. Additionally, James J. Stamos, the attorney in Chicago hired by the Estate to represent it in the Life Insurance Litigation, has stated that the Estate has a meritorious case, has a reasonable likelihood of success on the merits, and recommends that the Estate continue to participate.

10. As a result of the foregoing, Stansbury respectfully submits that due to his actions on behalf of the Estate, he has enabled the Estate to intervene and advance a meritorious position in the pending Life Insurance Litigation. There is now created a realistic expectation that the assets in the Estate could be more than doubled should the Estate's position prevail. As such, Stansbury should be discharged from further responsibility to pay attorney fees and costs in connection with the Estate's participation in the Life Insurance Litigation, and the responsibility to pay attorney fees and costs in the case should henceforth be assumed by the Estate.

WHEREFORE, Petitioner, William E. Stansbury, requests that this Court issue an Order stating that: a) Stansbury is hereby discharged from further responsibility to pay attorney fees and costs in connection with the Estate's participation in the Life Insurance Litigation; and, b) the responsibility to pay future attorney fees and costs in the case are hereby to be assumed by

the Estate and the Estate is hereby authorized to proceed.

Respectfully submitted,



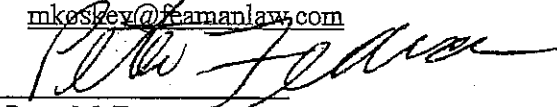
Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com; Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, boconnell@ciklinlubitz.com; John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, john@jmorrisseylaw.com; Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, ijb@ijblegal.com, on this 13 day of October, 2014.

PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
Tel: 561-734-5552
Fax: 561-734-5554
Service: service@feamanlaw.com
mkoszary@feamanlaw.com

By: _____



Peter M. Feaman
Florida Bar No. 0260347

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,
by Ted S. Bernstein, its Trustee, Ted
Bernstein, an individual,
Pamela B. Simon, an individual,
Jill Iantoni, an individual and Lisa S.
Friedstein, an individual.

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE
COMPANY

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE
TRUST DTD 6/21/95

Counter-Defendant

and,

FIRST ARLINGTON NATIONAL BANK
as Trustee of S.B. Lexington, Inc. Employee
Death Benefit Trust, UNITED BANK OF
ILLINOIS, BANK OF AMERICA,
Successor in interest to LaSalle National
Trust, N.A., SIMON BERNSTEIN TRUST,
N.A., TED BERNSTEIN, individually and
as purported Trustee of the Simon Bernstein

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

EXHIBIT 1

Irrevocable Insurance Trust Dtd 6/21/95,
and ELIOT BERNSTEIN

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually and
as alleged Trustee of the Simon Bernstein
Irrevocable Insurance Trust Dtd, 6/21/95

Cross-Defendant

and,

PAMELA B. SIMON, DAVID B. SIMON,
both Professionally and Personally
ADAM SIMON, both Professionally and
Personally, THE SIMON LAW FIRM,
TESCHER & SPALLINA, P.A.,
DONALD TESCHER, both Professionally
and Personally, ROBERT SPALLINA,
both Professionally and Personally,
LISA FRIEDSTEIN, JILL IANTONI
S.B. LEXINGTON, INC. EMPLOYEE
DEATH BENEFIT TRUST, S.T.P.
ENTERPRISES, INC. S.B. LEXINGTON,
INC., NATIONAL SERVICE
ASSOCIATION (OF FLORIDA),
NATIONAL SERVICE ASSOCIATION
(OF ILLINOIS) AND JOHN AND JANE
DOES

Third-Party Defendants.

PLAINTIFFS' FIRST AMENDED COMPLAINT

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

BACKGROUND

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.
7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.
8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.
9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.
10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.
11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.
12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.
14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.
15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".
16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.
17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.
18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.
19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

COUNT I

BREACH OF CONTRACT

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.
29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.
30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.
31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.
32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.
33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

COUNT III

RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 313-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party
Defendants
*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela Simon, Lisa Friedstein
and Jill Iantoni*

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

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB
PROBATE DIV.

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that


1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.

EXHIBIT 2

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.


MARTIN COLIN
Circuit Court Judge

Copies to:
Alan Rose, Esq., PAGE, MRACIIEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mehandler@pm-law.com
John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, court@pankauskilawfirm.com
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com
Elliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, eb@elw.com
William H. Gilasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, bill@palmettobaylaw.com
John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, john@jpmorrisseylaw.com
Benjamin P. Brown, Esq., Matwiczok & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, bbrown@matbrofaw.com

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant.)

Case No. 13 C 3643

Judge Amy St. Eve

ORDER

The Court grants Benjamin P. Brown's motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company ("Defendant" or "Jackson"), as successor in interest to Heritage Union Life Insurance Company ("Heritage"), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court's diversity jurisdiction. See 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust ("Bernstein Trust") alleged a breach of contract claim against Heritage based on Heritage's failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown's ("Brown") motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown's motion brought pursuant to Rule 24(a)(2).

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

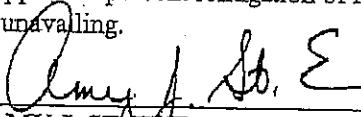
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

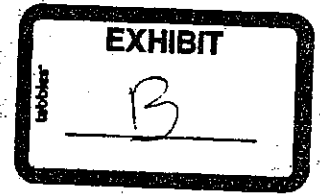
unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). See *Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. See *Walker*, 705 F.3d at 658; see also *Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. See *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014


AMY J. ST. JEVE
United States District Court Judge



STAMOS & TRUCCO LLP

Attorneys at Law

One East Wacker Drive, Third Floor, Chicago, Illinois 60601

James J. Stamos
jstamos@stamostrucco.com

TELEPHONE
(312) 630-7979

FACSIMILE
(312) 630-1183

November 25, 2015

Brian O'Connell
Ciklin Lubitz & O'Connell
515 North Flagler Drive
20th Floor
West Palm Beach, FL 33401

Re: Revised Retention Agreement
*Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable Trust DTD
6/21/95 v. Heritage Mutual Life Insurance Company
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)*

Dear Mr. O'Connell:

This will confirm that, in your capacity as Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action, already underway in federal court in Chicago, on a contingent fee basis. Our fees to date have been paid directly by Mr. William Stansbury, a claimant against the Estate. The outstanding balance of our fees and costs is currently \$15,164.78.

Upon execution of this retention agreement, and its approval by the Probate Court, we will waive the outstanding balance and our fee agreement going forward will be as follows:

- (1) We will receive as a fee 1/3 of the gross amount recovered by settlement of the above-captioned matter at any time prior to the completion of the final pretrial conference or, if none, prior to the morning of the first day upon which trial actually commences, plus any costs incurred including, but not limited to, filing fees, travel costs, copying, telefax, court reporting fees and online research.
- (2) We will receive as a fee forty (40) percent of the gross amount recovered, by settlement or otherwise, at any point after the completion of the final pretrial

Brian O'Connell
October 19, 2015
Page 2 of 2

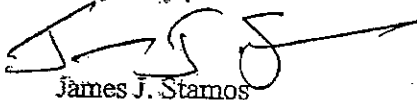
conference or, if none, at any time beginning on the morning of the first day upon which trial actually commences, plus any costs incurred as defined in paragraph 1.

- (3) Upon your execution of this Agreement and its approval by the Probate Court, Mr. Stansbury will be relieved of his obligation to pay any further litigation costs and/or fees.
- (4) In the event you instruct us to dismiss the case prior to final adjudication such that we are deprived of the opportunity to earn a fee based upon an amount paid in judgment or settlement, the Estate agrees to pay us immediately upon dismissal an amount equal to the number of hours we will have worked on the case through dismissal, multiplied by the hourly rates of \$420 for my time, \$210 for time billed by my associates, including Kevin Horan, other partner time at \$325 and paralegal time at \$105, in addition to any costs incurred as defined in paragraph 1, plus the current outstanding balance of \$15,164.78. It is further understood that any amounts paid under this paragraph 4 will be subject to the usual requirement that all fees charged in litigation be reasonable.

If you agree to these terms, please print this page, sign where indicated and return it to me along with a copy of the court's Order approving your entry into this Agreement on behalf of the Estate.

I look forward to hearing from you.

Very truly yours.



James J. Stamos

JJS:kph

AGREED AND ACCEPTED

Brian M. O'Connell, as Personal Representative
of the Estate of Simon Bernstein



STAMOS & TRUCCO LLP

Attorneys at Law

One East Wacker Drive, Third Floor, Chicago, Illinois 60601

James J. Stamos
jstamos@stamosrucco.com

TELEPHONE
(312) 630-7979

FACSIMILE
(312) 630-1183

James J. Stamos
jstamos@stamosrucco.com

December 5, 2015

BRIAN M. O'CONNELL
Ciklin Lubitz & O'Connell
515 N. Flagler Dr.
20th Floor
West Palm Beach, FL 33401

Re: *Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable
Trust DTD 6/21/95 v. Heritage Mutual Life Insurance Company*
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)

Dear Mr. O'Connell:

This will confirm that, in your capacity as Successor Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action in federal court in Chicago. We will bill my time at the hourly rate of \$420 an hour. We will bill other partner time at \$325 an hour and associate time at \$210 an hour. We bill monthly and we charge for customary out-of-pocket expenses including copying, telefax and online research. We require payment within 30 days of invoice. We will also require that the outstanding balance of \$15,164.78 owed under the previous retention agreement be paid within 30 days of the probate court's approval of this agreement.

If this letter accurately reflects our agreement, please execute where indicated, and return it to me. Email PDF is acceptable. I look forward to representing the Estate and working with you.

Very truly yours,



James J. Stamos

JJS:dmv

AGREED AND ACCEPTED

BRIAN M. O'CONNELL, as Successor Personal Representative
of the Estate of Simon Bernstein

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

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

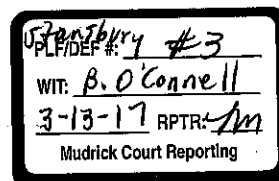
FILE NO: 502012CP4391XXXXNB

Deceased.

OBJECTION TO "ACCOUNTING OF SIMON BERNSTEIN TRUST BY TED S.
BERNSTEIN, SUCCESSOR TRUSTEE" FOR THE TIME PERIOD OF
FEBRUARY 3, 2014 THROUGH MARCH 15, 2015

BRIAN M. O'CONNELL, as Personal Representative of the Estate of Simon Bernstein ("Personal Representative" and "Estate," respectively), by and through undersigned counsel, hereby files his Objection to the "Accounting of Simon Bernstein Trust by Ted S. Bernstein, Successor Trustee" for the time period of February 3, 2014 through March 15, 2015" ("Accounting," "Trust," and "Ted," respectively), and objects to the "Accounting," on the following bases, including but not limited to:

1. On or about March 30, 2014, Ted S. Bernstein served the "Accounting."
2. The Personal Representative objects to the "Accounting" as it is ambiguous, insufficient, incomplete, and/or incorrect and seeks a more complete and detailed accounting as required under Fla. Stat. 736.08135, Fla. Prob. R. 5.346, and other applicable Florida Law and reserves his right to further object after receipt and examination of same.
3. The "Accounting" does not comply with Fla. R. Prob. 5.346(a), (b), and (c).
4. The "Accounting" does not comply with §736.08135, Florida Statutes.



9/30/15

5. The Personal Representative, at this time, makes the following additional general objections, and reserves his right to further object:

- a. Pursuant to Florida Statute §736.08135(1) – The “Accounting” does not adequately describe the beginning balance and does not adequately disclose the source and/or specific assets of the Trust from the date on which the trustee became accountable;
- b. Pursuant to Florida Statute §736.08135(2)(b) and Fla. Prob. R. 5.346(a)(1)– The “Accounting” fails to show all cash and property transactions and gains and losses realized during the accounting period and/or from commencement of administration;
- c. The “Accounting” does not contain a schedule of assets at the end of the accounting period as is required by Fla. Prob. R. 5.346(a)(2);
- d. Pursuant to Florida Statute §736.08135(2)(c) and Fla. Prob. R. 5.346(b)(4)– The “Accounting” fails to identify the acquisition value or carrying value and the estimated current value and does not contain the two values in the schedule of assets at the end of the accounting period. The “Accounting” fails to list known noncontingent liability(ies) with an estimated current amount of the liability(ies);
- e. Pursuant to Florida Statute §736.08135(2)(d) and Fla. Prob. R. 5.346(b)(6) – The “Accounting” fails to show significant transactions that do not affect the amount for which the trustee is accountable;
- f. The “Accounting” does not contain sufficient information to put interested persons on notice as to all significant transactions affecting the

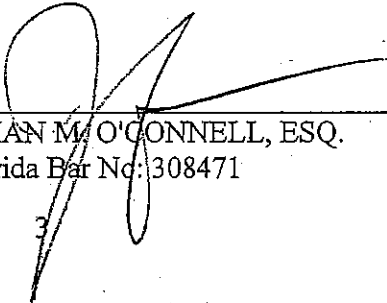
administration during the accounting periods as is required by Fla. Prob. R. 5.346(b)(3);

- g. Pursuant to Florida Statute §736.08135(2)(e) – The “Accounting” fails to reflect the allocation of receipts, disbursements, accruals, or allowances between income and principal when the allocation affects the interest of any beneficiary of the trust; and
- h. Personal Representative objects to the Disbursement to Bruce Stone in the amount of \$7,250.00, as no substantiating documents were provided, thus, the Personal Representative reserves any and all further objections after examination of same.

6. In addition, the Personal Representative objects to the “Accounting” as no substantiating documents were provided, thus the Personal Representative reserves his right to further object after receipt and examination of same.

WHEREFORE, BRIAN M. O’CONNELL, as Personal Representative of the Estate of Simon Bernstein, by and through undersigned counsel, hereby files his Objection to the “Accounting of Simon Bernstein Trust by Ted S. Bernstein, Successor Trustee” for the time period of February 3, 2014 through March 15, 2015,” and requests attorneys’ fees and costs and any further relief deemed necessary or proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail service on the 30th day of, September 2015 to all on the Service List attached.


BRIAN M. O’CONNELL, ESQ.
Florida Bar No: 308471

In Re: Estate of Simon L. Bernstein
File No: 502012CP004391XXXXSB

ASHLEY N. CRISPIN, ESQ.
Florida Bar No: 37495
JOIELLE A. FOGLIETTA, ESQ.
Florida Bar No. 94238
CIKLIN LUBITZ & O'CONNELL
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
Telephone: 561-832-5900
Facsimile: 561-833-4209
primary e-mail: service@ciklinlubitz.com
secondary e-mail: slobdell@ciklinlubitz.com