

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE DIV. CASE NO:
502012CP004391XXXXNB(IH)

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

/

Proceedings before the Honorable
ROSEMARIE SCHER
Volume II

Wednesday, June 28, 2017
3188 PGA Boulevard
North Palm Beach County Courthouse
Palm Beach Gardens, Florida 33410
9:47 - 11:38 a.m.

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

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EXAMINATIONS

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Witness:

WILLIAM STANSBURY

BY MR. ROSE 105

BY MR. FEAMAN 150

BY MR. ELIOT BERNSTEIN 168

EXHIBITS MARKED

No: Trustee's Exhibits

1 Letter, for I.D 123

2 Court Transcript May 23, 2014, In Evidence 147

No: Interested Party Bernstein's Exhibits

1 Claim Form, for I.D. 169

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

2 - - -

3 BE IT REMEMBERED that the following
4 proceedings were had in the above-styled and
5 numbered cause in the North Palm Beach County
6 Courthouse, City of Palm Beach Gardens, County of
7 Palm Beach, in the State of Florida, by Lisa
8 Mudrick, RPR, FPR, before the Honorable ROSEMARIE
9 SCHER, Judge in the above-named Court, on June 28,
10 2017, to wit:

11 - - -

12 THE COURT: Who's provided me a new
13 notebook?

14 MR. ROSE: It's just the transcripts of
09:47:30 15 the two hearings --

16 THE COURT: Oh, thank you.

17 MR. ROSE: -- that may be relevant so
18 everyone can follow along.

19 THE COURT: Okay. All right.

09:47:36 20 MR. ROSE: I provided a copy to the
21 witness stand.

22 THE COURT: Thank you.

23 MR. ROSE: And I mailed all counsel prior
24 a few days ago.

09:47:42 25 THE COURT: Okay. Thank you.

1 All right. I have re-read everything, so
2 let me just pull up my notes.

3 Let's have everybody say their appearances
4 for the record, please.

09:47:49 5 MR. FEAMAN: Peter Feaman on behalf of the
6 movant William Stansbury. With me is William
7 Stansbury.

8 THE COURT: Thank you.

9 MR. ELIOT BERNSTEIN: Eliot Bernstein,
09:47:58 10 pro se.

11 THE COURT: Thank you.

12 MR. ROSE: Alan Rose on behalf of Ted S.
13 Bernstein, trustee.

14 MS. CRISPIN: Your Honor, Ashley Crispin
09:48:04 15 on behalf of Brian O'Connell, personal
16 representative.

17 HON. DIANA LEWIS: Diana Lewis, guardian
18 ad litem for the Eliot Bernstein children.

19 THE COURT: Thank you.

09:48:13 20 All right. Give me one second to pull up
21 my notes. That explains it. I will concede I
22 was having a moment where I was freaking out
23 because I brought all this home last night and
24 re-read it. But I always have my typed notes
09:49:30 25 as well. And I couldn't find the typed notes,

1 but then I realized I placed them under
2 Stansbury instead of the normal Bernstein. So
3 we are all good.

4 All right. Now, my notes say that we are
09:49:42 5 ready for Mr. Feaman to do his redirect.

6 MR. FEAMAN: I don't think so. I think
7 Mr. Rose hasn't done his cross yet.

8 MR. ELIOT BERNSTEIN: Could I ask a
9 question on who's present today here? At the
09:50:00 10 last hearing Mr. Rose was going to subpoena my
11 children, my adult children. I have his
12 statement in the record if you would like a
13 copy. They are not here and present, so I just
14 want to make that clear. And I just want to
09:50:16 15 know if anybody is representing some of the
16 other alleged beneficiaries.

17 THE COURT: We did all of the appearances
18 for the record, so we'll move on.

19 MR. ELIOT BERNSTEIN: So can we find out
09:50:23 20 who they are representing?

21 THE COURT: I am not representing anybody.

22 MR. ELIOT BERNSTEIN: No, who they are
23 representing and who is not represented here at
24 this hearing?

09:50:29 25 THE COURT: I am sorry, you are right,

1 Mr. Stansbury on the stand, start with
2 Mr. Rose's cross. Thank you.

3 I am not understanding your question,
4 Mr. Eliot.

09:50:37 5 MR. ELIOT BERNSTEIN: Well, I am trying to
6 figure out who is here -- state appearances
7 for.

8 THE COURT: You know, we can go ahead and
9 do appearances once again and then begin.
09:50:43 10 Everybody, if you wouldn't mind.

11 I know Mr. Feaman is here for
12 Mr. Stansbury.

13 You are here for yourself.

14 Mr. Rose, you are here for the trustee.

09:50:50 15 Ms. Crispin, you are here on behalf of
16 Brian O'Connell.

17 And, of course, Ms. Lewis is here on
18 behalf of the children, the guardianship of
19 your children.

09:51:06 20 Yes?

21 MR. ELIOT BERNSTEIN: Okay. Nobody is
22 here representing --

23 THE COURT: That's clear. Let's move on.

24 MR. ELIOT BERNSTEIN: Okay.

09:51:09 25 THE COURT: Mr. Stansbury, come on up.

1 Thank you. Let me re-swear you in.

2 - - -

3 Thereupon,

4 WILLIAM STANSBURY,

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

7 THE WITNESS: I do.

8 THE COURT: Thank you. Please have a
9 seat. All right. You are up. Thank you.

10 MR. ROSE: Thank you.

11 CROSS (WILLIAM STANSBURY)

12 BY MR. ROSE:

13 Q. Good morning, Mr. Stansbury.

14 A. Morning, Mr. Rose.

09:51:37 15 Q. I provided a binder that has two
16 transcripts that's on the ledge. We may or may not
17 need to look at the transcripts. But in case I ask
18 you anything about the transcripts, I wanted you to
19 have the complete copies in front of you. Okay?

09:51:50 20 A. Thank you.

21 Q. So you are an interested person in this
22 estate; is that your position?

23 A. Yes.

24 Q. And that's because you have a claim
09:52:00 25 against the estate?

1 A. Correct, yes.

2 Q. And approximate dollar value of your
3 claim, and I am not going to hold you to this, but
4 just to give some sense of the scope, is it fair to
09:52:12 5 say the approximate dollar value of your claim is
6 approximately two and a half million dollars or
7 more?

8 A. Approximately, yes.

9 Q. Okay. And if the insurance proceeds do
09:52:24 10 not come into this estate you would agree there's
11 not sufficient funds in the estate to pay your
12 claim?

13 A. I don't have enough information to agree
14 with that or disagree with it.

09:52:36 15 Q. You haven't seen any inventories that have
16 been filed?

17 A. I have seen inventories, but I am also
18 aware through, I don't know if it's readings or a
19 lot of stuff goes back and forth over five years,
09:52:51 20 that the trust has some obligation, if the estate
21 is short of funds, to replenish the estate with
22 funds that it may need to settle obligations.

23 Q. So you have seen an inventory of the
24 estate?

09:53:08 25 A. Yeah. I mean, I have seen inventories. I

1 am not sure which one is right or not, but I have
2 seen inventories.

3 Q. You know the estate has substantially less
4 than two and a half million dollars in it, correct?

09:53:20 5 A. Based on what I have seen.

6 Q. And you have seen an accounting of the
7 trust, at least one accounting of the Simon
8 Bernstein Trust that's been filed by me and
9 Mr. Bernstein?

09:53:30 10 A. I don't recall seeing it, but -- I don't
11 recall seeing it.

12 Q. Now, if you win your lawsuit and the life
13 insurance proceeds come into this estate, you will
14 benefit by having additional funds in the estate,
09:53:47 15 correct?

16 A. Well, the estate would benefit first. And
17 then ultimately if I prevail, as I understand it,
18 then the assets in the estate could be used to
19 satisfy any claim or judgment that I am awarded.

09:54:00 20 Q. And that's the reason why you were willing
21 to fund the litigation in front of Judge Colton?

22 A. It's a reason, not the only reason.

23 Q. What were the other reasons?

24 A. Well, I think there were a number of, you
09:54:17 25 know, reasons that, you know, I shared last time I

1 was here. But the fact that I have been in the
2 insurance business my entire life. And I am aware
3 that when beneficiaries cannot be found that the
4 insurance companies will look to the estate. And
09:54:39 5 if there's a will, then it would go through the
6 probate estate. If not, then it could go into --
7 you have intestacy laws that apply in the state.
8 But it just doesn't go where it can't be proven it
9 should go.

09:54:55 10 Q. And we are not here today to decide that
11 issue, right?

12 A. I understand.

13 Q. That's being decided in Illinois?

14 A. Yeah, sure.

09:55:01 15 Q. I don't mean to interrupt you, but let me
16 finish my questions.

17 A. You are asking me -- I am sorry.

18 Q. It will be easier for the court reporter
19 if you let me finish my question, and I will always
09:55:11 20 try to let you finish your answer.

21 MR. FEAMAN: Actually I am not sure the
22 witness did finish his answer, Your Honor.

23 THE COURT: So at this point did you
24 finish your answer? Should we ask the question
09:55:27 25 again?

1 THE WITNESS: Well, Mr. Rose asked me what
2 other reasons. And I was sharing with him the
3 fact that it is a business that I have been
4 involved in. And when I see something that's
09:55:34 5 not right, I think that it should be at least
6 given an opportunity for the estate to have a
7 seat at the table.

8 I do recall seeing some correspondence
9 where it was admitted by the PR that the estate
09:55:49 10 would be the likely beneficiary of the proceeds
11 of the policy. But so that's the reasons.

12 BY MR. ROSE:

13 Q. Any other reasons you want to add to your
14 answer?

09:56:04 15 A. None that I can think of right now.

16 Q. Okay. We'll talk about your insurance
17 business experience later. But do you consider as
18 you sit here today at all what Simon Bernstein
19 wanted to have happen to his life insurance
09:56:17 20 proceeds?

21 MR. FEAMAN: Objection, calls for
22 speculation as to the state of mind of a
23 deceased person.

24 THE COURT: Overruled, because he said
09:56:25 25 does he consider. He didn't ask what Simon

1 Bernstein's intent was.

2 MR. FEAMAN: Thank you.

3 THE COURT: Thank you. Overruled. You
4 may proceed.

09:56:33 5 THE WITNESS: Do I consider it, was that
6 your question?

7 BY MR. ROSE:

8 Q. My question was as you sit here today and
9 you testify, are you giving any consideration to
09:56:42 10 what Simon Bernstein might have wanted to happen
11 with his life insurance proceeds?

12 A. No.

13 Q. Do you have any knowledge of what Simon
14 Bernstein wanted to have happen with his life
09:56:54 15 insurance proceeds?

16 A. No.

17 Q. Now, you testified that you had some
18 involvement in reinstating the policy?

19 A. Correct.

09:57:03 20 Q. And what was your understanding at that
21 time, whenever that was, as to the beneficiary of
22 the policy?

23 A. I didn't get into a discussion about the
24 beneficiary. The fire that was raging was the fact
09:57:25 25 that his life insurance policy had lapsed, which

1 would have meant no one would have received
2 anything. And I was somewhat instrumental in
3 helping to get the policy reinstated.

4 Q. But just so we are clear, as part of
09:57:38 5 whatever you did --

6 A. I didn't -- I am sorry.

7 Q. As part of whatever you did or whatever
8 involvement you had, you never learned at that time
9 who the beneficiary of the policy was?

09:57:51 10 A. I never asked and it was never told to me.

11 Q. Okay. By anyone?

12 THE COURT: I just saw someone walk in the
13 courtroom, and I didn't know if he was a
14 witness.

09:58:10 15 THE DEPUTY: Just a spectator.

16 THE COURT: Okay. Fair enough. Thank
17 you.

18 BY MR. ROSE:

19 Q. Now, do you agree that before he died
09:58:16 20 Simon Bernstein could have changed the beneficiary
21 of this policy to anyone he chose?

22 A. Yes.

23 Q. And at the time Simon created his final
24 testamentary documents in July of 2012, you had
09:58:35 25 already filed a lawsuit against him, correct?

1 A. Correct.

2 Q. And you were suing him for the same two
3 and a half million dollars approximately that you
4 are still seeking, correct?

09:58:46 5 A. Correct.

6 Q. So at the time Simon met with his lawyers
7 and did his final estate documents, he was aware
8 that you were someone suing him for a lot of money?

9 A. Correct.

09:59:02 10 Q. Now -- and I think this is a little bit
11 what you talked about last time. But there was
12 some concern when this policy lapsed because Simon
13 would no longer be able to get the same type of
14 insurance, the same dollar amount or the same risk
09:59:21 15 rating?

16 A. Well, I am not an underwriter. But he was
17 younger when he bought it and he wasn't as sick.
18 So when you buy it older and sicker, generally you
19 don't get as good of a deal. So that's a pretty
09:59:32 20 fair assessment.

21 Q. And you are not an underwriter but you
22 have 40 years experience in the industry, and you
23 know that Simon would probably not have been able
24 to get life insurance at that time if this policy
09:59:41 25 lapsed?

1 A. Correct.

2 Q. That's why it was so important to get it
3 reinstated?

4 A. Yes.

09:59:46 5 Q. What did you do exactly to get it
6 reinstated?

7 A. I worked with -- he and I shared an
8 administrative assistant. And I worked with her on
9 creating a letter that would be useful for purposes
10:00:03 10 of trying to have the insurance company understand
11 that it was not Simon's intent to lapse his
12 insurance, and that the policy was what we referred
13 to as lapsed in error. And they needed to
14 reconsider their decision to lapse the policy,
10:00:22 15 allow him to pay the back premium, and put the
16 benefit back in force without any waiver of the
17 contestable period. Generally when a policy lapses
18 if it's reinstated you have to both prove
19 insurability. And there's a, most companies, a
10:00:38 20 two-year contestable period that you have to
21 survive in order for the benefit to be payable.

22 Q. Would you agree with me that you
23 personally did not call the insurance company, but
24 other employees or agents of Simon Bernstein
10:00:49 25 actually contacted the insurance company?

1 A. I think I was instrumental in creating a
2 letter that ended up getting the policy reinstated.

3 Q. And the letter wasn't signed by you,
4 right? It was signed by someone else?

10:01:01 5 A. Correct.

6 Q. Okay. You didn't personally call anybody?

7 A. No.

8 Q. And you had no idea who the beneficiary
9 was?

10:01:10 10 A. No.

11 Q. Now, was Simon visibly agitated or upset
12 in any way about the lapsing of this policy?

13 A. He was upset.

14 Q. And can you elaborate?

10:01:27 15 A. No. He was just upset.

16 Q. And so it's your testimony, though, that
17 he reinstated a policy without having a beneficiary
18 designated properly so that the money would come
19 into his estate and could be used to pay a claim
10:01:40 20 such as yourself?

21 MR. FEAMAN: Objection, lack of predicate
22 all of those facts he stated.

23 MS. CRISPIN: Objection, foundation.

24 THE COURT: Sustained.

25 ///

1 BY MR. ROSE:

2 Q. If Simon -- Simon had at least the same
3 number of years in the insurance business that you
4 had, right?

10:01:57 5 A. I think so.

6 Q. You never spoke to him about that? You
7 don't know that?

8 A. I think it was maybe a little bit more,
9 but we were contemporaries.

10:02:06 10 Q. My question was at least as many as you.
11 So if he had more it would be at least as many,
12 right?

13 A. Oh, yes. Thank you.

14 Q. Okay. You spent a lot of time with Simon
10:02:17 15 Bernstein in some period of time when you worked
16 for the same company?

17 A. Yes, I did.

18 Q. Near the latter stages of his life?

19 A. Yes.

10:02:26 20 Q. You got to know him well?

21 A. I did.

22 Q. From those observations and experiences do
23 you believe he was fairly knowledgeable about the
24 insurance industry?

10:02:36 25 A. Certain aspects of it, yes.

1 Q. And he would have known that if he did not
2 have a beneficiary designation properly filled out,
3 that the money would go to the owner of the policy?

4 MR. FEAMAN: Objection as to what Simon
10:02:47 5 might have known.

6 THE COURT: Can I have the question read
7 back, please?

8 (The following portion of the record was
9 read back.)

10:02:54 10 "Q. And he would have known that if he
11 did not have a beneficiary designation properly
12 filled out, that the money would go to the
13 owner of the policy?"

14 THE COURT: Sustained.

10:03:05 15 BY MR. ROSE:

16 Q. Would anybody that has as many years
17 experience as Simon Bernstein in the life insurance
18 industry know that if there's not a proper
19 beneficiary designation the proceeds would go to
10:03:15 20 the owner of the policy?

21 MS. CRISPIN: Objection, speculation.

22 MR. FEAMAN: Objection, speculation.

23 THE COURT: Sustained.

24 BY MR. ROSE:

10:03:29 25 Q. Do you know that if you don't have a

1 policy beneficiary designation filled out that the
2 money goes to the owner of the policy?

3 MS. CRISPIN: Objection, relevance.

4 THE COURT: Overruled.

10:03:43 5 THE WITNESS: Can you re-ask me the
6 question, please?

7 BY MR. ROSE:

8 Q. You are funding the Illinois litigation at
9 this point, right?

10:03:53 10 A. Yes.

11 Q. And it's the position of the estate in
12 that litigation that there's no proper beneficiary
13 designation for this insurance policy, correct?

14 A. I think the issue is can you prove who the
10:04:08 15 beneficiary is in terms of the document, who the
16 trustee is, who -- you know, what the trust says.
17 Again, I have seen over the years where businesses
18 have insurance on somebody, the business collapses,
19 they forget to change the beneficiary and, you
10:04:28 20 know.

21 So, you know, I am sure there is language
22 on there that says who is listed as the contingent
23 beneficiary, but that person cannot be found.

24 There's pretty good established law, I believe,
10:04:44 25 that would go back to the estate of the decedent,

1 the owner of the policy.

2 Q. So the answer to my question is if there's
3 no beneficiary properly designated or located, then
4 the proceeds go to the owner of the policy?

10:04:56 5 A. To the estate of the owner if the owner
6 was the decedent. I mean, there's different paths
7 to people. You can be an owner of a policy on
8 somebody else's life.

9 Q. Right. And maybe we are -- I am asking
10:05:11 10 sort of a simple narrow question, so. I could, for
11 example, could own a life insurance policy on the
12 life of Simon Bernstein, correct?

13 A. Correct.

14 Q. I might be alive when he dies?

10:05:19 15 A. Correct.

16 Q. And if there's no beneficiary designation,
17 who gets the proceeds? Me as the owner, correct?

18 A. It may be argued that you should be
19 entitled to it.

10:05:33 20 Q. Yes or no, the owner of the policy --

21 A. Insurance is a state regulated industry,
22 and states have different rules and regulations and
23 procedures. And so I am not going to make a broad
24 brush statement about insurance in general.

10:05:51 25 Q. Okay. So let's say I have --

1 A. I am sure you could make an argument for
2 it.

3 Q. Let's say I am the owner of a life
4 insurance policy on Simon Bernstein's life. I have
10:06:02 5 a legally recognized insurable interest in his
6 life, and there's no beneficiary named. So you
7 know that under those circumstances the proceeds go
8 to the owner of the policy, correct?

9 MR. FEAMAN: Objection, hypothetical.

10:06:15 10 THE COURT: Overruled.

11 THE WITNESS: Who's the beneficiary on the
12 policy when Simon Bernstein died?

13 BY MR. ROSE:

14 Q. I think I said there was no beneficiary.

10:06:25 15 A. I don't know what that means. The policy
16 could not have been issued without a beneficiary.

17 Q. Just like this policy couldn't be issued
18 without a beneficiary, right, the one that we are
19 talking about today?

10:06:36 20 A. Correct.

21 Q. Okay.

22 MR. ROSE: Your Honor, I apologize, I
23 don't have stickers. I didn't remember how we
24 were numbering them at the last hearing.

10:06:53 25 THE COURT: Give me one second. Let's

1 look at what we have been doing. I know
2 Mr. Feaman's have been premarked, and I don't
3 think you put anything in yet. We were up to,
4 according to my record, Stansbury 8.

10:07:05 5 MR. FEAMAN: Correct, Your Honor.

6 MR. ROSE: Should I call this the
7 Trustee's 1?

8 THE COURT: Yes, that's fine. That works.
9 Thank you.

10:07:11 10 MR. ROSE: Okay.

11 THE COURT: I always keep the evidence
12 right up here for everybody.

13 MR. ROSE: Exhibit 1. Exhibit 1. This is
14 Exhibit 1.

10:08:01 15 THE COURT: Okay. I am not going to look
16 at it until it's in evidence.

17 MR. ROSE: I am sorry.

18 THE COURT: Thank you.

19 BY MR. ROSE:

10:08:10 20 Q. I am going to hand you what I marked as
21 Exhibit 1 for identification. My first question is
22 are you familiar -- have you seen this document
23 before?

24 A. Yes, I have.

10:08:27 25 Q. It was produced by somebody in connection

1 with litigation in this case?

2 A. It appears it was produced by Jackson
3 National Insurance Company that's responsible for
4 the payment.

10:08:44 5 Q. Okay. And do you have any reason to
6 believe this letter is not authentic?

7 A. I have no reason to believe it isn't.

8 MR. ROSE: I would move Exhibit 1 into
9 evidence.

10:08:56 10 THE COURT: Objection?

11 MR. FEAMAN: Objection, hearsay and
12 relevancy.

13 THE COURT: I am looking at it just for
14 the hearsay and relevancy objection. Sustained
10:09:08 15 as to hearsay.

16 MR. ROSE: May I be heard?

17 THE COURT: Sure.

18 MR. ROSE: It's not hearsay if it's an
19 operative legal document like a contract.
10:09:15 20 Because it specifies the beneficiary and it's
21 signed by -- submitted to the insurance
22 company, and it was produced by them.

23 THE COURT: What part of the evidence
24 rules are you citing that it's a hearsay
10:09:26 25 exception?

1 MR. ROSE: It's not hearsay. It's an
2 operative document.

3 THE COURT: I was looking at the first
4 page, so I will look at the second page. It's
10:09:37 5 a request letter to change a beneficiary. You
6 are saying that's an operative document? Do
7 you have anything, a case or something to show
8 me? I am not just being snarky. I have never
9 heard that.

10:09:50 10 MR. ROSE: Okay. And I am also not
11 offering necessarily -- I am offering for the
12 fact that it was sent from the insurance
13 company, not for the truth of the -- for the
14 purposes of what you are doing today, not for
10:10:00 15 the truth as it might be offered in Illinois.

16 And I would proffer for you, if you look
17 at the document that this designates two
18 beneficiaries of the policy in question, one of
19 which is the LaSalle National Trust, N.A., and
10:10:15 20 the second of which is the Simon Bernstein
21 Irrevocable Insurance Trust dated June 21,
22 1995, which is the plaintiff in the Illinois
23 case.

24 THE COURT: Okay. I sustained the hearsay
10:10:26 25 objection.

1 MR. ROSE: Okay.

2 BY MR. ROSE:

3 Q. Are you aware of who the --

4 THE COURT: Hold on, please. Let me mark
10:10:33 5 it. Did you put a sticker on it? No. I will
6 call this Trustee's Exhibit 1. Please allow me
7 to take the time to mark it.

8 (Trustee's Exb. No. 1, Letter, for I.D.)

9 THE COURT: Okay. You may proceed, thank
10:11:18 10 you.

11 BY MR. ROSE:

12 Q. You just told us that the life insurance
13 -- strike that. You just told us that a life
14 insurance company would not issue a policy if it
10:11:27 15 did not have a beneficiary named; is that true?

16 A. I have never seen it, so I am going to
17 assume it's true.

18 Q. And you are aware of who the insurance
19 company in this case believes were the primary and
10:11:36 20 contingent beneficiary?

21 MS. CRISPIN: Objection, speculation.

22 THE COURT: I apologize, can I have that
23 read back again?

24 (The following portion of the record was
10:11:46 25 read back.)

1 "Q. And you are aware of who the
2 insurance company in this case believes were
3 the primary and contingent beneficiary?"

4 THE COURT: Overruled speculation.

10:12:07 5 THE WITNESS: I can answer? I am aware
6 from what I have seen who the beneficiaries are
7 listed as.

8 BY MR. ROSE:

9 Q. And the insurance company believes that
10:12:16 10 the contingent beneficiary or the second
11 beneficiary was an insurance trust, correct?

12 A. Insurance company has listed the Simon
13 Bernstein Irrevocable Insurance Trust Dated
14 June 21, 1995, as the second beneficiary.

10:12:35 15 Q. And so the issue in Illinois is whether
16 that entity, that trust, exists so that it can be
17 the beneficiary, correct?

18 A. I suspect that it is.

19 Q. Okay. So assuming Simon Bernstein --
10:12:53 20 strike that. I don't want to say assuming.
21 Withdraw the question.

22 Do you have any reason to believe Simon
23 Bernstein at the time you were reinstating this
24 policy did not know that the 1995 trust was the
10:13:14 25 beneficiary of the policy?

1 MR. ELIOT BERNSTEIN: Object.

2 THE COURT: What's the legal objection?

3 MR. ELIOT BERNSTEIN: Relevancy as to what
4 any of this line of questioning has to do with
10:13:22 5 him paying. This is trying his case.

6 THE COURT: That's a relevancy objection.

7 MR. FEAMAN: Join.

8 THE COURT: Sustained.

9 Next question, please.

10:13:31 10 BY MR. ROSE:

11 Q. Okay. Now, you testified last time, I am
12 a little bit confused from your testimony, that you
13 knew Mr. Spallina was doing something wrong when he
14 demanded the proceeds be paid to this 1995
10:13:53 15 insurance trust? Do you remember that testimony?

16 A. I don't remember it the way you just said
17 it.

18 Q. Do you remember something close to that,
19 to save time?

10:14:04 20 A. I remember that he was trying to get it
21 paid to a trust that had nothing to do with this
22 1995 trust.

23 Q. I think your testimony was you knew it was
24 wrong what he was doing?

10:14:15 25 A. What he was doing was not, in my opinion,

1 ethical.

2 Q. But how did you know what he was doing --
3 how did you know he was doing something that was
4 wrong?

10:14:25 5 A. He admitted that he had never seen the
6 trust, that he didn't know what it said, educated
7 guesses were being made with regard to the
8 ownership and the beneficiary and who the trustee
9 was. He stated that in his opinion the proceeds
10:14:45 10 would go to the Estate of Simon Bernstein if this
11 trust could not be found. Based on that he, as the
12 trustee of the 1995 trust, submitted a life
13 insurance policy claim form to the insurance
14 company. And he indicated on that claim form that
10:15:02 15 he was the trustee of the 1995 trust.

16 To me that -- you know, I don't know how
17 many wrong things there are in there, but there are
18 quite a few.

19 Q. All right. But the point is you didn't
10:15:16 20 know from personal knowledge, you are saying from
21 something Mr. Spallina told you is what led you to
22 conclude he was doing something wrong?

23 A. Well, his actions led me to believe that
24 what he was doing was wrong, yes.

10:15:28 25 Q. Well, you had never seen the life

1 insurance policy itself, correct?

2 A. I hadn't. And according to what he said
3 he hadn't either.

4 Q. I asked if you had, though. Can you
10:15:39 5 answer my question?

6 A. I did. I hadn't and he hadn't.

7 Q. You hadn't?

8 THE COURT: All right. Please let him
9 finish the answer before you ask a question.
10:15:45 10 Just let him finish the question --

11 THE WITNESS: Thank you.

12 THE COURT: -- before you ask another one.

13 BY MR. ROSE:

14 Q. You had never seen it, correct?

10:15:51 15 MR. ELIOT BERNSTEIN: Again, I object on
16 the same grounds of relevancy, his paying the
17 litigation -- we are litigating the case that's
18 being litigated in Illinois under a federal
19 judge.

10:16:02 20 MS. CRISPIN: Join.

21 THE COURT: I would sustain that
22 objection.

23 BY MR. ROSE:

24 Q. Now, do you believe the estate could lose
10:16:13 25 the case in Illinois?

1 MS. CRISPIN: Relevancy objection, Your
2 Honor.

3 MR. FEAMAN: Speculation, legal
4 conclusion.

10:16:22 5 THE COURT: Overruled. Because he is
6 paying and funding that right now and that is
7 the issue, so overruled on that.

8 THE WITNESS: Is the question do I believe
9 the estate could lose?

10:16:35 10 BY MR. ROSE:

11 Q. Yes.

12 A. I don't have enough information. I am not
13 involved in what procedurally is going on there.
14 So I have to assume that the attorney representing
10:16:47 15 the estate wouldn't be doing it if he didn't think
16 there was a likelihood that he would win.

17 Q. My question was more directed to you. Do
18 you think there's some risk that the money you have
19 advanced in Illinois will not be returned to you
10:17:02 20 because the estate will lose the litigation?

21 A. I don't think my reimbursement from the
22 fees that I have advanced for initially funding the
23 case were contingent upon the estate winning or
24 losing, only providing a benefit.

10:17:25 25 Q. In the book you have in front of you, if

1 you would turn to the first tab, and let's go to
2 page 35.

3 MR. ELIOT BERNSTEIN: Do we have that? Do
4 we have a copy of that?

10:17:40 5 THE COURT: I am sorry, page 35?

6 MR. ROSE: Mr. Feaman, do you have a copy?

7 MR. FEAMAN: Of the transcript?

8 MR. ROSE: Yes.

9 MR. FEAMAN: I do.

10:17:49 10 MR. ROSE: Here, Mr. Bernstein, I have
11 extra copies.

12 THE COURT: Thirty-five?

13 MR. ROSE: Thirty-five.

14 THE COURT: Thank you.

10:17:59 15 MR. ELIOT BERNSTEIN: Of which one,
16 Exhibit 1? What hearing, June 2nd or May 23rd?

17 MR. ROSE: May 23rd.

18 BY MR. ROSE:

19 Q. Are you at page 35, sir?

10:18:13 20 A. Yes, Mr. Rose, I am.

21 Q. Okay. Now, this is a transcript of a
22 hearing that was held on May 23rd, 2014, right?

23 A. Yes.

24 Q. And you were at that hearing in person?

10:18:20 25 A. Yes.

1 Q. And you were represented by Mr. Feaman who
2 was present?

3 A. Yes.

4 Q. As your counsel?

10:18:26 5 A. Yes.

6 Q. Okay. So on page 35 the court stated, and
7 if you go back to 34 for context, there was a
8 discussion about who would pay the fees. And the
9 court said, "I just said that won't be the case."
10:18:49 10 Mr. Morrissey said, "That could potentially be the
11 case." And the judge said, "It would only be the
12 case if there was a recovery for the estate to
13 which then Mr. Stansbury would say under the
14 statute I performed a benefit for the estate."

10:19:01 15 Do you see where Judge Colin said that?

16 A. Mr. Rose, I am sorry, I was trying to find
17 on page 34 where you were. Can you give me a line
18 where you are starting?

19 Q. Well, let's just read what's on 35.

10:19:13 20 A. All right.

21 Q. The court said, "It would only be the case
22 if there was a recovery for the estate to which
23 then Mr. Stansbury would say under the statute I
24 performed a benefit for the estate."

10:19:23 25 Do you see that?

1 A. Yes, I do.

2 Q. And then let's go down a few more lines
3 starting at line 12, the fourth word, "There's not
4 a dollar coming out of the estate unless there's a
10:19:33 5 recovery basically, and then the recovery would
6 take place and he would seek some recovery of
7 fees."

8 Do you see where Judge Colin said that?

9 A. I see that.

10:19:39 10 Q. And you heard him when he said that
11 because you were in the courtroom?

12 A. Yes.

13 Q. So what you just told me was you didn't
14 see what winning or losing had to do with whether
10:19:49 15 you got reimbursed. Does that change your view on
16 that issue?

17 A. Not at all. Because on line six it refers
18 -- Judge Colin refers to under the statute. And
19 the statute, as I have come to understand, does not
10:20:03 20 necessarily require a monetary transaction in order
21 to provide a benefit for the estate.

22 Q. And did you read the amended order that
23 Judge Colin entered in this case?

24 A. I saw something within like the last week
10:20:18 25 or two. The only order that I had seen was the

1 order that Judge Colin personally signed on
2 May 23rd.

3 MR. ROSE: May I approach and get the
4 exhibits, Your Honor?

10:20:29 5 THE COURT: You may.

6 MR. ELIOT BERNSTEIN: Could we get a copy
7 of that?

8 MR. FEAMAN: The orders are Exhibits 1 and
9 2.

10:20:38 10 MR. ROSE: I am going to hand the witness
11 what's already been marked and it's already in
12 evidence as Exhibit 2.

13 MR. ELIOT BERNSTEIN: Do you have a copy
14 of that?

10:20:48 15 THE COURT: It's already in evidence.

16 MR. ELIOT BERNSTEIN: Oh.

17 BY MR. ROSE:

18 Q. So if you look at Exhibit 2, which is in
19 evidence, paragraph two, and I will read it, it
10:21:13 20 says, "For the reasons and subject to the
21 conditions stated on the record during the May 23,
22 2014 hearing, all attorneys' fees and costs
23 incurred, including for the curator in connection
24 with his work as administrator ad litem, and any
10:21:27 25 counsel retained by the administrator ad litem,

1 will initially be borne by William Stansbury."

2 Do you see that?

3 A. Yes, I see the word initially was added.

4 Q. Right. And you had a debate with
10:21:39 5 Ms. Crispin about what the word initially meant?

6 A. I think she was just asking me what it
7 meant, and I gave her what I thought initially
8 meant. I don't think it was a debate.

9 Q. I am not going to debate the word
10:21:50 10 initially. There's a dictionary that can help us
11 with that.

12 Then in paragraph three the court says,
13 "The court will consider any subsequent petition
14 for fees and costs by William Stansbury. However,
10:21:58 15 Mr. Stansbury shall not be reimbursed for any fees
16 or costs incurred from either the decedent's estate
17 or trust unless there is a recovery in the Illinois
18 litigation on behalf of the estate which results in
19 a net benefit after any such fees and costs are
10:22:13 20 paid to the estate." Do you see that?

21 A. I see that.

22 Q. Now, you didn't appeal that order,
23 correct?

24 A. I didn't even know it was in here. So the
10:22:21 25 only thing I saw was the May 23rd order that Judge

1 Colin had signed.

2 Q. You didn't appeal the May 23rd order,
3 correct?

4 A. No.

10:22:28 5 Q. You didn't appeal the amended order, did
6 you?

7 A. Again, I couldn't appeal something I
8 didn't know.

9 Q. Are you suggesting your counsel didn't
10:22:37 10 receive a copy of the order?

11 A. I am not suggesting anything.

12 Q. Okay. So if your counsel received a copy
13 of the order you could have filed a notice of
14 appeal of that order if you were unhappy with it,
10:22:46 15 correct?

16 MR. FEAMAN: Objection, calls for a legal
17 conclusion as to whether he could file a notice
18 of appeal. I mean, I can get into an argument
19 as whether that's an appealable order or not,
10:22:55 20 but he is asking him for a legal conclusion.

21 MR. ROSE: Well, can they just stipulate
22 they didn't appeal the order?

23 THE COURT: The Court knows the order
24 wasn't appealed.

10:23:04 25 MR. ROSE: Okay.

1 THE COURT: I am the judge on the case.

2 MR. ELIOT BERNSTEIN: Well, it's
3 interlocutory, isn't it?

4 THE COURT: No, it's not. And right now
5 it has not --

6 (Overspeaking.)

7 MR. ELIOT BERNSTEIN: -- appeal final
8 judgment --

9 (Overspeaking.)

10 THE REPORTER: I'm sorry, please, one at a
11 time. I'm sorry, Your Honor, I missed what you
12 were saying.

13 THE COURT: I am not going to discuss
14 whether it's possible to be appealed. It has
10:23:21 15 not been appealed. Let's move on.

16 BY MR. ROSE:

17 Q. If the order is enforced as written that
18 means that you cannot be paid back for your fees
19 unless the estate wins in Illinois? Do you agree
10:23:35 20 with that?

21 A. I am not sure that winning would be an
22 accurate word. Hypothetically a settlement could
23 occur where monies would come into the estate as a
24 result of the litigation. I don't know if winning
10:23:52 25 and losing is -- are words used in settlements.

1 And I am not sure that benefits are necessarily
2 tied to dollars and cents. I know that legal fees
3 are expensive. And I think if legal fees can be
4 waived or absorbed or put into a contingency
10:24:16 5 agreement by an attorney that that certainly is an
6 economic benefit to the estate.

7 Q. Well, if the estate would settle for
8 \$50,000, which is not enough to pay your fees, then
9 would you agree that the recovery you would have
10:24:32 10 would be limited to the amount of the settlement?

11 MR. FEAMAN: Objection, calls for
12 hypothetical.

13 THE COURT: Sustained.

14 BY MR. ROSE:

10:24:45 15 Q. If the case is not settled and the estate
16 loses at trial, would you agree you don't get
17 reimbursed under the terms of that order as it's
18 written?

19 A. No. I think I have fulfilled my
10:24:54 20 obligation under the order that was signed on
21 May 23rd Judge Colin's office, based on the hearing
22 that I sat through and the testimony that I heard.

23 Q. So there's no risk to you what happens in
24 Illinois? Win, lose or draw, so long as the estate
10:25:07 25 has enough money, you get paid back your \$73,000

1 that you claim to have spent?

2 A. I believe I did what I promised I would
3 do, initially fund litigation. And I have provided
4 a benefit to the estate. I don't know what else to
10:25:25 5 say.

6 Q. Well, just so I am clear, though,
7 regardless of what happens, assuming the estate has
8 enough money to pay you back \$73,000, it's your
9 position you are entitled to be paid back
10:25:36 10 regardless of the outcome of the Illinois case?

11 A. Yes.

12 Q. So there's no risk to you?

13 A. Loss of use of my money, interest that I
14 have lost on it, yeah. I am not asking for any
10:25:47 15 time factor money on the 70 some odd thousand I put
16 out.

17 Q. Now, if the estate pays you back money,
18 hires a lawyer in Illinois, and pays the lawyer in
19 Illinois and loses, would you agree that there is a
10:25:59 20 reduction in the assets that would be available in
21 the estate to distribute to the beneficiary?

22 A. Under that scenario that would be. But
23 that's a choice that they could make. They also
24 have the option of doing a contingency agreement
10:26:13 25 and not having any risk.

1 Q. Well, they already have risk because the
2 estate has to pay you in your own view \$73,000,
3 correct?

4 A. I say that's not a risk. That's a
10:26:22 5 benefit.

6 Q. Well, if the estate loses the lawsuit and
7 doesn't settle, you would agree no money will flow
8 into the estate from the Illinois case, true?

9 A. Seems like that would be a fair
10:26:36 10 assessment.

11 Q. But at the same time the estate will have
12 spent \$73,000 for this benefit that you conferred
13 upon it to be a plaintiff or a defendant or a
14 claimant in this litigation?

10:26:49 15 A. Yes. I provided them that opportunity and
16 benefit to be a part of the discussion with regard
17 to the \$1.7 million dollar policy.

18 Q. And you don't believe there's some risk
19 that the estate loses, and that what you have done
10:27:01 20 is in fact subject the estate to a risky litigation
21 that is going to cause it to incur legal fees?

22 A. I didn't -- I didn't risk anything to the
23 estate. I provided a benefit to the estate.

24 Q. Well, you don't believe for -- strike
10:27:21 25 that. You know for a fact, don't you, that there

1 was --

2 THE COURT: Can we move on from this line?
3 I think I got it. I mean, I am only seeing,
4 Mr. Rose, he believes he has given a benefit to
10:27:31 5 the estate, win, lose or draw, correct, at this
6 point?

7 THE WITNESS: Yes, sir, Your Honor.

8 THE COURT: I got it. Let's move on. I
9 know your position is unless the estate
10:27:41 10 collects money from the Illinois litigation he
11 would not even have the potential right to come
12 back to the Court. Have I got it?

13 MR. ROSE: Yes. I just --

14 THE COURT: Awesome. Let's move on to our
10:27:51 15 next point.

16 BY MR. ROSE:

17 Q. You are aware that there was plenty of
18 money in the estate for it to hire its own lawyer
19 if the PRs were interested in joining the Illinois
10:28:07 20 lawsuit, correct?

21 A. I am aware there was money in the estate,
22 yes.

23 Q. And the issue wasn't money? The issue was
24 whether the estate was willing to join in the
10:28:17 25 litigation, and you stepped in and asked Judge

1 Colin for permission to cause the estate to join
2 the litigation? Is that a fair summary?

3 A. I think it misses a few issues. At the
4 time the PRs Tescher and Spallina had resigned the
10:28:34 5 Illinois litigation was on somewhat of a deadline.
6 I think there was a July deadline to deposit papers
7 or whatever you folks do to do things in the legal
8 world. And we were in May.

9 There was a curator appointed, Ben Brown.
10:28:54 10 We were trying to have some opportunity to have the
11 estate represented in the Illinois litigation.
12 Mr. Brown was reluctant to go forward without some
13 sort of court guidance.

14 And, you know, so it was in that gray area
10:29:11 15 that there was no PR in the estate for them to take
16 the what I believe appropriate and probably legal
17 action to represent the estate in a situation where
18 they have a chance to secure a \$1.7 million dollar
19 benefit.

10:29:27 20 Q. And certain of the beneficiaries who were
21 represented by Mr. Morrissey were objecting to
22 that, correct?

23 A. My recollection and Judge Colin was going
24 back and forth with Mr. Morrissey on that because
10:29:38 25 he essentially, Mr. Morrissey was being asked if he

1 was arguing against his -- for his clients not to
2 receive any benefit as a result of the litigation.
3 And I think Mr. Morrissey said that he hadn't had
4 an opportunity to confer with his clients with
10:29:54 5 regard to that.

6 Q. Well, whatever Mr. Morrissey said is on
7 the transcript.

8 You recall him being there and arguing
9 against your position?

10:30:04 10 A. I recall he was arguing against the estate
11 being involved in the litigation, yes.

12 Q. And the trustee, who is the residuary
13 beneficiary, was concerned about the expenditure of
14 the limited resources in the estate on litigation,
10:30:18 15 correct?

16 A. I can't say what his concern or feelings
17 were. But I do know that he is the plaintiff on
18 the other side of the litigation, that if the
19 litigation didn't proceed with the estate being at
10:30:32 20 the table, he would have personally stood to
21 receive some benefit as a result of the insurance.

22 Q. Now, do you recognize that you are subject
23 to an amended order of Judge Colin that requires
24 you to pay Mr. Stamos?

10:30:49 25 A. I am aware that there was an order that

1 Judge Stamos issued on May 23rd.

2 MR. FEAMAN: Judge Colin.

3 THE WITNESS: Who did I say?

4 MR. FEAMAN: You said Stamos.

10:30:58 5 THE WITNESS: Oh, sorry about that. Comes
6 with age.

7 MR. FEAMAN: Sorry, Your Honor.

8 THE COURT: That's okay.

9 THE WITNESS: The order that Judge Colin
10:31:04 10 issued that I am aware of was May 23rd, and
11 where I was asked -- and in this amended order
12 I see where he has also indicated in there that
13 initially I bear the expense, not forever.

14 BY MR. ROSE:

10:31:21 15 Q. But you have seen that order? You are
16 saying you didn't see it back in June when he
17 signed it. You have seen it since then?

18 A. Yes.

19 Q. Okay. So it's your position that that
10:31:32 20 order doesn't obligate you to pay Mr. Stamos at the
21 present time; is that true?

22 A. My position is that I was required to
23 initially take the expense of the litigation, and I
24 have done that.

10:31:48 25 Q. So are you obligated today as you sit

1 here, unless the Court modifies the order, are you
2 obligated to pay Mr. Stamos? Or in your view have
3 you served your entire purpose and you have no
4 further obligation?

10:32:01 5 A. That would be my position.

6 Q. Okay. Now, putting aside what you are
7 obligated to do, could you fund the litigation in
8 Illinois without causing any undue hardship to
9 yourself?

10:32:10 10 MR. FEAMAN: Objection, relevancy,
11 invasion of privacy.

12 THE COURT: Sustained.

13 MR. ROSE: Ma'am, it's directly relevant
14 to compliance with the court order if you
10:32:18 15 have ability or inability to comply with the
16 court order. I am not asking him how much
17 money he has. I am asking if it would cause
18 undue --

19 THE COURT: He hasn't raised the fact that
10:32:26 20 he can't pay it.

21 MR. ROSE: Okay.

22 THE COURT: I mean, if he was to raise
23 that as a defense. But that's certainly -- and
24 I am not holding him in civil contempt. And I
10:32:36 25 haven't made any finding that he has violated

1 the court order. I would agree that if I was
2 holding him in indirect civil contempt then I
3 would certainly have to determine whether or
4 not he could pay it. But that has not been
10:32:47 5 raised, and the Court will not go there today.

6 MR. ROSE: Okay.

7 BY MR. ROSE:

8 Q. Are you making any claim that this would
9 be a financial hardship to continue funding
10:32:57 10 Illinois?

11 MR. FEAMAN: Same objection.

12 THE COURT: Sustained.

13 MR. ROSE: Okay.

14 BY MR. ROSE:

10:33:01 15 Q. Are you willing to fund the case to the
16 end if the Court were to order you to do so?

17 MR. FEAMAN: Objection, relevancy,
18 speculation, hypothetical.

19 THE COURT: Sustained.

10:33:56 20 BY MR. ROSE:

21 Q. Now, the transcript will speak for itself,
22 and I am not going to go through line by line. Do
23 you recall some discussion at the hearing about
24 your counsel being allowed input in the Illinois
10:34:09 25 lawsuit?

1 A. Yes, I recall conversation regarding that.

2 Q. Okay. And has anyone stopped your input
3 since the time you decided to stop funding the
4 litigation?

10:34:26 5 A. Mr. Rose, when you say input, your input,
6 do you mean me personally or do you mean
7 Mr. Feaman? I am not sure how you are asking the
8 question.

9 Q. Okay. I will rephrase.
10:34:37 10 Since the time that you decided to stop
11 paying Mr. Stamos, pursuant to your interpretation
12 of the amended order, has anyone from Mr. Stamos's
13 side changed the level of input they would allow
14 you or your counsel?

10:34:52 15 A. Not that I am aware of.

16 Q. Okay. Thank you.

17 MR. ROSE: Your Honor, is the transcript
18 itself in evidence or does it need to be in
19 evidence?

10:35:16 20 THE COURT: I think that Mr. Feaman gave
21 me a copy.

22 MR. FEAMAN: We did a notice of filing of
23 the transcript.

24 THE COURT: And I knew I took judicial
10:35:24 25 notice.

1 MR. FEAMAN: So it's in the record.

2 THE COURT: You asked the Court to take
3 judicial notice of the -- it is not in
4 evidence. I know there was a lot of discussion
10:35:36 5 about judicial notice about various documents,
6 the various motions. It is not in evidence.
7 When you say does it need to be in evidence?

8 MR. ROSE: I would move it into evidence
9 first.

10:35:46 10 THE COURT: The Court can't give you legal
11 advice. I can only say --

12 (Overspeaking.)

13 MR. ROSE: I move it into evidence.

14 MR. FEAMAN: I will stipulate to make it a
10:35:53 15 part of the record of this proceeding. Whether
16 it's marked as an exhibit or not, it's still
17 part of the record that the Court can consider.

18 THE COURT: Okay. How about we'll -- so I
19 will mark my copy of the transcript as
10:36:04 20 Petitioner's 2 as part of this record to be
21 considered by the Court for the Court to take
22 judicial notice. Is that acceptable?

23 THE REPORTER: Excuse me, was that
24 Petitioner's 2 or Trustee's 2?

10:36:19 25 THE COURT: Thank you. Trustee's 2.

1 Mr. Rose, give me one second to mark it.

2 (Trustee's Exb. No. 2, Court Transcript
3 May 23, 2014, In Evidence.)

4 THE COURT: Thank you. You may proceed.

10:37:11 5 BY MR. ROSE:

6 Q. Do you agree if the Court excuses you from
7 funding the Illinois litigation that you and
8 Mr. Feaman should have absolutely no input in what
9 the estate does in Illinois?

10:37:26 10 A. I harken back to the Judge Colin hearing
11 on May 23rd where he commented about you lawyers
12 always call and e-mail and talk, and that's what
13 you do. So I don't know if that's something that
14 he would do or not.

10:37:52 15 THE COURT: I am so sorry, the chief judge
16 wants me for a second. Would you excuse me? A
17 brief recess.

18 (A recess was taken.)

19 THE COURT: You may proceed.

10:53:53 20 THE WITNESS: Should I return to the
21 stand, Your Honor?

22 THE COURT: Thank you, Mr. Stansbury.

23 MR. ROSE: Just to give you a preview,
24 Your Honor, I think I have narrowed my -- used
10:54:01 25 the time on break to narrow down where I was

1 headed.

2 THE COURT: Okay.

3 MR. ROSE: And I will try to wrap up
4 fairly quickly.

10:54:06 5 THE COURT: Thank you.

6 BY MR. ROSE:

7 Q. Part of your motion for discharge you also
8 want to be repaid for your expenses, correct?

9 A. Yes, that was the agreement.

10:54:28 10 MR. ROSE: I move to strike that as
11 nonresponsive, particularly the word agreement.

12 THE COURT: It's his position, so --

13 MR. ROSE: Okay.

14 THE COURT: -- overruled.

10:54:38 15 BY MR. ROSE:

16 Q. You understand that's not our position,
17 the trust or the estate's position, correct?

18 A. Yes, I understand that.

19 Q. Thank you.

10:54:46 20 So does part of getting repaid include a
21 claim for the attorney's fees that you may have
22 paid Mr. Feaman to be involved in the Illinois
23 case?

24 A. The agreement was that I was to be
10:55:03 25 reimbursed for the fees that I spent in securing

1 the attorney for the estate in the Chicago
2 litigation. And so I would put all attorneys' fees
3 as a part of that basket.

4 Q. And notwithstanding whatever is in the
10:55:21 5 four corners of the order that's Exhibit 1 or the
6 amended order that's Exhibit 2, it's your position
7 that you want to be repaid for the time or the
8 money that you paid Mr. Feaman?

9 A. Yeah. But for that involvement I wouldn't
10:55:39 10 have had the expense that was generated for his
11 services.

12 Q. Okay. So, yes, you want reimbursement for
13 Mr. Feaman's fees?

14 A. Yes.

10:55:49 15 Q. Have you paid those fees?

16 A. Yes.

17 Q. He is not on a contingency fee? You have
18 actually paid him for the time that he has been
19 appearing here?

10:55:59 20 MR. FEAMAN: Objection, privileged.

21 THE COURT: Sustained.

22 BY MR. ROSE:

23 Q. Now, the transcript will speak for itself,
24 but is it your position that you volunteered to pay
10:56:16 25 the fees in Illinois? Or is it more accurate from

1 the transcript that Judge Colin said that he would
2 allow the appointment of an administrator ad litem
3 based upon your representations that you would pay?

4 A. I'd have to look at the transcript, but my
10:56:35 5 recollection is the latter.

6 Q. And you weren't -- as I recall, you
7 weren't particularly thrilled when Judge Colin
8 ordered you to advance these fees, were you?

9 A. No, I wasn't.

10:57:10 10 MR. ROSE: If we are allowed to make a
11 closing argument, then everything else I have
12 that I would do with him I can just do it with
13 the documents that are in evidence, so no
14 further questions.

10:57:19 15 THE COURT: Redirect.

16 MR. FEAMAN: Thank you, Your Honor.

17 REDIRECT (WILLIAM STANSBURY)

18 BY MR. FEAMAN:

19 Q. Morning, sir.

10:57:29 20 A. Good morning.

21 Q. Let's start with the questions that you
22 were asked about the transcript from the hearing of
23 May 23rd, 2014. Could you open -- do you have that
24 in front of you?

10:57:44 25 A. I have the binder, yes.

1 Q. Okay. Now, you were asked to go to, I
2 believe it was, page --

3 THE COURT: Thirty-five.

4 BY MR. FEAMAN:

10:57:54 5 Q. -- thirty-five; is that correct?

6 A. I believe that was it.

7 Q. All right. And it was read to you what
8 the court said in lines four through seven. I'd
9 also like to, on this redirect, ask you to go to
10:58:14 10 page 14 of the transcript.

11 A. I am here.

12 Q. And could you read what the court said on
13 lines 21 through 23?

14 A. "I hear that. Under the statute he has to
10:58:31 15 prove that he provided a benefit to the estate."

16 Q. Now, would you also go to page 38 of the
17 transcript.

18 A. Okay, I am there.

19 Q. Would you read what the court said on
10:58:53 20 lines five and six?

21 A. "That's the case, subject to a claim for
22 reimbursement under the statute."

23 Q. All right. And to put that in context,
24 could you read page 37, beginning with line 23,
10:59:11 25 Mr. Rose's statement.

1 A. "If I understand what you are saying,
2 which makes sense, Mr. Brown will keep separate
3 time for the time he spends as curator working on
4 the Illinois issue. He will hire counsel, and the
10:59:36 5 fees of Mr. Brown and the Illinois counsel under
6 his direction and his discretion would be paid by
7 Mr. Stansbury?" And that's a question.

8 Q. And then the court said what again?

9 A. "That's the case, subject to a claim for
10:59:53 10 reimbursement under the statute."

11 Q. Okay. Now, Exhibit 1 is the first order
12 signed by Judge Colin on May 23rd, 2014. Let me
13 hand you another copy of it.

14 THE COURT: Did we put back the other
11:00:22 15 order?

16 MR. ROSE: Two is probably still at the
17 witness stand.

18 THE COURT: Only because that one was
19 actually marked.

11:00:27 20 MR. ROSE: I would object to 1, it's in
21 evidence, but I would object to asking him
22 questions about an order that's been vacated
23 or been amended by a later order, because I
24 think that the legal effect of the amended
11:00:38 25 order is --

1 THE COURT: I would like to hear the
2 question first, but I --

3 THE WITNESS: Judge, do you need this
4 back?

11:00:43 5 THE COURT: Only at some point, if someone
6 would make sure I get it back. Thank you very
7 much.

8 BY MR. FEAMAN:

9 Q. Referring to Exhibit 1 in evidence, which
11:00:49 10 is the order of May 23rd signed by Judge Colin, I
11 call your attention to paragraph two. Is the word
12 initially anywhere in that paragraph?

13 A. Yes, "Will initially be borne by Williams
14 Stansbury."

11:01:15 15 Q. All right. Now I'd like to call your
16 attention to Exhibit 2 which is the second order on
17 the same issue, a conformed copy entered by Judge
18 Colin, and also look at paragraph two. Is the word
19 initially in that order as well?

11:01:42 20 A. It's there. It's handwritten. It wasn't
21 there in the original typing, but it's been
22 handwritten in.

23 Q. And going back to Exhibit 1, paragraph
24 three, could you read that, please.

11:02:02 25 A. "The court will consider any subsequent

1 petition for fees and costs by William Stansbury as
2 appropriate under Florida law."

3 Q. Is that consistent with those portions of
4 the transcript that we just read a few minutes ago
11:02:19 5 on pages 14 and 35 and 38?

6 A. Yes, it is.

7 Q. Now, you were asked some questions about
8 winning and losing by Mr. Rose about the case in
9 Chicago, winning or losing, and whether you should
11:02:44 10 get paid. And there's a discussion whether that
11 includes a settlement. And let me ask you this.
12 Has there been a settlement offer in that case in
13 Chicago that you are aware of?

14 A. Yes.

11:02:58 15 Q. And without telling me the amounts that
16 have been offered, has that settlement offer been
17 accepted or rejected by the estate?

18 A. I don't have any communication with the
19 estate regarding that, so I don't know.

11:03:12 20 Q. Okay. Now, you were asked some questions
21 about risk that you were taking or may not have
22 taken in connection with your funding of the
23 estate's intervention.

24 At the time of May 2014 when the order was
11:03:35 25 entered that we have been discussing here today,

1 had you previously tried to intervene on your own
2 behalf before that?

3 A. Yes.

4 Q. And what was the result of that attempted
11:03:50 5 intervention?

6 A. My application or whatever you call it for
7 intervention was not allowed, denied.

8 Q. And that had been entered as of May of
9 2014, correct?

11:04:05 10 A. Correct.

11 Q. Now, in May of 2014 was there a personal
12 representative of the estate?

13 A. No.

14 Q. And when you filed and had the hearing in
11:04:19 15 May of 2014 when you then were ordered to pay the
16 fees initially, that was before the estate had even
17 hired counsel in Chicago, correct?

18 A. Correct.

19 Q. So that means it was obviously before the
11:04:38 20 estate attempted to intervene in the lawsuit,
21 correct?

22 A. Correct.

23 Q. And that attempted intervention, even
24 though it was subsequently granted, could have been
11:04:49 25 denied by the court in Chicago, correct?

1 A. Correct.

2 Q. Now, you were asked by Mr. Rose whether
3 you were aware that at the hearing in May the
4 trustee was concerned about estate expenses. Do
11:05:16 5 you remember that question by Mr. Rose?

6 A. This morning?

7 Q. Yes.

8 A. Yes.

9 Q. Okay. Now, that trustee, is your
11:05:25 10 understanding is that it refers to Mr. Ted
11 Bernstein as the successor trustee appointed by
12 Messrs. Tescher and Mr. Spallina to the Simon
13 Bernstein trust that's the beneficiary of the Simon
14 Bernstein estate, correct?

11:05:42 15 MR. ROSE: Objection, leading, beyond the
16 scope, relevance.

17 THE COURT: Sustained as to leading.

18 BY MR. FEAMAN:

19 Q. And who do you understand the trustee to
11:05:49 20 be in that question by Mr. Rose?

21 A. Ted Bernstein.

22 Q. And in what capacity?

23 A. Well, he's the trustee of the Simon
24 Bernstein Trust that was created in his
11:06:06 25 testamentary documents.

1 Q. Okay. And is he the trustee actually
2 named by Mr. Simon Bernstein?

3 MR. ROSE: Objection, relevance, beyond
4 the scope. It's not an issue for today.

11:06:22 5 THE COURT: Sustained.

6 BY MR. FEAMAN:

7 Q. Now, that Mr. Ted Bernstein, is that the
8 same Ted Bernstein who's a plaintiff in the Chicago
9 litigation?

11:06:34 10 MR. ROSE: Same objection.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MR. FEAMAN:

14 Q. Who would benefit if Mr. Ted Bernstein
11:06:53 15 prevailed in the Chicago litigation?

16 MR. ROSE: Objection, relevance, beyond
17 the scope.

18 THE COURT: Sustained as beyond the scope.

19 This was in the original, but it wasn't touched
11:07:04 20 in cross.

21 BY MR. FEAMAN:

22 Q. Okay. Now, you were asked about the fact
23 that Mr. Simon Bernstein modified his estate
24 documents in the summer of 2012, correct?

11:07:27 25 A. Yes.

1 Q. Are you aware in the modified trust that
2 Mr. Simon Bernstein specifically disinherited all
3 of his children?

4 A. Yes.

11:07:41 5 Q. Okay. And are you aware that he made the
6 beneficiaries of the trust grandchildren trusts?

7 A. Yes.

8 Q. And did he specifically disqualify his
9 children as being successor trustees?

11:08:03 10 MR. ROSE: Objection, outside the scope.

11 THE COURT: Sustained.

12 MR. ROSE: Relevance.

13 THE COURT: Sustained.

14 MR. FEAMAN: No further questions.

11:08:25 15 THE COURT: Thank you.

16 Mr. Stansbury, you may step down.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 THE COURT: Mr. Feaman, next witness.

11:08:31 20 MR. FEAMAN: Brian O'Connell.

21 THE COURT: Bring him out. Is he here?

22 MS. CRISPIN: No, he is not here.

23 THE COURT: He was supposed to be here per
24 the last hearing. Remember, we set it
11:08:40 25 specifically so he could accommodate his

1 schedule, and that is why this date was picked.

2 MS. CRISPIN: I am sorry, I didn't recall
3 that, Your Honor.

4 THE COURT: I specifically remember, and
11:08:49 5 this Court very clearly remembers the reason we
6 had to do today was that he -- you all can --

7 MS. CRISPIN: Your Honor, he came up to me
8 before the hearing and asked me if
9 Mr. O'Connell was here. He never said he was
11:09:06 10 going to need to call him. If he needed that,
11 he should have told me an hour and a half ago
12 and I would have had him here.

13 MR. ELIOT BERNSTEIN: I said I needed him.

14 THE COURT: Mr. Eliot put on the record
11:09:13 15 specifically too.

16 MS. CRISPIN: I am sorry, it may be my
17 fault that I did not recall that. But I mean,
18 counsel came over and asked me if he was here
19 and then I said, no, he wasn't. And he should
11:09:21 20 have said to me, well, I intend to call him;
21 can you make arrangements.

22 THE COURT: No.

23 MS. CRISPIN: And I would have.

24 THE COURT: Well, Ms. Crispin, can I tell
11:09:31 25 you, I don't want you to take the hit.

1 Mr. O'Connell was in here, and we specifically
2 looked at his calendar. Does everybody recall
3 it the way I do?

4 One of the reasons that we could not set
11:09:41 5 it yesterday, I did fill the afternoon in, let
6 me just be sure, I had a blank yesterday, which
7 I was able to continue another trial, and
8 today. And the only reason -- and let me tell
9 you one of the main reasons the Court remembers
11:09:58 10 is, that is the witness the Court very much
11 wants to hear from as the PR.

12 So what I am going to do -- and I know he
13 has an awful schedule -- is we are going to
14 come back to hear Mr. O'Connell.

11:10:10 15 MS. CRISPIN: Okay.

16 THE COURT: But he is going to come back.
17 And I do not want, unless another judge has him
18 in trial, I don't want to hear about his
19 conflicts.

11:10:18 20 MS. CRISPIN: Okay.

21 THE COURT: And I don't mean to be
22 disrespectful to Mr. O'Connell, and I know he
23 has very -- I am sure it was a
24 misunderstanding.

11:10:25 25 MS. CRISPIN: It really was. And I really

1 am going to take the hit because I said when we
2 were calendaring this --

3 THE COURT: He was here when this all
4 happened, so you are not going to take the hit.
11:10:34 5 The Court is not going to let you take the hit.
6 Mr. O'Connell was here, he checked his
7 schedule. And the Court doesn't have a problem
8 that he had some difficulty. But that was one
9 of the reasons it had to be set today.

11:10:47 10 MS. CRISPIN: Okay.

11 MR. ELIOT BERNSTEIN: Can we stay this
12 until he is here?

13 THE COURT: Mr. Eliot, please, I am not
14 done.

11:10:53 15 MR. ELIOT BERNSTEIN: Okay. I am sorry.

16 THE COURT: We are going to stop because
17 that is going to be the next witness.

18 MS. CRISPIN: Okay.

19 THE COURT: So what I need to do now is
11:10:59 20 look at my schedule.

21 Mr. Rose, are you disturbed?

22 MR. ROSE: I am sorry. Well, I am only --
23 I am not disturbed. I am just disappointed
24 because, you know.

11:11:09 25 THE COURT: Do you disagree with the

1 Court's recollection of the last hearing?

2 MR. ROSE: I wouldn't disagree with the
3 Court's recollection. All I recall, though, is
4 we were here June 2nd, and you set it for the
11:11:20 5 same time I already had reserved for this other
6 motion. But I don't recall specifically, and I
7 don't disagree with the Court one bit.

8 THE COURT: Mr. Feaman, do you disagree
9 with my recollection? Really I wasn't being
11:11:34 10 snarky there. I wanted to see if I had it
11 wrong.

12 MR. FEAMAN: I wholeheartedly agree with
13 your recollection.

14 MR. ELIOT BERNSTEIN: I join in that.

11:11:41 15 MR. FEAMAN: I would add, I think, Your
16 Honor, there's some urgency to this matter for
17 the reason that the trial, I believe, is set in
18 August in Chicago.

19 MS. CRISPIN: I think there's a calendar
11:11:55 20 call, yes.

21 MR. FEAMAN: And Mr. Stamos is waiting.

22 THE COURT: No, no, I assumed as much.

23 MR. ROSE: I do have the transcript. I
24 mean --

11:12:01 25 THE COURT: Yes, what's it say? I know

1 Mr. Eliot specifically asked for Brian to be
2 here.

3 MR. ROSE: I don't recall.

4 THE COURT: Thank you.

11:12:08 5 MR. ROSE: This is the last page.

6 THE COURT: Because I don't want to
7 misrepresent.

8 MR. ROSE: Right where your finger is, I
9 think, where we concluded the witness. And I
11:12:16 10 don't recall it saying anything specifically in
11 that about Mr. O'Connell.

12 MS. CRISPIN: I am sorry.

13 MR. ROSE: Maybe it's somewhere else.

14 THE COURT: Oh, you know what, we went off
11:12:25 15 the record for all the scheduling.

16 MR. FEAMAN: Correct.

17 THE COURT: There's nothing about when we
18 were coming back. We did that with all of you
19 here.

11:12:32 20 MR. ROSE: I think it said something about
21 the 28th.

22 THE COURT: I did? You are right. I know
23 we had a discussion because I know Mr. Eliot
24 specifically said, is Mr. O'Connell going to be
11:12:53 25 here, which is why we cleared it.

1 MR. ELIOT BERNSTEIN: And he was going to
2 be out of town yesterday.

3 THE COURT: Right, because I wanted to --

4 MR. ELIOT BERNSTEIN: And then Ashley came
11:13:03 5 in and told him, no, you are going to be in
6 town the next day.

7 THE COURT: Thank you.

8 MR. ROSE: You are welcome.

9 THE COURT: That was fair, though. Thank
11:13:10 10 you very much.

11 MR. ELIOT BERNSTEIN: That would go for
12 the next hearing too. I would be calling him
13 as a witness. I am sure Mr. Feaman will be
14 calling him as a witness for the next hearing.
11:13:18 15 And the estate has been abandoned here, so.

16 THE COURT: Okay, now let's just find a
17 date. I don't need further comment.

18 So August is the trial, so we need to
19 figure out what's going on.

11:13:58 20 MR. FEAMAN: If it helps the Court, Your
21 Honor, my direct examination will not be more
22 than five minutes.

23 MR. ROSE: He was deposed, I think,
24 because there was a prior setting of this
11:14:09 25 hearing where he was not going to be available.

1 And we deposed him specifically so they could
2 have his deposition for the purposes of this
3 issue. But I am not saying that they didn't
4 also want to call him live.

11:14:20 5 THE COURT: I am looking at July 12th at
6 9:30. Well, wait a minute. No, no. Good.
7 July 12th, 9:30?

8 MS. CRISPIN: Your Honor, he is available.
9 The only thing I would tell you is that in
11:14:36 10 front of Judge Marra he is currently under
11 subpoena to be in front of Judge Marra in
12 federal court.

13 THE COURT: He trumps me; no worries.

14 MS. CRISPIN: But he said that he would be
11:14:45 15 most likely to go on the 17th but he could be
16 as early as the 12th, so.

17 THE COURT: Okay.

18 MS. CRISPIN: So we can set it.

19 THE COURT: Judge Marra absolutely trumps
11:14:54 20 me.

21 MS. CRISPIN: So I just tell you that,
22 Your Honor, just because it's on a calendar
23 call that goes on July 7th.

24 THE COURT: I've only got 9:30 to 11:00,
11:15:01 25 so we are only going to finish this motion, so.

1 MS. CRISPIN: But otherwise, that's
2 absolutely fine.

3 THE COURT: Excellent. I have so many
4 scheduling orders.

11:15:15 5 MR. ROSE: We can prepare a notice for
6 you.

7 THE COURT: Somebody, I think Harriet did
8 it, though. I think I have got the order
9 continuing the June 2nd hearing to be heard
11:15:23 10 first. The hearing set for June 28th, who did
11 that? Did I do it?

12 MR. ROSE: I think you did do that one.

13 THE COURT: Okay. So Harriet is going to
14 kill me, but she's going to do this one too.
11:15:31 15 And we are going to use the same order, only it
16 will be continuing the June 28th hearing for
17 9:30. Actually it's going to be 9:30 to 10:30.

18 HON. DIANA LEWIS: Your Honor, I am not
19 going to be in town that day, but I will allow
11:15:55 20 it to go forward, and I will get the
21 information from the attorneys.

22 THE COURT: Thank you very much for that,
23 Ms. Lewis.

24 MS. CRISPIN: And, Your Honor, if Judge
11:16:00 25 Marra does schedule the trial beginning on the

1 12th, it starts at 9:00 a.m., we will know on
2 July 7th. Should I alert the Court and the
3 parties at that time?

4 THE COURT: Absolutely.

11:16:11 5 MS. CRISPIN: Okay.

6 THE COURT: Thank you. Hundred percent
7 Judge Marra trumps me.

8 MR. ELIOT BERNSTEIN: Excuse me, Your
9 Honor. Was it only going to be for this first
11:16:22 10 one?

11 THE COURT: Yes, we are only finishing
12 this hearing because I have got an hour.

13 MR. ELIOT BERNSTEIN: Okay.

14 MR. ROSE: We are going to have the
11:16:30 15 hearing today on the other motion, right?

16 THE COURT: No, I am not starting the next
17 motion without finishing this one.

18 MR. ROSE: The two have nothing to do with
19 each other.

11:16:38 20 THE COURT: I am not starting the next one
21 until we finish this one.

22 MR. ROSE: Thank you. That's fine.

23 THE COURT: Thank you.

24 All right, everybody, so I will see you
11:16:45 25 back July 12th.

1 MR. FEAMAN: May Mr. Stansbury be excused,
2 Your Honor, because he has a vacation set for
3 that week? I believe we are done with him.

4 MR. ELIOT BERNSTEIN: Oh, no, I am calling
11:16:55 5 him as a witness.

6 THE COURT: You already had an opportunity
7 to cross him.

8 MR. ELIOT BERNSTEIN: I haven't called my
9 witnesses yet, though.

11:17:01 10 THE COURT: We have one hour to continue
11 this hearing.

12 MR. ELIOT BERNSTEIN: Yeah, I got a few
13 questions just based on what happened today.

14 THE COURT: Then let's put him on now and
11:17:09 15 we'll let you take him out of turn.

16 Mr. Stansbury, come on back up.

17 MR. ELIOT BERNSTEIN: Just packed up all
18 my stuff, so hold on a second.

19 THE COURT: Unpack it. Unpack it.

11:17:28 20 You are still under oath. I don't think I
21 need to swear you in.

22 DIRECT (WILLIAM STANSBURY)

23 BY MR. ELIOT BERNSTEIN:

24 Q. Mr. Stansbury, you were asked about what
11:17:50 25 you found offensive basically or possibly criminal

1 with Mr. Spallina's application for the benefits to
2 be paid, right?

3 MR. ROSE: Objection. This was asked
4 during Mr. Bernstein's cross-examination of the
11:18:03 5 witness the first time, this topic.

6 MR. ELIOT BERNSTEIN: He just brought it
7 up in this last time, in the last -- you just
8 brought it up again, so I am recrossing because
9 it's relevant to what you said.

10 THE COURT: He is allowed to put his
11 witness on. I will allow it.

12 MR. ELIOT BERNSTEIN: And I would like to
13 enter this into evidence. It's a claim form.

14 THE COURT: You have to show everybody
11:18:31 15 else. I can't look at it until I hear if
16 there's an objection. I will mark it, though,
17 no matter what.

18 MR. ELIOT BERNSTEIN: Okay. In evidence?

19 THE COURT: I will mark it as Interested
11:18:45 20 Party Bernstein 1.

21 (Interested Party Bernstein's Exb. No. 1,
22 Claim Form, for I.D.)

23 THE COURT: Any objections?

24 MR. ROSE: Yes.

11:18:50 25 THE COURT: Okay. And the basis?

1 MR. ROSE: I guess it's hearsay.

2 THE COURT: Sustained.

3 MR. ROSE: Also relevance and
4 authenticity.

11:19:07 5 THE COURT: Okay. Sustained.

6 MR. ELIOT BERNSTEIN: So can I ask him
7 questions?

8 THE COURT: You can ask whatever you want,
9 but this has been sustained and it is not in
11:19:22 10 evidence.

11 MR. ELIOT BERNSTEIN: Why is it not in
12 evidence?

13 THE COURT: Because I sustained the
14 objection. Move on.

11:19:37 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. Mr. Stansbury, are you aware that
17 Robert Spallina made application for the claim of
18 the life insurance proceeds that are the subject of
19 this?

11:19:51 20 MR. ROSE: Objection, hearsay, relevance.

21 THE COURT: Objection to hearsay
22 sustained.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Have you seen documentation yourself that
11:20:03 25 shows that Robert Spallina made application for the

1 life insurance policy?

2 MR. ROSE: Objection, that's hearsay.

3 THE COURT: Can I have that question read
4 back, please.

11:20:13 5 (The following portion of the record was
6 read back.)

7 "Q. Have you seen documentation yourself
8 that shows that Robert Spallina made
9 application for the life insurance policy?"

11:20:24 10 MR. ROSE: Also best evidence.

11 THE COURT: Overruled.

12 THE WITNESS: Yes.

13 BY MR. ELIOT BERNSTEIN:

14 Q. And was that claim paid?

11:20:35 15 A. Not to the best of my knowledge.

16 Q. And did Mr. Spallina, to the best of your
17 knowledge and review of the documents, apply as the
18 trustee of the 1995 trust?

19 MR. ROSE: I have an objection, hearsay,
11:20:53 20 relevance. When I was trying to inquire of the
21 same topic the Court sustained the objection
22 and ruled it was immaterial and irrelevant.

23 THE COURT: Sustained.

24 BY MR. ELIOT BERNSTEIN:

11:21:06 25 Q. Well, Mr. Stansbury, tell us why you are

1 here paying for litigation in your mind for this
2 policy?

3 MR. ROSE: Objection, cumulative.

4 THE COURT: Overruled.

11:21:24 5 THE WITNESS: Well, I am here because the
6 estate was not represented by a personal
7 representative at the time that this -- that
8 the policy proceeds in question were being
9 challenged. And they were being challenged
11:21:45 10 because there were a number of attempts made to
11 the claims department of Heritage Life
12 Insurance Company to have benefits paid to, I
13 believe it was, Mr. Spallina's law office trust
14 account or other trust accounts that he was
11:22:04 15 trying to create.

16 So as a by-product of the insurance
17 company not feeling that that was an
18 appropriate presentation that they required for
19 payment of a claim to a trust --

11:22:20 20 MR. ROSE: Objection, hearsay what the
21 insurance company said, move to strike.

22 THE COURT: Sustained as to what the
23 insurance company said.

24 THE WITNESS: So the proceeds were not
11:22:29 25 paid, and litigation began.

1 BY MR. ELIOT BERNSTEIN:

2 Q. So the claim was denied --

3 A. Yes.

4 Q. -- to pay Mr. Spallina's trust account,
11:22:44 5 not the 1995 trust?

6 A. Yes.

7 MR. ROSE: Objection. And again, I am
8 struggling for the relevance of this when -- in
9 the context of what we are here for today, as I
11:22:55 10 was precluded from getting into.

11 THE COURT: Sustained.

12 MR. ELIOT BERNSTEIN: Well, I am
13 actually --

14 THE COURT: It was your objection that
11:22:59 15 raised the fact that --

16 (Overspeaking.)

17 MR. ELIOT BERNSTEIN: No, I --

18 THE REPORTER: Wait, please, one at a
19 time.

11:23:03 20 THE COURT: When I speak you must let me
21 complete it.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: You objected as to you said
24 Mr. Rose is trying his case in Chicago and now
11:23:11 25 you are doing the same thing.

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So, no, you don't get to argue
3 back. Next question. Next question.

4 MR. ELIOT BERNSTEIN: My questions are
11:23:18 5 relating to the billing.

6 THE COURT: Ask your next question.

7 MR. ELIOT BERNSTEIN: Okay.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Mr. Stansbury, have you seen a letter from
11:24:04 10 Robert Spallina, and I believe it was part of their
11 production that you received, that claimed that
12 we'd like to see his wishes carried out and not
13 have the proceeds paid to the estate where they
14 could be subject to creditor claims prior to being
11:24:29 15 split in equal shares among the grandchildren?

16 MR. ROSE: Objection, hearsay.

17 THE COURT: Sustained.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Do you believe that the personal
11:24:48 20 representative of the estate has a duty to protect
21 a creditor's interest?

22 MR. ROSE: Objection, calls for a legal
23 conclusion, beyond the scope of this witness's
24 knowledge, lack of relevance.

11:25:04 25 THE COURT: Overruled as to relevance. I

1 will sustain it with regards to the legal
2 conclusion.

3 BY MR. ELIOT BERNSTEIN:

4 Q. In your opinion are you aware of -- well,
11:25:22 5 are you aware of any attempts to move the insurance
6 proceeds outside of the estate to avoid a creditor?

7 MR. ROSE: Objection. He asked if he had
8 an opinion, which he is not an expert witness,
9 beyond the scope of his knowledge or his --

11:25:37 10 THE COURT: Sustained.

11 MR. ELIOT BERNSTEIN: Did I ask for an
12 opinion? Could you read that back?

13 THE COURT: No. You did, and I sustained
14 the objection. Move on. You said in your
11:25:48 15 opinion.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Are you aware of any information that the
18 policy was being attempted to move outside the
19 Florida estate, the gross estate, to avoid
11:26:14 20 creditors?

21 MR. ROSE: Objection, relevance.

22 THE COURT: Sustained.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Do you know why the litigation for the
11:26:32 25 Illinois trust is in Illinois and not before this

1 court?

2 MR. ROSE: Objection, foundation,
3 relevance, materiality.

4 THE COURT: Sustained.

11:27:30 5 BY MR. ELIOT BERNSTEIN:

6 Q. Have you had conversations with me
7 regarding your attorney contacting the FBI
8 regarding the insurance policy as part of a federal
9 fraud?

11:27:46 10 MR. ROSE: Objection, hearsay, relevance.

11 THE COURT: Sustained.

12 MR. ELIOT BERNSTEIN: That's not hearsay.

13 THE COURT: It's relevance, sustained.

14 Mr. Bernstein, you kept asking me during
11:28:03 15 Mr. Rose's what does this have to do with
16 paying fees.

17 MR. ELIOT BERNSTEIN: Well, everything. I
18 mean, if there's a fraud going on then it has
19 to do with why he is paying the fees, but you
11:28:12 20 won't let the question be answered. I know
21 what's going on here and so.

22 THE COURT: Okay. Ask your next question
23 then.

24 MR. ELIOT BERNSTEIN: Uh-huh.

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. Have you contacted, you or your attorney
3 contacted the FBI regarding the Illinois insurance
4 as a fraud?

11:28:38 5 MR. ROSE: Objection, relevance.

6 THE COURT: Sustained.

7 BY MR. ELIOT BERNSTEIN:

8 Q. If Mr. Spallina's claim had been paid as
9 he filed it, would you be sitting here today paying
11:29:05 10 legal costs?

11 MR. ROSE: Objection, relevance.

12 THE COURT: Overruled.

13 THE WITNESS: No.

14 BY MR. ELIOT BERNSTEIN:

11:29:10 15 Q. And why is that?

16 A. Because there wouldn't have been an
17 opportunity for the estate to make the claim to the
18 policy if the proceeds had already been paid out to
19 the trust that he represented that he was the
11:29:28 20 trustee of.

21 Q. And you are aware that when the insurance
22 carrier didn't pay the claim to Spallina, who had
23 filed as the trustee of the '95 trust, that Ted
24 Bernstein subsequently filed the Illinois
11:29:46 25 litigation that you are stuck paying the fees in,

1 claiming that he was the trustee of the 1995 trust?

2 MR. ROSE: Objection, relevancy. And, you
3 know, we are really running into this -- we are
4 trying either the Illinois case or some other
5 case that's not the issue before Your Honor.

6 THE COURT: Overruled. You can answer.

7 THE WITNESS: Could I ask to have the
8 question re-read, I am sorry?

9 THE REPORTER: Your Honor?

10 THE COURT: Yes, thank you.

11 (The following portion of the record was
12 read back.)

13 "Q. And you are aware that when the
14 insurance carrier didn't pay the claim to
15 Spallina, who had filed as the trustee of
16 the '95 trust, that Ted Bernstein subsequently
17 filed the Illinois litigation that you are
18 stuck paying the fees in, claiming that he was
19 the trustee of the 1995 trust?"

11:30:48 20 THE WITNESS: Yes, I am aware of that.

21 BY MR. ELIOT BERNSTEIN:

22 Q. So you are paying the cost of this
23 litigation because Robert Spallina's death benefit
24 claim wasn't paid by the carrier to Robert Spallina
11:31:12 25 as trustee? And then Ted Bernstein filed a

1 litigation action to get the money paid to himself?
2 And we have all been dragged into this litigation
3 because of what Ted filed as a breach of contract
4 lawsuit, correct?

11:31:28 5 MR. ROSE: Objection, relevance,
6 argumentative.

7 THE COURT: Sustained. Next question.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Have you seen a document in the Spallina
11:32:08 10 and Tescher production that stated that because
11 there was no 1995 trust, it would be a best guess
12 as to who the beneficiaries and trustees were?

13 MR. ROSE: Objection, hearsay.

14 THE COURT: Sustained.

11:32:58 15 BY MR. ELIOT BERNSTEIN:

16 Q. Do you feel it's fair that you are paying
17 for this litigation?

18 MR. ROSE: Objection, relevance.

19 THE COURT: Sustained.

11:33:09 20 MR. ELIOT BERNSTEIN: All right. I am
21 done.

22 THE COURT: All right. Okay. Well then I
23 will see you back on -- wait. I am sorry. He
24 called him, so now I guess everybody else gets
11:33:19 25 another shot at him.

1 MR. FEAMAN: No questions.

2 MR. ROSE: No questions.

3 MS. CRISPIN: None.

4 THE COURT: Okay.

11:33:23 5 MR. ROSE: We do have one issue before we
6 sign off.

7 THE COURT: Yes.

8 THE WITNESS: Your Honor, may I step off?

9 THE COURT: July 12th, 9:30.

11:33:31 10 You can step off, thank you.

11 (Witness excused.)

12 MR. ROSE: I scheduled a hearing for
13 tomorrow at motion calendar on an unrelated
14 matter, but if Your Honor doesn't want to take
11:33:41 15 matters up --

16 MR. ELIOT BERNSTEIN: Oh, that is a -- it
17 shouldn't be a UMC hearing. There's objections
18 to it that are going to take a lot longer than
19 five minutes.

11:33:50 20 MR. ROSE: But I want some guidance
21 because I don't want to drive all the way to
22 the courthouse tomorrow --

23 THE COURT: No, that's fine.

24 MR. ROSE: -- if you are not going to hear
11:33:57 25 anything until this is resolved.

1 For tomorrow I provided the Court with a
2 copy of --

3 THE COURT: You are just kind of like am I
4 going to hear it or not?

11:34:03 5 MR. ROSE: Yeah, that's all I want to
6 know. I am not going to argue it.

7 THE COURT: I don't know what it is.

8 MR. ROSE: I am going to tell you what it
9 is. I sent it to Your Honor about ten days
11:34:10 10 ago.

11 Since I am special counsel for the estate
12 in the Stansbury litigation, you had approved
13 -- you did not disqualify my law firm. So now
14 we are special counsel. I would like to be
11:34:22 15 paid, and so I have filed a motion to establish
16 a protocol to pay our firm rather than have a
17 contested six-week hearing every month to get
18 paid, a protocol. And I would like that to get
19 heard at an 8:45. Because you are going to
11:34:38 20 hear it and rule on whether -- on what we need
21 to do to get paid. It's a very simple motion.
22 And I can promise you my presentation will be
23 less than 60 seconds.

24 Or if you don't want to have other matters
11:34:48 25 heard --

1 THE COURT: When you say you have been
2 retained by the trustee to represent --

3 MR. ROSE: Correct.

4 THE COURT: -- the estate in the Stansbury
11:34:58 5 motion? So you just want a protocol? Like in
6 other words, are you filing your petitions or
7 what's going to happen?

8 MR. ROSE: What I don't want to do is, you
9 know, what I have to do is I'd have to file a
11:35:10 10 fee petition and give the time records to the
11 enemy, Mr. Stansbury, who is the opponent in
12 the litigation, and he is going to -- and to
13 other people. And it's going to take an
14 enormous amount of time and waste. So what I
11:35:21 15 proposed in my protocol for the hearing
16 tomorrow was that if Mr. O'Connell can pay me,
17 and at the end of the case --

18 THE COURT: No, I can't do it any
19 different than any other case.

11:35:31 20 MR. ROSE: Well, actually he doesn't need
21 court permission to pay me.

22 THE COURT: Then why are you asking me?

23 MR. ROSE: Because --

24 THE COURT: Do you see what I am saying?
11:35:41 25 I am not ruling on anything. All I am telling

1 you is I intend to move forward in this case as
2 I move forward as every other case. So follow
3 the statute and we'll take the next step.

4 MR. ROSE: Well, the issue is at the end
11:35:54 5 of the case most likely there's going to be
6 nobody left with standing to object, and we
7 would avoid -- like what it's going to be each
8 of these hearings is thousands and thousands
9 and thousands of dollars.

11:36:04 10 THE COURT: I know.

11 MR. ROSE: It's unnecessary in some sense.
12 But I don't think it's -- so I set a motion for
13 you to decide if you would, a protocol that's
14 enforceable and consistent with the statute for
11:36:14 15 tomorrow.

16 THE COURT: I am not going to enter an
17 order -- I am going to tell you to follow the
18 statutes and then we'll move from there.

19 MR. ELIOT BERNSTEIN: So are we
11:36:28 20 cancelling? Sorry.

21 THE COURT: So if you want to come
22 tomorrow. I am just -- this Court is not
23 inclined to either -- if you are asking me to
24 approve the statutory scheme, happy to do it.
11:36:42 25 But I am going to tell you to do exactly what

1 the statutes and the rules say. And then we
2 will deal with every objection as it is raised.
3 I am not going to tell the trustee what -- you
4 are the lawyer for the trustee. I know it's --
11:36:57 5 I understand -- I understand the thought
6 process. But there is no way -- there is no
7 way --

8 MR. ROSE: Why don't we just special set
9 it and I will reconsider whether to file it.
11:37:18 10 And I will confer with -- I will cancel the
11 hearing for tomorrow, and if we want to have it
12 special set so you have time to consider it
13 without --

14 THE COURT: Perfect.

11:37:25 15 MR. ROSE: Not arguing the merits of it
16 today.

17 THE COURT: I am not ruling on the merits
18 of it, don't worry. I just -- okay. That's
19 the best way to deal with it.

11:37:38 20 MR. ELIOT BERNSTEIN: Your Honor, one last
21 thing, I'd just ask you to take a little
22 judicial notice I filed some pleadings today
23 responsive to these hearings, probably late.

24 THE COURT: I don't take judicial notice
11:37:47 25 -- when you say you filed, there were supposed

1 to be no filings without Court permission from
2 my last order for this hearing. I had
3 everything already for this hearing. The order
4 specifically said no further filings for this
11:38:00 5 hearing.

6 MR. ELIOT BERNSTEIN: Yes. And that's why
7 I wanted you to --

8 THE COURT: That wasn't noticed for today.
9 Just like I do it to Mr. Rose, it's not fair to
11:38:07 10 allow you to do it, Mr. Eliot.

11 Thank you very much. Court is in recess.

12
13 (The proceedings adjourned at 11:38 a.m.)
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1 C E R T I F I C A T E

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3
4 The State of Florida

5 County of Palm Beach

6
7 I, Lisa Mudrick, RPR, FPR, certify that I
8 was authorized to and did stenographically report
9 the foregoing proceedings, pages 98 through 185,
10 and that the transcript is a true record.11
12 Dated July 21, 2017.13
14
15
16
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