

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 III

Wednesday, July 12, 2017
3188 PGA Boulevard
North County Courthouse
Palm Beach Gardens, Florida 33410
9:38 - 11:14 a.m.

Reported by:
Suzanne L. Anderson, Shorthand Reporter
Notary Public, State of Florida

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18 On behalf of the Personal Representative of the
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EXAMINATIONS

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EXHIBITS MARKED

No: Stansbury's Exhibits

9 Settlement Agreement 195

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 County Courthouse, City
6 of Palm Beach Gardens, County of Palm Beach, in the
7 State of Florida, by Suzanne L. Anderson, Shorthand
8 Reporter, before the Honorable ROSEMARIE SCHER,
9 Judge in the above-named Court, on Wednesday, July
10 12, 2017, to wit:

11 - - -

12 THE COURT: Let me pull my notes up.
13 Thank you.

14 MR. ELIOT BERNSTEIN: Can we borrow one of
09:38:31 15 those chairs?

16 THE COURT: Actually, she's not counsel,
17 so she's really not supposed to be at counsel's
18 table. Thank you.

19 All right. Appearances for the record.

09:39:09 20 MR. FEAMAN: Good morning, Your Honor,
21 Peter Feaman on behalf of William Stansbury.
22 With me in court today is my law partner, Jeff
23 Royer.

24 MR. ELIOT BERNSTEIN: Eliot Bernstein,
09:39:21 25 pro se.

1 MR. ROSE: Alan Rose, counsel for Ted S.
2 Bernstein as trustee. With me is
3 Mr. Bernstein, Ted Bernstein.

4 MS. CRISPIN: Your Honor, Good morning.
09:39:29 5 Ashley Crispin on behalf of Mr. O'Connell, the
6 personal representative right here.

7 THE COURT: All right. Let me pull up my
8 notes. While I'm pulling up my notes, you all
9 will remember that I was very intent on getting
09:39:58 10 this heard, and I believe my JA was out when I
11 was scheduling it, and I make jokes about how I
12 mess things up. Well, I did. I've also got my
13 DV calendars going on, so you will see people
14 walk in. I have told everybody we're not going
09:40:18 15 to get to them until 10:30, so if you see
16 people wandering in, that's what's going on.
17 But we're just going to proceed.

18 And there's one other matter that I may,
19 and I'll give you the time, I may take a short
09:40:34 20 -- literally I have to do one more. You saw
21 somebody came up for an uncontested divorce.
22 There's one more I have to do because I didn't
23 want to change this hearing when I realized,
24 because I'm not allowed to look at the calendar
09:40:48 25 without my JA because this is what I do, that I

1 had accidentally kind of triple booked myself.
2 So we're just going to move forward, okay. I'm
3 just going to apologize in advance for the
4 interruptions.

09:40:59 5 So my recollection is we're going to start
6 with Mr. O'Connell. Are we all on the same
7 page?

8 MR. FEAMAN: Yes, Your Honor. I would
9 like to inform the Court, however, there's been
09:41:09 10 a major development in the case, a substantial
11 change of circumstances has taken place. I
12 found out yesterday that there is a fully
13 signed and executed settlement agreement in the
14 Chicago action signed by all of the litigants
09:41:28 15 except Mr. Eliot Bernstein. I think
16 Mr. O'Connell will stipulate to that.

17 MR. O'CONNELL: Yes, Your Honor.

18 THE COURT: That is a substantial change
19 in circumstances.

09:41:35 20 MR. O'CONNELL: And, Your Honor, to maybe
21 help the Court a little, there is a petition
22 that we filed yesterday for approval. It's not
23 set for hearing today. Just so the Court is
24 aware what has transpired, that petition may be
09:41:50 25 of help to the Court.

1 MR. FEAMAN: I have a copy of the fully
2 executed settlement agreement, which I would
3 like to offer to the Court at this time.

4 THE COURT: Okay. Okay. When you're
09:42:01 5 saying you're offering it to the Court, into
6 evidence, because we're in the middle of --

7 MR. FEAMAN: That's the only way I know
8 how to do it.

9 THE COURT: I didn't want to jump to that
09:42:09 10 conclusion. I don't mean to be -- I wasn't
11 being -- I wasn't trying to be difficult.

12 MS. CRISPIN: Your Honor, we would have no
13 objection as long as it goes with the motion
14 because of the fact that it's contingent upon
09:42:29 15 court approval. The settlement agreement
16 itself is really part and parcel of the
17 verified motion. I have an extra copy for the
18 Court and other counsel if they need it.

19 MR. ELIOT BERNSTEIN: And I'd like to
09:42:42 20 object. It's only a partially executed
21 settlement.

22 THE COURT: So noted. Overruled. It will
23 come into evidence as -- I want to make sure I
24 have the right number.

09:42:55 25 MR. FEAMAN: It's Exhibit 10, I believe.

1 THE COURT: Thank you.

2 MS. CRISPIN: You want the motion as well?

3 MR. FEAMAN: Pardon me?

4 MS. CRISPIN: You want the motion as well?

09:43:00 5 THE COURT: You gave me a copy of the
6 motion.

7 MS. CRISPIN: I didn't give a copy to
8 Peter.

9 MR. FEAMAN: I don't have it. I don't
09:43:07 10 know anything about the motion.

11 THE COURT: Verified motion for approval
12 of settlement agreement entered in Illinois
13 federal.

14 MR. FEAMAN: He filed that. That has
09:43:16 15 nothing to do with me. It's entered in
16 counterparts, Your Honor, executed in
17 counterparts.

18 THE COURT: Let me just -- I'm sorry.
19 What number did you say?

09:43:35 20 MR. FEAMAN: I believe we're on Number 10.

21 THE COURT: I always double check. So I'm
22 sorry, just give me one second.

23 MR. ELIOT BERNSTEIN: And I'd also like to
24 object to the grounds --

09:43:44 25 THE COURT: You're going to give me a

1 second.

2 MR. ELIOT BERNSTEIN: Oh, okay.

3 MR. FEAMAN: I don't have an exhibit
4 sticker on the back because of the newness of
09:43:51 5 the change of circumstances.

6 THE COURT: I'm just marking it as
7 Stansbury Number 10, Case Number 12CP4391.
8 This is the Trustee's 1 and 2.

9 Oh, there we go. I have it as 9. What am
09:45:26 10 I missing?

11 MR. FEAMAN: You know what, you're right,
12 because I premarked as 9 my law firm bills.
13 However, we're not there at this hearing to go
14 over amounts that may or may not be reimbursed
09:45:42 15 to my client, so it would be 9, Your Honor.
16 You're correct.

17 THE COURT: Awesome.

18 (Stansbury's Exb. No. 9, Settlement
19 Agreement.)

09:45:49 20 THE COURT: Yes, Mr. Eliot, your
21 objection?

22 MR. ELIOT BERNSTEIN: I object to it being
23 entered. I didn't get this thing until last
24 night. They've had it for weeks obviously.
09:46:00 25 Since the last hearing they mentioned they had

1 some kind of settlement. It's been hidden from
2 me and denied from me. So surprise attack. I
3 just want it on the record that I object to it
4 being entered, and I object to it being entered
09:46:13 5 under the terms that it's fully executed.

6 THE COURT: Well, considering that the --
7 Brian O'Connell, I'm looking at, signed it on
8 July 5th. It hasn't been executed for weeks,
9 so I overrule the objection, but the objection
09:46:34 10 is noted.

11 MR. ROSE: May I for the record?

12 THE COURT: Of course, Mr. Rose.

13 MR. ROSE: My client, the trustee, has no
14 objection to the document coming into evidence
09:46:45 15 or the motion coming into evidence. I do think
16 at some point this may alter how you want to
17 proceed with the hearing. Do you want to
18 address it?

19 THE COURT: No.

09:46:55 20 MR. ROSE: I'll just leave it at that.

21 THE COURT: Ms. Crispin, did you want the
22 motion in evidence too? I don't think it's --
23 or just you wanted the motion noted?

24 MS. CRISPIN: I wanted the motion noted.

09:47:11 25 THE COURT: Got it. Because we've only

1 taken the settlement into evidence.

2 MR. ROSE: I think the significant thing
3 for the purposes of today is the settlement is
4 conditioned upon Your Honor approving it. So
09:47:23 5 we're discharging -- the issue of whether we
6 discharge Mr. Stansbury, if you approve the
7 settlement, then everyone is in agreement --
8 well, everyone other than --

9 MR. FEAMAN: Your Honor, this is argument.
09:47:33 10 If I could continue with the presentation of my
11 case, and then we can get into whatever final
12 argument we want.

13 MR. ROSE: It's not argument.

14 THE COURT: I do want to know, since I
09:47:42 15 didn't until this second realize there was a
16 settlement, if the parties believe it alters
17 this motion. We're going to finish the
18 presentation and hear from -- you know what, at
19 this point let's actually go forward with the
09:48:00 20 evidence.

21 MR. ROSE: Our position has changed
22 completely, and I think Your Honor might like
23 to know our position with regard to the
24 contested motion. It would help you on how you
09:48:06 25 choose to conduct the hearing.

1 MR. ELIOT BERNSTEIN: I'd also like to
2 object.

3 MR. ROSE: I rarely get interrupted so
4 often in court.

09:48:15 5 THE COURT: Stop. Stop. Stop. Everyone
6 interrupts everyone in this case every single
7 time. So nobody can take -- I don't want
8 anyone taking homage on that. It's kind of
9 been the way it's been. The Court has tried to
09:48:26 10 have extreme patience with it and tried to give
11 everyone their turn. So, Mr. Rose, how does it
12 alter your position? Tell me.

13 MR. ROSE: If you approve the settlement,
14 we all agree Mr. Stansbury should be discharged
09:48:36 15 because there's nothing left to deal with in
16 Illinois other than repaying him the fees. I
17 believe the settlement agreement specifically
18 addresses repayment of Mr. Stansbury consistent
19 with the original order and the amended rogue
09:48:51 20 order of Judge Colin. Then the only issue that
21 would remain is whether Your Honor would award
22 Mr. Feaman additional attorney's fees serving
23 as Florida counsel. Our position --

24 THE COURT: That wasn't for today.

09:49:03 25 MR. ROSE: Correct. But our position with

1 respect to this motion is --

2 THE COURT: If I approve the settlement,
3 you're not objecting?

4 MR. ROSE: We all agree and we --

09:49:12 5 MR. ELIOT BERNSTEIN: I object.

6 THE COURT: Mr. Bernstein, no. You may
7 sit there and wait one second and then I'll
8 hear from you. I need to have one party get
9 their thoughts out because this isn't like
09:49:24 10 evidence.

11 MR. ELIOT BERNSTEIN: Okay.

12 MR. ROSE: The agreement is signed and a
13 footnote specifically provides that
14 Mr. Feaman's client will get repaid the money
09:49:37 15 he's advanced. So it's not a question pursuant
16 to the settlement that he'll get repaid.
17 That's the terms the parties agreed on. The
18 only thing I would say is, with regard to the
19 parties who signed the agreement, it is
09:49:48 20 executed by all of the people who are parties
21 in Illinois.

22 THE COURT: And Mr. Eliot Bernstein is not
23 a party pursuant to that judge in Illinois?

24 MR. ROSE: Correct. At this time. That's
09:50:00 25 all I wanted to say as far as our position.

1 THE COURT: Thank you very much.

2 Mr. Eliot?

3 MR. ELIOT BERNSTEIN: Well, by the way, I
4 was a party to that litigation until it was put
09:50:06 5 into the court that --

6 THE COURT: Right now you are not.

7 MR. ELIOT BERNSTEIN: -- I was a
8 beneficiary of my father's estate. It's been
9 determined by this Court I am beneficiary of my
09:50:14 10 father's estate. It's affected the Illinois
11 ruling, and none of them have gone to that
12 court and notified Judge Blakey that they have
13 improperly pled to the court that I wasn't a
14 beneficiary of my father's estate. He removed
09:50:29 15 me on res judicata collateral estoppel based on
16 this Court's apparent order prior to that
17 obviously that's steeped in fraud that I wasn't
18 a beneficiary, and you so have boldly
19 contradicted all of that.

09:50:40 20 All I was coming to is, so you rush ahead
21 on this little settlement, which is all about
22 fraud, and it starts with fraud. It starts
23 with a fraudulent insurance application.

24 THE COURT: I don't want a full argument.
09:50:51 25 I want what you want me to address right this

1 second.

2 MR. ELIOT BERNSTEIN: Well, what I want
3 you to address, first of all, Judge Blakey
4 needs to approval this settlement. He hasn't
09:50:57 5 done that. Second, all parties haven't
6 consented to this.

7 THE COURT: Judge Blakey does not need to
8 approve the settlement.

9 MR. ELIOT BERNSTEIN: Well, according to
09:51:04 10 the settlement, he does.

11 THE COURT: He does according to the
12 settlement?

13 MR. ELIOT BERNSTEIN: That's what it said,
14 I thought.

09:51:07 15 MR. ROSE: He does.

16 THE COURT: My apologies, Mr. Eliot.

17 MR. ELIOT BERNSTEIN: I'm not upset. The
18 other problem is they're flinging around
19 consent here in all of these settlements
09:51:19 20 they're doing and all of these court hearings.
21 And it's just come to our attention that my two
22 children have notified Diana Lewis, one of
23 them, that she has never had legal custody over
24 my son to give any consent since he was
09:51:34 25 sui juris the day the guardian ad litem for

1 minors was appointed to him. That's now
2 clearly before this Court and the federal court
3 as further evidence of fraud upon the Court and
4 continued and ongoing frauds.

09:51:46 5 Also my son Jacob Bernstein turned
6 sui juris on January 21st, 2017. And Diana
7 Lewis, despite being reminded several times at
8 the hearing, has gone in and put her name in
9 the record on both of their behalves knowing
09:52:02 10 that she should have discharged and terminated
11 these settlements, which are leading to these
12 settlements in Illinois. So I'm just letting
13 you know where we stand. It's all a lot of
14 fraud that's before federal and state agencies,
09:52:15 15 including -- well, I'll get to that later.

16 THE COURT: So at this point it's in
17 evidence. You may proceed.

18 MR. FEAMAN: For the record, Your Honor,
19 Mr. Stansbury's position is clear that his
09:52:30 20 request for discharge and entitlement to
21 reimbursement is no way dependant upon the
22 approval or non-approval of the settlement
23 agreement that's been offered to Your Honor
24 today, but that a discharge and a right to
09:52:46 25 compensation, whatever that is, can be and

1 should be determined by the Court independent
2 of the approval.

3 THE COURT: Okay. So let's call
4 Mr. O'Connell.

09:52:57 5 (Interruption in the Proceedings.)

6 THE COURT: Hang out one second for me.
7 We'll get to that.

8 (A brief recess was taken.)

9 THE COURT: Okay. Back to Bernstein.

09:58:03 10 MR. ROSE: Technically Mr. Feaman rested
11 his case.

12 THE COURT: No. He called Mr. O'Connell.

13 MR. ROSE: He rested his case, and then
14 Eliot Bernstein indicated that he wanted to
09:58:12 15 call Mr. O'Connell.

16 THE COURT: No. Mr. Feaman said, I would
17 like to now call Brian O'Connell.

18 MR. ROSE: I stand corrected. Withdrawn.

19 THE COURT: So come on up.

20 - - -

21 THEREUPON,

22 BRIAN M. O'CONNELL, ESQ.,

23 being by the Court first duly sworn, was examined
24 and testified as follows:

09:58:31 25 THE WITNESS: I do.

1 THE COURT: Excellent. Have a seat.

2 DIRECT (BRIAN M. O'CONNELL, ESQ.)

3 BY MR. FEAMAN:

4 Q. Please state your name.

09:58:56 5 A. Brian O'Connell.

6 Q. And your capacity in this case?

7 A. Personal representative of the Estate of
8 Simon Bernstein.

9 Q. Let me hand you, sir, what's been marked
09:59:08 10 as Stansbury Exhibit 5 in this proceeding. Is this
11 the petition you filed as successor personal
12 representative for authorization to enter into a
13 contingency agreement with Illinois counsel in the
14 pending life insurance litigation?

09:59:29 15 A. As I recall, Mr. Feaman, this was one of
16 two petitions --

17 Q. That's correct.

18 A. There was an amended petition that goes
19 along with this one.

09:59:34 20 Q. That's the next one.

21 A. I would say, yes, this is the first of two
22 petitions.

23 Q. All right. And you filed this on or about
24 December 2nd, 2015; is that correct?

09:59:45 25 A. Yes, sir.

1 Q. And you state in paragraph five that the
2 legal fees to date in the life insurance litigation
3 have been paid by William Stansbury, correct?

4 THE COURT: Did you say December 2nd,
09:59:59 5 2015?

6 MR. FEAMAN: Yes.

7 THE WITNESS: That's what it says, sir.

8 BY MR. FEAMAN:

9 Q. Was that a true statement at the time that
10:00:06 10 you made it?

11 A. Yes.

12 Q. And you state that in paragraph seven, the
13 successor personal representative believes it is in
14 the best interest of the estate to continue with
10:00:18 15 the life insurance litigation. Do you see that?

16 A. I do.

17 Q. Was that a true statement when you made
18 that back in December 2nd, 2015?

19 A. Yes.

10:00:28 20 Q. You stated that in paragraph eight
21 Illinois counsel -- that would be Mr. Stamos, I
22 guess?

23 A. Correct.

24 Q. -- has agreed to waive the outstanding
10:00:39 25 balance currently due and enter into a contingency

1 agreement. Was that a true statement at the time
2 that you filed this?

3 A. Yes.

4 Q. And so then you request authorization in
10:00:52 5 this motion to enter into a contingency agreement,
6 correct?

7 A. Yes.

8 Q. Now let me show you Exhibit 6. This is
9 the one you mentioned. Exhibit 6 is the motion you
10:01:12 10 filed after Exhibit 5 entitled Successor Personal
11 Representative's Amended Petition For Authorization
12 to Enter Into Contingency Fee Agreement or Hourly
13 Fee Agreement With Illinois Counsel in Pending Life
14 Insurance Litigation?

10:01:29 15 A. Correct.

16 Q. And you filed this with this Court on or
17 about December 4th, 2015; is that correct?

18 A. That's right.

19 Q. In that motion you again repeated that the
10:01:41 20 legal fees in paragraph five to date in the life
21 insurance litigation have been paid by William
22 Stansbury, correct?

23 A. Correct.

24 Q. And you said in paragraph six, the value
10:01:55 25 of the life insurance policy at issue is

1 approximately \$1.7 million, correct?

2 A. Correct.

3 Q. You repeat in your -- this filing, in
4 paragraph seven, that the successor personal
10:02:10 5 representative -- that would be you, correct?

6 A. Yes.

7 Q. -- believes that it is in the best
8 interest of the estate to continue with the life
9 insurance litigation, correct?

10:02:18 10 A. Correct.

11 Q. And again the same allegation in paragraph
12 eight or statement, I should say, that Illinois
13 counsel has agreed to waive any outstanding balance
14 currently due and enter into a contingency
10:02:34 15 agreement, correct?

16 A. Correct.

17 Q. And then you added a paragraph, I believe
18 paragraph nine, which says alternatively the
19 successor personal representative could enter into
10:02:43 20 an hourly fee agreement with Illinois counsel, and
21 you attach that as Exhibit C, correct?

22 A. That's right.

23 Q. And you attached the --

24 THE COURT: Mr. Feaman, I don't have that
10:02:54 25 right in front of me, so a little slower if you

1 could. Thank you very much.

2 MR. FEAMAN: Sorry, Your Honor.

3 BY MR. FEAMAN:

4 Q. Exhibit C is what, sir?

10:03:03 5 A. That would be a proposed hourly fee
6 agreement with my Illinois counsel.

7 Q. And that was back in December of 2015,
8 correct?

9 A. Correct.

10:03:13 10 Q. Exhibit B to this motion is what, sir?

11 A. A proposed contingency fee agreement with
12 my Illinois counsel.

13 Q. Subject to the Court discharging
14 Mr. Stansbury and the agreement of the
10:03:27 15 beneficiaries, you were willing to go in December
16 of 2015 with either a contingency or an hourly; is
17 that correct?

18 A. Yes. I was considering going either/or at
19 that point in time. Both were under consideration
10:03:45 20 might be the best way to say that.

21 Q. All right. And in the last few days the
22 estate, in fact, has settled with the plaintiffs in
23 the Chicago litigation?

24 MR. ROSE: Object to the form.

10:04:02 25 THE COURT: What's the form?

1 MR. FEAMAN: I'll rephrase.

2 BY MR. FEAMAN:

3 Q. In the last few days, the estate has
4 entered into a settlement agreement with all
10:04:14 5 parties now in the case in the Chicago litigation;
6 is that correct?

7 A. It is correct in that we have signed a
8 settlement agreement that's subject to court
9 approval here and federal court in Illinois.

10:04:29 10 Q. It's signed by all of the parties who are
11 presently in the action up in Chicago; is that
12 correct?

13 A. That's true.

14 Q. And you agree that the settlement is in
10:04:37 15 the best interest of the estate?

16 A. Yes.

17 Q. How long have you been negotiating a
18 settlement?

19 A. A number of months. It's taken a long
10:04:46 20 time, a lot of conversations, a lot of back and
21 forth. As with most cases, as it got closer to
22 trial, it became more serious and we came closer
23 and were able to achieve the settlement with the
24 numbers and the terms that are reflected in the
10:05:04 25 agreement.

1 Q. When you say a number of months, that
2 means you'd be going back to at least May of this
3 year; is that correct?

4 A. There were some conversations then. They
10:05:13 5 picked up more recently.

6 Q. Didn't you have a formal mediation?

7 A. As a telephone mediation.

8 Q. A telephone mediation. When was that?

9 A. That was in May.

10:05:25 10 Q. It was in May. I wasn't present at that,
11 correct?

12 A. No.

13 Q. Who was present at that mediation?

14 A. It was my counsel, counsel for I'll call
10:05:35 15 them the claimants, and those were the folks that I
16 remember being present. It was telephonic. It
17 wasn't in person, so I'm not entirely sure who may
18 have been on the phone at a particular time, and
19 our mediator of course, Judge Alvarez.

10:05:53 20 Q. So it was Mr. Stamos, your counsel,
21 Chicago counsel?

22 A. That's right.

23 Q. Who was there on behalf of the -- were any
24 clients there on your side?

10:06:04 25 MS. CRISPIN: Object to the form.

1 THE COURT: You guys, you really can't do
2 objections to form. Tell me what you're
3 objecting.

4 MS. CRISPIN: "Your side." I'm not sure
10:06:14 5 what that means. It's unclear, vague, assumes
6 facts not in evidence.

7 BY MR. FEAMAN:

8 Q. Any persons there connected, affiliated or
9 having an interest in the Estate of Simon Bernstein
10:06:27 10 that you represented?

11 THE COURT: This is the Court's own asking
12 for clarification. When you're saying "there,"
13 do you mean --

14 MR. FEAMAN: At the mediation.

10:06:33 15 THE COURT: At the mediation, okay.

16 MR. FEAMAN: The telephone mediation in
17 May.

18 THE WITNESS: On the phone I don't recall
19 an individual, an individual party
10:06:43 20 participating. I wasn't speaking to say the
21 Bernstein children, for example, so I'm not
22 sure if they were on the phone with Judge
23 Alvarez perhaps. I don't want to get off on a
24 tangent. I was speaking with --

10:06:58 25 MR. ROSE: Other than who's present --

1 THE COURT: Are you objecting?

2 MR. ROSE: I'm objecting. They are --

3 MR. FEAMAN: I have --

4 THE COURT: Hold on.

10:07:06 5 MR. ROSE: -- addressing mediations. I
6 understand --

7 THE COURT: What is your legal objection?
8 Not speaking, legal objection.

9 MR. ROSE: I was just advising there's a
10:07:13 10 mediation privilege that should be respected
11 by --

12 THE COURT: Sustained.

13 MR. ROSE: -- all parties. I think it's
14 getting close to --

10:07:18 15 MR. FEAMAN: No further questions, Your
16 Honor.

17 THE COURT: Sustained as to anything
18 further.

19 Mr. Eliot, questions?

10:07:27 20 MR. ELIOT BERNSTEIN: For Mr. O'Connell?

21 THE COURT: Yes.

22 CROSS (BRIAN M. O'CONNELL, ESQ.)

23 BY MR. ELIOT BERNSTEIN:

24 Q. Approximately how many years have you been
10:07:54 25 involved with estate cases?

1 A. Estate cases in general --

2 Q. Yes.

3 A. -- or this case?

4 Q. In general.

10:08:00 5 A. Really since I started practicing law, so
6 1981.

7 Q. Approximately how many estate cases have
8 you worked on, over 25, 50, 100?

9 A. In the thousands.

10:08:12 10 Q. Is it fair to say that you're familiar
11 with the basics of estate planning, yes or no?

12 MR. ROSE: Objection, relevance,
13 materiality.

14 MS. CRISPIN: Join.

10:08:22 15 THE COURT: Sustained with regards to
16 estate planning.

17 MR. ELIOT BERNSTEIN: On what grounds was
18 it sustained so I can get that on the record?

19 THE COURT: Did the court reporter hear
10:08:36 20 me?

21 THE REPORTER: Yes.

22 THE COURT: Would you read it back?

23 THE REPORTER: Sustained with regards to
24 estate planning.

10:08:38 25 THE COURT: Thank you. You may proceed.

1 BY MR. ELIOT BERNSTEIN:

2 Q. In the entire time of your involvement in
3 the Simon Bernstein estate case, have you ever
4 sought a deposition of Robert Spallina about
10:08:52 5 Simon's life insurance, yes or no?

6 MR. ROSE: Objection, relevance and
7 materiality as to the issue of discharging
8 Mr. Feaman's client to this litigation.

9 THE COURT: Sustained. Next question.

10:09:03 10 MR. ELIOT BERNSTEIN: Sustained on what
11 grounds?

12 THE COURT: I sustained his objection.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Have you ever sought --

10:09:09 15 MR. ELIOT BERNSTEIN: Well, can you state
16 what ground it was sustained on for the record?

17 THE COURT: He objected on those grounds,
18 and I sustained that objection.

19 BY MR. ELIOT BERNSTEIN:

10:09:16 20 Q. Have you ever sought a deposition of
21 Donald Tescher about Simon's insurance?

22 MR. ROSE: Same objection.

23 THE COURT: I will overrule it because
24 part of the Court's determination will be the
10:09:41 25 fact that he is the personal representative who

1 is representing, who has rights, so I will
2 allow it.

3 THE WITNESS: I have not. I can't speak
4 for Mr. Stamos because Mr. Stamos of course was
10:09:56 5 handling the matter prior to my becoming the
6 personal representative.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Have you talked with him regarding that?

9 MS. CRISPIN: Objection, Your Honor,
10:10:04 10 attorney/client privilege.

11 BY MR. ELIOT BERNSTEIN:

12 Q. No. Are you --

13 THE COURT: Sustained.

14 BY MR. ELIOT BERNSTEIN:

10:10:07 15 Q. Are you aware personally of any deposition
16 of Donald Tescher?

17 A. In the Illinois case, no.

18 Q. Have you ever sought the deposition or
19 know if your attorney sought the deposition of
10:10:19 20 Robert Spallina, the former personal representative
21 of the estate that was discharged after being
22 brought?

23 MR. ROSE: Objection, move to strike,
24 argumentative.

10:10:32 25 THE COURT: Overruled. You can answer.

1 THE WITNESS: Not to my knowledge.

2 BY MR. ELIOT BERNSTEIN:

3 Q. So to the best of your knowledge, Illinois
4 estate counsel that you've retained has not sought
10:10:48 5 any of those either?

6 A. I don't believe those depositions have
7 occurred.

8 Q. Have they sought depositions on any
9 relevant parties in the matter?

10:10:56 10 A. There have been depositions in that
11 matter.

12 Q. Whose?

13 A. I don't have a complete list here of who's
14 been deposed, because again part of the time I
10:11:05 15 wasn't in the case. So I don't want to misspeak as
16 to exactly who was deposed and when. I know there
17 have been depositions.

18 Q. Were any representatives of the primary
19 beneficiary of the policy, LaSalle National Bank,
20 according (inaudible.) --

21 THE REPORTER: Wait. I'm sorry, sir. Can
22 you start that question over. Were any
23 representatives of the primary beneficiary --

24 BY MR. ELIOT BERNSTEIN:

10:11:29 25 Q. LaSalle National Bank -- LaSalle National

1 Trust, excuse me, contacted or deposed regarding
2 their interest as the primary beneficiary of the
3 policy?

4 A. Well, the way your question is worded, I'm
10:11:44 5 a little uncertain because you said contacted or --

6 Q. Have they been deposed? Let's start with
7 that.

8 A. I'm not sure.

9 Q. Okay. Would you normally get a copy of
10:11:54 10 that from your counsel, depositions of parties?

11 A. Again, I would. It depends on the timing
12 as to when the deposition might have taken place.

13 Q. The discovery has been closed quite a
14 while there, so you probably would have gotten it
10:12:10 15 by now because it's several months to over a year.

16 A. I think it would depend on whether he was
17 operating as my counsel at the time and was I in
18 office at the time.

19 Q. So today as you sit here, you don't know
10:12:20 20 anybody who's been deposed in that action?

21 A. I know there have been depositions in --

22 Q. Of who?

23 A. -- the action.

24 THE COURT: Let him answer.

10:12:25 25 MR. ELIOT BERNSTEIN: Okay. Sorry.

1 THE WITNESS: I can't give you the exact
2 names. I'm not going to guess.

3 BY MR. ELIOT BERNSTEIN:

4 Q. So you don't have any knowledge of any
10:12:39 5 particular deposition at all at this moment?

6 MS. CRISPIN: Objection, asked and
7 answered.

8 THE COURT: Sustained.

9 BY MR. ELIOT BERNSTEIN:

10:12:47 10 Q. Has Attorney Peter Feaman sought Illinois
11 counsel to get the depositions that you know of?

12 MR. ROSE: Objection --

13 MS. CRISPIN: Objection, speculation.

14 MR. ROSE: -- relevance, materiality.

10:12:54 15 THE COURT: Sustained.

16 BY MR. ELIOT BERNSTEIN:

17 Q. How long have you known Peter Feaman --

18 MR. ELIOT BERNSTEIN: Oh, sorry. Did you
19 overrule that?

10:13:00 20 THE COURT: No. I sustained it.

21 BY MR. ELIOT BERNSTEIN:

22 Q. How long have you known Peter Feaman?

23 A. Approximately eight or nine years.

24 Q. And how well do you know him?

10:13:13 25 MS. CRISPIN: Objection, relevance.

1 THE COURT: Sustained.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Did you work with Peter Feaman in the past
4 on cases?

10:13:20 5 A. We've been adversaries. That's how we
6 met.

7 Q. Was it true that Peter Feaman was
8 instrumental in bringing you in this case?

9 MR. FEAMAN: Objection, relevance.

10:13:32 10 MR. ROSE: Join.

11 MS. CRISPIN: Join.

12 THE COURT: Sustained.

13 MR. ELIOT BERNSTEIN: On what grounds was
14 it sustained?

10:13:43 15 THE COURT: Sustained. Next question.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Do you or counsel have a copy of the Simon
18 Bernstein insurance policy, a bona fide copy from
19 the carrier?

10:14:01 20 MR. ROSE: Objection. Again, I understand
21 you're giving leeway, but we're here to decide
22 a narrow issue. This sounds more like --

23 THE COURT: What is your legal objection?

24 MR. ROSE: Relevance, materiality, beyond
10:14:13 25 the scope of --

1 THE COURT: Sustained. Next question.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Before we go any further, and I'm not even
4 sure we should have gone this far yet, you filed a
10:14:27 5 motion with the Court regarding a potential
6 conflict of interest of your firm in these matters
7 that you filed with Judge Scher. Do you think it's
8 appropriate to continue in the hearings without
9 first rectifying if you are conflicted in your
10:14:43 10 firm?

11 MR. ROSE: Objection, relevance,
12 materiality.

13 MS. CRISPIN: Objection, misstates the
14 facts in evidence and argumentative.

10:14:52 15 THE COURT: Sustained.

16 MR. ELIOT BERNSTEIN: On which grounds
17 that they raised by the way? They raised
18 several. All of them or --

19 THE COURT: Sustained.

10:15:15 20 BY MR. ELIOT BERNSTEIN:

21 Q. Do you have a partner Jerald Beer?

22 MR. ROSE: Objection, relevance.

23 MS. CRISPIN: Join.

24 THE COURT: I'm missing the relevance with
10:15:24 25 regards to --

1 MR. ELIOT BERNSTEIN: Well the --

2 THE COURT: Let me finish, please. With
3 regards to claims Mr. Stansbury seeks.

4 MR. ELIOT BERNSTEIN: Okay. Well, if
10:15:37 5 Mr. O'Connell is conflicted and has been since
6 the beginning of his representation, then all
7 of what he's done has basically been in
8 violation of the Florida Bar.

9 THE COURT: That would be a different
10:15:49 10 motion.

11 MR. ELIOT BERNSTEIN: Well, he put --

12 THE COURT: Sustained. I can't give legal
13 advice.

14 MR. ELIOT BERNSTEIN: Well, we should
10:15:52 15 address the conflict motion --

16 THE COURT: Sustained.

17 MR. ELIOT BERNSTEIN: -- before we
18 continue on the fraud.

19 THE COURT: So noted --

10:15:56 20 MR. ELIOT BERNSTEIN: Okay. That's fine.

21 THE COURT: Sustained. You have about
22 three more minutes of questions.

23 MR. ELIOT BERNSTEIN: Again that will
24 interfere with my due process rights, but okay.

10:16:04 25 THE COURT: The Court moves to strike

1 that.

2 MR. ELIOT BERNSTEIN: Put them on the
3 record.

4 BY MR. ELIOT BERNSTEIN:

10:16:07 5 Q. Were you noticed in March of 2016 --

6 MR. ELIOT BERNSTEIN: I've got more
7 questions than three minutes.

8 THE COURT: I am equally allotting the
9 time as the Court has indicated, and this Court
10:16:18 10 has continued this hearing for the third time.
11 You may continue --

12 MR. ELIOT BERNSTEIN: That's not my fault.

13 THE COURT: -- with your questions.

14 MR. ELIOT BERNSTEIN: That's not my fault.
10:16:22 15 This has been improperly scheduled each time.

16 THE COURT: Mr. Bernstein --

17 MR. ELIOT BERNSTEIN: It's caused me --

18 THE COURT: Mr. Bernstein, I'm giving you
19 a lot of leeway.

10:16:29 20 MR. ELIOT BERNSTEIN: Okay.

21 THE COURT: Wait. You're going to listen
22 to me a second.

23 MR. ELIOT BERNSTEIN: Uh-huh.

24 THE COURT: I will not tolerate
10:16:36 25 disrespect. You can disagree with the Court's

1 rulings, which you know I have no problem with,
2 but I will not be disrespected. Please go
3 ahead and finish up your questions.

4 MR. ELIOT BERNSTEIN: By the way, I'd like
10:16:42 5 to put on the record that people coming into
6 this court and committing fraud is a little bit
7 more than being a little bit of disrespect.
8 And those people, as you're aware of, that have
9 walked in here and told you I wasn't a
10:16:55 10 beneficiary with standing and have committed a
11 lot of fraud --

12 THE COURT: Mr. Bernstein --

13 MR. ELIOT BERNSTEIN: -- against me.
14 That's where we should start.

10:16:57 15 THE COURT: -- I'm going to ask you to do
16 your questions. This is not argument. It's
17 not time for argument.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Were you noticed in March 2016 that
10:17:06 20 potential conflicts between your firm and the
21 estate existed?

22 MS. CRISPIN: Objection, relevance.

23 THE WITNESS: Noticed of what and how?

24 BY MR. ELIOT BERNSTEIN:

10:17:13 25 Q. Notice of conflict of interest between

1 your firm and the Estate of Simon Bernstein, and
2 that I asked for your conflict of interest
3 disclosure form signed in March of 2016. I sent
4 you a copy.

10:17:27 5 MR. ROSE: Objection, relevance,
6 materiality, beyond the scope of this hearing.

7 MS. CRISPIN: Join.

8 THE COURT: Sustained.

9 MR. ELIOT BERNSTEIN: Well, if he's in
10:17:37 10 conflict --

11 THE COURT: No, no.

12 MR. ELIOT BERNSTEIN: Okay. I won't ask.
13 That's fine. I'd like it put on the record.

14 BY MR. ELIOT BERNSTEIN:

10:17:40 15 Q. What measures did you take to ferret out
16 conflicts prior to accepting this case? Did you
17 run a conflict check at your firm?

18 A. I did.

19 MS. CRISPIN: Objection, relevance.

10:17:52 20 THE COURT: Sustained.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Should you or your firm be taking any
23 actions in the case until the conflict you're aware
24 of is resolved?

10:18:01 25 MS. CRISPIN: Objection, relevance,

1 materiality.

2 THE COURT: I'll let him answer.

3 Overruled.

4 THE WITNESS: I'm not aware of any

10:18:11 5 disqualifying type of conflict, sir.

6 BY MR. ELIOT BERNSTEIN:

7 Q. You put in a motion regarding the conflict
8 of interest that you want this Court to determine.

9 My question is should you be doing anything prior
10:18:25 10 to that if you are in conflict?

11 A. I don't know which motion you're referring
12 to precisely. If you want to show me a copy, I'd
13 be happy to look at it.

14 Q. No. I think Judge Scher can look it up.
10:18:38 15 You just filed it the other week in this court. Do
16 I have to remind you of what you filed? Are you
17 competent?

18 A. I want to make sure --

19 MS. CRISPIN: Objection, Your Honor, move
10:18:46 20 to strike, argumentative.

21 THE COURT: Sustained, sustained.

22 THE WITNESS: I want to make sure --

23 THE COURT: I sustained the objection, so
24 you don't have to answer.

10:18:53 25 MR. ELIOT BERNSTEIN: Which part did you

1 sustain?

2 THE COURT: I sustained. Your question
3 was inappropriate. If you wish to show him the
4 motion you're referencing to, you're free to.

10:19:04 5 BY MR. ELIOT BERNSTEIN:

6 Q. Are you aware of a motion filed with your
7 signature to this Court regarding a conflict of
8 interest?

9 A. I'm aware of a motion that talks about the
10:19:17 10 fact there isn't a conflict of interest, yes.

11 Q. Well, it asked the Court to determine if
12 there is a conflict, correct?

13 A. You'd have to show me the motion.

14 Q. (Inaudible.)

10:19:26 15 THE REPORTER: I'm sorry, Judge. I didn't
16 even hear what he said.

17 THE COURT: I missed it all too, so...

18 BY MR. ELIOT BERNSTEIN:

19 Q. Have you attended settlement conferences
10:19:46 20 personally in these matters?

21 A. Yes, a telephone mediation.

22 Q. Okay. You stated prior that you've spent
23 months on this settlement, and prior to this in
24 other hearings before you said you really didn't
10:20:03 25 have any idea about what's going on here; is that

1 correct?

2 A. That's not correct.

3 Q. Oh, okay. How much have you billed for
4 this case for the insurance litigation?

10:20:12 5 MS. CRISPIN: Objection, relevance.

6 THE COURT: Sustained. One more question
7 and you're done.

8 MR. ELIOT BERNSTEIN: Okay. So my due
9 process rights to question the witness are
10:20:21 10 being interfered with.

11 THE COURT: Ask your question, please.

12 BY MR. ELIOT BERNSTEIN:

13 Q. Have you made note to the U.S. District
14 Court that you and others made claims and petitions
10:20:36 15 in hearings that I was not a beneficiary with
16 standing in my father's estate?

17 MR. ROSE: Objection, relevance,
18 materiality.

19 MS. CRISPIN: Join.

10:20:44 20 THE COURT: Sustained for this motion.

21 MR. ELIOT BERNSTEIN: Since you're cutting
22 short my opportunity to be heard, that's all I
23 have to say.

24 THE COURT: All right. And you'll have
10:20:53 25 the same amount of time, Mr. Rose.

1 MR. ROSE: May I approach and get the
2 exhibits?

3 THE COURT: You may. There's some
4 exhibits that are over with Mr. O'Connell as
10:21:02 5 well.

6 RE CROSS (BRIAN M. O'CONNELL, ESQ.)

7 BY MR. ROSE:

8 Q. I'm going to hand you Exhibit 2 in
9 evidence without objection at the prior hearing.
10:21:15 10 This is the amended order appointing administrator
11 ad litem.

12 MR. FEAMAN: Objection, exceeds the scope
13 of direct.

14 THE COURT: Can I have the question read
10:21:57 15 back?

16 THE REPORTER: I'm going to hand you
17 Exhibit 2 in evidence without objection at the
18 prior hearing. This is the amended order
19 appointing administrator ad litem.

10:22:01 20 THE COURT: Thanks. Ask a question.

21 BY MR. ROSE:

22 Q. You were asked questions by Mr. Feaman
23 about -- I lost my train of thought. I'll withdraw
24 it. One second. I got it. You were asked
10:22:26 25 questions by Mr. Feaman about two motions you filed

1 seeking permission to hire a lawyer in the event
2 this Court were to discharge Mr. Stansbury,
3 correct?

4 A. Correct.

10:22:38 5 MR. FEAMAN: Objection, mischaracterizes
6 his testimony. No discussion on assuming
7 Mr. Stansbury was discharged. No testimony did
8 he give on that.

9 THE COURT: Overruled. Overruled.

10:22:54 10 BY MR. ROSE:

11 Q. If the Court were to rule that
12 Mr. Stansbury not be discharged, then you would not
13 need to alter the arrangement with Mr. Stamos,
14 would you?

10:23:05 15 A. Correct.

16 Q. So you filed motions seeking permission
17 from this Court to enter into one or another
18 alternate fee arrangement with Mr. Stamos?

19 A. Correct.

10:23:18 20 Q. That would only be conditioned on this
21 Court discharging Mr. Stansbury, otherwise you
22 wouldn't have a need to do that?

23 A. True.

24 Q. Now, when you filed those motions, were
10:23:28 25 you aware of the terms of Exhibit 2?

1 A. Yes.

2 Q. This was entered June 12th of 2014, which
3 I know for a fact was before you were appointed as
4 personal representative, correct?

10:23:41 5 A. Correct.

6 Q. That happened sometime at --

7 THE COURT: Just because the Court doesn't
8 have the exhibit, I'm assuming Exhibit 2 is the
9 order? I don't know what exhibit you're
10:23:50 10 referring to.

11 MR. ELIOT BERNSTEIN: I don't have a copy.
12 Can I get a copy of that too?

13 THE COURT: It's in evidence. I want him
14 to say whatever you're referring to. Just tell
10:24:00 15 me what it is.

16 MR. ELIOT BERNSTEIN: Your Honor, there
17 was an exhibit entered into evidence, a court
18 order, I guess an amended court order. I don't
19 have a copy of that. I didn't get one at the
10:24:10 20 court last time. You said I didn't need it.

21 THE COURT: I didn't say you didn't need
22 it. I said it was entered into evidence. It's
23 the Court's pleadings.

24 MR. ELIOT BERNSTEIN: Well, I didn't get a
10:24:16 25 copy of it.

1 THE COURT: Nobody got a copy. Once they
2 put it in evidence, you should be able to get a
3 copy.

4 MR. ELIOT BERNSTEIN: I just got it from
10:24:26 5 Peter.

6 THE COURT: Thank you.

7 MR. ELIOT BERNSTEIN: Thank you, Peter.

8 THE COURT: Please proceed.

9 MR. ROSE: Would you like a copy or --

10:24:30 10 THE COURT: Just tell me what it is.

11 MR. ELIOT BERNSTEIN: Are we working off
12 the amended or the regular?

13 THE COURT: Mr. Bernstein, I'd like to be
14 the one directing it.

10:24:38 15 MR. ELIOT BERNSTEIN: Oh, sorry.

16 THE COURT: Tell me what your referring
17 to.

18 MR. ROSE: It's the amended order
19 appointing administrator ad litem.

10:24:44 20 THE COURT: Thank you. Go ahead.

21 MR. ROSE: If I repeat a question, I
22 apologize because my train of thought --

23 THE COURT: I need you to because now I'm
24 all confused.

25 ///

1 BY MR. ROSE:

2 Q. With regard to the two motions that you
3 filed seeking to hire counsel in Illinois, you did
4 that with knowledge of the terms of the amended
10:25:07 5 order entered by Judge Colin, correct?

6 A. Correct.

7 Q. You're aware that amended order was never
8 appealed?

9 A. Correct.

10:25:16 10 Q. You never excused Mr. Stansbury from
11 complying with that agreement, did you?

12 A. No.

13 Q. So when you entered into -- strike that.
14 When you filed a motion seeking the Court's
10:25:28 15 permission to enter into, it was with the knowledge
16 that in the event that Mr. Stansbury was discharged
17 that he would not be reimbursed for any fees or
18 costs incurred from either the decedent's estate or
19 trust unless there had been a recovery in the
10:25:44 20 Illinois litigation on behalf of the estate which
21 results in a net benefit to the estate; is that
22 correct?

23 A. That's correct, pursuant to the order,
24 yes.

10:25:53 25 Q. At this point, assuming Mr. Stansbury is

1 discharged and assuming that the Court does not
2 require Mr. Stansbury to comply with the terms of
3 the order until the time of the discharge, there's
4 going to be an amount due and owing to Mr. Stamos;
10:26:15 5 is that correct?

6 A. There is an amount due to Mr. Stamos, yes.

7 Q. It's \$55,000, plus or minus, as set forth
8 in the settlement agreement which is in evidence?

9 A. Correct.

10:26:25 10 Q. If the Court were to discharge
11 Mr. Stansbury and not require him to pay that
12 55,000 to be in compliance with the order, then
13 you're going to have a liability to Mr. Stansbury
14 of -- a liability to Mr. Stamos of \$55,000?

10:26:41 15 MR. FEAMAN: Objection, hypothetical.

16 THE WITNESS: Yes.

17 THE COURT: Overruled.

18 BY MR. ROSE:

19 Q. And that liability would be in addition to
10:26:47 20 whatever liability you have either now or in the
21 future to repay Mr. Stansbury?

22 A. True.

23 Q. No one disputes that if there's a
24 settlement and money comes in that Mr. Stansbury is
10:27:00 25 going to get paid back. In fact, it's in the

1 settlement agreement itself, correct?

2 A. If the settlement is approved, then
3 there's a benefit to the estate and Mr. Stansbury
4 should be repaid for the fees.

10:27:10 5 Q. You would agree if the settlement is
6 approved, Mr. Stansbury could be immediately
7 discharged with the thanks of the Court because
8 there's a net benefit if the settlement was
9 approved and funded?

10:27:22 10 A. Absolutely because there would be no need
11 for him to continue. There's nothing to fund. The
12 litigation is over. It's settled.

13 Q. Now let's talk about what happens if the
14 settlement is not approved for any reason or is
10:27:32 15 rejected by the Court. You would owe money to
16 Mr. Stamos immediately if Mr. Stansbury is
17 discharged, correct?

18 A. Correct.

19 Q. You would either have to enter into a
10:27:43 20 contingency fee agreement with him or pay him
21 hourly?

22 A. I would have to make that call at that
23 point, yes.

24 Q. Is it possible that the contingency fee
10:27:53 25 agreement he demands of 40 percent is higher than

1 it would be if he, in fact, had been paid in full
2 the \$55,000 that Mr. Stansbury owed?

3 A. If he's successful mathematically, yes, it
4 would be more. It would be 40 percent of the
10:28:11 5 recovery of approximately a million seven.

6 Q. Actually I asked a bad question.

7 Mr. Stamos is willing to waive the 55,000
8 if you enter into a contingency fee agreement,
9 right?

10:28:20 10 A. Right. It would be folded into that, yes.

11 Q. He wants 40 percent as a contingency fee?

12 A. Correct.

13 Q. Would you agree if Mr. Stansbury had paid
14 him all along so he wasn't owed any money, he might
10:28:34 15 be willing to do it on a lesser contingency fee
16 because he's already paid \$125,000 at that point?

17 MR. FEAMAN: Objection. It asks for the
18 statement of mind of counsel in Chicago.

19 THE COURT: Sustained. Can the Court ask
10:28:48 20 a question of Mr. O'Connell?

21 THE WITNESS: Sure, Your Honor.

22 THE COURT: At some point did you make the
23 determination it was beneficial for the estate
24 to continue in this litigation?

10:29:04 25 THE WITNESS: Yes.

1 THE COURT: As the personal
2 representative?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Thank you. You may proceed.

10:29:11 5 BY MR. ROSE:

6 Q. Apropos -- I'll save it foreclosing.

7 If you hire a lawyer on a contingency fee
8 basis at 40 percent, would you agree the attorney's
9 fee is about \$700,000?

10:29:31 10 MR. FEAMAN: Objection, hypothetical,
11 speculation.

12 THE WITNESS: Yes.

13 THE COURT: Overruled.

14 BY MR. ROSE:

10:29:37 15 Q. That's not something I'm making up. That
16 comes straight from the document attached to the
17 motion that Mr. Feaman put in evidence, correct?

18 A. That and the math, if one assumes, because
19 the policy had a value of a million seven, it
10:29:54 20 applies the 40 percent to that.

21 Q. I believe there's a recitation in the
22 settlement agreement that the amount in the
23 registry of the court is 1,708,000 and some change?

24 A. Correct.

10:30:03 25 THE COURT: I have another question. Is

1 the settlement agreement in any way contingent
2 on this hearing?

3 THE WITNESS: This particular hearing, no,
4 Your Honor. Just the generalized Court's
10:30:14 5 approval on the merits of the agreement here
6 and in Illinois in the federal court, both
7 courts.

8 THE COURT: Thank you.

9 BY MR. ROSE:

10:30:28 10 Q. Are you aware of anybody that believes --
11 strike that.

12 If you happened to -- if the settlement
13 were not approved and you went to trial, you
14 recognize there's a possibility that you win and
10:30:46 15 you get all of the money, right?

16 A. Yes.

17 Q. And there's a possibility that you lose
18 and get none of the money?

19 A. True.

10:30:51 20 Q. In the context where you lose and get none
21 of the money, you would possibly have to pay
22 Mr. Stamos his attorney's fees if you hired him on
23 an hourly rate basis, correct?

24 A. Correct.

10:31:04 25 Q. And Mr. Stansbury wants to be repaid not

1 pursuant to the amended order but immediately
2 regardless of whether funds were actually received,
3 correct?

4 A. I believe that's his position.

10:31:15 5 Q. In fact, that's probably the only thing
6 we're arguing here today, whether he gets paid back
7 now or whether there's a net benefit to the estate?

8 THE COURT: Actually, I thought that the
9 Court, I was under the impression that's the
10:31:28 10 one decision I'm not making today.

11 MR. ROSE: No. You're actually making the
12 decision. You're not deciding the amount
13 today.

14 THE COURT: No. I'm not deciding whether
10:31:35 15 he's reimbursed. I'm deciding whether he has
16 to continue to fund the litigation.

17 MR. ROSE: I think when we started the
18 hearing -- may I say we may not have been clear
19 enough on our position at the start of the
10:31:47 20 hearing. I think when I stood up at the
21 beginning of the hearing, it was to tell you if
22 you approved the settlement, then he's
23 discharged. We're going forward --

24 THE COURT: Yes.

10:31:55 25 MR. ROSE: If you're going to defer on

1 paying him back, then the issue --

2 THE COURT: I'm going to decide today at
3 the end of this hearing whether he'll be
4 discharged. But from the beginning, Mr. Feaman
10:32:08 5 said at the beginning they weren't asking
6 whether or not he would be reimbursed. Am I
7 correct, Mr. Feaman? I don't want to put words
8 in your mouth. And I once inappropriately --
9 you said the right thing and I corrected you
10:32:21 10 and I was wrong.

11 MR. FEAMAN: In opening statement we said
12 there were two things for you to decide: One
13 whether he should be discharged and second
14 whether it was appropriate at this time that
10:32:34 15 he's entitled to reimbursement without
16 determining an amount. In response to a
17 question in opening statement, you asked
18 opposing counsel, what's your position on
19 discharge, that part of it, and they both said
10:32:53 20 we oppose it. So here we are.

21 THE COURT: Thank you.

22 MR. ELIOT BERNSTEIN: Excuse me --

23 MR. ROSE: I still oppose discharge for
24 the record.

10:33:00 25 THE COURT: I know.

1 Yes, Mr. Eliot?

2 MR. ELIOT BERNSTEIN: Will I have time to
3 call the rest of my witnesses?

4 THE COURT: Who are the other witnesses?

10:33:09 5 MR. ELIOT BERNSTEIN: Alan Rose, Ted
6 Bernstein and Diana Lewis. I told you that at
7 the first hearing of this.

8 THE COURT: No, no.

9 MR. ELIOT BERNSTEIN: So, no, I won't get
10:33:18 10 that opportunity.

11 THE COURT: No. I do not remember you
12 ever mentioning because Ms. Lewis specifically
13 said she was not available for today but we
14 could proceed without her. And this is --

10:33:26 15 MR. ELIOT BERNSTEIN: I thought we were
16 starting with Brian O'Connell and we only had
17 one hour.

18 THE COURT: And we're going to conclude
19 the hearing.

10:33:32 20 MR. ELIOT BERNSTEIN: Oh, I didn't hear
21 that.

22 THE COURT: Did anybody else --

23 MR. ELIOT BERNSTEIN: I thought I was
24 going to get an opportunity --

10:33:34 25 THE COURT: Did anybody else misinterpret?

1 MR. ELIOT BERNSTEIN: Okay. I get it.

2 THE COURT: No. I need to --

3 MR. ELIOT BERNSTEIN: Leave it. Leave it
4 the way it is.

10:33:40 5 THE COURT: So you understood?

6 MR. ELIOT BERNSTEIN: What?

7 THE COURT: So you understand?

8 MR. ELIOT BERNSTEIN: What do I
9 understand?

10:33:48 10 THE COURT: That's what I'm asking you.

11 MR. ELIOT BERNSTEIN: I'm just confused if
12 I'm going to be able to present my witnesses.

13 THE COURT: I was very clear last time
14 that we are going to conclude this hearing in
10:33:58 15 an hour. Diana Lewis specifically said that
16 she was unable to attend today but she had no
17 objection to the hearing going forward.

18 MR. ELIOT BERNSTEIN: Right. I thought we
19 were continuing. I didn't know the conclusion
10:34:13 20 was going to be at the end of this hour.

21 THE COURT: Did anyone else have a
22 different interpretation of the Court's prior
23 re-setting to conclude this? Actually, I don't
24 even have to ask that. The reason it was set
10:34:25 25 today specifically, and I was not very kind

1 with regards to bringing Mr. O'Connell unless
2 another judge had him, he was to be here
3 because the case was set for trial in Illinois,
4 so we needed to continue and finish it today.

10:34:38 5 MR. ELIOT BERNSTEIN: Well --

6 THE COURT: That was the reason. And I
7 said I squeezed it in specifically today
8 because the case was set, I want to say, within
9 two weeks or very soon thereafter in August to
10:34:54 10 start, so we were going to conclude today.

11 MR. ELIOT BERNSTEIN: Do we have a
12 transcript of that hearing with all of that
13 stuff?

14 THE COURT: I don't need -- I know there's
10:35:02 15 a court reporter. And you know what,
16 Mr. Eliot, you have every right to contact that
17 court reporter and order that at your own
18 expense.

19 You can proceed, Mr. Rose.

10:35:06 20 BY MR. ROSE:

21 Q. Would you agree that as of today
22 Mr. Stansbury has not conferred a net benefit on
23 the estate?

24 MR. FEAMAN: Objection, calls for a legal
10:35:19 25 conclusion.

1 MR. ROSE: I'll rephrase.

2 BY MR. ROSE:

3 Q. Would you agree that as of today
4 Mr. Stansbury has not delivered a net cash influx,
10:35:34 5 a net cash benefit to the estate as a result of
6 anything that happened in conjunction with the
7 order entered by Judge Colin?

8 MR. FEAMAN: Objection, assumes facts not
9 in evidence, no foundation. Mr. Stansbury is
10:35:49 10 not in a position to deliver anything.

11 THE COURT: As the personal
12 representative, I want to know -- I'm so sorry,
13 Madam Court Reporter, would you read that back?

14 THE REPORTER: Sure. Would you agree that
15 as of today Mr. Stansbury has not delivered a
16 net cash influx, a net cash benefit to the
17 estate as a result of anything that happened in
18 conjunction with the order entered by Judge
19 Colin?

10:36:16 20 THE COURT: As phrased I sustain
21 Mr. Feaman's objection as phrased. That's a
22 legal question.

23 BY MR. ROSE:

24 Q. Would you agree there has not been from
10:36:24 25 the Illinois litigation a net cash influx into the

1 estate?

2 A. I would agree with that.

3 Q. There has not been a net benefit in cash
4 from the Illinois litigation as of today?

10:36:39 5 A. That's correct as of today.

6 Q. If the Court were to approve settlement
7 and it become fully consummated, you expect to get
8 a net cash benefit at that point?

9 A. Absolutely.

10:36:51 10 THE COURT: Mr. Rose, I'm going to ask you
11 to --

12 MR. ROSE: Last question.

13 BY MR. ROSE:

14 Q. And so it's still possible that as a
10:36:58 15 result of the -- of whatever happened where Judge
16 Colin appointed an administrator ad litem with the
17 agreement set forth in the transcript and the
18 order, whatever that is, there's still a chance
19 that the estate could lose the litigation in
10:37:16 20 Illinois and it could have a net cash loss to the
21 estate? You'd have to pay money to either
22 Mr. Feaman's client or Mr. Stamos and still lose
23 the case. It's possible.

24 MR. FEAMAN: Objection, speculation.

10:37:28 25 THE COURT: Sustained -- overruled

1 actually. It goes to the issue. Overruled.

2 THE WITNESS: It could be possible.

3 MR. ROSE: No further questions.

4 THE COURT: Okay. Okay. Redirect?

10:37:38 5 MR. FEAMAN: One question.

6 REDIRECT (BRIAN M. O'CONNELL, ESQ.)

7 BY MR. FEAMAN:

8 Q. In response to the Court's question that
9 at some point you made the decision that it was in
10:37:53 10 the best interest of the estate to continue with
11 the Chicago litigation, you answered yes, correct?

12 A. Correct.

13 Q. When you look at Exhibits 5 and 6, which
14 was your motions to approve either a contingency or
10:38:08 15 an hourly agreement, you would agree with me that
16 that decision you made was done at the very latest
17 as of the filing of those motions, December 2nd,
18 2015, correct?

19 A. Correct.

10:38:21 20 MR. FEAMAN: Thank you.

21 THE COURT: Mr. Feaman, can I impose on
22 you to bring me back my exhibits?

23 MR. FEAMAN: Yes, Your Honor. All of
24 them.

10:38:32 25 THE COURT: Thank you. Thank you. All

1 right. That concluded your witnesses,
2 Mr. Feaman?

3 MR. FEAMAN: Yes.

4 THE COURT: Mr. Eliot, Mr. Bernstein is
10:38:52 5 here if you want to call him.

6 MR. ELIOT BERNSTEIN: I want to call Diana
7 Lewis first.

8 THE COURT: Well, we've already discussed
9 that. We're not going to revisit that. She's
10:39:00 10 not here. She specifically said she wasn't
11 going to be here and the Court specifically
12 said -- and you did not indicate at that time
13 you were intending to put her on.

14 MR. ELIOT BERNSTEIN: I did tell her --

10:39:08 15 THE COURT: I'm moving forward.

16 MR. ELIOT BERNSTEIN: -- that I intended
17 to.

18 THE COURT: I'm moving forward.

19 MR. ELIOT BERNSTEIN: And I told the Court
10:39:13 20 that too.

21 THE COURT: The deposition is not, so you
22 understand --

23 MR. ELIOT BERNSTEIN: That's fine.

24 THE COURT: You need to stop that.

10:39:17 25 MR. ELIOT BERNSTEIN: Oh, sorry. I call

1 Ted Bernstein.

2 THE COURT: When I talk, you cannot make
3 mumblings underneath. Thank you.

4 Mr. Bernstein, come on up. And please
10:39:26 5 keep the questions relevant to this proceeding
6 on whether Mr. Stansbury should remain paying
7 the fees of the Chicago litigation.

8 - - -

9 THEREUPON,

10 TED BERNSTEIN,

11 being by the Court first duly sworn, was examined
12 and testified as follows:

13 THE WITNESS: I do.

14 THE COURT: And we'll keep it brief to
10:39:39 15 that issue. Mr. Bernstein, you may proceed.

16 DIRECT (TED BERNSTEIN)

17 BY MR. ELIOT BERNSTEIN:

18 Q. Ted, are you aware of any depositions in
19 the Illinois litigation on your former counsel and
10:40:00 20 former PRs of the Estate of Simon Bernstein, Robert
21 Spallina or Donald Tescher?

22 MR. ROSE: Objection, relevance,
23 materiality and cumulative from the testimony
24 of Mr. O'Connell.

10:40:09 25 THE COURT: Overruled. You can answer if

1 you can.

2 THE WITNESS: Am I aware of depositions
3 that have been taken of Robert Spallina and
4 Donald Tescher is what you're asking?

10:40:14 5 BY MR. ELIOT BERNSTEIN:

6 Q. Right.

7 A. In relation to what?

8 Q. Illinois insurance litigation.

9 A. Not sure.

10:40:26 10 Q. You claim that you're the acting trustee
11 of a trust in the Illinois insurance litigation; is
12 that correct?

13 A. Yes.

14 Q. Are you aware that your former attorney
10:40:37 15 stated that he was the trustee of that trust while
16 applying for a life insurance death benefit claim?

17 MR. ROSE: Objection, relevance,
18 materiality, beyond the scope of the issues.

19 THE COURT: Sustained. Next question,
10:40:49 20 please.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Are you aware that Robert Spallina made
23 application for the life insurance proceeds that
24 are subject to this hearing?

10:40:59 25 MR. ROSE: Same objection.

1 THE COURT: Sustained.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Are you aware of any claim for fraudulent
4 application for insurance in this matter?

10:41:10 5 MR. ROSE: Objection, same objection.

6 THE COURT: Let me explain. Please let me
7 explain. I'm sustaining the objections because
8 we're here to decide whether Mr. Stansbury
9 should pay for this litigation that could bring
10:41:25 10 money into the estate.

11 MR. ELIOT BERNSTEIN: Right.

12 THE COURT: So I'm totally missing where
13 you're going.

14 MR. ELIOT BERNSTEIN: I'm trying to lay a
10:41:28 15 foundation, Your Honor, that you continuously
16 block me from that there's fraud going on here
17 and that Mr. Stansbury shouldn't be paying
18 anything, that investigations for fraudulent
19 applications for insurance on my father while
10:41:43 20 my brother and his counsel made allegations
21 that he was murdered, they went and applied for
22 an insurance policy with Mr. Spallina, the
23 former PR of this estate, who resigned after
24 admitting fraud.

10:41:54 25 THE COURT: So --

1 MR. ELIOT BERNSTEIN: So should
2 Mr. Stansbury be paying and should the estate
3 be paying for fraud? You're about to allow the
4 estate to pay. Mr. Stansbury shouldn't have
10:42:09 5 been paying for this. That's the most
6 ridiculous order in the world, but he shouldn't
7 have ever been paying as a creditor for the
8 estate's recovery of an asset they were fully
9 aware of. The reason prior attorneys didn't go
10:42:23 10 after and see the advantage of the settlement
11 was because they're involved directly with the
12 fraud. So I'd like to lay the basis that this
13 is all about a lot of fraud, possible murder of
14 my father, attempts to collect his insurance
10:42:35 15 policy.

16 THE COURT: Then I'm going to sustain the
17 objection. Discontinue that line of
18 questioning because that is not appropriate for
19 this hearing. Next question.

10:42:49 20 MR. ELIOT BERNSTEIN: It's not appropriate
21 if Mr. Stansbury --

22 THE COURT: If you argue with me --

23 MR. ELIOT BERNSTEIN: I'm trying to figure
24 out my line of questioning. Excuse me.

10:42:55 25 THE COURT: Please ask your next question.

1 I can't give you legal advice.

2 MR. ELIOT BERNSTEIN: (Inaudible.)

3 THE REPORTER: I'm sorry. I can't hear
4 you.

10:43:01 5 MR. ELIOT BERNSTEIN: I asked her --

6 I thought it was procedural advice. Okay.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Ted, you're aware in the Illinois
9 litigation there's been a summary judgment claim
10:43:16 10 that I was not a beneficiary of Simon Bernstein's
11 estate; is that correct?

12 MR. ROSE: Objection, relevance,
13 materiality, beyond the scope of the issues.

14 THE COURT: Sustained. This isn't a
10:43:29 15 discovery deposition, so I'm sustaining that.
16 Move on.

17 BY MR. ELIOT BERNSTEIN:

18 Q. In your settlement have you gained consent
19 of the beneficiaries that -- did you propose the
10:43:56 20 settlement in Illinois?

21 MR. ROSE: Objection, relevance,
22 materiality, beyond the scope.

23 THE COURT: This isn't to approve the
24 settlement, so sustained.

10:44:06 25 MR. ELIOT BERNSTEIN: Well, the settlement

1 has been entered. I'm just asking if their
2 counsel -- if his counsel filed it, put
3 together the settlement, who did the
4 settlement.

10:44:16 5 THE COURT: For the motion to approve,
6 that may be a relevant question, but not for
7 today.

8 BY MR. ELIOT BERNSTEIN:

9 Q. Do you know the age of Josh Bernstein,
10:44:26 10 your nephew?

11 MR. ROSE: Same objection.

12 THE COURT: Sustained.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Do you know the birthday of Jacob
10:44:35 15 Bernstein?

16 MR. ROSE: Same objection.

17 THE COURT: Sustained.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Did you seek a guardian ad litem for Josh
10:44:40 20 and Jake after Josh -- did you seek a GAL for Josh
21 or Jake, a guardian ad litem in these matters?

22 MR. ROSE: Objection, relevance, beyond
23 the scope for today.

24 THE COURT: Sustained. I need you to keep
10:44:54 25 it to today's motion.

1 MR. ELIOT BERNSTEIN: Well, I'm trying to
2 -- okay. You won't let me lay any foundations.
3 I get it. It's okay. I'm good with the record
4 as it stands.

10:45:02 5 THE COURT: Okay. Does anyone have any
6 questions for Mr. Bernstein?

7 MR. ELIOT BERNSTEIN: I also want to put
8 on the record that I've been denied my
9 opportunity to call certain witnesses.

10:45:10 10 THE COURT: Any other questions for
11 Mr. Bernstein?

12 MR. FEAMAN: No questions, Your Honor.

13 MR. ROSE: No, Your Honor.

14 THE COURT: You may step down,
10:45:17 15 Mr. Bernstein. Thank you.

16 Mr. Rose, any witnesses?

17 MR. ROSE: No, Your Honor.

18 THE COURT: Mr. O'Connell?

19 MR. O'CONNELL: No, Your Honor.

10:45:29 20 THE COURT: Okay. Which other witnesses
21 did you want to call, Mr. Eliot? We
22 discussed --

23 MR. ELIOT BERNSTEIN: Diana Lewis. That's
24 one. Depending on her answers, I might have
10:45:55 25 others. There's been a lot of change brought

1 here.

2 THE COURT: Have you subpoenaed anyone
3 else to be here?

4 MR. ELIOT BERNSTEIN: No. I was going to
10:46:03 5 probably call up Mr. Rose, but I'll do that
6 after if I have a chance to get Diana Lewis.
7 Otherwise, it kind of goes against my
8 positions.

9 THE COURT: Okay. Are we ready for
10:46:14 10 closings?

11 MR. FEAMAN: Yes, Your Honor.

12 THE COURT: All right. I'm going to ask
13 you to keep them really brief.

14 MR. FEAMAN: Yes. As to the issue of
10:46:24 15 whether Mr. Stansbury should be discharged from
16 any further responsibility of funding the
17 Chicago litigation, Your Honor, I really can't
18 believe that opposing counsel have made this
19 argument against that with a straight face when
10:46:39 20 the personal representative comes into this
21 court and says that the decision was made that
22 it's in the best interest of the estate to
23 continue with the litigation in Chicago at
24 least a year and a half ago.

10:46:56 25 There's no law, there's no case, there's

1 no statute which would allow this Court to
2 force a claimant to pay for the efforts to
3 gather assets for that estate. That's clearly
4 the job of the personal representative. Plus
10:47:18 5 both of the orders that permit the estate to
6 intervene in the Chicago litigation, both of
7 them say that Mr. Stansbury will "initially"
8 bear the cost of the litigation, both the one
9 entered that I gave to the judge, which by the
10:47:40 10 way is Exhibit 1 in this action, which I gave
11 to the judge on the day of the hearing says
12 "initially," and secondly the subsequent order,
13 which by the way is a conformed copy, not a
14 copy of what the judge actually signed, entered
10:48:00 15 weeks after the hearing, the judge even wrote
16 in "initially" in the typed version. His
17 handwriting, Judge Colin, says "initially" in
18 paragraph two.

19 So here we are, Your Honor, three years
10:48:17 20 and \$70,000 later by Mr. Stansbury, and we're
21 still arguing that somehow they think he should
22 be kept against his will to fund the Chicago
23 litigation. Clearly, "initially" has come and
24 gone. The man has expended at least \$70,000 of
10:48:40 25 Mr. Stansbury as is in evidence.

1 As to the amounts, we're reserving on
2 that. We've all agreed on that. Because we
3 will be seeking fees subsequently for having to
4 go through all of this on behalf of
10:48:55 5 Mr. Stansbury. So that's why I'm surprised at
6 the position taken by both the estate -- and I
7 know that Mr. Rose on behalf of his client back
8 in May of 2014 objected that Mr. Stansbury
9 should even be allowed to have the push for the
10:49:17 10 estate to intervene. And then once Judge Colin
11 allowed it and said Mr. Stansbury, you'll pay
12 for it initially, to which we agreed, that was
13 initially objected to by Mr. Rose's client, of
14 course, because Ted Bernstein was the plaintiff
10:49:37 15 in the estate -- I mean, in the action in
16 Chicago.

17 Now here we are trying to get
18 Mr. Stansbury discharged three years later and
19 now they're taking the complete opposite
10:49:47 20 position that, no, you shouldn't let him out
21 either. Here's the bottom line: There's no
22 authority, statute or law that says that this
23 Court should compel Mr. Stansbury against his
24 will to fund the PR's efforts to obtain assets
10:50:04 25 for the estate. I think that's clear on that

1 issue.

2 I'll move on. The next issue is whether
3 Mr. Stansbury is entitled to a ruling saying
4 that he is entitled to be compensated without
10:50:17 5 ruling as to the amount. Our position on that
6 is very clear that under Florida law he
7 provided a benefit to the estate. They take
8 the position that because no cash has as of yet
9 flown into the estate as a result of the
10:50:31 10 intervention that it's not time for that yet.
11 We say that that's not the law in Florida.

12 We cited the Wejanowski case, which I
13 cited in opening statement. It says that there
14 is a petition for reimbursement of fees by the
10:50:50 15 personal representative, and it was objected to
16 because the argument was, well, you -- the
17 appeal, the attorney's fees incurred did not
18 result in a monetary benefit to the estate.
19 And the court said, we don't analyze whether a
10:51:04 20 benefit has been conferred upon the estate for
21 the expenditure of the funds as to whether it
22 translates into money, but whether -- their
23 test was the true benefit to an estate provided
24 by, in this case it was, an appellate attorney
10:51:19 25 for purposes of entitlement to payment of

1 appellate fees and costs out of estate assets
2 is the presentation of a good faith appeal and
3 its ultimate resolution.

4 Reasoning by analogy, Mr. Stansbury has
10:51:33 5 funded a good faith intervention and though it
6 has not yet resulted in money to the estate,
7 clearly a benefit has been provided but for the
8 intervention. Summary judgment could have been
9 granted in favor of the plaintiffs. The estate
10:51:53 10 would have never had the opportunity to even
11 make the settlement it has in front of you now
12 for some \$700,000.

13 So we believe the law clearly supports the
14 conclusion by Your Honor that Mr. Stansbury
10:52:07 15 even right now has conferred a benefit on the
16 estate. Opposing counsels rely on what I call
17 the rogue order, which was the subsequent order
18 entered a month after the hearing. My response
19 to that is there was no notice of hearing
10:52:23 20 resulting in that order, rather it was sent in
21 and signed by the judge. They made a big deal
22 of the fact that it was not appealed.

23 Well, Your Honor, it's not an appealable
24 order. Not every order entered by a judge is
10:52:36 25 appealed. There would have been a petition for

1 writ of cert. And at some point the decision
2 was made that there is a limited amount of
3 resources and we'll deal with what the law is.
4 And that's why we put the transcript of that
10:52:57 5 hearing had before Judge Colin before Your
6 Honor, because that order, the second order if
7 you will, which does not revoke the first order
8 says --

9 THE COURT: I do need you to wrap it up,
10:53:10 10 Mr. Feaman.

11 MR. FEAMAN: Thank you. It says in three
12 places: At page 14, page 35 and page 38, Judge
13 Colin specifically said under the statute he
14 has to prove that he provided a benefit to the
10:53:26 15 estate.

16 THE COURT: Ms. Crispin --

17 MR. FEAMAN: Don't worry about money.

18 THE COURT: I'm sorry.

19 MR. FEAMAN: That's at page 14. Judge
10:53:35 20 Colin said at page 35, quote, it would only be
21 the case if there's a recovery for the estate
22 to which then Mr. Stansbury would say, under
23 the statute I performed a benefit for the
24 estate. And then the judge again repeated at
10:54:01 25 page 38, Judge Colin said, that's the case

1 subject to a claim for reimbursement under the
2 statute, and the statute and the law allow
3 Mr. Stansbury to seek and have this Court say
4 that he is entitled to fees because he has
10:54:18 5 conferred a benefit on the estate.

6 THE COURT: Thank you. Mr. Eliot?

7 MR. ELIOT BERNSTEIN: First I'd like to
8 note in my closing the Court's rushing these
9 proceedings to coincide with other case
10:54:32 10 actions. It's limited my time for witnesses,
11 discovery, et cetera. It's allowing a
12 settlement into evidence that's been discussed
13 that I had no time to review. And again, this
14 hearing looks like a further sham hearing in a
10:54:47 15 continuation of sham hearings to attempt to
16 cover up fraud, fraud on the Court, fraud on
17 the beneficiaries and fraud on the creditor,
18 Mr. Stansbury. And while I appreciate the
19 Court's effort to cover up a long lineage of
10:54:57 20 frauds that have been going on in this case by
21 the personal representatives prior, et cetera,
22 we will move forward with this limited hearing
23 of my rights.

24 I oppose the order that Mr. Stansbury's
10:55:12 25 counsel filed seeking full discharge from the

1 estate of Simon. In addition to the last
2 minute nature of the proposed order that I was
3 never submitted prior to, I think, yesterday to
4 review or make comment on -- it was submitted
10:55:30 5 within less than 24 hours of this hearing.

6 MR. FEAMAN: Eliot, that order was
7 circulated to counsel. It was not submitted to
8 the Court.

9 MR. ELIOT BERNSTEIN: Oh, okay, however it
10:55:42 10 got in here. With the settlement, I haven't
11 had time to prepare proper questions on that.
12 They all went ahead and started questioning and
13 you allowed all of that, but that's okay. The
14 proposed order is predicated on false and
10:55:56 15 misleading statements to the Court.

16 MR. ROSE: Objection. This is not
17 appropriate closing argument of a motion --

18 THE COURT: Sustained.

19 MR. ROSE: -- that's before the Court
10:56:01 20 today.

21 THE COURT: The Court will also put on the
22 record that this Court has allowed comments
23 from Mr. Eliot that if any other attorney said
24 I would shut down immediately.

10:56:10 25 MR. ELIOT BERNSTEIN: Right. Well, I'm

1 hoping that when attorneys commit fraud and
2 come up to the Court --

3 MR. ROSE: Judge --

4 THE COURT: Please, Mr. Eliot.

10:56:15 5 MR. ELIOT BERNSTEIN: -- and state false
6 statements --

7 THE COURT: Mr. Eliot, that's the last
8 time today I think you're going to argue with
9 me while I'm trying to talk. If you do it
10:56:25 10 again, I will ask you to leave.

11 MR. ELIOT BERNSTEIN: Okay. While I
12 submit that Stansbury shouldn't have to pay for
13 the litigation obligation to the Illinois case
14 and U.S. Seventh, I've also made an appeal to
10:56:45 15 the U.S. Seventh Court of Appeals regarding
16 much of what you're learning about, all of the
17 fraud --

18 MR. ROSE: Objection, argumentative.

19 MR. ELIOT BERNSTEIN: -- that interfered
10:56:54 20 with my rights in that case.

21 MR. ROSE: Well, it is argument, but it's
22 improper argument.

23 THE COURT: Overruled. Just finish it up.

24 MR. ELIOT BERNSTEIN: The claimant
10:57:03 25 Stansbury shouldn't be fully discharged from

1 obligations to the Estate of Simon Bernstein
2 until conflicts of interests are determined and
3 until full accountings of both the estates of
4 Simon and Shirley are completed and heard with
10:57:15 5 any objections. And I think that at a minimum
6 Stansbury's obligation to pay for Chicago
7 counsel should be stayed until further order of
8 the Court.

9 I believe that it's been made that there's
10:57:37 10 a statement that they had a fully executed
11 settlement to this Court. I believe that's not
12 true. Again, I've just been thrown all of
13 these documents in the last hours but also note
14 that the U.S. District Court hasn't approved
10:57:55 15 this settlement yet, and it is part of the
16 settlement papers that Judge Blakey will be
17 needing to do that. There's a conference
18 tomorrow with Judge Blakey that I'll also be
19 attending.

10:58:13 20 And I believe that Mr. Feaman has
21 knowledge that the settlement negotiations
22 themselves came after fraud upon the U.S.
23 District Court occurred by Ted Bernstein and
24 his Illinois counsel Adam Simon --

10:58:27 25 THE COURT: All right. I'm not going to

1 allow you to say what the other attorneys have
2 knowledge of in this courtroom.

3 MR. ELIOT BERNSTEIN: Well, this --

4 THE COURT: No. That will be the end of
10:58:32 5 that.

6 MR. ELIOT BERNSTEIN: Okay. But --

7 THE COURT: No. That's arguing with me.
8 You're done.

9 Mr. Rose, you may proceed.

10:58:40 10 MR. ROSE: Thank you, Your Honor. I'm
11 going to address a couple of issues briefly.
12 It's okay my position has been criticized. I
13 understand it's not a personal attack, but my
14 position has been criticized. I need to defend
10:58:55 15 my position and explain how we got here briefly
16 because it's relevant to your determination of
17 whether you're going to discharge Mr. Stansbury
18 or not.

19 I will tell you this. It's not unapparent
10:59:08 20 that you're inclined to release him from
21 funding further obligations. That's fine.
22 This motion was filed two years ago. It was
23 set multiple times before Judge Phillips, and
24 it was always withdrawn from hearing. They
10:59:21 25 never wanted to have this issue heard for

1 whatever reason.

2 MR. FEAMAN: Objection, citing facts that
3 are not in the record.

4 MR. ROSE: It's actually in the record
10:59:28 5 because he put into evidence -- the first thing
6 he did was go through all of the times that he
7 filed motions and put in a whole chronology of
8 stuff at some point. But that's not -- my
9 point is we had two issues.

10:59:41 10 They have a motion to be discharged. We
11 are entitled to have a hearing on that, and
12 this is the hearing. It could have been a very
13 quick hearing. I would have been fine if they
14 put in all of their documents and we went
10:59:53 15 straight to closing argument. But I would
16 submit to you, although you've heard evidence
17 on multiple days, it was basically people
18 reading the documents and reading the
19 transcripts and things that could have been put
11:00:01 20 into evidence. I'm not the cause of this being
21 a lengthy hearing.

22 This is our position then and our position
23 today. The estate has a claim that it could
24 lose and in our position very likely would lose
11:00:16 25 based upon the law and the evidence and the

1 record in Illinois and our concern, my client's
2 concern as the trustee of the trust was that
3 estate funds not be used to fund litigation
4 that we believed in good faith was going to
11:00:28 5 result in a negative result.

6 We had a lengthy hearing. You have the
7 transcript in evidence. We had a long
8 discussion with Judge Colin about these very
9 issues. And for the purposes of -- we keep
11:00:39 10 saying Judge Colin, but to some degree we're
11 really -- it's the Court. It's as though Your
12 Honor were there that day. It's the same
13 discussion. That was our position then and
14 it's still our position.

11:00:51 15 You heard from Mr. O'Connell. There's
16 still a possibility of a net negative result in
17 this case. We urge you to approve the
18 settlement today. But if for some reason you
19 decide to reject the settlement, then there's
11:01:06 20 going to be a trial in Illinois. And depending
21 on what we do here today, there's multiple
22 scenarios under which this estate ends up
23 spending money that should go to the
24 beneficiaries, the trust, and then the
11:01:18 25 sub-trusts and losing and a net loss.

1 So the other part I think is, you know,
2 this is a valid order of the Court. And you
3 know I used the word "rogue" tongue and cheek,
4 but Mr. Feaman repeated it in his closing. He
11:01:36 5 still calls this the "rogue" order. It's an
6 order of Your Honor or this Court. I take
7 orders of the Court very seriously.

8 His client is not in compliance with the
9 order. And to come in and ask for relief from
11:01:50 10 an order when you're not in compliance with it
11 violates the law. We've cited that to you in
12 our motion. I won't repeat it. But clearly
13 you're supposed to comply with orders and get
14 relief from them and then you can choose to
11:02:02 15 comply or not. So his client clearly did not
16 comply with the order. To call it a "rogue"
17 order insults the Court, insults the parties.
18 It's an insult to Judge Colin, who spent 50
19 pages discussing.

11:02:18 20 And Mr. Feaman told you in opening, well,
21 this was a surprise because we never talked
22 about this issue. And then he showed you in
23 the transcript. He read it to you in closing,
24 the transcript that says he will only -- it
11:02:27 25 will only be the case he can get recovery if

1 there is a recovery for the estate. It
2 couldn't be clearer that it was litigated for
3 page after page. This is a valid order of Your
4 Honor and it's never been modified. It's never
11:02:42 5 been appealed. Whether it's appealable or not
6 is debatable.

7 My position is it is an appealable order
8 because it requires him to immediately pay
9 money, so it's an appealable order on Rule
11:02:51 10 9.130(c)(3). And it's probably an appealable
11 probate order under 9.170. I'm not criticizing
12 them for not appealing it. I'm criticizing
13 them, not Mr. Feaman, their position, I'm
14 criticizing them for not complying with it, for
11:03:07 15 not acknowledging it.

16 And Your Honor is left where you are left.
17 I think you're going to discharge him from
18 further obligations. We would ask that you do
19 it conditionally on him bringing himself into
11:03:20 20 compliance with this order. Then Mr. O'Connell
21 can make an informed decision whether to hire a
22 lawyer on an hourly rate basis or on a
23 contingency fee basis.

24 In one sense, by not paying \$55,000 to
11:03:33 25 Mr. Stamos, they put Mr. O'Connell in a very

1 difficult position. He has to either
2 immediately write a check for \$55,000 for past
3 due expenses or enter into what I think is a
4 very large contingency fee for a case that's
11:03:46 5 going to be -- I think there was some
6 testimony. It's not an expensive case to try
7 for Mr. Stamos, 50 to \$100,000. Now, because
8 there's a past due balance, the way we're going
9 to get out of it is he's going to waive it if
11:03:59 10 we'll agree to give him -- well, when I say
11 "we" I mean Mr. O'Connell, if the estate is
12 willing to give him 40 percent.

13 I think if you want to discharge him, he
14 should be required first to come in compliance
11:04:13 15 with this order. Failing that, you certainly
16 should not modify the amended order and entitle
17 him to any monies until there is a net
18 recovery. Now, we all full well expect there
19 will be a net recovery. So there would be
11:04:25 20 nothing left for him to oversee. The discharge
21 becomes moot when you approve the settlement.
22 I was hoping they would get this settled. You
23 heard some testimony that they started in May
24 with a mediation. I was hoping this would be
11:04:39 25 settled before we had these hearings. I didn't

1 expect these hearings to take as long as they
2 did.

3 Where you are right now we ask you to deny
4 his discharge for two reasons: He's not in
11:04:50 5 compliance with the order and all the same
6 reasons still apply that applied to Judge
7 Colin. I understand that you're very likely to
8 not require --

9 THE COURT: I had a question.

11:05:00 10 MR. ROSE: Yes. Sorry.

11 THE COURT: If I was to discharge
12 requiring him to come into compliance, aren't I
13 -- why would I just not discharge, require
14 Mr. O'Connell to make the determination of
11:05:15 15 which way to go, either pay the past balance --
16 do you see what I'm saying? He could make that
17 determination as the personal representative
18 that would be a choice of this Court. Do you
19 see what I'm saying? Like I'm not forcing him
11:05:27 20 to make the decision contingency -- I'm talking
21 out loud. Forgive me.

22 MR. ROSE: That's fine. I think the
23 answer to that is --

24 THE COURT: He could do that.

11:05:36 25 MR. ROSE: He could it. He's starting out

1 minus 55,000 instead of at zero. It's a
2 question. I take court orders seriously. I
3 think they have value. I think every -- I
4 think it's generally accepted law that amended
11:05:53 5 orders supersede a prior order. If it amends
6 only one provision of the order, this is -- you
7 know, certainly the amended order takes
8 precedence over the prior order. The amended
9 order could not be any clearer when you couple
11:06:08 10 it with the transcript that he doesn't get
11 anything paid to him, can't even apply for
12 something until there's a net cash benefit to
13 the estate, a recovery for the estate. I won't
14 read that all again.

11:06:21 15 THE COURT: All right.

16 MR. ROSE: The math of it all is -- again
17 I understand Mr. O'Connell has decisions to
18 make. I think the decisions are moot. We
19 don't have time. We're not doing it today. At
11:06:34 20 some time we should have a scheduling
21 conference to decide a procedure because you
22 actually now have three settlements in front of
23 you. One --

24 THE COURT: All right. That's -- let me
11:06:41 25 rule on this. I've got nine DV's outside

1 because I did it to myself, and I've gone
2 beyond the hour I gave you all.

3 MS. CRISPIN: Your Honor, can we have two
4 minutes, the estate?

11:06:54 5 THE COURT: Absolutely.

6 MS. CRISPIN: I'll keep it very short.

7 THE COURT: No. You get the right to
8 closing.

9 MS. CRISPIN: Your Honor, I'm not going to
11:06:58 10 repeat the items that Mr. Rose said. I think
11 it's important for the Court to look at --
12 we're looking at two issues, one is the
13 discharge. The position of the estate has
14 been, we're not taking a position on that
11:07:09 15 because we weren't there when it was determined
16 what the word "initially" meant. We think it
17 really comes down to that, which is why the
18 inquiries were, what does "initially" mean and
19 what is that supposed to mean. We're going to
11:07:19 20 leave that to Your Honor.

21 What we have taken a position on is
22 whether or not the reimbursement should occur
23 now. We believe that it's very clear that it's
24 on a recovery. I think --

11:07:28 25 THE COURT: It's not going to. I'll tell

1 you that now. I don't mean to cut you to the
2 chase, but that's not going to happen today.

3 MS. CRISPIN: Oh, that determination?

4 THE COURT: Yes. Despite the requests
11:07:43 5 that I make the determination today, I'm not
6 going to make it today.

7 MS. CRISPIN: Then, Your Honor, we don't
8 have anything further.

9 THE COURT: The first thing I want to say
11:07:52 10 is that the order this Court entered June 28th
11 said, "Order continuing June 28, 2017 hearing
12 to be completed at hearing set for July 12,
13 2017" on today's hearing.

14 MR. ELIOT BERNSTEIN: Did that say should
11:08:06 15 be?

16 THE COURT: You're not arguing with me.

17 MR. ELIOT BERNSTEIN: I couldn't hear you
18 well. It said should be or will be? I
19 couldn't hear that.

11:08:16 20 THE COURT: To be, to be, to be completed.

21 We're here today on the motion of creditor
22 William B. Stansbury for discharge from further
23 responsibility for the funding of the estate's
24 participation in Chicago Life Insurance
11:08:34 25 litigation and for assumption of responsibility

1 by the estate and for the reimbursement of
2 advanced funds. This was filed May 4th, 2016,
3 by counsel for Mr. Stansbury.

4 This Court entered an amended order
11:08:50 5 appointing administer -- administrator, sorry,
6 that word gives me a hard time -- ad litem on
7 June 12, 2014, that indicated in paragraph two
8 for the reasons and subject to the conditions
9 stated on the record during the May 23rd, 2014,
11:09:12 10 hearing, all attorneys' fees (inaudible.)

11 THE REPORTER: I'm sorry, Judge. All
12 attorneys' fees and --

13 THE COURT: I apologize to you.

14 THE REPORTER: I'm just having a hard time
15 hearing you.

16 THE COURT: All attorneys' fees and costs
17 incurred including for the curator in
18 connection with his work as administrator
19 ad litem and any counsel retained by the
11:09:36 20 administrator ad litem will initially be borne
21 by William Stansbury. And that went into
22 evidence as Petitioner Stansbury 2 with no
23 objection.

24 Thereafter, the successor personal
11:10:14 25 representative filed his petition for

1 authorization to enter into a contingency fee
2 agreement and then an amended petition in
3 December 2015. Pursuant to 733.612, the
4 personal representative has authority without
11:10:40 5 court order, subparagraph 19, to employ persons
6 including but not limited to attorneys,
7 accountants, auditors, appraisers, investment
8 advisors and others, even if they are one and
9 the same as the personal representative or are
11:11:14 10 associated with the personal representative, to
11 advise or assist the personal representative in
12 performance of administrative duties, act upon
13 recommendations of those employed -- I'm not
14 going to read the whole statute. Under
11:11:36 15 paragraph 20, to prosecute or defend claims or
16 proceedings in any jurisdiction for protection
17 of the estate as the personal representative.

18 This Court heard from Brian O'Connell, the
19 personal representative of the estate. It is
11:11:50 20 his opinion that there is a benefit to the
21 estate in pursuing the litigation -- sorry
22 about that. Based on the testimony heard and
23 the evidence reviewed, the personal
24 representative has made the decision that it is
11:12:25 25 in the estate's best interest to continue this

1 litigation. Mr. Stansbury is discharged from
2 further responsibility, and it is up to the
3 personal representative to determine whether it
4 is in the best interest of this estate to
11:12:38 5 proceed. He has this right without court
6 order. At this time the Court defers on
7 whether Mr. Stansbury should be reimbursed for
8 the fees laid out to date.

9 Okay. Thank you all very much.

11:12:57 10 Mr. Feaman, can I impose on you, as it was your
11 motion, to prepare the order?

12 MR. FEAMAN: Absolutely, Your Honor. I
13 would ask leave of court to do that on Monday.
14 I have to catch a plane today to go to
11:13:10 15 Washington.

16 THE COURT: You have absolutely -- I'll
17 tell you what, this is my last day until the
18 Court is taking their annual leave. So I will
19 be out all next week, so please take the time.
11:13:19 20 I'll mark on this that I don't expect to see it
21 until July 28th.

22 MR. FEAMAN: Thank you.

23 MR. ROSE: Just for the record, Judge, you
24 deferred ruling in part. But can we now set
11:13:30 25 other motions for hearing? You had asked us

1 not to set anything else until after we --

2 THE COURT: I am going to direct my JA to
3 set certain motions. And so when I get back if
4 there's anything else you want, bring it. We
11:13:45 5 can do a conference with everybody with their
6 calendar, because at this point I have a stack
7 of what has been set and deferred. I'm going
8 to give it to her to get it set and probably --
9 no. I'm going to give it to her to re-set
11:14:00 10 those, the ones that were previously set to
11 start when this concluded. We had a motion to
12 approve a settlement. We obviously have
13 another motion to approve a settlement. So I'm
14 going to give her some information and then you
11:14:12 15 can come in front of me if you want some other
16 ones. I'm sure there will be.

17 MR. ROSE: Those are the ones that I was
18 referring to.

19 THE COURT: We had them set. That's why I
11:14:21 20 was looking.

21 MR. ROSE: There are three settlement
22 motions that really should be heard next -- I
23 mean, I don't mean to -- in my view, they
24 should be heard next.

11:14:28 25 THE COURT: Let me go with the ones that I

1 originally -- the order that I originally was
2 trying to follow, okay?

3 MR. ROSE: Okay.

4 THE COURT: And then we'll take it from
11:14:37 5 there. Thank you very much, everybody.

6
7 (Thereupon, the Proceedings were concluded
8 at 11:14 a.m.)
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C E R T I F I C A T E

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The State of Florida)
County of Palm Beach)

I, Suzanne L. Anderson, Shorthand Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 187 through 278, and that the transcript is a true record.

Dated this 21st day of July, 2017.



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