

Case: 17-3595

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APPEAL,ROWLAND,TERMED

United States District Court
Northern District of Illinois - CM/ECF LIVE, Ver 6.2.1 (Chicago)
CIVIL DOCKET FOR CASE #: 1:13-cv-03643
Internal Use Only

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v.
 Heritage Union Life Insurance Company
 Assigned to: Honorable John Robert Blakey
 Case in other court: 17-01461
 17-03595
 Circuit Court of Cook COUNTY, 2013 L
 003498

Date Filed: 05/16/2013
 Date Terminated: 11/21/2017
 Jury Demand: None
 Nature of Suit: 110 Contract: Insurance
 Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal

Date Filed	#	Docket Text
11/09/2017	297	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein to vacate (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2, # 3 Exhibit Exhibit 3, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6, # 7 Exhibit Exhibit 7, # 8 Exhibit Exhibit 8, # 9 Exhibit Exhibit 9, # 10 Exhibit Exhibit 10, # 11 Exhibit Exhibit 11, # 12 Exhibit Exhibit 12, # 13 Exhibit Exhibit 13, # 14 Exhibit Exhibit 14, # 15 Exhibit Exhibit 15, # 16 Exhibit Exhibit 16, # 17 Exhibit Exhibit 17, # 18 Exhibit Exhibit 18, # 19 Exhibit Exhibit 19, # 20 Exhibit Exhibit 20, # 21 Exhibit Exhibit 21, # 22 Exhibit Exhibit 22, # 23 Exhibit Exhibit 23, # 24 Exhibit Exhibit 24, # 25 Exhibit Exhibit 25, # 26 Exhibit Exhibit 26, # 27 Exhibit Exhibit 27, # 28 Exhibit Exhibit 28, # 29 Exhibit Exhibit 29, # 30 Exhibit Exhibit 30, # 31 Exhibit Exhibit 31, # 32 Exhibit Exhibit 32, # 33 Exhibit Exhibit 34, # 34 Exhibit Exhibit 35, # 35 Exhibit Exhibit 36, # 36 Exhibit Exhibit 37)(Bernstein, Eliot) (Entered: 11/09/2017)

UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF ILLINOIS EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95, et al.,

Plaintiffs,

v.

HERITAGE UNION LIFE INSURANCE
CO.,

Defendant.

Case No. 1:13-cv-3643
Judge John Robert Blakey
Magistrate Mary M. Rowlan

HERITAGE UNION LIFE INSURANCE
COMPANY,

Counter-Plaintiff,

v.

CROSS PLAINTIFF ELIOT IVAN
BERNSTEIN MOTION FOR
RELIEF FROM SUMMARY
JUDGMENT ORDER PURSUANT
TO FED. R. CIV. P. 60(b)(3)

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,

Counter-Defendant,

and

FIRST ARLINGTON NATIONAL BANK,
et al.,

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN, et al.,

Cross-Defendants,

and

PAMELA B. SIMON, et al.,

Third-Party Defendants,

BRIAN M. O'CONNELL, as Personal
Representative of the Estate of
Simon L. Bernstein,

Intervenor.

**MOTION FOR RELIEF FROM SUMMARY JUDGMENT ORDER PURSUANT TO
FED. R. CIV. P. 60(b), 60(b)(3) and FED R. CIV. P. 60(a)**

Cross Plaintiff Eliot Ivan Bernstein (“ELIOT”), Pro Se, respectfully moves, pursuant to Fed. R. Civ. P. 60(b) and Fed. R. Civ. P. 60(a) for relief from this Court’s Order of January 30, 2017, in SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, et al., v. HERITAGE UNION LIFE INSURANCE CO., Civ No. 1:13-cv-3643, (Dkt. #273), “MEMORANDUM OPINION AND ORDER” issued by the most Honorable Judge John Robert Blakey. There was a prior Round 1 Summary Judgment Order issued in this case by Judge Blakey for the Court’s reference, (Dkt. #220).

Cases

Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014).

Statutes

18 U.S.C. §1341

18 U.S.C. §1983

18 U.S.C. §1951(b)

18 U.S.C. §2

18 U.S.C. §2511

28 U.S.C. §1447(d)

Rules

Federal Rule of Civil Procedure Rule 60(b)

Federal Rule of Civil Procedure 52(a)

STANDARD OF REVIEW

1. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void;..or..(6) any other reason that justifies relief. F.R.C.P. 60(b). Rule 60 motions should be granted where there is a showing that justice demands it, as in this case. F.R.C.P. 60(b).

2. Eliot Bernstein is entitled to relief from the Court's Order issued against him on January 30, 2017 ("ORDER"), (Dkt #273), denying him standing and removing him from the proceedings based upon Intervenor Brian M. O'Connell and his counsel and Ted Bernstein and his counsel, Adam Simon and Co-Counsel Alan B. Rose, knowingly making fraudulent representations to this Court and the Florida probate court--that Eliot was not a beneficiary of the estate of Simon Bernstein and as such did not have standing to participate in proceedings.

3. O'Connell and Ted alleged to have secured a knowingly inaccurate order in the Florida probate court and misrepresented such order to this Court stating to this Court that it was ruled that Eliot Bernstein was not a beneficiary of his father's estate and an alleged "testamentary" trust in order to then use such claims to deceive this Honorable Judge into granting their Motions for Summary Judgment using Collateral Estoppel against Eliot Bernstein on the same basis, knowing this Honorable Judge would defer to claims made by counsel about the Florida probate judge's wholly erroneous and misrepresented findings on the issue.

4. The ORDER made several notable claims relying on the false and misleading “Statement of Undisputed Facts” put forth by Plaintiffs in their Motion for Summary Judgment, including but not limited to the following statements,

“Judge John L. Phillips presided over a joint trial of the Probate Actions in December of 2015. A full recitation of Judge Phillips’ findings is unnecessary here, but relevant portions of his final orders include:...

- The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are “Simon Bernstein’s then living grandchildren,” while “Simon’s children – including Eliot Bernstein – are not beneficiaries.”

(ORDER Page 5 of 21 PageID #:13274)

and,

“First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court’s rulings. The Probate Court found, *inter alia*, that Simon Bernstein’s “children – including Eliot – are not beneficiaries” of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein’s grandchildren (including Eliot’s children) are the testamentary trust’s beneficiaries.”

and,

“These findings [of the FL probate court] have preclusive effect in this case,⁴ such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust.”

FACTS AND PROCEDURAL BACKGROUND

5. O’Connell and Ted’s Motions for Summary Judgment were filed May 25, 2016 (Dkt. #'s 245-249) and May 21, 2016 respectively (Dkt. #'s 239-243). Plaintiffs Memorandum of Law submitted with their Summary Judgment Motion falsely stated (Dkt. #241 Page 3 of 17 PageID #:4255):

“To the contrary, **Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable.** Judge John L. Philips also determined that Simon Bernstein’s grandchildren are the beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot.” [emphasis added]¹

6. Based upon Plaintiffs’ misconduct and fraud, this court issued its Memorandum Opinion and Order (“ORDER”) on January 30, 2017 (Dkt #273), granting summary judgment against Eliot on the basis primarily that he was not a beneficiary of his father’s estate and an alleged “testamentary” trust in the Estate of Simon and therefore did not have standing to participate. At no time have Plaintiffs legitimately believed this knowingly false statement of fact, but instead propagated fraud in at least two courts of law in order to tortiously interfere with Eliot’s inheritance and the rights of Eliot’s three children, as well by removing his due process rights by removing his standing.

7. Page 10 of 17 of the same document (Dkt. #241, PageID #:4262) falsely states the following:

“Eliot’s Claims make reference to the fact that the Estate of Simon Bernstein may be entitled to the Policy Proceeds. But as determined by the Probate Court, Eliot is not a beneficiary and has no standing to act on behalf of the Estate or participate at all in the Probate litigation in Florida. (SoF, ¶33-¶34). The Estate is already adequately represented in the instant litigation by its personal representative and local counsel. (SoF, ¶25). Also, the interests of

¹ This Court should note that the Simon Trust at Issue in the Florida Courts exhibited further herein is not a “testamentary trust” as the Court states in its ORDER as illustrated above but in fact it is an “Inter-vivos” living trust funded prior to death. This Court’s ORDER reflects this wrong language and this is factually incorrect as it relied upon statements made by opposing counsel in their Summary Judgment pleading. The Court should note that the Florida Probate Court also wrongly claims this Simon Trust as “testamentary” as it has no subject matter jurisdiction over inter-vivos trusts, which are civil court cases and thus the Probate Court in FL acted outside its jurisdiction in hearing this Simon Trust case in the Probate court.

Eliot's children in the Estate are now being represented solely by the guardian ad litem. (SoF, ¶33-¶34).”

8. Page 11 of 17 of the same document (Dkt. #241, PageID #:4263) restates the same fraudulent facts to ensure that Eliot's claims were dismissed and he was denied standing in the Florida probate court and this Court.

“Despite Eliot's pending appeals, the doctrine of collateral estoppel applies, and acts to settle material issues in the instant litigation. The Probate Orders entered after trial include findings that (i) Eliot is not beneficiary of the Estate of Simon Bernstein; (ii) appoint a guardian ad litem for Eliot's children; and (iii) Eliot has no standing in the Probate Actions on behalf of himself, the Estate or his children.”

9. In Movant's Statement of Undisputed Material Facts In Support of their Motion for Summary Judgment, Plaintiffs state that Judge Phillips in the Florida Probate Court, ruled that Eliot was not an heir after a December 15, 2015 validity hearing, but failed to attach a copy of an Order stating such and instead attached an Order issued December 16, 2015 determining only that the documents were valid and enforceable by their terms, (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196.)

10. Plaintiffs knew that the Order they attached from the validity hearing did not address any beneficiary or standing related issues in the construction of the Wills or Trusts of Simon and Shirley Bernstein, nor could it have done so as the hearing was limited to “validity” only and no “construction” was done of any of the documents to determine the terms of the dispositive documents being validated.

11. Further, it was alleged to this Court that Eliot was determined after the “validity” hearing to not be a beneficiary with standing of his parents Trusts as well as their Wills and where the trusts were misrepresented to this Court and the Florida probate court further misrepresented

them to be “testamentary” trusts, however given that they were executed and funded prior to death as illustrated further herein they are factually Inter-vivos trusts and are not within the Probate court’s jurisdiction under Florida law, as only testamentary trusts are. Section 736.0203 of the Florida Trust Code defines subject matter jurisdiction as follows: “[t]he circuit court has original jurisdiction in this state of all proceedings arising under this code.” Section 736.0201 defines more specifically the role of the courts in trust proceedings. It provides that judicial proceedings concerning trusts be governed by the Florida Rules of Civil Procedure, clarifying that “[a] proceeding for the construction of a testamentary trust may be filed in the probate proceeding for the testator’s estate” [emphasis added] subjecting it to the Florida Probate Rules should the case be filed there. Fla. Stat. 736.0201 (1)(5).

12. Ted Bernstein and his counsel Adam Simon and co-counsel Alan Rose’s misconduct is outrageous and merits severe sanctions given the two years of chaotic court proceedings and hundreds of thousands in attorneys’ fees spent to deny Eliot the right to participate in hearings in the Florida courts through abuse of process with the goal of violating 42 U.S.C. 1983 through the deprivation of the right to due process and equal protection guaranteed by the 14th Amendment as they illegally and tortiously interfered with Eliot and his children’s inheritance rights through this scheme and artifice to defraud.

13. This intentional deception upon the Florida Probate court was not rectified until Judge Phillips retired and Judge Rosemarie Scher took the bench, leading to Judge Scher’s finding that Eliot was in fact a named beneficiary of the estate of Simon Bernstein and had standing to participate, after evidentiary hearings which occurred February 16, 2017, March 02, 2017 and March 16, 2017, in 15th Judicial Circuit Probate Court Case #502012CP004391XXXXNB and subsequent Orders issued confirming such.

14. Intervenor Brian O’Connell inexplicably stated on the record under oath, as personal representative of the estate, that Eliot was, in fact, a beneficiary with standing in the estate of Simon Bernstein and Alan Rose similarly recanted his prior claims to the Probate court that were then mimicked in this Court by Ted and Adam Simon. See, (Exhibit 1 - Transcript of Feb 16, 2017 Hearing), (Exhibit 2 – Transcript of March 02 2017 Hearing) and [Exhibit 3 - Transcript of March 16, 2017 Hearing.)

15. Four documents were consistently relied upon in Alan Rose, Adam Simon, Ted and O’Connell’s efforts to defraud Eliot Bernstein and the courts, including: The four documents² that were part of the Final Order of Count II (Dkt. #240-11, Exhibit #10, PageID #:4191-PageID #:4196) issued by Judge Phillips on December 16, 2015 after the sham “validity” hearing on December 15, 2105 that Plaintiffs and their counsel relied on in their Summary Judgment to make claims that Eliot was not a beneficiary with standing of his father’s estate and are as follows:

- a. The Will of Shirley Bernstein dated May 20, 2008. See (Exhibit 4 – “Will of Shirley Bernstein” dated May 20, 2008) that expressly states that ELIOT and his siblings are beneficiaries,
- b. The Inter-Vivos Trust of Shirley Bernstein funded prior to her death, See, (Exhibit 5 - “Shirley Bernstein Trust Agreement dated May 20, 2008) that has ELIOT as one of three of five children as a beneficiary. When Shirley passed away on December 08, 2010 this Inter-vivos trust became IRREVOCABLE with Eliot and two of his three sisters, Plaintiffs Lisa Friedstein and Jill Iantoni, as the ONLY PERMISSIBLE CLASS OF BENEFICIARIES FOREVER SET IN STONE. Ted and Plaintiff Pamela Simon and

² That it was determined at the hearing that none of the parties, fiduciaries or their counsel knew where the Original Simon and Shirley Trust and Will documents are and they were not present for examination at the hearing, only alleged copies, see Exhibit 24 - December 15, 2015 Hearing.

their lineal descendants were considered predeceased for all purposes of disposition of Shirley's trust at the time it became IRREVOCABLE.

Each beneficiary of Shirley's trust had a separate trust created and funded on May 20, 2008, namely the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the "validity hearing" despite being a part of the Simon and Shirley Inter-vivos trusts being validated and in violation of Fl. trust code. The Eliot Bernstein Family Trust is exhibited herein as (Exhibit 6 – "Eliot Bernstein Family Trust" dated May 20, 2008).

- c. The 2012 Will of Simon Bernstein (Exhibit 7 – "Will of Simon L. Bernstein" dated July 25, 2012), which allegedly replaced the 2008 Will of Simon Bernstein done with Shirley Bernstein that was not part of the "validity" hearing. The 2012 Will allegedly was signed weeks before Simon's passing on September 13, 2012. Both Wills have the five children of Simon as Beneficiaries despite Ted and his counsels claims to this Court in their Summary Judgment papers, already exhibited herein, that the 10 grandchildren of Simon are the beneficiaries of Simon and Shirley's Estates, which this Court then relied upon in making its ORDER and dismissing Eliot from this lawsuit on claims he was not a beneficiary and did not have standing in his father's estate.
- d. The Inter-vivos trust of Simon Bernstein funded prior to his death, see (Exhibit 8 - "Simon L. Bernstein Trust Agreement" dated May 20, 2008) that has Eliot as one of three of five children listed as a beneficiary. This Inter-vivos trust was not made part of the "validity hearing" and instead only the below alleged Amendment and Restatement was submitted, again in violation of statutes to have all parts of the trusts present at any validity hearing.

Similar to Shirley's trust, each beneficiary of this Simon Inter-vivos trust had a separate trust created held thereunder and funded on May 20, 2008, again the "Eliot Bernstein Family Trust," the "Jill Iantoni Family Trust" and the "Lisa Friedstein Family Trust" all of which were suppressed at the sham "validity hearing" despite being a part of the 2008 Simon Bernstein Trust Agreement and in violation of Fl. trust code. The Eliot Bernstein Family Trust is already exhibited herein as (Exhibit 6), and,

- i. The 2012 Amendment and Restatement of the "Simon L. Bernstein Trust Agreement" dated May 20, 2008 was the only part of the trust made available at the "validity" hearing and not the controlling 2008 Simon L. Bernstein Trust Agreement. See, (Exhibit 9 - "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012") which amended the 2008 trust agreement and was allegedly executed several weeks prior to Simon's passing on September 13, 2012. The amended trust excludes Eliot and ALL of his siblings as beneficiaries leaving only the then living grandchildren who have trusts held thereunder as beneficiaries, namely the grandchildren who are part of the Eliot Family Trust, Jill Iantoni Family Trust and Lisa Friedstein Family Trust established and held thereunder as part of the controlling 2008 Simon trust.

There has been no construction hearing of this Amendment to the 2008 Simon Bernstein Trust Agreement dated May 20, 2008 but it appears that only 6 of the 10 grandchildren (Eliot's three children and his two siblings Jill and Lisa's children) will ultimately be found to be beneficiaries of the Amended 2008 Simon Trust document if it is upheld after a proper and legal validity and construction hearing in the proper venue to determine the terms of the trust and who the beneficiaries are

and if it was induced under great duress placed upon by Ted and sister Pamela when they were informed they were wholly disinherited with their lineal descendants in the 2008 Simon Trust and the 2008 Shirley Trust. Again the Probate court had no jurisdiction to hear the validity or any alleged construction of this and the other Inter-vivos trusts rendering any/all judgments void.

16. After two years of this fraud on the court, fraud on certain of the beneficiaries and interested parties that removed Eliot from the proceedings, derailed the entire proceedings in the Florida probate court and ultimately led to the issuance by this Court of an ORDER granting summary judgment against Eliot Bernstein on the mistaken belief that he was not a beneficiary and had no standing in his father's estate, this Court appropriately deferring to the FL state probate court's alleged determination of the issues, Intervenor Brian O'Connell and Alan Rose inexplicably had a sudden about face and admitted in hearings before the new Judge Scher that Eliot is a beneficiary and has standing--a fact they clearly knew all along. Ted, Intervenor O'Connell and their counsel however have all failed to notify this Court of their change of story.

17. The February 16, 2017 hearing transcript before Judge Scher already exhibited herein (Exhibit 1) includes O'Connell's change of heart as Attorney Peter Feaman ("Feaman") representing the creditor William Stansbury in the Simon Estate case cross examined him concerning the issue,

3 Q. Correct? And Mr. Bernstein is not a
4 monetary beneficiary of the estate, is he?
5 A. As a trustee he is a beneficiary,
6 residuary beneficiary of the estate. And then he
7 would be a beneficiary as to tangible personal
8 property.

(Exhibit 1 - Feb 16, 2107 Hearing, Page 17 of the Transcript)

18. Cornered, O'Connell confirmed what Eliot fought for two years to establish that was wasting judicial resources and deceiving the Probate court that Eliot was in fact a beneficiary with standing and Eliot further had O'Connell confirm this during his cross examination:

18 BY MR. ELIOT BERNSTEIN OF BRIAN O'CONNELL:
19 Q. Okay, so beneficiary?
20 A. Right.
21 Thank you. Which will go to the
22 bigger point of the fraud going on here, by the
23 way.”

(Exhibit 1 - Feb 16, 2017 Hearing, Page 35 of the Transcript)

19. Attorney Alan Rose contradicted prior representations to the Florida Probate court in numerous pleadings and hearings claiming Eliot was not a beneficiary and did not have standing in his father's estate, agreeing now with O'Connell that Eliot is and was, in fact, a beneficiary with standing in Simon Bernstein's estate. Rose admits on record in the March 02, 2017 hearing that contrary to his prior statements to the Probate court over the course of two years that were then mimicked to this Court by Ted and Adam Simon, that Eliot does have standing, as a beneficiary. Rose stated in the hearing,

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

(Exhibit 2 - March 02, 2017 Hearing Page 139 of the Transcript)

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

(Exhibit 2 - March 02, 2017 Hearing Page 143 of the Transcript)

20. Attorney Feaman while questioning witness O'Connell in the same March 02, 2017 hearing handed him a pleading filed in September of 2015 entitled "Trustee's Omnibus Status Report and Request for Case Management Conference" filed by Ted and authored by Rose and Rose stated on the record the following in response:

7 BY MR. FEAMAN:

8 Q. You were here when Mr. O'Connell said that
9 Mr. Eliot is a beneficiary of the Simon Bernstein
10 estate, correct?

11 A. I was here when he said it. I have said
12 it. I don't dispute it. I have told the judge
13 that. I don't understand. For tangible personal
14 property.

15 Q. Okay.

16 THE COURT: What am I being handed?

17 BY MR. FEAMAN:

18 Q. I am handing you a pleading that you filed
19 in September 2015 entitled Trustee's Omnibus Status
20 Report and Request for Case Management Conference.
21 And the very first page you said, relating to
22 Mr. Eliot, he is not a named -- he is not named as
23 a beneficiary of anything. And it's in the Estate
24 of Simon Bernstein. So my question is when did you
25 suddenly become aware that he is a beneficiary of

(Exhibit - 2 March 02, 2017 Hearing Page 212 of the Transcript)

1 the estate?

2 A. That sentence is -- I now see that
3 sentence is technically wrong. It's not -- I am
4 talking about where the money is and the money is
15:12:37 5 in the trust. He is not a beneficiary of the
6 trust. I may have made a misstatement.

7 THE COURT: Are you asking me to take this
8 into evidence?

9 MR. FEAMAN: Yes.

15:12:45 10 THE COURT: Objection?

11 MR. ROSE: No. It's in the court file.

12 THE COURT: I know. Let me just mark it.

13 MR. FEAMAN: No further questions.” [emphasis added]

(Exhibit 2 - March 02, 2017 Hearing Page 213 of the Transcript)

21. Alan Rose committed fraud on the court in Filing #32030300 to the 15th Judicial Judge JOHN L. PHILLIPS, dated September 14, 2015, in the “TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST FOR CASE MANAGEMENT CONFERENCE” see, (Exhibit 10 - Omnibus Status Report] accusing Eliot of the very misconduct he was engaged in when he stated,

“Introduction - The overarching issue in these cases is Eliot Bernstein. **He is not named as a beneficiary of anything**; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel.” [emphasis added]

22. On January 4, 2016, Rose repeated in a filing titled “SUCCESSOR TRUSTEE'S MOTION FOR APPOINTMENT OF A GUARDIAN AD LITEM TO REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN; FOR A GAG ORDER TO PROTECT GUARDIAN AND OTHERS; AND TO STRIKE ELIOT'S FILINGS” [Exhibit 11 - Motion for Appointment of GAL³], the affirmative statement of Ted Bernstein, his client, that

³ The Guardian was not appointed randomly but instead a long term family friend of PR Brian O'Connell and a former judge in the Palm Beach courts (not re-elected by the People of the State of Florida) Diana Lewis. Lewis was inserted as GAL over ELIOT'S children to preclude ELIOT from protecting and representing his minor children as their natural guardian and thereby the minor children's rights and the adult child's rights were usurped illegally through this legal process abuse that has obstructed justice and denied due process. Outrageously despite two of ELIOT'S children who are both adults now notifying Diana Lewis that her predatory guardianship over them is over and to cease and desist any further actions on their behalf, she continues to kidnap their legal rights and enter into settlements, on their behalf, destroy trusts and LLC's with Oppenheimer Trust Company that were set up by their grandparents while they were alive for them and destroying companies set up to protect their home and more.

“Eliot Bernstein, Individually, is not a beneficiary of either Simon’s or Shirley’s Trusts or Estates. Instead, his three sons are among the beneficiaries of both Simon and Shirley’s Trusts, in amounts to be determined by further proceedings. **Eliot lacks standing to continue his individual involvement in this case.**”
[emphasis added]

23. After two years of derailing multiple judicial proceedings O’Connell, Ted, and Rose suddenly agree that Eliot is a beneficiary with standing and after three evidentiary hearings Judge Rosemarie Scher ruled that Eliot is a beneficiary with standing to participate in his father’s estate proceedings and issued findings of fact and conclusions of law to eliminate further dispute.

From an Order issued by Judge Scher, See (Exhibit 12- March 03, 2017 Scher Order)

Hon. Judge Rosemarie Scher states,

“Present before the Court were Peter Feaman, Esquire on behalf of William Stansbury; Alan Rose, Esquire on behalf of Ted Bernstein, Trustee, Brian O’Connell as Personal Representative, **Eliot Bernstein as interested party.**” [emphasis added].

24. On March 2, 2017, the Hon. Judge Rosemarie Scher overruled the erroneous alleged order to reflect that for all purposes going forward, ELIOT BERNSTEIN is a beneficiary with standing to participate when she confirmed in the hearing before her that she “overruled” any prior claims by that court or its court appointed officers and fiduciaries that Eliot did in fact have standing in his father’s estate in the following exchange:

9 forthcoming. And I think we'll be able to show
10 that there's been fraud on this Court. The
11 other date in that hearing if you look at the
12 transcript Mr. Rose claimed that I had no
13 standing, and you overruled that, or whatever
14 you call it, you did.
15 THE COURT: I did.”

(Exhibit 2 - March 02, 2017 Hearing Page 127 of the Transcript)

25. Hon. Judge Rosemarie Scher issued further findings of fact, conclusions of law in an Order dated April 2017, see (Exhibit 13 - April 27, 2017 Scher Order) after hearings held on February 16, 2017, March 02, 2017 and March 16, 2017 further enforcing that Eliot Bernstein is a beneficiary of the Simon Bernstein Estate and further giving him standing, which wholly contradicts Plaintiffs unsupported claim in the Summary Judgment that Eliot is not a beneficiary and had no standing that this Court then relied upon in dismissing Eliot from this lawsuit citing Collateral Estoppel based on an alleged Florida Court ruling and statements by officers of this Court (Attorneys and Fiduciaries) stating Eliot was not a beneficiary and did not have standing. Hon. Judge Rosemarie Scher states in her April 27, 2017 Order on Page 7 Paragraph 17,

“17. Elliot Bernstein joins Stansbury's opposition to the appointment of Mrachek Firm. Elliot is a residuary beneficiary of any tangible property of the Estate.”

This Order established Eliot as a beneficiary.

26. Standing is a foundational issue that should never have taken over three years to determine as Ted, Rose and the fiduciaries in charge of the trusts and estates depleted the assets through fraud and intentional deception. In order to now rectify the injustices wrought upon Eliot and his family by the frauds of these fiduciaries, Eliot re-affirmed in a June 2, 2017 hearing that Judge Scher expressly overruled the prior finding that deprived him of standing as a beneficiary and that this fraud discovered had to be brought to the attention of this Court by those parties responsible and those parties aware of the frauds. As such, this Honorable Judge is asked to reinstate Eliot Bernstein in the case to participate in full and avoid the further deprivation of rights Rose, Ted and O'Connell conspired to accomplish. From a hearing held in the Florida

Probate Court on June 02, 2017 before Judge Scher, see (Exhibit 14 - June 02, 2017 Hearing Transcript) the following exchange was made by Eliot to the court,

15 MR. ELIOT BERNSTEIN: Oh, okay. So I was
16 thrown out of the Illinois litigation because
17 they told that court that I was not a
18 beneficiary of my father's estate and I had no
19 standing. And Judge Blakey relied on this
20 Court's statement that I was not a beneficiary
21 and had no standing in my father's estate to
22 throw me out on a summary judgment, saying I
23 had no standing and therefore in Florida res
24 judicata and yada yada yada.
25 The bottom line is that was all

(Exhibit 14 - Page 36)

1 orchestrated. This whole Florida court is
2 being manipulated to create another fraud on a
3 federal court. And everybody who is aware that
4 I am a beneficiary with standing should have
5 already notified federal Judge Blakey that
6 Mr. Rose misled this Court to gain those orders
7 by Judge Phillips. And that's where I will
8 close it up.
9 THE COURT: And that's good.

(Exhibit 14 - Page 37)

27. This entire outrageous deception upon the state and federal court did not even slow the co-conspirators down in their scheme to defraud Eliot of his inheritance rights. Instead, Ted, Adam Simon, O'Connell and Rose ignored the ruling and proceeded full steam ahead into settlement negotiations and executed settlements in both the Florida court and this Court, omitting Eliot to steal what is rightfully his inheritance by maintaining the fraudulent narrative that he was not a beneficiary with standing and therefore not a necessary party to the settlement

discussions or the executed settlements. The parties entered into a Settlement Agreement, see (Exhibit 15 - July 17, 2017 Signed Illinois Settlement Excluding Eliot from Settlement Discussions and Execution) with no notice to Eliot to settle this Federal lawsuit before this Court and regardless of his status as a beneficiary and submitted the fraudulent executed Settlement Agreement not to this Court for approval but to Judge Scher for her approval and to further defraud this court yet again into acknowledging a Settlement Agreement that was void for failing to include a necessary party, Eliot Bernstein and fraud. See (Exhibit 16 - Oct 19, 2017 Scher Order on Illinois Federal Lawsuit Settlement) and (Exhibit 17 - October 19, 2017 Hearing Transcript.)

28. If the foregoing deception failed to shock the conscience of the Judge, the fact that the Florida probate court assumed subject matter jurisdiction over INTER-VIVOS TRUSTS in violation of the Florida Trust Code should exasperate the Court. The Code is unambiguous in mandating LIVING TRUSTS be heard in civil court and merely permitting testamentary trusts to be considered in pending probate matters. The Court should take Judicial Notice of the following Inter-vivos trust case dockets and make them in whole part of this Court's record which were erroneously heard and considered and allegedly validated in the Florida Probate court in absence of subject matter jurisdiction and then further misrepresented to this Court as "testamentary" trusts, leading to a host of void orders:

- a. Case # 502014CP003698XXXXNB – "Shirley Bernstein Trust Agreement" dated May 20, 2008, a living Inter-vivos trust - (Exhibit 18 - Shirley Trust Docket)
- b. Case # 502015CP001162XXXXNB – "Simon L. Bernstein Amended and Restated Trust Agreement" dated July 25, 2012, a living Inter-vivos trust (Exhibit 19 - Simon Trust Docket)

29. The Estate cases that had these Inter-vivos trusts of Simon and Shirley Bernstein heard by a Probate court under the estate cases as alleged “testamentary” trusts in addition to the separate Probate actions listed above are as follows and the Court should take Judicial Notice of the following estate case dockets and make them in whole part of this Court’s record:

- a. Case # 502012CP004391XXXXSB – Simon Bernstein Estate (Exhibit 20 - Simon Estate Docket)
- b. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate (Exhibit 21 - Shirley Estate Docket)

30. The Florida probate proceedings were so wrought with fraud as to vitiate the entire proceedings, leaving this Court broad discretion to determine the rights and liabilities of the parties--particularly with respect to the INTER-VIVOS TRUSTS settled by Simon and Shirley Bernstein for the benefit of their “children,” which included Eliot Bernstein. For purposes of illustration, Simon L. Bernstein’s Codicil to his Will, dated July 25, 2012 already exhibited herein specifically defines his “children” to include:

“TED S. BERNSTEIN, PAMELA B. SIMON, **ELIOT BERNSTEIN**, JILL IANTONI and LISA S. FRIEDSTEIN.
[emphasis added]

31. This Court was also intentionally misinformed by its Court appointed officers (Attorneys and Fiduciaries) in their Motion for Summary Judgment that ELIOT was not a beneficiary of his mother’s Estate when her Will expressly include Eliot as a beneficiary.

WILL OF SHIRLEY BERNSTEIN
Dated May 20, 2008

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby
revoke all my prior Wills and Codicils and make this Will. My

spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, ELIOT BERNSTEIN [EMPHASIS ADDED], JILL IANTONI and LISA S. FRIEDSTEIN.

32. This false statement of fact to the Florida Probate court created another Order that was based upon intentional deception and fraud on the court that is not accurate either regarding Eliot not being a beneficiary and not having standing in his mother's estate. Thus, this Order was clearly erroneous too and Eliot is again having to pursue legal remedies to overturn the Order procured by the same co-conspirators' frauds. Ted had received upon his mother's death in addition to a copy of the Will, a Petition for Administration in the Shirley Estate that was filed on Feb. 10, 2011 (Exhibit 22 – Shirley Petition for Administration) filed in the Florida Probate Court, which clearly shows all five children of Shirley, including Ted as a beneficiary of the Estate of Shirley.

33. To establish to this Court that Ted and co-conspirator counselors Alan Rose and Adam Simon knew that Eliot was a beneficiary in Simon's Estate with standing prior to misleading this Court with scienter that he was not to disable his due process rights, Ted received upon his father's death in addition to a copy of the Will showing all five children as beneficiaries, a Petition for Administration (Exhibit 23 - Simon Petition for Administration) filed in the Florida Probate Court on October 02, 2012, which clearly shows all five children of Simon, including Ted as a beneficiary of the Estate of Simon. Yet, Tet and his counsel claim in their Summary Judgment that,

“To the contrary, Eliot has lost standing to participate in the Probate Actions on his own behalf after it was determined that the testamentary documents at issue in the Probate Actions are in fact valid, genuine and enforceable. **Judge John L. Philips also determined that Simon Bernstein's grandchildren are the**

beneficiaries of his Estate, and none of his children are beneficiaries, including Eliot.” [emphasis added]

34. Alan Rose, Ted Bernstein, Brian O’Connell, and their co-conspirators and agents / representatives cannot be trusted to tell the truth to this Honorable Judge, as evidenced by their repeated, undeterred fraud on federal and state courts to steal Eliot and his children’s inheritance.

35. The fraud is all encompassing to the outrageous extent of Florida court appointed officers (Attorneys and Fiduciaries and Guardian,) including but not limited to, Ted Bernstein, Adam Simon, Alan Rose, Robert Spallina, Donald Tescher and their agents and representatives filing this Federal lawsuit over a non-existent trust, entitled “Simon L. Bernstein Irrevocable Insurance Trust dtd 6/95” that no executed copy has ever been produced to affirm the terms of or if Ted is in fact a Successor Trustee as he claims. The Court in its Round 1 Summary Judgment Order denying Summary Judgment to Plaintiffs eloquently pointed to the fact that the initial claim for the proceeds was made by former Co-Personal Representative in the Estate of Simon Bernstein, Robert Spallina, who claimed to be Successor Trustee of the legally non-existent trust and then when this lawsuit was filed it was filed by Ted acting as the alleged Trustee instead. These schemes and artifices to defraud Eliot of insurance benefits was the motivation to manufacture a lawsuit concerning a trust that never even existed, involving an insurance policy that has not ever been produced to this Court, despite funds being interpled to the Court based on the “Policy” terms.

36. Proof of the schemes lies in the fact that despite funds of the alleged “Policy” being interpled into this court, none of these co-conspirators have produced an actual “Policy” or an actual trust to date--revealing the entire production was a sham--to cover up fiduciary theft and using the Court to attempt to facilitate a crime. Attorneys, Tescher and Spallina, the former Co-Personal Representatives and Co-Trustees of Simon’s Estate and Simon’s Trusts have admitted

their law firm forged dispositive documents and deposited them in the Florida probate proceedings, acknowledging fraudulently notarized and forged documents being filed with the Florida probate court, including Post Mortem forgeries of Simon Bernstein's signature used to fraudulently close his deceased wife's estate that when the fraud was proven led to the Estate being reopened, which it remains open to this date.

37. In this Court's ORDER the Court also mistakenly defines that a "Policy" exists and "Policy Proceeds" are at stake when factually the Court is not in possession of any bona fide policy issued by the insurance carrier and is only in possession of parole evidence that a policy exists and the terms of it, such as, who the beneficiaries are, what the face amount is, who the owner is and other information that is contractually defined in the legally binding policy issued. No party to this lawsuit has produced a policy to the Court, including the carrier.

38. Spallina⁴ has further admitted ironically in the December 15, 2015 "validity" hearing (Exhibit 24 – December 15, 2015 Hearing Transcript, Page 95 - Lines 12-25, Page 96 – Lines 8-19) that while acting as Ted's counsel for Ted as Fiduciary of the Shirley Bernstein Trust Agreement dated May 20, 2008 that Spallina forged a copy of this Shirley Bernstein trust document, which altered the beneficiaries of the Shirley trust that he had drafted years earlier while acting as Simon and Shirley's Estate planner, two years after the decedent passed in January of 2013 and sent this forged trust to Eliot Bernstein and his children's counsel, Christine C. Yates, Esq. of Tripp Scott Law Firm in Ft. Lauderdale, FL to deceive them of who the true and proper beneficiaries of Shirley's trust were.

39. This fraud was in effort to benefit Ted and Pamela Simon's families, who were omitted from the Shirley's Trust the date it became irrevocable upon her death as being considered

⁴ TESCHER and SPALLINA after resigning from all Bernstein family matters after their law firm committed fraud were subsequently arrested by the SEC in a non-related Insider Trading Scheme and and subsequently surrendered their law licenses. (Exhibit 34 – TESCHER and SPALLINA SEC Consents)

predeceased for all purposes of dispositions as stated in the express terms of that trust. Ted Bernstein and his attorneys' actions have been nothing but fraud since the start and he even attempted with his close personal friends and counsel, Spallina and Tescher, to reinsert his lineal descendants post-mortem when the Shirley trust was no longer subject to revocation through this fraudulent trust Spallina created and disseminated.

40. Further, Spallina at the "validity" hearing claimed that the fraudulent trust did not alter the beneficiaries of the Shirley trust when in fact it did through a fraudulent and forged amendment, this false statement to the court also violates the terms of his consent with the SEC and is yet another example of these reprobates in the probate court willingness to lie and deceive the court and the beneficiaries and interested parties, see (Exhibit 25 - Fraudulently Altered Amendment Shirley Trust) and (Exhibit 26 - Alleged Original Amendment that was Fraudulently Altered.)

41. The forged version omits the intentional exclusion of Ted and Pamela Simon **and their lineal descendants**. Where the actual alleged language of the 2008 "Shirley Bernstein Trust Agreement" reads,

"Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), **and their respective lineal descendants** [emphasis added] shall be deemed to have predeceased the survivor of my spouse and me..."

42. The language that was fraudulently inserted in the Forged 2008 "Shirley Bernstein Trust Agreement" removes the language excluding Ted and Pamela Simon's lineal descendants from inheritancy in the IRREVOCABLE trust of Shirley giving them a possible 40% stake in the Shirley Trust if it were determined through the frauds that the grandchildren are beneficiaries

instead of Eliot, Jill and Lisa who are the only permissible class of beneficiaries as of the date of Shirley's death on December 08, 2010 when the trust became IRREVOCABLE. From the fraudulent and forged 2008 "Shirley Bernstein Trust Agreement" it is clear that Spallina altered language to change the possible beneficiaries of her trust:

“NOW THEREFORE, by executing this instrument, I hereby amend the Trust Agreement as follows:

1. I hereby delete Paragraph B. of Article II. in its entirety.
2. I hereby amend the last sentence of Paragraph E. of Article III. to read as follows:

Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, Ted S. BERNSTEIN ("Ted") and PAMELA B. SIMON ("PAM"), shall be deemed to have predeceased the survivor of my spouse and me...”

43. The fraud continues to completely permeate all court proceedings in which Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon, and their co-conspirators discussed herein are involved. Undeterred by being caught red handed by Hon. Rosemarie Scher, Rose and Ted still continue to use a fraudulent appointment of a Guardian Ad Litem for Eliot's ADULT CHILDREN, knowing they are over the age of 18 and competent to act on their own behalf but still using her to gain consent for settlements and more, despite knowing that they are adults and all having received Cease and Desist letters from the children notifying them to cease the illegal acts being done in their names.

44. A predatory guardianship was placed on Joshua Bernstein by Judge Phillips as a minor when he in fact at the time of the initiation of the Guardian Ad Litem Joshua was factually an adult and no adult guardianship proceedings were ever held for him, thereby kidnapping his legal rights as an adult by claiming him to be a minor. For a detailed analysis of how this fraud was committed, see (Exhibit 27 - July 11, 2017 Joshua Bernstein Cease and Desist Letter to Diana

Lewis.) Despite receiving the Cease and Desist Letter from Joshua, Lewis continues to act on Joshua's behalf with no legal authority including acting to give his consent in the proposed Settlement of this lawsuit.

45. Jacob Bernstein had to issue a Cease and Desist Letter to Diana Lewis, see (Exhibit 28 - July 11, 2017 Jacob Bernstein Cease and Desist Letter to GAL Diana Lewis) after he turned 18 years old on January 01, 2017 to attempt to have her cease acting on his behalf and Lewis has refused to terminate the "minor" guardianship when he was no longer a minor as required by law and instead continues to act on his behalf including in the proposed Settlement of this lawsuit.

46. Diana Lewis, the fraudulently appointed Guardian Ad Litem appointed in an evidentiary hearing in the Probate court and not through a formal GAL hearing in that division, continues to appear in Court as a Guardian Ad Litem for Eliot's adult sons, consenting to the destruction of trusts created in their names, mismanaging the assets intended solely for them, billing ludicrous and fraudulent amounts for services rendered and entering them into sham settlement agreements without any notice to Eliot's adult sons, who are the only persons legally authorized to act on their behalf in any of these matters.

47. The fraudulent scheme and artifices to defraud of these criminal fiduciaries, attorneys and guardian have created a nightmare for Eliot Bernstein and his entire family that will not end as he is forced to endure the continual egregious deprivation of his rights to property, watching thieves steal his inheritance without recourse because these attorneys have managed to deceive the Florida probate court, civil court, appeals court and Supreme Court if that is possible--to intentionally harm Eliot and his family. After more than four years of fighting for minimal due process rights in terms of mere notice and the opportunity to be heard in a proceeding not tainted with fraud, the deception continues, prompting Eliot Bernstein to pray this Court makes the

insanity stop as more fully described in Eliot's "All Writs Injunction" (Dkts #214-216) that even predicated that this fraud to remove Eliot from the proceedings through fraudulent claims of collateral estoppel and more were in progress and that this Court can now plainly see were executed and worked.

48. Eliot's rights have been so categorically denied due to the corruption of these fiduciaries, he is now being precluded from filing appeals of adverse rulings pro se, violating the Open Courts provision of the Florida Constitution and guarantee of redress for wrongs in the United States Constitution. Eliot is indigent and cannot afford counsel but has been barred from filing in the Florida appeals court to vacate the fraudulently obtained orders and expose further the fraud on the Probate court without a Florida attorney, the perfect catch 22. See, (Exhibit 29 - August 23, 2017 4th DCA Order Prohibiting Eliot Filing Pro Se). The 4th DCA stated in its Order:

"The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented."

49. The 4th DCA then issued an Order dismissing an appeal filed by Eliot for failure to prosecute it when the reason for this failure was due to the fact that Eliot cannot find nor afford an attorney to prosecute the case for him and the court refuses to allow him to do so pro se. This violates the equal protection clause of the 14th Amendment to the United States Constitution and 42 U.S.C. 1983. See, (Exhibit 30 - Nov. 01 2017 4th DCA Order Dismissing Appeal Lack of Prosecution.)

50. Eliot is similarly prohibited from entering evidence or speaking for any length of time and prohibited from questioning a witness for more than four minutes in the same probate proceedings with Judge Scher who has witnessed the fraud that has kept Eliot out of proceedings

based on false claims to that court and who recently determined he is a beneficiary with standing, yet she continues to move forward despite the frauds as if nothing has happened, see (Exhibit 31 - Oct 19, 2017 Hearing Transcript Regarding Settlement of Illinois Federal Lawsuit.)

51. Judge Rosemarie Scher had no jurisdiction to approve the settlements involving Simon and Shirley Bernstein's Inter vivos Trusts, including the alleged Plaintiff in this case, the non-existent and Inter-vivos "Simon Bernstein Irrevocable Insurance Trust dtd 6/95" in the Probate court but did so anyway, rendering the ORDERS void; yet they are treated as if valid and enforceable, which excluded Eliot and his children from all right and benefit to their rightful inheritance.

52. In her Order dated April 27, 2017, see (Exhibit 13 - April 27, 2017 Order), Page 11 Paragraph #32), Judge Scher found "Mr. O'Connell to be credible." But nonetheless, stated that it "cannot ignore the fact that the Estate and Ted are adverse in the Illinois lawsuit" declining to appoint Ted Bernstein as Administrator Ad Litem while the Illinois action is still pending.

53. Remarkably, after learning of the fraud upon her court, Judge Scher accepted retaliatory pleadings by Ted and Alan Rose to hold Eliot in contempt of court and to hold it over Eliot's head as a weapon issued an Order on September 15, 2017, see (Exhibit 32 – Scher September 15, 2017 Order) and scheduled the hearing for Thursday, March 22, 2018 at 1:30 p.m. The contempt charge is centered upon the fact that Eliot sent the Cease and Desist letters of his Adult children to the Guardian Ad Litem on their behalf to keep confidential their private email addresses and ignoring the substance of the fraud disclosed in the Cease and Desist letters sent that were submitted by Ted and Rose in their pleading.

54. Dkt. #289 is hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

55. Dkts. #214-215 are hereby incorporated by reference with all exhibits and all arguments in support of this Motion and all relief sought.

56. Eliot can hardly conceive of a case in which justice mandates that the court vacate the ORDER dismissing his claims based on findings of the Florida Court that have since been overruled and overturned, such that the ORDER granting summary judgment against Eliot Bernstein is no longer valid. The circumstances here satisfy the prerequisites for relief under Rule 60(b).

57. Fiduciaries and Counsels misrepresentations have warranted Rule 60(b)(3) relief, particularly because it “completely sabotaged the federal trial machinery” by fraudulently defeating Eliot Bernstein’s right to a federal forum. See, e.g., *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1346 (5th Cir. 1978) reversing denial of Rule 60(b)(3) motion because defendant suppressed information called for upon discovery and prevented plaintiff from fully and fairly presenting her case); see also *Boddicker v. Esurance, Inc.*, 770 F.Supp.2d 1016 (D.S.D. 2011) (the district court vacated, under Rule 60(b)(3), its summary judgment order that relied on defendant’s misrepresentation).

58. Fiduciary and Attorney fraud is hardly something unique or isolated, but widespread and the subject of almost every news publication but the metastasis of this cancer continues to spread unabated. Unless this Honorable Judge intervenes and issues appropriate rulings based upon evidence and legitimate estate planning documents and trusts, rather than forged instruments by a cottage group of fiduciaries and attorneys that might as well be deemed the Probate mafia, Eliot Bernstein and his children, the intended beneficiaries of Shirley and Simon Bernstein’s generous provision for their futures, will be robbed of everything they are rightfully entitled to under

federal and state law, denied any semblance of due process and denied equal protection of the law.

59. Given fraud vitiates everything it touches, this Court can easily render judgment that the proffered orders of Ted Bernstein, Alan Rose, Adam Simon, Pamela Simon and the corrupt fiduciaries engaging in flagrant theft--are void ab initio.

60. Eliot has written this Motion under great physical duress and medical malady that is “life threatening” as is more fully explained in (Exhibit 33 – “MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING” – EXHIBIT 1 – “AFFIDAVIT OF CANDICE BERNSTEIN IN SUPPORT OF ELIOT BERNSTEIN’S MOTION TO POSTPONE AND RESCHEDULE NOVEMBER 15, 2017 HEARING”) and prays that this Court understands this has affected his ability to file in a healthy state of mind and if the Court finds any procedural errors, etc. allows Eliot to refile an amended motion.

61. That only this week on November 06, 2017 or thereabout after conversation with this Court’s clerks lasting approximately 15 minutes, Eliot Bernstein was reinstated by Clerk Nadine as a filer in ECF system as no one could determine how or why he was removed as no order was issued to remove him and no reason existed. Eliot being Pro Se did not initially know that he was improperly removed and believed he was prohibited from filing with the Court when he was dismissed on Summary Judgment despite the need to file appeals and motions such as this 60(a) and 60(b). Further, even after reinstatement in the ECF filing system Eliot is not being served process by the ECF system or opposing parties as of 11/08/2017 when filings were filed by opposing parties and this is severely interfering with his rights to be noticed, respond and file necessary pleadings.

Wherefore, ELIOT BERNSTEIN respectfully prays for this Court to retain jurisdiction over the inter vivos trusts, given the “res” of these trusts is not within the subject matter jurisdiction of any court for a determination of the rights and liabilities of the parties. Eliot Bernstein respectfully prays for this Rule 60b Motion to be granted and for the ORDER granting summary judgment against him (primarily on the basis of him not being a beneficiary of the Simon Bernstein Estate and claim that he lacked standing--now proven herein to be a fraudulent and misleading claim to this Court that has been proven false by new orders of the Probate court) be vacated and set aside.

Eliot prays that this Court seeing the fraud that has denied Eliot due process and procedure for almost a year in this Court and almost two in the Florida probate court and other Florida courts, review and consider Eliot’s “All Writs Injunction” (Dkts #214-216) and the reliefs sought therein as these fraudulent acts further support his claims therein and entitle him to the reliefs sought thereunder.

Eliot Bernstein further prays for appointment of pro bono counsel to protect his rights as he is physically incapable of protecting himself due to severe physical and stress related health problems he has experienced that have almost ended his life multiple time in the past few years. (See Exhibit 33 – EXHIBIT 1 - Affidavit of Candice Bernstein). Eliot seeks the Court to approve his In Forma Pauperis Indigent Application submitted to this Court already as he is indigent and qualifies for such appointment and thanks the Court for the same.

DATED: November 09, 2017

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross
Plaintiff PRO SE
Eliot Ivan Bernstein
2753 NW 34th St.
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Telephone (561) 245-8588
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th of November, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein
Third Party Defendant/Cross
Plaintiff PRO SE
Eliot Ivan Bernstein
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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXNBIH

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable
ROSEMARIE SCHER

Thursday, February 16, 2017

3188 PGA Boulevard

North County Courthouse

Palm Beach Gardens, Florida 33410

2:38 p.m. - 4:46 p.m.

Reported by:

Lisa Mudrick, RPR, FPR

Notary Public, State of Florida

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25 Estate of Simon Bernstein:
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40 ELIOT I. BERNSTEIN, pro se
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I N D E X
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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 Palm Beach County Courthouse
6 north branch, City of Palm Beach Gardens, County of
7 Palm Beach, in the State of Florida, by Lisa
8 Mudrick, RPR, FPR, before the Honorable ROSEMARIE
9 SCHER, Judge in the above-named Court, on
10 February 16, 2017, to wit:

11 - - -

12 THE COURT: The first thing we are going
13 to do, and this is more for the Court, starting
14 to the left in the first pew behind, we are
14:39:10 15 going to make our appearances and go around,
16 and ending with Judge Lewis.

17 MR. FEAMAN: Thank you, Your Honor. Peter
18 Feaman on behalf of the movant William
19 Stansbury. With me today is Jeff Royer from my
14:39:22 20 office and also Nancy Guffey.

21 THE COURT: Okay.

22 MR. ROSE: Good afternoon, Your Honor.
23 Alan Rose. I represent Ted S. Bernstein as
24 successor trustee of Simon's trust and
14:39:37 25 Shirley's trust.

1 THE COURT: Okay.

2 MR. ROSE: I represent him as the movant
3 seeking to be appointed as administrator ad
4 litem to defend the estate in the independent
14:39:47 5 action.

6 And Mr. O'Connell is here. And with me is
7 Michael Kranz, my associate, at the end. And I
8 will let Mr. O'Connell introduce himself.

9 MR. O'CONNELL: Good afternoon, Your
14:39:58 10 Honor. Brian O'Connell, PR of the Simon
11 Bernstein Estate.

12 JUDGE LEWIS: Diana Lewis, guardian ad
13 litem for the Eliot Bernstein children.

14 THE COURT: Okay. A few ground rules. I
14:40:18 15 have my order on this case management
16 conference, and that's the order in which we
17 will proceed, okay? Does everyone have a copy
18 of that order? I also have an extra copy in
19 case somebody needs it.

14:40:35 20 So we will begin with Stansbury's motion
21 to vacate in part the Court's ruling on
22 September 7, 2016, and/or any subsequent order
23 permitting the Estate of Simon Bernstein to
24 retain Alan Rose.

14:40:53 25 And I am just verifying the correct docket

1 entry. And it is noted on the case management
2 conference as docket entry 497. That is
3 incorrect. That's why I was double checking.
4 It's 496. And I knew that because I just
14:41:21 5 looked it up.

6 All right. In the order one of the things
7 I had said was to get all materials to me by
8 February 9th. Thank you. You can see I am
9 surrounded by notebooks. I received a ton of
14:41:35 10 materials. The only thing I would request is
11 from now on when I say February 9th, I mean
12 February 9th. I received two more -- from
13 everybody, from both sides, just so everybody
14 knows, I received documents Monday. From now
14:41:51 15 on if you don't meet the deadline you will have
16 to come into court with them and provide them
17 and tell me why you didn't meet the deadline.

18 I am going to put some firm rules on these
19 parties, and I don't think I will have to
14:42:02 20 explain why, just going through some of this
21 case.

22 Number two, from this point forward, and I
23 plan to include this in any order I issue, in
24 preparing for this it was very difficult to get
14:42:16 25 a grasp as to when the pleadings to the same

1 thing ended. Because we've got the original
2 motion or petition, then we've got the
3 response, then we've got the reply, then we've
4 got the supplement, then we've got the second
14:42:28 5 supplement to the response. Then we have an
6 answer to the second supplement. No more.

7 Petition or motion, response, reply, end.
8 If you desperately feel that there must be
9 something you must bring to the Court's
14:42:40 10 attention prior to the hearing, come in and ask
11 me for permission.

12 Because, quite frankly, the Court read as
13 much as humanly possible given the fact that
14 with all due respect it's not my only case.
14:42:51 15 And I am very compulsive, so I read as much as
16 I could. But some of it was -- if I thought
17 every single new piece of paper had some gem of
18 nuance that was different from all the other
19 prior, I might not be putting this rule. But a
14:43:05 20 lot of it was just repeating the same thing.

21 And I know a lot of it, which is why I
22 completely understand, had to do with the fact
23 that we need to get this judge up to speed,
24 which I appreciate. Okay. From this point now
14:43:18 25 I will be the original judge reading, all

1 sides, petition or motion, response, reply.

2 Okay.

3 Last and final housekeeping. I will make
4 no -- how do I put this? You all know that the
14:43:42 5 other half of my division is family and
6 divorce, an area where people get truly bent
7 out of shape as well and can be exceedingly
8 nasty to each other because you are going
9 through a horrible time.

14:44:01 10 You all are lawyers. I do not expect from
11 this point forward to see any direct -- now, an
12 appropriate motion is an appropriate motion. I
13 am excluding in a motion something you feel
14 justified to do. But in the pleadings, state
14:44:19 15 the facts. I don't want the adjectives, okay?
16 I can figure -- you know, state the facts, tell
17 me what happened. And I don't want the
18 adjectives that are following back and forth,
19 which I won't deal with. Anyone who has
14:44:35 20 practiced in front of me knows me. You can do
21 anything on your position within the bounds of
22 the law. I will not accept unprofessionalism
23 even in pleadings, even though you are
24 professional personally here.

14:44:45 25 Okay. That takes care of that. And

1 that's kind of a general rule I set forth in
2 all of my box cases in family too. So don't
3 anyone take it personally. That's something I
4 say at the get-go because as things proceed
14:44:57 5 people get mad. Remember, you are the lawyers,
6 not the clients, although I do know we have
7 some clients here.

8 Okay. So since it is, let me pull up on
9 Cap, Mr. Feaman's motion to vacate, he will
14:45:10 10 begin to have the floor.

11 MR. FEAMAN: Thank you, Your Honor.

12 THE COURT: Sorry, I just hit something
13 bad on my computer. I do take notes on my
14 computer. The reason we must end at 4:30 is
14:45:24 15 because I do not look at my e-mail or my
16 emergency motions, and I am signing judge,
17 which must be sent in before 5:00, okay? So I
18 give you my full attention, but we end prompt
19 at 4:30 because I am signing judge. Yesterday
14:45:37 20 I think I had four by the time I got back
21 there.

22 So let me -- here it is. Perfect. Thank
23 you again for the notebooks with the tab
24 indexes. Truly a time saver for the Court.

14:45:48 25 You may proceed, Mr. Feaman, thank you.

1 MR. FEAMAN: Thank you, Your Honor. May
2 it please the Court. Peter Feaman on behalf of
3 William Stansbury. My remarks are by way of an
4 opening statement at this time, Your Honor, in
14:45:59 5 connection with Your Honor's order, case
6 management conference and order specially
7 setting hearings.

8 As Your Honor noted, we are dealing with
9 Stansbury's motion, docket entry 496, and
14:46:13 10 Stansbury's related motion to disqualify Alan
11 Rose and his law firm, docket entry 508.

12 The story and premise, Your Honor, for
13 this is that the personal representative of the
14 Simon Bernstein estate, Brian O'Connell, has a
14:46:37 15 fiduciary duty to all interested persons of the
16 estate. And that's found in Florida Statute
17 733.602(1) where it states a personal
18 representative is a fiduciary, and in the last
19 sentence, a personal representative shall use
14:46:56 20 the authority conferred by this code, the
21 authority in the will, if any, and the
22 authority of any order of the Court, quote, for
23 the best interests of interested persons,
24 including creditors, close quote.

14:47:13 25 Mr. Stansbury is an interesting --

1 interested person to the Estate of Simon
2 Bernstein as well as a claimant in this case.

3 Interesting -- interested persons -- yes,
4 he is an interesting person. But interested
14:47:28 5 persons is defined, Your Honor, in Florida
6 Statute 731.201(23) which states that an
7 interested person means, quote, any person who
8 may reasonably be expected to be affected by
9 the outcome of the particular proceeding
14:47:51 10 involved.

11 The evidence will show that Mr. Stansbury
12 clearly falls into that category.

13 The second part of our presentation, Your
14 Honor, will then involve the presentation of
14:48:04 15 evidence to show that in fact there is a
16 conflict of interest. And then part three --
17 of conflict of interest of Mr. Rose and his law
18 firm representing the estate in this case.

19 And thirdly, that the conflict of
14:48:21 20 interest, the evidence will show, is not
21 waivable.

22 The parties' chart, which we did and
23 submitted to Your Honor with our package last
24 week, is the color chart, I have an extra copy
14:48:33 25 if Your Honor does not have it.

1 THE COURT: I believe it is --

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

3 THE COURT: I believe it is in -- I know I
4 have it. And I know I had it. Oh, got it. I
14:49:06 5 knew it was in one of my notebooks. Thank you.

6 MR. FEAMAN: Thank you.

7 Now, the summation of the position of the
8 parties in connection with what the evidence
9 will show, Your Honor, shows that we are here
14:49:17 10 obviously on the Estate of Simon Bernstein, and
11 the proposed attorney is Alan Rose. That's the
12 box at the top. The two proceedings that are
13 engaged with regard to the estate right now is
14 the Stansbury litigation against the estate
14:49:34 15 which is wherein it is proposed that Mr. Rose
16 and his law firm defend the estate in that
17 case.

18 And more significantly, Your Honor,
19 because it really wouldn't matter what the
14:49:49 20 other litigation is that Mr. Rose is being
21 asked to defend, because more significantly is
22 the orange box on the right, which I will call
23 for the purposes of this litigation the Chicago
24 litigation. And in that action there are a
14:50:05 25 number of plaintiffs, one of whom is Ted

1 Bernstein individually. And the evidence will
2 show in this case that Alan Rose represents Ted
3 Bernstein individually, not only in other
4 matters, but he actually appeared in a
14:50:27 5 deposition on behalf of Mr. Bernstein
6 individually in that Chicago litigation, made
7 objections to questions. And the evidence will
8 show that he actually on a number of occasions
9 instructed Mr. Bernstein not to answer certain
14:50:47 10 questions that were directed to Mr. Bernstein
11 by counsel for the Estate of Simon Bernstein.

12 In that Chicago litigation we will present
13 to Your Honor certified copies of pleadings
14 from the Chicago litigation that shows the
14:51:04 15 following: That Ted Bernstein, among others,
16 sued an insurance company to recover
17 approximately \$1.7 million dollars of life
18 insurance proceeds. Mr. Stansbury became aware
19 that that litigation was going on, and moved to
14:51:23 20 intervene in that lawsuit. Mr. Stansbury was
21 denied.

22 So the evidence will show that he was able
23 to prevail upon Ben Brown, and Ben Brown moved
24 on behalf of the estate when he was curator to
14:51:37 25 intervene. And in fact the Estate of Simon

1 Bernstein --

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

3 THE COURT: Legal objection?

4 MR. ROSE: That he is completely
14:51:48 5 misstating the record of this Court and the
6 proceedings before Judge Colin.

7 THE COURT: You will have an opportunity
8 to respond and explain it to me.

9 MR. FEAMAN: Thank you, Your Honor.

14:51:56 10 And the evidence will show that the Estate
11 of Simon Bernstein is now an intervenor
12 defendant, and they filed their own intervenor
13 complaint seeking to recover that same \$1.7
14 million dollars that Ted Bernstein is seeking
14:52:13 15 to recover as a plaintiff in that same action.

16 So the evidence will show that Mr. Rose
17 represents Ted Bernstein. Ted Bernstein is
18 adverse to the estate. And now Mr. Rose seeks
19 to represent the estate to which his present
14:52:35 20 client, Ted Bernstein, is adverse in the
21 Stansbury litigation, which is why we are
22 there. Now --

23 THE COURT: Wait. Slow down one second.

24 MR. FEAMAN: Sure.

14:52:44 25 THE COURT: That is something you repeated

1 several times in your motion, but I want you to
2 state it one more time for me slowly.

3 MR. FEAMAN: Yes. The Chicago litigation
4 one of the plaintiffs is Ted Bernstein
14:52:54 5 individually. The Estate of Simon Bernstein
6 has now intervened in that action. And Ted
7 Bernstein as plaintiff is seeking to recover
8 \$1.7 million dollars.

9 Adversely, the Estate of Simon Bernstein
14:53:09 10 seeks to recover that same \$1.7 million dollars
11 and is arguing up there that it should not go
12 to the plaintiffs but should go to the estate.

13 So they are one hundred percent adverse,
14 that would be Ted Bernstein and the Estate of
14:53:27 15 Simon Bernstein.

16 And Mr. Rose represents Ted Bernstein, and
17 now seeks to represent the estate in a
18 similar -- in an action against the estate, and
19 they are both going on at the same time. Thus,
14:53:44 20 the conflict is an attorney cannot represent a
21 plaintiff in an action, whether he is counsel
22 of record in that action or not, that's adverse
23 to the Estate of Simon Bernstein, and at the
24 same time defend the Estate of Simon Bernstein
14:54:03 25 when he has a client that is seeking to deprive

1 the estate of \$1.7 million dollars.

2 Now, if Ted Bernstein and the other
3 plaintiffs in that case were monetary
4 beneficiaries of the estate, I suppose it could
14:54:21 5 be a waivable conflict. However, that's not
6 the case.

7 That drops us to the third box on the --
8 the fourth box on the chart, which is the green
9 one, which deals with the Simon Bernstein
14:54:33 10 Trust. The Simon Bernstein Trust is the
11 residual beneficiary of the Simon Bernstein
12 estate. And once the estate captures that
13 money as a result of the Chicago litigation, if
14 it does, then the trust will eventually accede
14:54:54 15 to that money after payment of creditors, one
16 of which would be or could be my client.

17 And who are the beneficiaries of the
18 trust? So we have the one beneficiary of the
19 Simon Bernstein estate, the Simon Bernstein
14:55:06 20 Trust, and who are the beneficiaries of the
21 trust? Not the children of Simon Bernstein.
22 Not Ted Bernstein. But the grandchildren of
23 Simon Bernstein, some of whom are adults and
24 some of whom are minors in this case. Such
14:55:22 25 that if the estate prevails in the Chicago

1 litigation, even assuming Mr. Stansbury wasn't
2 around making his claim against the estate, if
3 all of the distributions were finally made when
4 the estate wins that Chicago litigation, none
14:55:37 5 of it will ever end up in the hands of Ted
6 Bernstein as plaintiff. The only way
7 Mr. Bernstein can get that money is to prevail
8 as a plaintiff in the Chicago litigation.
9 Mr. Rose represents Mr. Bernstein, and
14:55:54 10 therefore there's a conflict, and it's a
11 non-waivable conflict.

12 And in my final argument when I discuss
13 the law, I will suggest to the Court that the
14 conflict that's presented before the Court is
14:56:11 15 in fact completely non-waivable.

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

14:56:25 20 MR. FEAMAN: I filed it as soon as I
21 became aware that there was a conflict. For
22 example, when the order that we are seeking to
23 set aside was entered, I was not aware that the
24 Rose law firm represented Ted Bernstein in that
14:56:40 25 Chicago action. My client then brought it to

1 my attention. And as soon as we did that, I
2 moved to set aside the order because it became
3 apparent that there was a clear conflict.

4 Because initially, as I told Brian
14:56:54 5 O'Connell, Mr. Stansbury can't dictate who the
6 estate wishes to hire as its attorneys unless,
7 as it turns out, that attorney represents
8 interests that are adverse to the estate. And
9 that's when we filed our motion to set aside.

14:57:14 10 I got possession of the deposition that
11 will be offered today. The deposition revealed
12 to me what I have summarized here today, this
13 afternoon, and then we moved to set aside the
14 order. And then we thought that wasn't enough,
14:57:30 15 we should do a formal motion to disqualify,
16 which we did.

17 The chronology of the filings, the motion
18 to vacate, I am not sure exactly when that was
19 filed, but it wasn't too long after the entry
14:57:46 20 of the September 7th order, and then the motion
21 to disqualify came after that. And --

22 THE COURT: It was filed October 7th.

23 MR. FEAMAN: Pardon me?

24 THE COURT: It was filed October 7th.

14:57:56 25 MR. FEAMAN: Okay. The motion to vacate?

1 THE COURT: Yes.

2 MR. FEAMAN: Correct. We had to do our
3 due diligence. We got the copy of the
4 deposition, and moved. Because we don't get
14:58:10 5 copies of things that go on up there on a
6 routine basis.

7 THE COURT: Okay. I just wanted to ask
8 what your position was. Okay. All right.
9 Thank you.

14:58:21 10 Opening?

11 MR. ROSE: As a threshold matter, I think
12 even though this is an evidentiary hearing, you
13 are going to receive some documentary evidence,
14 I don't think there's a real need for live
14:58:34 15 testimony, in other words, from witnesses. No,
16 no.

17 THE COURT: Okay.

18 MR. ROSE: I am advising you. I am not
19 asking your opinion of it.

14:58:42 20 THE COURT: Thank you.

21 MR. ROSE: I am advising you. I have
22 spoken to Mr. Feaman.

23 THE COURT: Okay.

24 MR. ROSE: So I don't know there's going
14:58:53 25 to be live witnesses.

1 THE COURT: Okay.

2 MR. ROSE: He has seven documents or eight
3 documents he would like to put in evidence, and
4 I would be happy if they just went into
14:58:59 5 evidence right now.

6 THE COURT: He can decide how he wants to
7 do his case.

8 MR. ROSE: Okay.

9 THE COURT: You can do your opening.

14:59:05 10 MR. ROSE: I think we are going to be
11 making one long legal argument with documents,
12 so.

13 THE COURT: Okay. Well, let's do an
14 opening and then.

14:59:14 15 MR. ROSE: Let me start from the beginning
16 then.

17 THE COURT: Okay.

18 MR. ROSE: So we are here today, and there
19 are three motions that you said you would try
14:59:20 20 to do today. And I don't have any doubt you
21 will get to do all three today given how much
22 time we have and progress we are making and the
23 amount of time Mr. Feaman and I think this will
24 take.

14:59:31 25 THE COURT: Okay.

1 MR. ROSE: The three are completely
2 related. They are all the same. They are
3 three sides of the same coin.

4 Am I blocking you?

14:59:44 5 MR. O'CONNELL: Your Honor, could I step
6 to the side?

7 THE COURT: Yes, absolutely.

8 MR. ROSE: You can have the chart.

9 MR. O'CONNELL: Okay.

14:59:53 10 THE COURT: Mr. Rose, I have to ask you.
11 I received a, I think it was a flash drive, and
12 it had proposed orders on matters that were not
13 necessarily going to be heard today. I don't
14 think I got a flash dive with a proposed order.
15:00:07 15 I did receive Mr. Feaman's on these particular
16 orders.

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

19 THE COURT: Okay. But I did on the other
15:00:17 20 ones. That's what seemed odd to me.

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

22 THE COURT: Okay. That's okay. You may
23 proceed.

24 MR. ROSE: There's three matters today and
15:00:27 25 they are sort of related, and they involve how

1 are we going to deal with the claim by
2 Mr. Stansbury against the Estate of Simon
3 Bernstein.

4 And there are currently three separate
15:00:40 5 proceedings. There's a proceeding in Illinois.
6 It's all taking place in Illinois. There's the
7 probate proceeding which we are here on which
8 is the Estate of Simon Bernstein. And there's
9 the Stansbury litigation that is pending in
15:00:57 10 circuit court. It's just been reassigned to
11 Judge Marx, so we now have a judge, and that
12 case is going to proceed forward. It's set for
13 trial, I believe, in July to September
14 timeframe.

15:01:12 15 So the first thing you are asked to do
16 today is to reconsider a valid court order
17 entered by Judge Phillips on September the 7th.
18 We filed our motion in August, and they had 30
19 days, more than 30 days before the hearing to
15:01:27 20 object or contest the motion to appoint us.

21 The genesis of the motion to appoint us
22 was what happened at mediation. We had a
23 mediation in the summer. The parties signed a
24 written mediation settlement agreement. We
15:01:43 25 have asked Your Honor at next week's hearing to

1 approve the mediation settlement agreement. It
2 is signed by every single one of the ten
3 grandchildren or their court-appointed guardian
4 ad litem, Diana Lewis, who has now been
15:02:02 5 approved by this Court, upheld by the 4th
6 District, and upheld by the Supreme Court this
7 week. So I think it's safe to say that she's
8 going to be here.

9 So the settlement agreement is signed by
15:02:12 10 all of those people. It's signed by my client
11 as the trustee. It's also signed by four of
12 the five children, excluding Eliot Bernstein.

13 And as part of this, once we had a
14 settlement, there was a discussion of how do we
15:02:29 15 get this relatively modest estate to the finish
16 line. And the biggest impediment getting to
17 the finish line is this lawsuit. Until this
18 lawsuit is resolved, his client is something.
19 We can debate what he is. He claims to be an
15:02:46 20 interested person. I think technically under
21 law he is a claimant. Judge, I think even
22 Judge Colin ruled he was not a creditor and
23 denied his motion to remove and disqualify Ted
24 Bernstein as trustee. That was pending and
15:03:03 25 there's an order that does that a long time

1 ago. If I could approach?

2 THE COURT: Sure.

3 MR. ROSE: I don't have the docket entry
4 number. This is in the court file. This was
15:03:12 5 Judge Colin on August 22nd of 2014.

6 THE COURT: I saw it.

7 MR. ROSE: He has been trying to remove me
8 and Mr. Bernstein for like almost three or four
9 years now. But that's only significant because
15:03:24 10 he is not a creditor. He is a claimant. So
11 what we want to do is we want to get his claim
12 to the finish line.

13 So I am not talking about anything that
14 happened at mediation. Mediation is now over.
15:03:35 15 We have a signed settlement agreement.

16 Mr. Stansbury participated in the mediation,
17 but we did not make a settlement with him.
18 Okay.

19 So as a result of the mediation, all the
15:03:46 20 other people, everybody that's a beneficiary of
21 this estate coming together and signing a
22 written agreement, those same people as part of
23 the written agreement said we want this case to
24 finish, and how are we going to do that.

15:03:59 25 Well, let's see. Mr. Stansbury is the

1 plaintiff represented by Mr. Feaman. The
2 estate was represented by -- do you?

3 THE COURT: No.

4 MR. ROSE: I can give you one to have if
15:04:16 5 you want to make notes on.

6 THE COURT: I would like that. I would
7 like that very much.

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

10 15:04:22 THE COURT: Thank you.

11 MR. ROSE: You will recall -- I don't want
12 to talk out of school because we decided we
13 weren't going to talk out of school. But I got
14 Mr. Feaman's -- like I didn't have a chance to
15:04:33 15 even get this to you because I hadn't seen his
16 until after your deadline, but.

17 THE COURT: This is demonstrative.

18 MR. ROSE: Okay.

19 THE COURT: He can pull up something new
15:04:39 20 demonstrative as well.

21 MR. ROSE: Mr. -- originally the defendant
22 here originally was assigned when he was alive.
23 When he died his estate was substituted in. He
24 hired counsel. His counsel didn't do much in
15:04:54 25 the case because I did all the work because I

1 was representing the companies, Ted Bernstein
2 and another trust. And in January of 2014 the
3 PRs of the estate resigned totally unrelated to
4 this.

15:05:13 5 So in the interim between the original PRs
6 and the appointment of Mr. O'Connell, we had a
7 curator. The curator filed papers, which I
8 filed, it's in the file, but I have sent it to
9 Your Honor, where he admits, he states that he
15:05:27 10 wanted to stay the litigation but he states
11 that I have been doing a great job representing
12 him and he hasn't even had to hire a lawyer yet
13 because he is just piggybacking on the work I
14 am doing.

15:05:36 15 I represented in this lawsuit the very one
16 that Mr. O'Connell wants to retain my firm to
17 handle. And he wants it with the consent --
18 and one thing he said was that there's some
19 people that aren't here. Every single person
15:05:47 20 who is a beneficiary of this estate wants my
21 firm to handle this for the reasons I am about
22 to tell you. And I don't think there's any
23 dispute about it.

24 I was the lawyer that represented the main
15:05:56 25 company LIC and AIM. Those are the shorthands

1 for the two companies. Mr. Stansbury was at
2 one point a ten percent stockholder in these
3 companies. He gave his stock back. Ted
4 Bernstein who is my client, and the Shirley
15:06:11 5 Bernstein trust, I represented all these people
6 in the case for about 15 or 18 months before we
7 settled. I could be off on the timing. But I
8 did all the documents, the production,
9 interviewed witnesses, interviewed everybody
15:06:23 10 you could interview. Was pretty much ready to
11 go to trial other than we had to take the
12 deposition of Mr. Stansbury, and then he had
13 some discovery to do.

14 We went and we settled our case. Because
15:06:33 15 we had a gap, because we didn't have a PR at
16 the time, we were in the curator period,
17 Mr. Brown was unwilling to do anything, so we
18 didn't settle the case.

19 So Mr. O'Connell was appointed, so he is
15:06:45 20 now the personal representative. He doesn't
21 know the first thing about the case. No
22 offense. I mean, he couldn't. You know, it's
23 not expected for him to know the first thing
24 about it. I don't mean the first thing. But
15:06:57 25 he doesn't know much about the case or the

1 facts.

2 We had discussions about hiring someone
3 from his law firm to do it. I met someone from
4 his law firm and provided some basic
15:07:07 5 information, but nothing really happened. We
6 were hopeful we'd settle in July. We didn't
7 settle.

8 So they said the beneficiaries with
9 Mr. O'Connell's consent we want Mr. Rose to
15:07:19 10 become the lawyer and we want Mr. Ted Bernstein
11 to become the administrator ad litem.

12 Now, why is that important? That's the
13 second motion you are going to hear, but it's
14 kind of important.

15:07:28 15 THE COURT: That's the one Phillips
16 deferred?

17 MR. ROSE: Well, what happened was
18 Mr. Feaman filed an objection to it timely.
19 And in an abundance of caution because it might
15:07:39 20 require an evidentiary or more time than we
21 had, Judge Phillips deferred. That was my
22 order. And my main goal was I wanted to get
23 into the case and so we could start going to
24 the status conferences and get this case
15:07:48 25 moving. And what happened was as soon as we

1 had the first status conference and we started
2 the case moving, until we got the motion to
3 disqualify, and stopped and put the brakes on.

4 And this is a bench trial, so there's
15:08:00 5 not -- this is like maybe argument, but it's a
6 little bit related. I believe that Mr. -- this
7 is the case they want to happen first and
8 they're putting the brakes on this case because
9 they want this case to move very slowly.
15:08:13 10 Because the only way there's any money to
11 pay --

12 MR. FEAMAN: Objection.

13 THE COURT: Legal objection?

14 MR. FEAMAN: What counsel believes is not
15:08:18 15 appropriate for --

16 THE COURT: Sustained.

17 MR. ROSE: Okay. So this case -- so
18 anyway. Mr. Bernstein, Ted Bernstein, Ted,
19 Simon and Bill, that's Ted, the dead guy Simon
15:08:36 20 and his client Bill, were the three main
21 shareholders of a company.

22 THE COURT: I got it.

23 MR. ROSE: Ted and Simon started it. They
24 brought Bill in and gave him some stock for a
15:08:46 25 while. Bill is suing for two and a half

1 million dollars. The only person alive on this
2 planet who knows anything about this case is
3 Ted. He has got to be the representative of
4 the estate to defend the case. He has got to
15:09:00 5 be sitting at counsel table. If he is not at
6 counsel table, he is going to be excluded under
7 the exclusionary rule and he will be out in the
8 hallway the whole trial. And whoever is
9 defending the estate won't be able to do it.
15:09:11 10 This guy wants Ted out and me out because we
11 are the only people that know anything about
12 this case.

13 So why is that important? Well, it makes
14 it more expensive. It makes him have a better
15:09:21 15 chance of winning. That's what this is about.
16 And at the same time the Illinois case is
17 really critical here because unless the estate
18 wins the money in Illinois, there's nothing in
19 this estate to pay him.

15:09:33 20 THE COURT: I understand.

21 MR. ROSE: Mr. O'Connell, I proffer, he
22 advised me today there's about \$285,000 of
23 liquid assets in the estate. And we are going
24 to get some money from a settlement if you
15:09:46 25 approve it.

1 Now, Eliot and Mr. Stansbury will probably
2 object to that. It's not for today. So we
3 have a settlement with the lawyers, the ones
4 that withdrew. So we got a little bit of money
15:09:56 5 from that. But there's really not going to be
6 enough money in the estate to defend his case,
7 pay all, do all the other things you got to do.
8 So this is critical for Mr. Stansbury.

9 So the original PR, the guys that
15:10:10 10 withdrew, they refused to participate in this
11 lawsuit because they knew the facts. They knew
12 the truth. They met with Simon. They drafted
13 his documents. So they were not participating
14 in this lawsuit.

15:10:21 15 Mr. Feaman stated in his opening that his
16 client tried to intervene. So Bill tried to
17 intervene directly into Illinois, and the
18 Illinois judge said, no thank you, leave.

19 So when these guys withdrew we got a
15:10:38 20 curator. The curator I objected --

21 THE COURT: Mr. Brown?

22 MR. ROSE: Ben Brown. He was a lawyer in
23 Palm Beach, a very nice man. He passed away in
24 the middle of the lawsuit at a very young age.
15:10:52 25 But he -- the important thing -- I interrupted,

1 and I apologize for objecting. I didn't know
2 what to do. But Mr. Brown didn't say, hey, I
3 want to get in this lawsuit in Illinois; let me
4 jump in here. Mr. Feaman and Mr. Stansbury
15:11:06 5 filed a motion to require Mr. Brown to
6 intervene in the case.

7 THE COURT: In the federal case?

8 MR. ROSE: In the federal case in
9 Illinois. Because it's critical for
15:11:17 10 Mr. Stansbury, it's critical for Mr. Stansbury
11 to get this money into the estate.

12 THE COURT: Into the estate, I understand.

13 MR. ROSE: Okay. So we had a hearing
14 before Judge Colin, a rather contested hearing
15:11:26 15 in front of Judge Colin. Our position was very
16 simple -- one of the things you will see, my
17 client's goals on every one of these cases are
18 exactly the same. Minimize time, minimize
19 expense, maximize distribution. So we have the
15:11:43 20 same goal in every case.

21 All the conflict cases you are going to
22 see all deal with situations where the lawyers
23 have antagonistic approaches and they want --
24 like in one case he has, it's one lawsuit the
15:11:54 25 lawyer wants two opposite results inside the

1 same lawsuit for two different clients. That's
2 completely different. And even that case,
3 which is the Staples case, it was two to one.
4 There was a judge that dissented and said,
15:12:05 5 look, I understand what you are saying, but
6 there's still not really a conflict there.

7 But our goals are those goals.

8 So what we said to Judge Colin is we think
9 the Illinois case is a loser for the estate.
15:12:20 10 We believe the estate is going to lose. The
11 lawyer who drafted the testamentary documents
12 has given an affidavit in the Illinois case
13 saying all his discussions were with Simon.
14 The judge in Illinois who didn't have that when
15:12:31 15 he first ruled had that recently, and he denied
16 their summary judgment in Illinois. So it's
17 going to trial. But that lawyer was the
18 original PR, so he wasn't bringing the suit.

19 Mr. Brown says, I am not touching this.

15:12:45 20 So we had a hearing, and they forced Mr. Brown
21 to intervene with certain conditions. And one
22 of the conditions was very logical. If our
23 goal is to save money and Mr. Stansbury,
24 Mr. Feaman's client, is going to pay the cost
15:12:59 25 of this, he will get it back if he wins, then

1 we got no objection anymore, as long as he is
2 funding the litigation. He is the only guy who
3 benefits from this litigation. None of the --
4 the children and the grandchildren they don't
15:13:12 5 really care.

6 Judge Lewis represents Eliot's three kids
7 versus Eliot. The money either goes to Eliot
8 or his three kids. She's on board with, you
9 know, we don't want to waste estate funds on
15:13:25 10 this. Our goal is to keep the money in the
11 family. He wants the money.

12 This is America. He can file the lawsuit.
13 That's great. But these people should be able
14 to defend themselves however they choose to see
15:13:36 15 fit. But the critical thing about this is
16 Mr. Brown didn't do anything in here. Judge
17 Colin said, you can intervene as long as he is
18 paying the bills. And that's an order. Well,
19 that order was entered a long time ago. It was
15:13:48 20 not appealed.

21 So one of the things, the third thing you
22 are being asked to do today is vacate that
23 order, you know. And I did put in my motion,
24 and I don't know if it was ad hominem toward
15:13:58 25 Mr. Feaman, it really was his client, his

1 client is driving this pace. He is driving us
2 to zero. I mean, we started this estate with
3 over a million dollars. He has fought
4 everything we do every day. It's not just
15:14:11 5 Eliot. Eliot is a lot of this. Mr. Stansbury
6 is driving us to zero as quickly as possible.

7 So in the Illinois case the estate is
8 represented by Stamos and Trucco. They are
9 hired by, I think, Ben Brown but was in
15:14:27 10 consultation with Mr. Feaman. They
11 communicated -- the documents will come into
12 evidence. I am assuming he is going to put the
13 documents on his list in evidence.

14 You will see e-mails from Mr. Stamos from
15:14:39 15 the Stamos Trucco firm, they e-mailed to
16 Mr. O'Connell, and they copied Bill Stansbury
17 and Peter Feaman because they are driving the
18 Illinois litigation. I don't care. They can
19 drive it. I think it's a loser. They think
15:14:50 20 it's a winner. We'll find out in a trial.

21 They are supposed to be paying the bills.
22 I think the evidence would show his client's in
23 violation of Judge Colin's orders because his
24 client hasn't paid the lawyer all the money
15:15:00 25 that's due. And Mr. O'Connell, I think, can

1 testify to that. I don't think it's a disputed
2 issue. But the lawyer's been paid 70 and he is
3 owed 40, which means Mr. Feaman's client is
4 right now technically in violation of a court
15:15:12 5 order.

6 I have asked numerous times for them to
7 give me the information. I just got it this
8 morning. But I guess I can file a motion to
9 hold him in contempt for violating a court
15:15:21 10 order.

11 But in the Chicago case the plaintiff is
12 really not Ted Bernstein, although he probably
13 nominally at some point was listed as a
14 plaintiff in the case. The plaintiff is the
15:15:32 15 Simon Bernstein 1995 irrevocable life insurance
16 trust. According to the records of the
17 insurance company, the only person named as a
18 beneficiary is a defunct pension plan that went
19 away.

15:15:45 20 THE COURT: Net something net something,
21 right?

22 MR. ROSE: Right. And then the residual
23 beneficiary is this trust. And these are
24 things Simon -- he filled out one designation
15:15:53 25 form in '95 and he named the 95 trust.

1 THE COURT: But there's no paperwork,
2 right?

3 MR. ROSE: We can't find the paperwork.
4 Not me. It was not me. I have nothing to do
15:16:01 5 with it. I said we. I wanted to correct the
6 record because it will be flown up to Illinois.

7 Whoever it is can't find the paperwork.
8 So there's a proceeding, and it happens in
9 every court, and there's Illinois proceedings
15:16:11 10 to determine how do you prove a lost trust.

11 This lawsuit is going to get resolved one
12 way or the other. But in this lawsuit the 95
13 trust Ted Bernstein is the trustee, so he
14 allowed, though under the terms of the trust in
15:16:24 15 this case, and we cited it to you twice or
16 three times, under Section 4J of the trust on
17 page 18 of the Simon Bernstein Trust, it says
18 that you can be the trustee of my trust, Simon
19 said you can be the trustee of my trust even if
15:16:41 20 you have a different interest as a trustee of a
21 different trust. So that's not really an
22 issue. And up in Chicago Ted Bernstein is the
23 trustee of the 95 trust. He is represented by
24 the Simon law firm in Chicago.

15:16:52 25 I have never appeared in court. He is

1 going to put in all kinds of records. My name
2 never appears -- I have the docket which he
3 said can come into evidence. I don't appear on
4 the docket.

15:17:02 5 Now, I have to know about this case though
6 because I represent the trustee of the
7 beneficiary of this estate. I've got to be
8 able to advise him. So I know all about his
9 case. And he was going to be deposed.

15:17:14 10 Guess who was at his deposition? Bill
11 Stansbury. Bill Stansbury was at his
12 deposition, sat right across from me. Eliot,
13 who is not here today, was at that deposition,
14 and Eliot got to ask questions of him at that
15:17:27 15 deposition. He wanted me at the deposition.
16 He is putting the deposition in evidence. If
17 you study the deposition, all you will see is
18 on four occasions I objected on what grounds?
19 Privilege. Be careful what you talk about; you
15:17:40 20 are revealing attorney/client privilege.

21 That's all I did. I didn't say, gee, don't
22 give them this information or that information.
23 And if I objected incorrectly, they should have
24 gone to the judge in Illinois. And I guarantee
15:17:50 25 you there's a federal judge in Illinois that if

1 I had objected improperly would have overruled
2 my objections. I instructed him to protect his
3 attorney/client privilege. That's what I was
4 there for, to advise him and to defend him at
15:18:00 5 deposition and to protect him. That's all I
6 did in the Illinois case. And that is over.

7 Now, I am rooting like crazy that the
8 estate loses this case in one sense because
9 that's what everybody that is a beneficiary of
15:18:18 10 my trust wants. But I could care less how that
11 turns out, you know, from a legal standpoint.
12 I don't have an appearance in this case. And
13 everyone up there is represented by lawyers.

14 So what we have now is we have this motion
15:18:36 15 which seeks to disqualify my law firm. We
16 still have the objection to Ted serving as the
17 administrator ad litem. And I think those two
18 kind of go hand in hand.

19 There's another component you should know
15:18:50 20 about that motion. But as I told you, our
21 goals are to reduce expense.

22 The reason that everybody wanted Ted to
23 serve as the administrator ad litem, so he
24 would sort of be the representative of the
15:19:03 25 estate, because he said he would do that for

1 free.

2 THE COURT: I remember.

3 MR. ROSE: Mr. O'Connell is a
4 professional. He is not going to sit there for
15:19:13 5 free for a one-week, two-week jury trial and
6 prepare and sit for deposition. That's enough
7 money -- just his fees alone sitting at trial
8 are enough to justify everything -- you know,
9 it's a significant amount of money.

15:19:27 10 So that's what's at issue today.

11 But their motion for opening statement,
12 and I realize this is going to overlap, my
13 other will be --

14 THE COURT: Which motion?

15:19:40 15 MR. ROSE: The disqualification.

16 THE COURT: I wasn't sure.

17 MR. ROSE: I got you. That was sort of
18 first up. All right. So I am back. That's
19 the background. You got the background for the
15:19:48 20 disqualification motion. This is an adversary
21 in litigation trying to disqualify me.

22 I think it is a mean-spirited motion by
23 Mr. Stansbury designed to create chaos and
24 disorder and raise the expense, maybe force the
15:20:04 25 estate into a position where they have to

1 settle, because now they don't have a
2 representative or an attorney that knows
3 anything about the case.

4 MR. FEAMAN: Objection.

15:20:11 5 THE COURT: Legal objection?

6 MR. FEAMAN: Comments on the motivation or
7 intention of opposing counsel in opening
8 statement is not proper.

9 THE COURT: I will allow it only -- mean
15:20:25 10 spirited I will strike. The other comments I
11 will allow because under Rule 4-1.7, and I may
12 be misquoting, but it is one of the two rules
13 we have been looking at under the Florida Bar,
14 the commentary specifically talks about an
15:20:42 15 adverse party moving to disqualify and the
16 strategy may be employed. So I will allow that
17 portion of his argument, striking mean
18 spirited.

19 MR. ROSE: Okay. If you turn to tab 2 of
15:20:53 20 the -- we, I think, sent you a very thin
21 binder.

22 THE COURT: Yes, you did.

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

15:20:59 25 THE COURT: Yes.

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

3 THE COURT: In any other world this would
4 have been a nice sized binder. In this
15:21:06 5 particular case you are indeed correct, this is
6 a very thin binder.

7 MR. ROSE: Okay. If you flip to page
8 2240 --

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

10 15:21:15 MR. ROSE: -- which is about five or six
11 pages in.

12 THE COURT: Yes.

13 MR. ROSE: This is where a conflict is
14 charged by opposing party.

15 15:21:22 THE COURT: Yes.

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

18 And I would point for the record I did not
19 say that Mr. Feaman was mean spirited. I
15:21:32 20 specifically said mean spirited by his client.

21 THE COURT: Thank you.

22 MR. ROSE: So conflicts charged by the
23 opponent, and this is just warning you that
24 this can be used as a technique of harassment,
15:21:40 25 and that's why I am tying that in.

1 But the important things are I have never
2 represented Mr. Stansbury in any matter.
3 Generally in a conflict of interest situation
4 you will see I represented him. I don't have
15:21:56 5 any confidential information from
6 Mr. Stansbury. I have only talked to him
7 during his deposition. It wasn't very
8 pleasant. And if you disqualify me to some
9 degree my life will be fine, because this is
15:22:07 10 not the most fun case to be involved in. I am
11 doing it because I represent Ted and we are
12 trying to do what's right for the
13 beneficiaries.

14 THE COURT: Appearance for the record.
15:22:18 15 Someone just came in.

16 MR. ELIOT BERNSTEIN: Hi. Eliot Ivan
17 Bernstein.

18 THE COURT: Thank you.

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

15:22:24 20 THE COURT: Thank you. You may proceed.
21 I just wanted the court reporter to know.

22 MR. ELIOT BERNSTEIN: Thank you, Your
23 Honor.

24 MR. ROSE: I don't have any confidential
15:22:28 25 information of Mr. O'Connell. He is the PR of

1 the estate. I don't know anything about
2 Mr. O'Connell that would compromise my ability
3 to handle this case. I am not sure he and I
4 have ever spoken about this case. But in
15:22:39 5 either case, I don't have any information.

6 So I can't even understand why they are
7 saying this is a conflict of interest. But the
8 evidence will show, if you look at the way
9 these are set up, these are three separate
15:22:50 10 cases, not one case. And nothing I am doing in
11 this case criticizes what I am doing in this
12 case. Nothing I am doing -- the outcome of
13 this case is wholly independent of the outcome
14 of this case. He could lose this case and win
15:23:05 15 this case. He could lose this case and lose
16 this case. I mean, the cases have nothing to
17 do with the issues.

18 Who gets the insurance proceeds? Bill
19 Stansbury is not even a witness in that case.
15:23:17 20 It has nothing to do with the issue over here,
21 how much money does Bill Stansbury get? So
22 you've got wholly unrelated, and that's the
23 other part of the Rule 4-1.9 and 4-1.7, it
24 talks about whether the matters are unrelated.
15:23:31 25 And I guess when I argue the statute I will

1 argue the statute for you.

2 At best what the evidence is going to show
3 you -- and I am not trying to win this on a
4 technicality. I want to win this like up or
15:23:43 5 down and move on. Because this estate can't --
6 this delay was torture to wait this long for
7 this hearing.

8 But if I showed up at Ted's deposition,
9 and I promise you I will never show up again, I
15:23:57 10 am out of that case, this is a conflict of
11 interest with a former client. I have ceased
12 representing him at his deposition. He is
13 never going to be deposed again. If it's a
14 conflict of interest with a former client, all
15:24:09 15 these things are the prerogative of the former
16 client. They are not the prerogative of the
17 new client. The new client it's not the issue.
18 So if I represented Ted in his deposition, I
19 cannot represent another person in the same or
15:24:21 20 a substantially related matter.

21 So I can't represent the estate in this
22 case because I sat at Ted's deposition, unless
23 the former client gives informed consent. He
24 could still say, hey, I don't care, you do the
15:24:35 25 Illinois case for the estate. I wouldn't do

1 that, but that's what the rule says. Use
2 information. There's no information. I am not
3 even going to waste your time. Reveal
4 information. So there's no information. If
15:24:46 5 this is the rule we are traveling under, you
6 deny the motion and we go home and move on and
7 get back to litigation. If we are traveling
8 under this rule, I cannot under 4-1.7 --

9 MR. FEAMAN: Excuse me, Your Honor, this
15:25:00 10 sounds more like final argument than it does
11 opening statement what the evidence is going to
12 show.

13 THE COURT: Overruled.

14 MR. ROSE: So under 4-1.7, except as in b,
15:25:17 15 and I am talking about b because that's maybe
16 the only piece of evidence we may need is the
17 waiver. I have a written waiver. I think it
18 has independent legal significance. Because if
19 I obtained his writing in writing, I think it's
15:25:30 20 admissible just because Mr. O'Connell signed
21 it. But they object, they may object to the
22 admission of the waiver, so I may have to put
23 Mr. O'Connell on the stand for two seconds and
24 have him confirm that he signed the waiver
15:25:40 25 document.

1 But except if it's waived, now let's put
2 that aside. We never even get to the waiver.
3 The representation of one client has to be
4 directly adverse to another client. So
15:25:53 5 representing Ted in his deposition is not --
6 has nothing to do -- first of all, Ted had
7 counsel representing him directly adverse. I
8 was there protecting him as trustee, protecting
9 his privileges, getting ready for a trial that
15:26:07 10 we had before Judge Phillips where he upheld
11 the validity of the documents, determined that
12 Ted didn't commit any egregious wrongdoing.
13 That's the December 15th trial. It's on appeal
14 to the 4th District. That's what led to having
15:26:23 15 Eliot determined to have no standing, to Judge
16 Lewis being appointed as guardian for his
17 children. That was the key. That was the only
18 thing we have accomplished to move the thing
19 forward was that, but we had that.

15:26:34 20 But that's why I was at the deposition,
21 but it was not directly adverse to the estate.

22 Number two, there's a substantial risk
23 that the representation of one or more clients
24 will be materially limited by my
15:26:52 25 responsibilities to another. I have asked them

1 to explain to me how might -- how what I want
2 to do here, which is to defend these people
3 that I have been doing -- I have asked
4 Mr. Feaman to explain to me how what I am doing
15:27:06 5 to defend the estate, like I defended all these
6 people against his client, could possibly be
7 limited by my responsibilities to Ted. My
8 responsibilities to Ted is to win this lawsuit,
9 save the money for his family, determine his
15:27:19 10 father did not defraud Bill Stansbury. So I am
11 not limited in any way.

12 So if you don't find one or two, you don't
13 even get to waiver. But if you get to waiver,
14 and this is evidence, it's one of the -- I only
15:27:34 15 gave you three new things in the binder. One
16 was the waiver. One was the 57.105 amended
17 motion.

18 I think the significance of that is after
19 I got the waiver, after I got a written waiver,
15:27:46 20 I thought that changed the game a little bit.
21 You know, if you are a lawyer and you file a
22 motion to disqualify -- so when I got the
23 written waiver --

24 MR. FEAMAN: Your Honor --

15:27:54 25 THE COURT: Legal objection.

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

3 THE COURT: Sustained.

4 MR. FEAMAN: -- that you haven't even seen
15:28:01 5 yet.

6 THE COURT: Sustained.

7 MR. FEAMAN: Thank you.

8 THE COURT: Sustained.

9 MR. ROSE: I got a waiver signed by
15:28:08 10 Mr. O'Connell. I had his permission, but I got
11 a formal written waiver. And it was after our
12 first hearing, and it was after -- so I sent it
13 to Mr. Feaman.

14 But if you look under the rule, it's a
15:28:21 15 clearly waivable conflict. Because I am not
16 taking an antagonistic position saying like the
17 work I did in the other case was wrong or this
18 or that.

19 And if you look at the rules of
15:28:31 20 professional conduct again, and we'll do it in
21 closing, but I am the one who is supposed to
22 decide if I have a material limitation in the
23 first instance. That's what the rules direct.
24 Your Honor reviews that. But in the first
15:28:44 25 instance I do not have any material limitation

1 on my ability to represent the estate
2 vigorously, with all my heart, with everything
3 my law firm's resources, and with Ted's
4 knowledge of the case and the facts to defend
15:29:01 5 his case, there is no limitation and there's no
6 substantial risk that I am not going to do the
7 best job possible to try to protect the estate
8 from this claim.

9 And I think we would ask that you deny the
15:29:12 10 motion to disqualify on the grounds that
11 there's no conflict, and the waiver for
12 Mr. O'Connell would resolve it.

13 And we also would like you to appoint Ted
14 Bernstein. There's no conflict of interest in
15:29:25 15 him defending the estate as its representative
16 through trial to try to protect the estate's
17 money from Mr. Stansbury. It's not like Ted or
18 I are going to roll over and help Mr. Stansbury
19 or sell out the estate for his benefit. That's
15:29:41 20 what a conflict would be worried about. We are
21 not taking a position in -- we are not in the
22 case yet, obviously. If you allow us to
23 continue in this case, we are not going to take
24 a position in this case which is different from
15:29:53 25 any position we have ever taken in any case

1 because all --

2 THE COURT: Just for the record, for the
3 record, I see you pointing. So you are not
4 taking a position in the Palm Beach circuit
15:30:02 5 court --

6 MR. ROSE: Case.

7 THE COURT: -- civil case --

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

9 THE COURT: -- that's different than
15:30:07 10 probate or even the insurance proceeds?

11 MR. ROSE: Correct. Different from what
12 we did in the federal case in Illinois,
13 different from we are taking in the probate
14 case. Or more importantly, in fact most
15:30:17 15 importantly, we are not taking a position
16 differently than we took when I represented
17 other people in the same lawsuit.

18 You have been involved in lawsuits where
19 there are eight defendants and seven settled
15:30:27 20 and the last guy says, well, gee, let me hire
21 this guy's lawyer, either he is better or my
22 lawyer just quit or I don't have a lawyer. So
23 but I am not taking a position like here we
24 were saying, yeah, he was a terrible guy, he
15:30:38 25 defrauded you, and now we are saying, oh, no,

1 it's not, he didn't defraud you. That would be
2 a conflict. We have defended the case by
3 saying that Mr. Stansbury's claim has no merit
4 and we are going to defend it the same way.

15:30:49 5 And then that's what we'd like to do with
6 the Florida litigation, and then time
7 permitting we'd like to discuss the Illinois
8 litigation, because we desperately need a
9 ruling from Your Honor on the third issue you
15:31:00 10 set for today which is are you going to vacate
11 Judge Colin's order and free Mr. Stansbury of
12 the duty to fund the Illinois litigation.

13 Judge Colin entered the order. The issue
14 was raised multiple times before Judge
15:31:14 15 Phillips. He wanted to give us his ruling one
16 day, and we -- you know, he didn't. We were
17 supposed to set it for hearing. We had
18 numerous hearings set on that motion, the
19 record will reflect, and those were all
15:31:26 20 withdrawn. And now that they have a new judge,
21 I think they are coming back with the same
22 motion to be excused from that, and that's the
23 third thing you need to decide today.

24 THE COURT: All right.

15:31:36 25 MR. ROSE: Unless you have any questions,

1 I'll --

2 THE COURT: Give me one second to finish
3 my notes. Just one second, please. I have to
4 clean things up immediately or I go back and
15:33:38 5 look and sometimes my typos kill me. Just one
6 more second.

7 Mr. Feaman, back to you.

8 MR. FEAMAN: Thank you.

9 THE COURT: Feaman, forgive me.

10 15:34:17 MR. FEAMAN: No problem.

11 I would offer first, Your Honor, as
12 Exhibit 1 --

13 THE COURT: I am going to do a separate
14 list so I will keep track of all the exhibits.
15:34:31 15 So Exhibit 1, go ahead.

16 MR. FEAMAN: It's a --

17 THE COURT: Stansbury Exhibit 1?

18 MR. FEAMAN: Yes.

19 THE COURT: Go ahead.

15:34:41 20 MR. FEAMAN: May I approach, Your Honor?

21 THE COURT: You may. Has everybody seen a
22 copy?

23 MR. FEAMAN: Yes.

24 MR. ROSE: I have seen a copy. Do you
15:34:48 25 have an extra copy?

1 MR. FEAMAN: Sure. We have one for
2 everybody.

3 THE COURT: It appears to be United States
4 District Court Northern District of Illinois
15:35:03 5 Eastern Division.

6 MR. FEAMAN: There's exhibit stickers on
7 the back.

8 MR. ROSE: Just for the record, I have no
9 objection to the eight exhibits he has given,
15:35:13 10 and he can put them in one at a time.

11 THE COURT: Okay. Great.

12 MR. ROSE: But no objection.

13 THE COURT: Okay. This is the first one
14 in the complaint.

15:35:27 15 MR. FEAMAN: And we offer Exhibit 1, Your
16 Honor, for the purpose as shown on the first
17 page of the body of the complaint where it
18 lists the parties, that the plaintiffs are
19 listed, and Ted Bernstein is shown individually
15:35:43 20 as the plaintiff in that action.

21 THE COURT: Give me one second. I have to
22 mark as Claimant Stansbury's into evidence
23 Exhibit 1.

24 ///

25 ///

1 (Claimant Stansbury's Exb. No. 1,
2 Complaint, United States District Court Northern
3 District of Illinois.)

4 THE COURT: And you are saying on page
15:35:57 5 two?

6 MR. FEAMAN: Yes. After the style of the
7 case, the first page of the body under the
8 heading Claimant Stansbury's First Amended
9 Complaint, the plaintiff parties are listed.

10 THE COURT: Yes.

11 MR. FEAMAN: And it shows Ted Bernstein
12 individually as a plaintiff in that action.

13 THE COURT: Okay.

14 MR. FEAMAN: May I approach freely, Your
15:36:20 15 Honor?

16 THE COURT: Yes, absolutely, as long as
17 you are no way mad.

18 MR. FEAMAN: And, Your Honor, William
19 Stansbury offers as Exhibit 2 a certified copy
15:36:41 20 of the motion to intervene filed by the Estate
21 of Simon Bernstein in the same case, the United
22 States District Court for the Northern District
23 of Illinois, the Eastern Division.

24 THE COURT: So received.

25 ///

1 (Claimant Stansbury's Exb. No. 2, Motion
2 to Intervene, United States District Court Northern
3 District of Illinois.)

4 MR. FEAMAN: Thank you.

15:37:10 5 And the purpose for Exhibit 2, among
6 others, is shown on paragraph seven on page
7 four where it is alleged that the Estate of
8 Simon Bernstein is entitled to the policy
9 proceeds as a matter of law asserting the
10 estate's interest in the Chicago litigation.

11 THE COURT: Okay.

12 MR. FEAMAN: Next, Your Honor, I would
13 offer Stansbury's Exhibit 4.

14 THE COURT: We have gone past Exhibit 3.

15:38:17 15 MR. FEAMAN: I am going to do that next.

16 THE COURT: Okay.

17 MR. FEAMAN: I think chronologically it
18 makes more sense to offer 4 at this point.

19 THE COURT: Sure.

15:38:25 20 MR. FEAMAN: Exhibit 4, Your Honor, is a
21 certified copy again in the same case, United
22 States District Court for the Northern District
23 of Illinois Eastern Division. It's a certified
24 copy of the federal court's order granting the
15:38:41 25 motion of the estate by and through Benjamin

1 Brown as the curator granting the motion to
2 intervene in that action.

3 And the purpose of this exhibit is found
4 on page three under the analysis section where
15:39:09 5 the court writes that why the estate should be
6 allowed to intervene, showing that the setting
7 up, I should say, a competing interest between
8 the Estate of Simon Bernstein and the
9 plaintiffs in that action, one of whom is Ted
10 Bernstein individually.

11 THE COURT: All right.

12 (Claimant Stansbury's Exb. No. 4, Order
13 Granting the Motion to Intervene, United States
14 District Court Northern District of Illinois.)

15:39:59 15 THE COURT: You may proceed.

16 MR. FEAMAN: Thank you.

17 THE COURT: I generally do with everybody,
18 I put all the evidence right here so if anybody
19 wants to approach and look.

15:40:22 20 Okay. This is now 3?

21 MR. FEAMAN: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. ELIOT BERNSTEIN: Excuse me, what did
24 you say?

15:40:29 25 MR. FEAMAN: She puts them there so if you

1 want to look at them you can see them.

2 THE COURT: The ones that have been
3 entered into evidence.

4 MR. ELIOT BERNSTEIN: Okay. He just gave
15:40:38 5 me a copy of everything.

6 THE COURT: Yes.

7 MR. FEAMAN: Exhibit 3, Your Honor, is
8 offered at this time it is a certified copy of
9 the, again in the same court United States
10 District Court Northern District of Illinois,
11 it is actual intervenor complaint for
12 declaratory judgment filed by Ben Brown as
13 curator and administrator ad litem of the
14 Estate of Simon Bernstein seeking the insurance
15:41:12 15 proceeds that are at issue in that case and
16 setting up the estate as an adverse party to
17 the plaintiffs.

18 THE COURT: So received.

19 (Claimant Stansbury's Exb. No. 3,
15:41:29 20 Complaint for Declaratory Judgement by Intervenor,
21 United States District Court Northern District of
22 Illinois.)

23 THE COURT: Thank you very much.

24 MR. FEAMAN: You are welcome.

15:41:47 25 Mr. Stansbury now offers as Exhibit 5 a

1 certified copy again for the United States
2 District Court Northern District of Illinois,
3 the answer to the intervenor complaint filed by
4 the estate, which was Exhibit 3. Exhibit 5 is
15:42:08 5 the answer filed by the plaintiffs.

6 And this is offered for the purpose as set
7 forth at page three, the plaintiff Simon
8 Bernstein -- excuse me -- the plaintiff's Simon
9 Bernstein irrevocable trust which is different
15:42:33 10 from the Simon Bernstein Trust that's the
11 beneficiary of the Simon Bernstein estate down
12 here, and Ted Bernstein individually and the
13 other plaintiffs answering the complaint filed
14 by the estate. And requesting on page seven in
15:42:54 15 the wherefore clause that the plaintiffs
16 respectfully request that the Court deny any of
17 the relief sought by the intervenor in their
18 complaint and enter judgment against the
19 intervenor and award plaintiffs their costs and
15:43:12 20 such other relief.

21 THE COURT: Just give me one second.

22 MR. FEAMAN: Thank you.

23 (Claimant Stansbury's Exb. No. 5, Answer
24 to Intervenor Complaint, United States District
15:43:56 25 Court Northern District of Illinois.)

1 THE COURT: I am sorry, I am having a
2 problem with my computer again. Give me just
3 one minute.

4 MR. FEAMAN: Exhibit 6 is a certified copy
15:44:16 5 of the -- I am sorry, are you ready?

6 THE COURT: Yes, I am.

7 MR. FEAMAN: Thank you.

8 THE COURT: Exhibit 6 is a certified copy?

9 MR. FEAMAN: Of the deposition taken by
15:44:34 10 the Estate of Simon Bernstein in the same
11 action, United States District Court for the
12 Northern District of Illinois of Ted Bernstein
13 taken on May 6, 2015.

14 THE COURT: Okay.

15:45:00 15 (Claimant Stansbury's Exb. No. 6,
16 Deposition of Ted Bernstein 5-6-15, United States
17 District Court Northern District of Illinois.)

18 MR. FEAMAN: And the highlights of that
19 deposition, Your Honor, are shown on the first
15:45:10 20 page showing the style of the case and noting
21 the appearances of counsel on behalf of Ted
22 Bernstein in that action, Adam Simon of the
23 Simon Law Firm, Chicago, Illinois, and Alan B.
24 Rose, Esquire of the Mrachek Fitzgerald law
15:45:31 25 firm of West Palm Beach, and James Stamos, the

1 attorney for the Estate of Simon Bernstein in
2 Chicago, Illinois.

3 I will not read it into the record. I
4 will just read three excerpts into the record
15:45:48 5 in the interests of time, although I am
6 offering the entire thing.

7 THE COURT: Okay.

8 MR. FEAMAN: So that we don't go back and
9 forth with I will read this, you read that. So
15:45:57 10 I am offering it entirely, but I would
11 highlight three excerpts.

12 MR. ROSE: Just with respect to the
13 documents coming into evidence, it has yellow
14 highlighting. Can he represent that he has
15:46:08 15 yellow highlighted everywhere where my name
16 appears?

17 MR. FEAMAN: Yes.

18 MR. ROSE: And therefore we don't have to
19 bother with places like searching the record.

15:46:15 20 MR. FEAMAN: That's correct. I
21 highlighted everybody's copy.

22 MR. ROSE: I have no objection.

23 THE COURT: Okay.

24 MR. ROSE: I just wanted the record to be
15:46:21 25 clear that the yellow highlighting reflects the

1 places where I either spoke or my name came up.

2 MR. FEAMAN: That's correct.

3 THE COURT: Okay.

4 MR. ROSE: Thank you, Your Honor.

15:46:28 5 MR. FEAMAN: The first subpart I was
6 reading into the record would be beginning at
7 page 63, line 20, statement by Mr. Rose. "This
8 is Alan Rose, just for the record. Since I am
9 Mr. Bernstein's personal counsel, he is not
10 15:46:54 asserting the privilege as to communications of
11 this nature as responded in your e-mail. He is
12 asserting privilege to private communications
13 he had one on one with Robert Spallina who he
14 considered to be his counsel. That's the
15 15:47:10 position for the record and that's why the
16 privilege is being asserted."

17 The second -- although the ones I am going
18 to read into the record are not all of them,
19 but just three different examples. The second
15:47:31 20 one would be at page 87, line six, statement by
21 Mr. Rose. "I am going to object, instruct him
22 not to answer based on communications he had
23 with Mr. Spallina. But you can ask the
24 question with regard to information that
15:47:59 25 Spallina disseminated to third parties or."

1 The next item is found on page 93, line
2 one, "Objection to form."

3 THE COURT: Okay.

4 MR. FEAMAN: Next I will offer Exhibits 7
15:48:52 5 and 8 at the same time because they are
6 related, and I will describe them for the
7 record.

8 THE COURT: Exhibit 7 is. Thank you. And
9 8.

10 MR. FEAMAN: You are welcome.

11 Exhibit 7 is an e-mail from
12 TheodoreKuyper@StamosTrucco.com, attorneys for
13 the estate in the Chicago action, to Brian
14 O'Connell or BOConnell@CiklinLubitz.com, with a
15:50:02 15 copy to Peter Feaman and William Stansbury,
16 enclosing a court ruling, dated January 31st,
17 2017, enclosing a court ruling. And in the
18 last line saying in the interim, quote, we
19 appreciate your comments regarding the Court's
15:50:31 20 ruling.

21 And then Exhibit 8 is an e-mail from James
22 Stamos, attorney for the estate in the Chicago
23 action, sent Tuesday, February 14th, 2017, to
24 Brian O'Connell, Peter Feaman, William
15:50:53 25 Stansbury, saying, quote, See below. What is

1 our position on settlement?, close quote. I
2 think he is right about the likely trial
3 setting this summer.

4 The e-mail response to an e-mail from
15:51:10 5 counsel for the plaintiffs in the Chicago
6 action that solicits information concerning a
7 demand for settlement.

8 And we'll save comment and argument on
9 those exhibits for final argument, Your Honor.

15:51:52 10 THE COURT: Okay.

11 (Claimant Stansbury's Exb. No. 7, E-mail,
12 1-31-2017, Theodore Kuyper to Brian O'Connell,
13 etc.)

14 (Claimant Stansbury's Exb. No. 8, E-mail,
15:51:57 15 2-14-2017, James Stamos to Brian O'Connell, etc.)

16 MR. ELIOT BERNSTEIN: Your Honor?

17 MR. FEAMAN: Next --

18 MR. ELIOT BERNSTEIN: Sorry, thought you
19 were done.

15:52:02 20 MR. FEAMAN: Next I would call Brian
21 O'Connell to the stand.

22 THE COURT: Okay.

23 - - -

24 Thereupon,

25 BRIAN O'CONNELL,

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

3 THE WITNESS: I do.

4 THE COURT: Have a seat. Thank you very
15:52:20 5 much.

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

8 (A recess was taken.)

9 THE COURT: All right. Call
15:58:54 10 Mr. O'Connell. I apologize. Let's proceed.

11 MR. FEAMAN: Thank you, Your Honor.

12 DIRECT (BRIAN O'CONNELL)

13 BY MR. FEAMAN:

14 Q. Please state your name.

15:58:59 15 A. Brian O'Connell.

16 Q. And your business address?

17 A. 515 North Flagler Drive, West Palm Beach,
18 Florida.

19 Q. And you are the personal representative,
15:59:09 20 the successor personal representative of the Estate
21 of Simon Bernstein; is that correct?

22 A. Yes.

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

15:59:22 25 A. I do.

1 Q. Would you agree with me, Mr. O'Connell,
2 that as personal representative of the estate that
3 you have a fiduciary duty to all interested persons
4 of the estate?

15:59:34 5 A. To interested persons, yes.

6 Q. Okay. Are you aware that Mr. Stansbury,
7 obviously, has a lawsuit against the estate,
8 correct?

9 A. Correct.

15:59:44 10 Q. And he is seeking damages as far as you
11 know in excess of \$2 million dollars; is that
12 correct?

13 A. Yes.

14 Q. Okay. And the present asset value of the
15:59:55 15 estate excluding a potential expectancy in Chicago
16 I heard on opening statement was around somewhere a
17 little bit over \$200,000; is that correct?

18 A. Correct.

19 Q. And --

16:00:11 20 A. Little over that.

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

24 A. Yes.

16:00:21 25 Q. And if the estate is successful in that

1 lawsuit then that money would come to the Estate of
2 Simon Bernstein, correct?

3 A. Correct.

4 Q. And then obviously that would quintuple,
16:00:35 5 if my math is correct, the assets that are in the
6 estate right now; is that correct?

7 A. They would greatly enhance the value of
8 the estate, whatever the math is.

9 Q. Okay. So would you agree that
16:00:45 10 Mr. Stansbury is reasonably affected by the outcome
11 of the Chicago litigation if he has an action
12 against the estate in excess of two million?

13 A. Depends how one defines a claimant versus
14 a creditor. He certainly sits in a claimant
16:01:04 15 position. He has an independent action.

16 Q. Right.

17 A. So on that level he would be affected with
18 regard to what happens in that litigation if his
19 claim matures into an allowed claim, reduced to a
16:01:19 20 judgment in your civil litigation.

21 Q. So if he is successful in his litigation,
22 it would -- the result of the Chicago action, if
23 it's favorable to the estate, would significantly
24 increase the assets that he would be able to look
16:01:33 25 to if he was successful either in the amount of

1 300,000 or in an amount of two million?

2 A. Right. If he is a creditor or there's a
3 recovery then certainly he would benefit from that
4 under the probate code because then he would be
16:01:48 5 paid under a certain priority of payment before
6 beneficiaries.

7 Q. All right. And so then Mr. Stansbury
8 potentially could stand to benefit from the result
9 of the outcome of the Chicago litigation depending
16:02:08 10 upon the outcome of his litigation against the
11 estate?

12 A. True.

13 Q. Correct?

14 A. Yes.

16:02:13 15 Q. So in that respect would you agree that
16 Mr. Stansbury is an interested person in the
17 outcome of the estate in Chicago?

18 A. I think in a very broad sense, yes. But
19 if we are going to be debating claimants and
16:02:26 20 creditors then that calls upon certain case law.

21 Q. Okay.

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

24 Q. Okay. We entered into evidence Exhibits 7
16:02:40 25 and 8 which were e-mails that were sent to you

1 first by an associate in Mr. Stamos's office and --

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

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

16:02:56 5 MR. FEAMAN: I think I do.

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

8 Does anyone object to me maintaining the
9 originals so that I can follow along? If you
16:03:03 10 don't --

11 MR. FEAMAN: I know we do.

12 MR. ROSE: If you need my copy to speed
13 things up, here.

14 BY MR. FEAMAN:

16:03:24 15 Q. There's our copies of 7 and 8.

16 A. Which one did you want me to look at
17 first?

18 Q. Take a look at the one that came first on
19 January 31st, 2007. Do you see that that was an
16:03:41 20 e-mail directed to you from is it Mr. Kuyper, is
21 that how you pronounce his name?

22 A. Yes.

23 Q. Okay. On January 31st. Do you recall
24 receiving this?

16:03:53 25 A. Let me take a look at it.

1 Q. Sure.

2 A. I do remember this.

3 Q. All right. And did you have any
4 discussions with Mr. Kuyper or Mr. Stamos
16:04:19 5 concerning your comments regarding the Court's
6 ruling which was denying the estate's motion for
7 summary judgment?

8 A. There might have been another e-mail
9 communication, but no oral communication since
16:04:31 10 January.

11 Q. Did you send an e-mail back in response to
12 this?

13 A. That I don't recall, and I don't have my
14 records here.

16:04:38 15 Q. Okay.

16 A. I am not sure.

17 Q. Why don't we take a look at Exhibit 8, if
18 we could. That's the e-mail from Mr. Stamos dated
19 February 14th to you and me and Mr. Stansbury. Do
16:04:57 20 you see that?

21 A. Yes.

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

24 A. Correct.

16:05:04 25 Q. Okay. And that's because Mr. Stamos had

1 received an e-mail from plaintiff's counsel in
2 Chicago soliciting some input on a possible
3 settlement, correct?

4 A. Yes.

16:05:19 5 Q. And when you received this did you respond
6 to Mr. Stamos either orally or in writing?

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

16:05:34 10 Q. So then you haven't had any discussions
11 with Mr. Stamos concerning settlement --

12 A. No.

13 Q. -- since this?

14 A. Not -- let's correct that. Not in terms
16:05:44 15 of these communications.

16 Q. Right.

17 A. I have spoken to him previously about
18 settlement, but obviously those are privileged that
19 he is my counsel.

16:05:53 20 Q. Okay. And you are aware that -- would you
21 agree with me that Mr. Ted Bernstein, who is in the
22 courtroom today, is a plaintiff in that action in
23 Chicago?

24 A. Which action?

16:06:06 25 Q. The Chicago filed, the action filed by

1 Mr. Bernstein?

2 A. Can you give me the complaint?

3 Q. Sure.

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

16:06:14 5 THE COURT: Go ahead.

6 BY MR. FEAMAN:

7 Q. This is the --

8 MR. ROSE: We'll stipulate. The documents
9 are already in evidence.

16:06:25 10 THE COURT: Same objection?

11 MR. ROSE: I mean, we are trying to save
12 time.

13 BY MR. FEAMAN:

14 Q. Take a look at the third page.

16:06:33 15 (Overspeaking.)

16 THE COURT: Hold on. Hold on. Hold on.

17 I have got everybody talking at once. It's
18 Feaman's case. We are going until 4:30. I
19 have already got one emergency in the, we call
16:06:41 20 it the Cad, that means nothing to you, but I am
21 telling you all right now I said we are going
22 to 4:30.

23 THE WITNESS: Yes, sir, Ted Bernstein is a
24 plaintiff.

25 ///

1 BY MR. FEAMAN:

2 Q. Individually, correct?

3 A. Individually and as trustee.

4 Q. And Mr. Stamos is your attorney who
16:06:57 5 represents the estate, correct?

6 A. Correct.

7 Q. And the estate is adverse to the
8 plaintiffs, including Mr. Bernstein, correct?

9 A. In this action, call it the Illinois
16:07:09 10 action, yes.

11 Q. Correct.

12 A. Okay.

13 THE COURT: Hold on. One more time. Go
14 back and say that again. You are represented
16:07:16 15 by Mr. Stamos?

16 THE WITNESS: Right, in the Illinois
17 action, Your Honor.

18 THE COURT: Right.

19 THE WITNESS: And Ted Bernstein
16:07:22 20 individually and as trustee is a plaintiff.

21 THE COURT: Right, individually and as
22 trustee, got it.

23 THE WITNESS: And the estate is adverse to
24 Ted Bernstein in those capacities in that
16:07:32 25 litigation.

1 BY MR. FEAMAN:

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

3 THE COURT: Thank you.

4 BY MR. FEAMAN:

16:07:37 5 Q. And are you aware that Mr. Rose represents
6 Mr. Ted Bernstein in various capacities?

7 A. Yes.

8 Q. Generally?

9 A. In various capacities generally, right.

16:07:52 10 Q. Including individually, correct?

11 A. That I am not -- I know as a fiduciary,
12 for example, as trustee from our various and sundry
13 actions, Shirley Bernstein, estate and trust and so
14 forth. I am not sure individually.

16:08:10 15 Q. How long have you been involved with this
16 Estate of Simon Bernstein?

17 A. A few years.

18 Q. Okay. And as far as you know
19 Mr. Bernstein has been represented in whatever
16:08:23 20 capacity in all of this since that time; is that
21 correct?

22 A. He is definitely -- Mr. Rose has
23 definitely represented Ted Bernstein since I have
24 been involved. I just want to be totally correct
16:08:34 25 about exactly what capacity. Definitely as a

1 fiduciary no doubt.

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

16:08:53 5 A. Could I take a look at it?

6 Q. Sure. Have you seen that deposition
7 before, Mr. O'Connell?

8 A. I am not sure. I don't want to guess.
9 Because I know it's May of 2015. It's possible.
16:09:20 10 There were a number of documents in all this
11 litigation, and I would be giving you a guess.

12 Q. On that first page is there an appearance
13 by Mr. Rose on behalf of Ted Bernstein in that
14 deposition?

16:09:31 15 A. Yes.

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

19 A. Yes.

16:09:43 20 Q. Okay. And would you agree with me upon
21 reviewing that deposition that Mr. Rose is
22 representing Ted Bernstein there?

23 MR. ROSE: Objection, calls for a legal
24 conclusion.

16:09:55 25 THE WITNESS: There's an appearance by

1 him.

2 THE COURT: Sustained.

3 BY MR. FEAMAN:

4 Q. There's an appearance by him? Where does
16:09:59 5 it show that?

6 MR. ROSE: The objection is sustained.

7 THE COURT: I sustained the objection.

8 MR. FEAMAN: Oh, okay. Sorry.

9 BY MR. FEAMAN:

10 Q. Now, you have not gotten -- you said that
16:10:14 11 you wanted to retain Mr. Rose to represent the
12 estate here in Florida, correct?

13 A. Yes. But I want to state my position
14 precisely, which is as now has been pled that Ted
16:10:35 15 Bernstein should be the administrator ad litem to
16 defend that litigation. And then if he chooses,
17 which I expect he would, employ Mr. Rose, and
18 Mr. Rose would operate as his counsel.

19 Q. Okay. So let me get this, if I understand
16:10:48 20 your position correctly. You think that Ted
21 Bernstein, who you have already told me is suing
22 the estate as a plaintiff in Chicago, it would be
23 okay for him to come in to the estate that he is
24 suing in Chicago to represent the estate as
16:11:05 25 administrator ad litem along with his attorney

1 Mr. Rose? Is that your position?

2 A. Here's why, yes, because of events. You
3 have an apple and an orange with respect to
4 Illinois. Mr. Rose and Ted Bernstein is not going
16:11:18 5 to have any -- doesn't have any involvement in the
6 prosecution by the estate of its position to those
7 insurance proceeds. That's not on the table.

8 THE COURT: Say it again, Ted has no
9 involvement?

16:11:30 10 THE WITNESS: Ted Bernstein and Mr. Rose
11 have no involvement in connection with the
12 estate's position in the Illinois litigation,
13 Your Honor. I am not seeking that. If someone
14 asked me that, I would say absolutely no.

16:11:43 15 BY MR. FEAMAN:

16 Q. I am confused, though, Mr. O'Connell.
17 Isn't Ted Bernstein a plaintiff in the insurance
18 litigation?

19 A. Yes.

16:11:52 20 Q. Okay. And as plaintiff in that insurance
21 litigation isn't he seeking to keep those insurance
22 proceeds from going to the estate?

23 A. Right.

24 Q. Okay.

16:12:00 25 A. Which is why the estate has a contrary

1 position --

2 Q. So if the estate --

3 (Overspeaking.)

4 THE COURT: Let him finish his answer.

16:12:11 5 THE WITNESS: It's my position as personal
6 representative that those proceeds should come
7 into the estate.

8 BY MR. FEAMAN:

9 Q. Correct.

16:12:17 10 A. Correct.

11 Q. And it's Mr. Bernstein's position both
12 individually and as trustee in that same action
13 that those proceeds should not come into the
14 estate?

16:12:25 15 A. Right.

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

18 A. As a trustee he is a beneficiary,
19 residuary beneficiary of the estate. And then he
16:12:41 20 would be a beneficiary as to tangible personal
21 property.

22 Q. So on one hand you say it's okay for
23 Mr. Bernstein to be suing the estate to keep the
24 estate from getting \$1.7 million dollars, and on
16:12:52 25 the other hand it's okay for him and his attorney

1 to defend the estate. So let me ask you this --

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

3 Q. Okay. Well, go back to Exhibit 8, if we
4 could.

16:13:07 5 A. Which one is Exhibit 8?

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

8 A. The 31st?

9 Q. Right.

16:13:19 10 A. Well, actually the Stamos e-mail is
11 February 14th.

12 Q. Sorry, February 14th. And Mr. Rose right
13 now has entered an appearance on behalf of the
14 estate, correct?

16:13:37 15 A. You have to state what case.

16 Q. Down here in Florida.

17 A. Which case?

18 Q. The Stansbury action.

19 A. The civil action?

16:13:44 20 Q. Yes.

21 A. Yes. You need to be precise because
22 there's a number of actions and various
23 jurisdictions and various courts.

24 Q. And Mr. Rose's client in Chicago doesn't
16:13:56 25 want any money to go to the estate. So when you

1 are discussing settlement with Mr. Stamos, are you
2 going to talk to your other counsel, Mr. Rose,
3 about that settlement when he is representing a
4 client adverse to you?

16:14:16 5 A. No.

6 Q. How do we know that?

7 A. Because I don't do that and have not done
8 that.

9 Q. So you --

16:14:24 10 A. Again, can I finish, Your Honor?

11 THE COURT: Yes, please.

12 THE WITNESS: Thanks. Because there's a
13 differentiation you are not making between
14 these pieces of litigation. You have an
16:14:33 15 Illinois litigation pending in federal court
16 that has discrete issues as to who gets the
17 proceeds of a life insurance policy. Then you
18 have what you will call the Stansbury
19 litigation, you represent him, your civil
16:14:48 20 action, pending in circuit civil, your client
21 seeking to recover damages against the estate.

22 BY MR. FEAMAN:

23 Q. So Mr. Rose could advise you as to terms
24 of settlement, assuming he is allowed to be counsel
16:15:02 25 for the estate in the Stansbury action down here,

1 correct?

2 A. About the Stansbury action?

3 Q. Right, about how much we should settle
4 for, blah, blah, blah?

16:15:13 5 A. That's possible.

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

9 A. Depends on what the facts and
16:15:24 10 circumstances are. Right now, as everyone knows I
11 think at this point, there isn't enough money to
12 settle, unless Mr. Stansbury would take less than
13 what is available. There have been attempts made
14 to settle at mediations and through communications
16:15:42 15 which haven't been successful. So certainly I am
16 not as personal representative able or going to
17 settle with someone in excess of what's available.

18 Q. Correct. But the outcome of the Chicago
19 litigation could make more money available for
16:16:00 20 settlement, correct?

21 A. If it's successful it could.

22 Q. Okay. Maybe a number that would be
23 acceptable to Mr. Stansbury, I don't know, that's
24 conjecture, right?

16:16:08 25 A. Total conjecture.

1 Q. Okay.

2 A. Unless we are going to get into what
3 settlement discussions have been.

4 Q. And at the same time Mr. Rose, who has
16:16:16 5 entered an appearance at that deposition for
6 Mr. Bernstein in the Chicago action, his client has
7 an interest there not to let that money come into
8 the estate, correct?

9 MR. ROSE: Objection again to the extent
16:16:29 10 it calls for a legal conclusion as to what I
11 did in Chicago. I mean, the records speak for
12 themselves.

13 THE COURT: Could you read back the
14 question for me?

15 (The following portion of the record was
16 read back.)

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

22 THE COURT: I am going to allow it as the
23 personal representative his impressions of
24 what's going on, not as a legal conclusion
16:17:03 25 because he is also a lawyer.

1 THE WITNESS: My impression based on
2 stated positions is that Mr. Ted Bernstein does
3 not want the life insurance proceeds to come
4 into the probate estate of Simon Bernstein.
16:17:17 5 That's what he has pled.

6 BY MR. FEAMAN:

7 Q. Right. And you disagree with Mr. Ted
8 Bernstein on that, correct?

9 A. Yes.

16:17:24 10 MR. FEAMAN: Thank you.

11 CROSS (BRIAN O'CONNELL)

12 BY MR. ROSE:

13 Q. And notwithstanding that disagreement, you
14 still believe that --

16:17:29 15 MR. ROSE: I thought he was done, I am
16 sorry.

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

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

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

16:17:36 20 THE COURT: That's okay. I didn't think
21 that you were trying to.

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

23 THE COURT: All right.

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

16:17:55 25 MR. ELIOT BERNSTEIN: Excuse me, Your

1 Honor.

2 BY MR. ROSE:

3 Q. And notwithstanding the fact that in
4 Illinois Ted as the trustee of this insurance trust
16:18:02 5 wants the money to go into this 1995 insurance
6 trust, right?

7 A. Right.

8 Q. And he has got an affidavit from Spallina
9 that says that's what Simon wanted, or he's got
16:18:14 10 some affidavit he filed, whatever it is? And you
11 have your own lawyer up there Stamos and Trucco,
12 right?

13 A. Correct.

14 Q. And notwithstanding that, you still
16:18:21 15 believe that it's in the best interests of the
16 estate as a whole to have Ted to be the
17 administrator ad litem and me to represent the
18 estate given our prior knowledge and involvement in
19 the case, right?

16:18:30 20 A. It's based on maybe three things. It's
21 the prior knowledge and involvement that you had,
22 the amount of money, limited amount of funds that
23 are available in the estate to defend the action,
24 and then a number of the beneficiaries, or call
16:18:48 25 them contingent beneficiaries because they are

1 trust beneficiaries, have requested that we consent
2 to what we have just outlined, ad litem and your
3 representation, those items.

4 Q. And clearly you are adverse to
16:19:03 5 Mr. Stansbury, right?

6 A. Yes.

7 Q. But in this settlement letter your lawyer
8 in Chicago is copying Mr. Stansbury and Mr. Feaman
9 about settlement position, right?

16:19:13 10 A. Correct.

11 Q. Because that's the deal we have,
12 Mr. Stansbury is funding litigation in Illinois and
13 he gets to sort of be involved in it and have a say
14 in it, how it turns out? Because he stands to
16:19:23 15 improve his chances of winning some money if the
16 Illinois case goes the way he wants, right?

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

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

16:19:33 20 A. Approximately, yes.

21 Q. And there's an order that's already in
22 evidence, and the judge can hear that later, but --
23 okay. So --

24 THE COURT: I don't have an order in
16:19:46 25 evidence.

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

3 THE COURT: Oh, in the Illinois?

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

16:19:55 5 THE COURT: Oh, in the Illinois.

6 MR. ROSE: But it's in evidence now, Your
7 Honor.

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

16:19:58 10 MR. ROSE: I am sorry.

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

12 MR. ROSE: I was going to save it for
13 closing.

14 THE COURT: In the Illinois is the Florida
16:20:05 15 order?

16 MR. ROSE: Yes.

17 THE COURT: Okay. That's the only thing I
18 missed.

19 MR. ROSE: Right.

16:20:08 20 BY MR. ROSE:

21 Q. The evidence it says for the reasons and
22 subject to the conditions stated on the record
23 during the hearing, all fees and costs incurred,
24 including for the curator in connection with his
16:20:16 25 work, and any counsel retained by the administrator

1 ad litem will initially be borne by William
2 Stansbury. You have seen that order before, right?

3 A. I have seen the order, yes.

4 Q. And the Court will consider a petition to
16:20:26 5 pay back Mr. Stansbury. If the estate wins in
6 Illinois, we certainly have to pay back
7 Mr. Stansbury first because he has fronted all the
8 costs, right?

9 A. Absolutely.

16:20:34 10 Q. Okay. So despite that order, you have
11 personal knowledge that he is \$40,000 in arrears
12 with the Chicago counsel?

13 A. I have knowledge from my counsel.

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

16:20:47 15 A. Yes. It's information everyone has.

16 Q. Okay.

17 A. Should have.

18 Q. Would you agree with me that you have
19 spent almost no money defending the estate so far
16:21:03 20 in the Stansbury litigation?

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

24 Q. Very minimal. Minimal?

16:21:15 25 A. Not a significant amount.

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

3 A. Yes.

4 Q. Have you had the time to study all the
16:21:26 5 documents, the depositions, the exhibits, the tax
6 returns, and all the stuff that is going to need to
7 be dealt with in this litigation?

8 A. I have reviewed some of them. I can't say
9 reviewed all of them because I would have to
16:21:36 10 obviously have the records here to give you a
11 correct answer on that.

12 Q. And you bill for your time when you do
13 that?

14 A. Sure.

16:21:41 15 Q. And if Ted is not the administrator ad
16 litem, you are going to have to spend money to sit
17 through a two-week trial maybe?

18 A. Yes.

19 Q. You are not willing to do that for free,
16:21:53 20 are you?

21 A. No.

22 Q. Okay. Would you agree with me that you
23 know nothing about the relationship, personal
24 knowledge, between Ted, Simon and Bill Stansbury,
16:22:05 25 personal knowledge? Were you in any of the

1 meetings between them?

2 A. No, not personal knowledge.

3 Q. Were you involved in the business?

4 A. No.

16:22:11 5 Q. Do you have any idea who the accountant --
6 well, you know who the accountant was because they
7 have a claim. Have you ever spoken to the
8 accountant about the lawsuit?

9 A. No.

16:22:17 10 Q. Have you ever interviewed any witnesses
11 about the lawsuit independent of maybe talking to
12 Mr. Stansbury and saying hello and saying hello to
13 Ted?

14 A. Or talking to different parties, different
16:22:29 15 family members.

16 Q. Now, did you sign a waiver, written waiver
17 form?

18 A. Yes.

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

16:22:38 20 A. Yes.

21 Q. Did you edit it substantially and put it
22 in your own words?

23 A. Yes.

24 Q. Much different than the draft I prepared?

16:22:45 25 A. Seven pages shorter.

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

4 MR. FEAMAN: Objection, it's cumulative
16:22:54 5 and it's hearsay.

6 THE COURT: This is his affidavit, his
7 sworn consent?

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

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

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

14 THE COURT: But a written consent is
16:23:21 15 necessary under the rules, and that's been
16 raised as an issue.

17 MR. FEAMAN: The rule says that --

18 THE COURT: I mean, whether you can waive
19 is an issue, and I think that specifically
16:23:30 20 under four point -- I am going to allow it.
21 Overruled.

22 MR. ELIOT BERNSTEIN: Can I object?

23 THE COURT: Sure.

24 MR. ELIOT BERNSTEIN: That just came on
16:23:39 25 February 9th to me.

1 THE COURT: Okay.

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

4 THE COURT: Okay.

16:23:43 5 MR. ELIOT BERNSTEIN: Which kind of
6 actually exposes a huge fraud going on here.
7 But I will get to that when I get a moment. It
8 shouldn't be in. I hardly had time to review
9 it. And I will explain some of that in a
16:23:54 10 moment, but.

11 THE COURT: I am overruling that
12 objection. All documents were supposed to be
13 provided by the Court pursuant to my order by
14 February 9th. This is a waiver of any
16:24:04 15 potential conflict that's three pages. And if
16 you got it February 9th you had sufficient
17 time. So overruled.

18 I am not sure what to call this,
19 petitioner's or respondent's, in this case. I
16:24:30 20 am going to mark these as respondent's.

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

22 THE COURT: I could do that. Let me mark
23 it.

24 (Trustee's Exb. No. 1, Personal
16:24:39 25 Representative Position Statement.)

1 BY MR. ROSE:

2 Q. I think you alluded to it. But after the
3 mediation that was held in July, there were some
4 discussions with the beneficiaries, including Judge
16:24:49 5 Lewis who's a guardian ad litem for three of the
6 children, correct?

7 A. Yes.

8 Q. And you were asked if you would consent to
9 this procedure of having me come in as counsel
16:24:59 10 because --

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

14 MR. ROSE: Oh, I am sorry.

16:25:06 15 THE COURT: That's okay.

16 I have to add it to my exhibit list.

17 You may proceed, thank you.

18 BY MR. ROSE:

19 Q. You agreed to this procedure that I would
16:25:43 20 become counsel and Ted would become the
21 administrator ad litem because you thought it was
22 in the best interests of the estate as a whole,
23 right?

24 A. For the reasons stated previously, yes.

16:25:51 25 Q. And other than having to go through this

1 expensive procedure to not be disqualified, you
2 still agree that it's in the best interests of the
3 estate that our firm be counsel and that Ted
4 Bernstein be administrator ad litem?

16:26:02 5 A. For the defense of the Stansbury civil
6 action, yes.

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

9 A. Correct.

16:26:10 10 Q. Now, you were asked if you had a fiduciary
11 duty to the interested persons including
12 Mr. Stansbury, right?

13 A. I was asked that, yes.

14 Q. So if you have a fiduciary duty to him,
16:26:20 15 why don't you just stipulate that he can have a two
16 and a half million dollar judgment and give all the
17 money in the estate to him? Because just because
18 you have a duty, you have multiple duties to a lot
19 of people, correct?

16:26:32 20 A. Correct.

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

24 A. Correct.

16:26:39 25 Q. And you have been a lawyer for many years?

1 A. Yes.

2 Q. Correct? And you have served as trustee
3 as a fiduciary, serving as a fiduciary,
4 representing a fiduciary, opposing fiduciary,
16:26:51 5 that's been the bulk of your practice, correct?

6 A. Yes, yes and yes.

7 MR. ROSE: Nothing further.

8 THE COURT: Redirect?

9 MR. FEAMAN: Yes.

16:26:58 10 THE COURT: Wait a minute. Let me let
11 Mr. Eliot Bernstein ask any questions.

12 MR. ELIOT BERNSTEIN: Can I ask him
13 questions at one point?

14 THE COURT: You can.

16:27:10 15 MR. ELIOT BERNSTEIN: Your Honor, first, I
16 just wanted to give you this and apologize for
17 being late.

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

19 MR. ELIOT BERNSTEIN: Well, no, it's
16:27:20 20 important so you understand some things.

21 I have got ten steel nails in my mouth so
22 I speak a little funny right now. It's been
23 for a few weeks. I wasn't prepared because I
24 am on a lot of medication, and that should
16:27:33 25 explain that. But I still got some questions

1 and I would like to have my....

2 MR. ROSE: I would just state for the
3 record that he has been determined to have no
4 standing in the estate proceeding as a
16:27:43 5 beneficiary.

6 THE COURT: I thought that was in the
7 Estate of Shirley Bernstein.

8 MR. ROSE: It's the same ruling --
9 (Overspeaking.)

16:27:52 10 THE COURT: Please, I will not entertain
11 more than one person.

12 MR. ROSE: By virtue of Judge Phillips'
13 final judgment upholding the documents, he is
14 not a beneficiary of the residuary estate. He
16:28:02 15 has a small interest as a one-fifth beneficiary
16 of tangible personal property, which is --

17 THE COURT: I understand.

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

16:28:13 20 THE COURT: Wouldn't that give him
21 standing, though?

22 MR. ROSE: Well, I don't think for the
23 purposes of the disqualification by Mr. Feaman
24 it wouldn't.

16:28:19 25 THE COURT: Well, that would be your

1 argument, just like you are arguing that
2 Mr. Stansbury doesn't have standing to
3 disqualify you, correct?

4 MR. ROSE: Right.

16:28:26 5 THE COURT: So that's an argument you can
6 raise.

7 You may proceed.

8 CROSS (BRIAN O'CONNELL)

9 BY MR. ELIOT BERNSTEIN:

16:28:31 10 Q. Mr. O'Connell, am I a devisee of the will
11 of Simon?

12 MR. ROSE: Objection, outside the scope of
13 direct.

14 THE COURT: That is true. Sustained.

16:28:40 15 That was not discussed.

16 BY MR. ELIOT BERNSTEIN:

17 Q. Do I have standing in the Simon estate
18 case --

19 MR. ROSE: Objection, calls for a legal
16:28:46 20 conclusion.

21 BY MR. ELIOT BERNSTEIN:

22 Q. -- in your opinion?

23 MR. ELIOT BERNSTEIN: Well, he is a
24 fiduciary.

16:28:51 25 THE COURT: He was asked regarding his

1 thoughts regarding a claimant, so I will allow
2 it. Overruled.

3 THE WITNESS: You have standing in certain
4 actions by virtue of your being a beneficiary
16:29:01 5 of the tangible personal property.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Okay, so beneficiary?

8 A. Right.

9 Q. Okay. Thank you. Which will go to the
16:29:09 10 bigger point of the fraud going on here, by the
11 way.

12 Are you aware that Ted Bernstein is a
13 defendant in the Stansbury action?

14 A. Which Stansbury action?

16:29:20 15 Q. The lawsuit that Mr. Rose wants Ted to
16 represent the estate in?

17 A. I'd have to see the action, see the
18 complaint.

19 Q. You have never seen the complaint?

16:29:30 20 A. I have seen the complaint, but I want to
21 make sure it's the same documents.

22 Q. So Ted --

23 THE COURT: You must allow him to answer
24 the questions.

16:29:37 25 MR. ELIOT BERNSTEIN: I am sorry, okay.

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

4 MR. ROSE: Well, I object. Mr. Feaman
16:29:45 5 knows that he has dismissed the claims against
6 all these people, and this is a complete waste.
7 We have a limited amount of time and these are
8 very important issues.

9 MR. ELIOT BERNSTEIN: Excuse me.

16:29:56 10 THE COURT: Wait.

11 MR. ROSE: These defendants they are
12 dismissed, they are settled. Mr. Feaman knows
13 because he filed the paper in this court.

14 THE COURT: Mr. Rose.

16:30:02 15 MR. ROSE: It's public record.

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

19 MR. ROSE: Okay.

16:30:09 20 THE COURT: Because I know that's why you
21 are objecting, and you know I have to allow --

22 MR. ROSE: Okay.

23 THE COURT: All right? The legal
24 objection is noted. Mr. O'Connell can respond.
16:30:19 25 He asked to see a document.

1 BY MR. ELIOT BERNSTEIN:

2 Q. I would like to show you --

3 THE DEPUTY: Ask to approach, please.

4 MR. ELIOT BERNSTEIN: Oh, ask to.

16:30:28 5 BY MR. ELIOT BERNSTEIN:

6 Q. Can I approach you?

7 THE COURT: What do you want to approach
8 with?

9 MR. ELIOT BERNSTEIN: I just want to show
16:30:34 10 him the complaint.

11 THE COURT: Complaint? As long as you
12 show the other side what you are approaching
13 with.

14 MR. ELIOT BERNSTEIN: It's your second
16:30:40 15 amended complaint.

16 MR. ROSE: No objection.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Is Ted Bernstein a defendant in that
19 action?

16:30:46 20 A. I believe he was a defendant, past tense.

21 Q. Okay. Let me ask you a question. Has the
22 estate that you are in charge of settled with Ted
23 Bernstein?

24 A. In connection with this action?

16:31:01 25 MR. ROSE: Objection, relevance.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Yes, in connection with this action?

3 THE COURT: Which action?

4 MR. ELIOT BERNSTEIN: The Stansbury
16:31:07 5 lawsuit that Ted wants to represent.

6 THE COURT: If he can answer.

7 MR. ELIOT BERNSTEIN: This is the conflict
8 that's the elephant in the room.

9 THE COURT: No, no, no.

16:31:14 10 MR. ELIOT BERNSTEIN: Okay.

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

13 MR. ELIOT BERNSTEIN: Sorry.

14 THE COURT: Ask a question and move on.

16:31:18 15 MR. ELIOT BERNSTEIN: Got it.

16 THE COURT: Mr. O'Connell, if you can
17 answer the question, answer the question.

18 THE WITNESS: Sure. Thanks, Your Honor.

19 I am going to give a correct answer. We have
16:31:25 20 not had a settlement in connection with Ted
21 Bernstein in connection with what I will call
22 the Stansbury independent or civil action.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. So that lawsuit --

16:31:37 25 A. The estate has not entered into such a

1 settlement.

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

16:31:52 5 A. The estate prior to -- I thought you were
6 talking about me, my involvement. Prior to my
7 involvement there was a settlement.

8 Q. With Shirley's trust, correct?

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

16:32:04 10 Q. Well, you just --

11 THE COURT: Wait. You have to let him
12 answer.

13 MR. ELIOT BERNSTEIN: Sorry, okay.

14 THE WITNESS: I recall there being a
16:32:08 15 settlement again prior to my involvement with
16 Mr. Stansbury and Ted Bernstein.

17 BY MR. ELIOT BERNSTEIN:

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

16:32:24 20 A. The estate, the estate, my estate, when I
21 have been personal representative, we are not in
22 litigation with Ted. We are in litigation with
23 Mr. Stansbury. That's where the disconnect is.

24 Q. In the litigation Ted is a defendant,
16:32:41 25 correct?

1 A. I have to look at the pleadings. But as I
2 recall the claims against Ted Bernstein were
3 settled, resolved.

4 Q. Only with Mr. Stansbury in the Shirley
16:32:55 5 trust and individually.

6 So let me ask you --

7 THE COURT: You can't testify.

8 MR. ELIOT BERNSTEIN: Okay.

9 BY MR. ELIOT BERNSTEIN:

16:33:03 10 Q. Ted Bernstein, if you are representing the
11 estate, there's a thing called shared liability,
12 meaning if Ted is a defendant in the Stansbury
13 action, which he is, and he hasn't been let out by
14 the estate, then Ted Bernstein coming into the
16:33:22 15 estate can settle his liability with the estate.

16 You following? He can settle his liability by
17 making a settlement that says Ted Bernstein is out
18 of the lawsuit, the estate is letting him out, we
19 are not going to sue him. Because the estate
16:33:40 20 should be saying that Ted Bernstein and Simon
21 Bernstein were sued.

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

24 MR. ELIOT BERNSTEIN: Okay.

16:33:47 25 THE COURT: But is that a question?

1 MR. ELIOT BERNSTEIN: Yeah, okay.

2 THE COURT: I can't --

3 MR. ELIOT BERNSTEIN: I will break it
4 down, because it is a little bit complex, and I
16:33:54 5 want to go step by step.

6 THE COURT: Thank you. And we will be
7 concluding in six minutes.

8 MR. ELIOT BERNSTEIN: Then I would ask for
9 a continuance.

16:34:01 10 THE COURT: We will be concluding in six
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Ask what you can.

14 MR. ELIOT BERNSTEIN: Okay.

16:34:08 15 BY MR. ELIOT BERNSTEIN:

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

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

16:34:23 20 Q. Okay.

21 A. At that point in time.

22 Q. So both those parties share liability if
23 Stansbury wins, correct?

24 MR. ROSE: Objection.

16:34:30 25 THE WITNESS: No.

1 THE COURT: Hold on.

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

4 MR. ELIOT BERNSTEIN: Well, if
16:34:38 5 Mr. Stansbury won his suit and was suing Ted
6 Bernstein --

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

16:34:47 10 But his question in theory is appropriate.
11 He says they are both defendants, they share
12 liability. Mr. O'Connell can answer that. The
13 record speaks for itself.

14 THE WITNESS: And the problem, Your Honor,
16:34:57 15 would be this, and I will answer the question,
16 but I am answering it in the blind without all
17 the pleadings. Because as I -- I will give you
18 the best answer I can without looking at the
19 pleadings.

16:35:08 20 THE COURT: You can only answer how you
21 can.

22 THE WITNESS: As I recall the state of
23 this matter, sir, this is the independent
24 action, the Stansbury action, whatever you want
16:35:17 25 to call it, Ted Bernstein is no longer a

1 defendant due to a settlement.

2 BY MR. ELIOT BERNSTEIN:

3 Q. He only settled with Mr. Stansbury,
4 correct? The estate, as you said a moment ago, has
16:35:29 5 not settled with Ted Bernstein as a defendant. So
6 the estate could be --

7 THE COURT: Mr. Bernstein, Mr. Bernstein.

8 MR. ELIOT BERNSTEIN: Uh-huh.

9 THE COURT: From the pleadings the Court
16:35:38 10 understands there is not a claim from the
11 estate against Ted Bernstein in the Stansbury
12 litigation. Is the Court correct?

13 MR. ELIOT BERNSTEIN: The Court is
14 correct.

16:35:50 15 THE COURT: Okay.

16 MR. ELIOT BERNSTEIN: But the estate, if
17 Mr. O'Connell was representing the
18 beneficiaries properly, should be suing Ted
19 Bernstein because the complaint alleges that he
16:36:00 20 did most of the fraud against Mr. Stansbury,
21 and my dad was just a partner.

22 THE COURT: Okay. So that's your
23 argument, I understand.

24 MR. ELIOT BERNSTEIN: Okay.

16:36:07 25 THE COURT: But please ask the questions

1 pursuant to the pleadings as they stand.

2 MR. ELIOT BERNSTEIN: Okay.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Could the estate sue Ted Bernstein since
16:36:15 5 he is a defendant in the action who has shared
6 liability with Simon Bernstein?

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

9 THE COURT: He can answer the question if
16:36:24 10 he can.

11 MR. ROSE: Okay.

12 THE WITNESS: One of the disconnects here
13 is that he is not a current beneficiary in the
14 litigation as you just stated.

15 MR. ELIOT BERNSTEIN: There's no
16 beneficiary in that litigation.

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

18 MR. ELIOT BERNSTEIN: Oh.

19 THE COURT: Remember, you have got to ask
16:36:40 20 questions.

21 THE WITNESS: Defendant, Your Honor, wrong
22 term. He is not a named defendant at this
23 point due to a settlement.

24 BY MR. ELIOT BERNSTEIN:

16:36:48 25 Q. Could the estate sue back a

1 counter-complaint to Ted Bernstein individually who
2 is alleged to have committed most of the egregious
3 acts against Mr. Stansbury? He is a defendant in
4 the action. Nobody settled with him yet from the
16:37:05 5 estate. Could you sue him and say that half of the
6 liability, at least half, if not all, is on Ted
7 Bernstein?

8 A. Anyone, of course, theoretically could sue
9 anyone for anything. What that would involve would
16:37:19 10 be someone presenting in this case me the facts,
11 the circumstances, the evidence that would support
12 a claim by the estate against Ted Bernstein. That
13 I haven't seen or been told.

14 Q. Okay. Mr. Stansbury's complaint, you see
16:37:34 15 Ted and Simon Bernstein were sued. So the estate
16 could meet the argument, correct, that Ted
17 Bernstein is a hundred percent liable for the
18 damages to Mr. Stansbury, correct?

19 A. I can't say that without having all the
16:37:51 20 facts, figures, documents --

21 Q. You haven't read this case?

22 A. -- in front of me. Not on that level.
23 Not to the point that you are -- not to the point
24 that you are --

16:37:57 25 Q. Let me ask you a question.

1 A. -- trying to.

2 MR. ROSE: Your Honor?

3 BY MR. ELIOT BERNSTEIN:

4 Q. Let me ask you a question.

16:38:04 5 THE COURT: Hold on one second, sir.

6 MR. ROSE: He is not going to finish in
7 two minutes and there are other things we need
8 to address, if we have two minutes left. So
9 can he continue his cross-examination at the
16:38:12 10 continuance?

11 THE COURT: March we have another hearing.

12 MR. ELIOT BERNSTEIN: Can we continue this
13 hearing?

14 THE COURT: Yes. But I am going to give
16:38:15 15 you a limitation. You get as much time as
16 everybody else has.

17 MR. ELIOT BERNSTEIN: That's fine.

18 THE COURT: You have about ten more
19 minutes when we come back.

16:38:23 20 MR. ELIOT BERNSTEIN: Okay. Can I submit
21 to you the binder that I filed late?

22 THE COURT: Sure.

23 MR. ELIOT BERNSTEIN: (Overspeaking).

24 THE COURT: As long as it has been -- has
16:38:29 25 it been filed with the Court and has everybody

1 gotten a copy?

2 MR. ELIOT BERNSTEIN: I sent them copies
3 and I brought them copies today.

4 THE COURT: As long as everybody else gets
16:38:40 5 a copy --

6 MR. ELIOT BERNSTEIN: Okay.

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

9 MR. ROSE: Your Honor, we had a couple of
16:38:45 10 other -- I mean, he can continue it but we have
11 limited time. There is a summary judgment
12 hearing set for next week in this case. So
13 right now -- not this case, Your Honor, I mean
14 the Stansbury case.

15 THE COURT: Oh, you did see the look in my
16 face?

17 MR. ROSE: Right. No, I understand. So I
18 am right now traveling under a court order that
19 authorizes me to appear, but I would like to on
16:39:04 20 the record I am not going to -- I think we need
21 to cancel that hearing or advise Judge Marx,
22 because I don't feel comfortable going forward
23 in the light of this motion, no matter how
24 frivolous I think it is, pending. That's why I
16:39:16 25 would hope to get this concluded today.

1 THE COURT: I understand.

2 MR. ROSE: But it's not anyone's fault.
3 That's why I wanted to raise it in the minute
4 we have. So I think we should either continue
16:39:23 5 it or I would withdraw the motion without
6 prejudice, whatever I need to do with Judge
7 Marx. But I want Mr. Feaman's comment on the
8 record.

9 MR. FEAMAN: I think it should be
16:39:31 10 continued until there's a disposition of this.

11 MR. ELIOT BERNSTEIN: Yeah.

12 MR. ROSE: And then --

13 MR. FEAMAN: And in fact, that judge or
14 that division, sorry, I didn't mean to
16:39:41 15 interrupt, stayed all discovery in that case
16 until this motion was heard, so.

17 THE COURT: I am trying.

18 MR. ROSE: No, I understand.

19 MR. FEAMAN: No, we are not.

16:39:49 20 MR. ROSE: The other thing is Mr. Feaman
21 has represented this is the last witness. So I
22 would think we would finish this hearing in a
23 half an hour, and we have a couple hours set
24 aside. And you were going to just state what
16:40:00 25 other matters you were going to address.

1 The one thing I wanted -- we had sent you
2 in an order to -- at that same hearing if
3 there's time to handle some just very mop-up
4 motions in the Shirley Bernstein estate.

16:40:11 5 THE COURT: Let me see how long we have
6 set for next time.

7 MR. ROSE: We have two hours on the 2nd.

8 THE COURT: All right. Here's what I want
9 done. Within the first hour we are going to
16:40:19 10 finish this motion. With all due respect, now
11 I will have some time to review some of what
12 you have given me, but I don't know if I will
13 rule from the bench, so you are also going to
14 have to give me time.

16:40:31 15 MR. ROSE: That's fine.

16 THE COURT: Thanks. I appreciate that.

17 MR. ROSE: I will tell Judge Marx that we
18 need a continuance for let's say 45 days or
19 something.

16:40:38 20 THE COURT: I need time to rule on that
21 motion once I have everything. And we are just
22 going to have to take things as they come. I
23 mean, that's just how we'll have to do it. We
24 have a lot of -- how can I put this --
16:41:00 25 positions being presented. And so, like I

1 said, so, Mr. Eliot -- and I am only calling
2 you that because there's a lot of Bernsteins in
3 the room.

4 MR. ELIOT BERNSTEIN: That's okay.

16:41:08 5 THE COURT: It's not disrespectful, I am
6 not trying to be, because I have two
7 Bernsteins.

8 Mr. Eliot Bernstein.

9 MR. ELIOT BERNSTEIN: Yes.

16:41:14 10 THE COURT: So you will get ten more
11 minutes.

12 MR. ELIOT BERNSTEIN: Okay.

13 THE COURT: Then Mr. Feaman will have his
14 final say because it was his witness, on that
16:41:22 15 witness.

16 MR. ELIOT BERNSTEIN: And then do I get to
17 say something at some point?

18 THE COURT: You will get to say something
19 at some point, yes.

16:41:30 20 MR. ELIOT BERNSTEIN: Thank you.

21 THE COURT: Okay. But we are going to
22 wrap it all up within an hour.

23 MR. ELIOT BERNSTEIN: That one hearing?

24 THE COURT: Yes, the motion to disqualify
16:41:36 25 and the motion to vacate.

1 MR. ELIOT BERNSTEIN: Okay.

2 THE COURT: So the first hour -- and you
3 can see I am pretty militant, because if not we
4 are not going to get anything done here. So we
16:41:45 5 are -- no, not yet. Then we are going to move
6 on to the administrator ad litem motion which
7 would be the next consecutive motion.

8 Yes?

9 MR. ELIOT BERNSTEIN: What day is that on?

16:41:57 10 THE COURT: March 2nd. I can give you an
11 extra copy of the scheduling order if you would
12 like.

13 MR. ELIOT BERNSTEIN: Okay. All I want to
14 make the Court aware of here is I am dealing
16:42:06 15 with a serious medical issue that I am telling
16 you I am bleeding talking to you. It's very
17 serious, and it has been for three weeks. And
18 I just want to say I will let you know if I --
19 as soon as I can how long it's going to take.
16:42:21 20 He has got to put in full. It's complicated.
21 But I have had facial reconstruction and it
22 takes time for the teeth to adjust once he
23 puts. And I do not have teeth for three weeks,
24 and these spikes are like nails in your mouth.
16:42:37 25 So every talk tongue bite will hurt.

1 THE COURT: You can --

2 MR. ELIOT BERNSTEIN: I will let you know
3 if it's going to take any longer than that by
4 say a week before that hearing, okay? And I
16:42:46 5 will give you a doctor's note that it's still
6 ongoing, et cetera. Because I can't -- I mean,
7 the last three weeks they've bombarded me with
8 all this stuff, not saying I wasn't prepared
9 for it. But I have been severely stressed, as
16:42:59 10 the letter indicates. I am on severe
11 narcotics, heavy muscle relaxers that would
12 make you a jellyfish. So just appreciate that.

13 THE COURT: I do.

14 MR. ELIOT BERNSTEIN: Okay. I appreciate
16:43:10 15 that.

16 THE COURT: The Court appreciates what you
17 have represented. We'll deal with it. Do you
18 need an extra copy of the scheduling order?

19 MR. ELIOT BERNSTEIN: Me?

16:43:19 20 THE COURT: You.

21 MR. ELIOT BERNSTEIN: Oh, for March 2nd?

22 THE COURT: Yes.

23 MR. ELIOT BERNSTEIN: Can I get one,
24 please?

16:43:25 25 THE COURT: I am trying to find it. I

1 have so many papers.

2 MR. ELIOT BERNSTEIN: Did you serve it to
3 me?

4 THE COURT: Me personally?

16:43:32 5 MR. ELIOT BERNSTEIN: Did somebody?

6 THE COURT: I have no idea. You should,
7 actually yes.

8 MR. ELIOT BERNSTEIN: Is it today's order?

9 MR. FEAMAN: Yes, he is on the list.

16:43:39 10 THE COURT: He is on the service list. I
11 double checked when you were late.

12 MR. ELIOT BERNSTEIN: I got it.

13 THE COURT: You did get it, okay. So you
14 do have it. All right. Excellent.

16:43:44 15 Thank you everyone. I am taking -- you
16 know what, Court's in recess. He has some of
17 the exhibits in evidence. But I think he took
18 Mr. Feaman's original e-mail.

19 MR. ROSE: We'll straighten it out, Your
16:43:55 20 Honor.

21 THE COURT: Thank you. Court's in recess.

22 (Judge Scher exited the courtroom.)

23 MR. FEAMAN: Don't go off the record.

24 Stay on the record. We have got to have
16:44:11 25 custody of these original exhibits. We've got

1 to know who's going to get them and all that.

2 MR. ROSE: Mr. Feaman, would you please
3 check these and determine if they are your
4 copies or the Court's copies? Thank you, sir.

16:44:22 5 MR. FEAMAN: This looks like a copy, copy,
6 copy, original.

7 THE DEPUTY: This is for the Court.

8 MR. FEAMAN: I just want to go through it
9 and make sure the Court has all the originals.

16:45:25 10 MR. ROSE: Those are the eight -- I handed
11 Mr. Feaman the eight exhibits that he put in
12 and the one exhibit that was trustee's exhibit.

13 MR. FEAMAN: The Court has all the
14 exhibits.

16:46:03 15

16 (The proceedings adjourned at 4:46 p.m.)

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C E R T I F I C A T E

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The State of Florida

County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 1 through 117, and that the transcript is a true record.

Dated February 21, 2017.



LISA MUDRICK, RPR, FPR
Mudrick Court Reporting, Inc.
1615 Forum Place, Suite 500
West Palm Beach, Florida 33401
561-615-8181

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

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

/

Proceedings before the Honorable

ROSEMARIE SCHER

Volume II

Thursday, March 2, 2017

3188 PGA Boulevard

North branch Palm Beach County Courthouse

Palm Beach Gardens, Florida 33410

1:35 - 3:39 p.m.

Reported by:

Lisa Mudrick, RPR, FPR

Notary Public, State of Florida

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23 On behalf of himself:

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I N D E X
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EXAMINATIONS Page

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ALAN B. ROSE

BY MR. FEAMAN 207

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EXHIBITS MARKED

No. Claimant Stansbury's

9 Pleading 214

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

2 - - -

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

11 - - -

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

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

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

22 THE COURT: All right.

23 MR. FEAMAN: Thank you.

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

1 THE COURT: Thank you.

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

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

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

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

16 MS. CANDACE BERNSTEIN: Candace Bernstein.

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

1 your cross-examination.

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

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

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

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

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

14 THE COURT: That I did receive.

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

19 THE COURT: Thank you.

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

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

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

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

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

14 MR. ELIOT BERNSTEIN: Okay.

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

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

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

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

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

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

1 be preparing proper responses for that.

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

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

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

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

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

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

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

13 THE COURT: Yes.

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

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

21 MR. ELIOT BERNSTEIN: Totally.

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

24 THE COURT: Yes.

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

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

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

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

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

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

13 THE COURT: Last point.

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

17 THE COURT: Not set for today.

18 MR. ELIOT BERNSTEIN: No, I know.

19 THE COURT: I understand.

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

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

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

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

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

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

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

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

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

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

8 THE COURT: Right.

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

12 THE COURT: Yes, I understand.

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

15 THE COURT: Let me ask you. The effort
13:46:26 16 it's only for the state court action, the civil
17 action in front of Judge Marx?

18 MR. ROSE: Correct.

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

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

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

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

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

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

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

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

15 MR. FEAMAN: That is correct, Your Honor.

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

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

23 THE COURT: I see what you are saying.

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

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

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

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

7 THE COURT: That's me.

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

14 THE COURT: Oh, I understand.

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

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

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

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

1 THE COURT: It's a new chart?

2 MR. ROSE: It's completely different.

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

5 MR. ELIOT BERNSTEIN: (Inaudible).

6 MR. ROSE: Completely different.

7 THE COURT: Stop.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: I will let you know --

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

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

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

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

1 MR. ROSE: Okay.

2 THE COURT: Okay?

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

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

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

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

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

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

14 MR. ELIOT BERNSTEIN: No.

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

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

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

19 THE COURT: Correct.

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

22 MR. ELIOT BERNSTEIN: Incorrect.

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

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

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

4 MR. ROSE: Correct.

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

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

13 MR. ROSE: Totally incorrect.

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

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

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

23 THE COURT: Okay?

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

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

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

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

19 MR. ELIOT BERNSTEIN: None of us do.

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

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

22 THE COURT: Go ahead.

23 MR. ROSE: I am not engaging with

24 Mr. Eliot. He is engaging with me.

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

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

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

7 THE COURT: I agree.

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

12 THE COURT: Yes.

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

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

21 MR. ROSE: No, okay.

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

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

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

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

8 MR. ROSE: I do, absolutely.

9 THE COURT: Go ahead.

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

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

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

18 THE COURT: Mr. Bernstein?

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

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

22 MR. ELIOT BERNSTEIN: I am sorry.

23 THE COURT: Go ahead.

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

1 THE COURT: Sure.

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

13:53:53 5 THE COURT: Yes.

6 MR. ROSE: Judge Phillips tried the case.

7 THE COURT: Yes.

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

13:54:00 10 THE COURT: Okay.

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

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

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

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

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

7 MR. ROSE: Then we have the trial.

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

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

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

14 MR. ROSE: I am sorry.

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

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

7 Continue, please.

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

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

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

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

17 THE COURT: Thank you.

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

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

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

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

4 - - -

5 Thereupon,

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

9 THE WITNESS: I do.

10 13:59:01 THE COURT: Thank you. Please have a
11 seat. You may proceed.

12 CROSS (BRIAN O'CONNELL)

13 BY MR. ELIOT BERNSTEIN:

14 Q. Mr. O'Connell, can you please state your
15 13:59:15 full name and address for the record?

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

18 Q. In what capacity are you testifying today?

19 A. As an individual.

20 13:59:27 Q. Not in a fiduciary capacity?

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

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

25 13:59:38 A. Yes.

1 Q. And your bar number, please?

2 A. 308471.

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

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

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

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

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

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

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

1 question. I don't know the answer.

2 BY MR. ELIOT BERNSTEIN:

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

6 A. I don't know.

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

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

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

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

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

25 ///

1 BY MR. ELIOT BERNSTEIN:

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

8 A. I don't know.

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

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

13 Q. Okay.

14 A. If there are such records.

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

19 A. I don't recall.

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

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

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

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

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

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

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

8 A. We ordered tax returns.

9 Q. Did you receive them from the IRS?

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

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

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

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

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

1 any of the beneficiaries?

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

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

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

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

11 MR. ELIOT BERNSTEIN: Okay.

12 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

4 Q. Have you looked at the lawsuit?

14:05:10 5 A. Yes.

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

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

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

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

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

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

23 A. That the lawsuit speaks for itself.

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

1 A. I don't recall.

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

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

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

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

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

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

22 Q. Okay.

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

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

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

14:07:19 5 A. Originally.

6 Q. Okay.

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

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

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

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

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

23 A. 768.01 perhaps?

24 Q. 768.81.

14:08:23 25 A. 81?

1 Q. Yes.

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

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

6 THE COURT: Thank you.

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

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

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

13 THE COURT: The comparative fault statute?

14 MR. ELIOT BERNSTEIN: Yes.

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

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

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

23 MR. ELIOT BERNSTEIN: Well --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 THE COURT: Give me just one second.

7 MR. ROSE: Okay.

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

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

14 THE COURT: Okay. Thank you.

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

17 MR. ELIOT BERNSTEIN: Okay.

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

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

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

14:13:05 25 (Overspeaking.)

1 MR. ELIOT BERNSTEIN: -- consideration.

2 Thank you.

3 THE COURT: I understand your objection.

4 MR. ELIOT BERNSTEIN: Okay.

14:13:07 5 THE COURT: And wait. And you put it on
6 the record so it's preserved.

7 MR. ELIOT BERNSTEIN: Okay.

8 THE COURT: But you get six more minutes.

9 BY MR. ELIOT BERNSTEIN:

14:13:13 10 Q. Mr. O'Connell, when did you -- did you
11 perform a due diligence investigation into Ted
12 Bernstein's potential liability in the Stansbury
13 lawsuit?

14 A. I have not. I have never been presented
14:13:24 15 with any facts by anyone or even an allegation to
16 suggest that such a liability might exist.

17 Q. Well, the complaint actually alleges that
18 Ted committed the frauds?

19 A. And then, as I have mentioned, Ted was
14:13:35 20 dismissed as a defendant by Mr. Stansbury.

21 Q. Yeah, that's okay. Whether Mr. Stansbury
22 in the estate would have to determine if Ted had
23 liability in this, correct?

24 A. No.

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

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

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

7 THE COURT: Thank you.
8 You may proceed.

9 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

3 Q. Okay.

4 A. That begs the issue of --

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

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

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

17 A. I wouldn't --

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

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

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

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

12 MR. ELIOT BERNSTEIN: Your Honor --
13 (Overspeaking.)

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

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

23 THE COURT: I have absolutely --

24 MR. ELIOT BERNSTEIN: Okay.

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

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

4 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

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

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

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

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

23 MR. ROSE: Objection, argumentative.

24 THE COURT: Overruled. You can answer.

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

1 anything.

2 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

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

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

2 MR. ELIOT BERNSTEIN: I got you.

3 (Overspeaking.)

4 THE COURT: Last question.

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

6 few more.

7 THE COURT: Last question.

8 BY MR. ELIOT BERNSTEIN:

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

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

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

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

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

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

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

8 Q. Okay. So --

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

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

13 THE COURT: You can finish one more.

14 MR. ELIOT BERNSTEIN: Okay.

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

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

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

14:20:47 25 Q. Okay.

1 MR. ELIOT BERNSTEIN: I can get that if
2 you'd like, Your Honor.

3 THE COURT: If you want to hand it to him.

4 MR. ELIOT BERNSTEIN: Okay. Hold on.

14:20:57 5 THE COURT: Does anyone have that pleading
6 handy?

7 MR. ROSE: If I could enlighten you?

8 THE COURT: Yes. Which pleading are you
9 referencing?

14:21:13 10 MR. ROSE: No, in the trust --

11 MR. ELIOT BERNSTEIN: (Inaudible).

12 (Overspeaking.)

13 THE COURT: No, I asked which pleading you
14 are referencing, and he was just trying to tell
14:21:20 15 me.

16 MR. ELIOT BERNSTEIN: Okay.

17 THE COURT: Do you have the pleading,
18 Mr. Eliot?

19 MR. ELIOT BERNSTEIN: I am looking for it.

14:21:25 20 THE COURT: I was just going to ask him if
21 he had the pleading he can show you the
22 pleading if he can get it. Do you know which
23 pleading?

24 MR. ROSE: I can tell you what it is.

14:21:31 25 THE COURT: What is it?

1 MR. ROSE: In the trust construction case
2 Judge Colin ordered that we try the validity of
3 five documents.

4 THE COURT: Yes, I remember.

14:21:42 5 MR. ROSE: One of them affected

6 Mr. O'Connell --

7 THE COURT: I might be able to pull it up
8 from the court file.

9 MR. ROSE: -- which was the will. So
14:21:46 10 Mr. O'Connell filed an answer in the case. But
11 then we entered into a stipulation and an order
12 that Mr. O'Connell would abide by whatever
13 Judge Phillips ruled at the trial so that he
14 wouldn't have to sit through a trial and incur
14:21:57 15 the expense.

16 THE COURT: Got it.

17 MR. ROSE: So I think he withdrew his --
18 he entered into an agreement and he did not
19 pursue any defenses, and the documents were
14:22:04 20 upheld as valid. It would be his answer filed
21 in, not in the Estate of Simon Bernstein, but I
22 think it's the 2014 3698 case.

23 MR. ELIOT BERNSTEIN: It's Mr. O'Connell's
24 answer. It's his only affirmative defense,
14:22:22 25 Your Honor, if you want to look it up. It's

1 his answer to the Shirley Bernstein Trust,
2 construction complaint on behalf of the estate.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Mr. O'Connell, what made you say that?

14:22:34 5 A. Originally?

6 Q. Yes.

7 A. Before it was settled? My review of the
8 Shirley Bernstein Trust.

9 Q. You said the Simon Bernstein Trust he
14:22:46 10 wasn't validly serving under?

11 A. Sorry, Simon Bernstein Trust, correct.

12 Q. Okay. So now what was it?

13 A. My review -- originally when that
14 affirmative defense was entered based on my review
14:22:55 15 of the Simon Bernstein Trust.

16 Q. You claimed that Ted wasn't validly
17 serving. On what grounds? On what basis?

18 MR. ROSE: Objection, Your Honor. Under
19 the statute -- it's not relevant. But under
14:23:06 20 the statute Mr. O'Connell has no, would have
21 had no standing, just like Mr. Bernstein had no
22 standing, and Mr. Feaman has no standing --

23 THE COURT: Sustained.

24 MR. ROSE: -- because only the settlor or
14:23:17 25 the co-trustee or the beneficiary trust can

1 seek removal.

2 THE COURT: All right. Let's wrap it up.

3 MR. ELIOT BERNSTEIN: Well, you are not
4 going to let me ask any more questions?

14:23:23 5 THE COURT: I am not.

6 MR. ELIOT BERNSTEIN: Okay. Again, my --

7 THE COURT: Your objection is so noted for
8 the record.

9 Okay. Redirect.

14:23:34 10 MR. FEAMAN: Thank you, Your Honor.

11 THE COURT: You are welcome, thank you.

12 MR. ELIOT BERNSTEIN: Oh, excuse me, Your
13 Honor?

14 THE COURT: Yes, sir.

14:23:42 15 MR. ELIOT BERNSTEIN: Just one last thing.
16 Do I get to make an opening statement and stuff
17 at this proceeding?

18 THE COURT: We are way past that.

19 MR. ELIOT BERNSTEIN: Well, I was late
14:23:52 20 last time.

21 THE COURT: And that's why you waived it.

22 MR. ELIOT BERNSTEIN: So I waived it?

23 THE COURT: You waived it by being late.

24 MR. ELIOT BERNSTEIN: Oh, okay.

14:23:58 25 THE COURT: Okay? Thank you.

1 MR. FEAMAN: May it please the Court?

2 THE COURT: Absolutely, thank you.

3 REDIRECT (BRIAN O'CONNELL)

4 BY MR. FEAMAN:

14:24:05 5 Q. Good afternoon, Mr. O'Connell.

6 A. Good afternoon.

7 Q. Mr. Eliot actually brought this up when we
8 were here the first time concerning the counts of
9 the Stansbury lawsuit, and I actually thought about
10 what he had to say. So I would like to follow up
11 and ask you some more questions on the Stansbury
12 lawsuit. If I could hand you a copy of the second
13 amended complaint?

14 A. Sure.

14:24:38 15 Q. Okay.

16 A. I have got it.

17 Q. And this is the second amended complaint
18 in the lawsuit that is pending where Mr. Rose seeks
19 to become counsel for the estate, correct?

14:24:55 20 MR. ROSE: If I could, just a brief
21 objection for the record?

22 THE COURT: For the record.

23 MR. ROSE: To the extent we are going to
24 argue that we should be disqualified because of
14:25:02 25 some potential contribution, I would just note

1 it's not in the papers --

2 MR. FEAMAN: Move to strike.

3 THE COURT: I get to hear his entire
4 argument before you get to move to strike
14:25:11 5 anything.

6 MR. FEAMAN: Yes, ma'am.

7 THE COURT: I don't know what you are
8 striking.

9 MR. ROSE: The grounds -- those grounds
14:25:17 10 aren't in the motion to disqualify our firm as
11 valid or the objection to our retention that's
12 the basis of vacating your order.

13 THE COURT: Continue.

14 MR. ELIOT BERNSTEIN: Excuse me, I just
14:25:31 15 missed that piece. Can somebody read that
16 back? I am sorry.

17 THE COURT: Sure, I can have the court
18 reporter read back his objection. Thank you.

19 MR. ELIOT BERNSTEIN: I am sorry.

14:25:38 20 THE COURT: No, that's all right.

21 MR. ELIOT BERNSTEIN: I was out there for
22 just a second.

23 MR. FEAMAN: Response, Your Honor.

24 THE COURT: I was just waiting to hear the
14:25:48 25 question. He asked that Mr. Rose's objection

1 be read back, and I said sure, and I was giving
2 the court reporter the opportunity to read it
3 back.

4 MR. ELIOT BERNSTEIN: I am sorry, Your
14:25:58 5 Honor.

6 THE COURT: That's quite all right. Thank
7 you.

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

10 "MR. ROSE: Those grounds aren't in the
11 motion to disqualify our firm as valid or the
12 objection to our retention that's the basis of
13 vacating your order."

14 THE COURT: Mr. Feaman, you wanted a
14:26:50 15 response?

16 MR. FEAMAN: My response is we allege that
17 Mr. Rose has a conflict of interest.

18 THE COURT: I think that's broad enough.
19 We are talking about the lawsuit he is saying
14:27:01 20 he has a conflict. Let's move on. Overruled.

21 MR. FEAMAN: Thank you.

22 BY MR. FEAMAN:

23 Q. So the lawsuit is case number 13933 in the
24 general jurisdiction division, correct?

14:27:11 25 A. Correct.

1 Q. And this is not the first time you are
2 looking at this, correct?

3 A. Correct.

4 Q. In fact, you have looked at it in somewhat
14:27:20 5 detail because you and I carried on some serious
6 settlement negotiations, did we not?

7 A. Yeah, we have over a span of time, yes.

8 Q. Okay. Let me then first draw your
9 attention to paragraph 26 on page six. Let me know
14:27:41 10 when you are there.

11 A. I am there.

12 THE COURT: Hold on. The Court is not
13 there yet. I assume you want the Court to
14 follow along? Does anyone have an objection to
14:27:48 15 me pulling up the complaint?

16 MR. ELIOT BERNSTEIN: No, ma'am.

17 MR. FEAMAN: It's public record.

18 THE COURT: Just for the record.

19 MR. ROSE: That's fine, or you can have my
14:27:56 20 copy.

21 THE COURT: Just give me one second. I
22 have got the docket up. And just tell me when
23 it was filed, the amended complaint.

24 MR. FEAMAN: The amended complaint was
14:28:04 25 served and filed on or about September 3rd,

1 2013.

2 THE COURT: Thank you. Got it.

3 You may proceed, thank you.

4 BY MR. FEAMAN:

14:28:21 5 Q. Now, it's alleged there that LIC Holdings
6 and Arbitrage became the alter ego of Simon
7 Bernstein and Ted Bernstein; is that correct?

8 A. I see that, yes, that language.

9 Q. Now, LIC Holdings and Arbitrage were two
14:28:36 10 corporate defendants before -- in this action
11 before they were settled out; is that correct?

12 A. Correct.

13 Q. And that was the corporations under which
14 Mr. Stansbury and Mr. Simon Bernstein and Mr. Ted
14:28:48 15 Bernstein did business, correct?

16 A. Well, that's what's alleged in here.

17 Q. Okay. And it says that the allegations
18 are against both Simon Bernstein and Ted Bernstein,
19 correct?

14:29:01 20 A. Yes, in 26.

21 Q. And then the last sentence of page six
22 says, "The wrongful action of Simon Bernstein and
23 Ted Bernstein in diverting and converting corporate
24 assets rendered LIC and possibly Arbitrage
14:29:18 25 insolvent," correct?

1 A. That's what it says. That's the
2 allegation.

3 Q. Right. And now you are aware that Mr. Ted
4 Bernstein's deposition has not been taken in this
14:29:27 5 case, correct?

6 A. I am not sure.

7 THE COURT: Can I ask you to clarify which
8 case?

9 MR. FEAMAN: Sorry.

14:29:36 10 THE COURT: The civil case?

11 MR. FEAMAN: The Stansbury action.

12 THE COURT: Thank you.

13 MR. FEAMAN: Refer to it that way for the
14 record.

14:29:40 15 THE COURT: Thank you.

16 THE WITNESS: I don't know either way.

17 BY MR. FEAMAN:

18 Q. In fact, are you aware that other than the
19 beginning of the deposition of Mr. Stansbury, that
14:29:48 20 in the Stansbury action no depositions have yet
21 been taken in that case; are you aware of that?

22 A. I recall Mr. Stansbury's deposition, but I
23 am not sure what other depositions may or may not
24 have been taken.

14:30:01 25 Q. If I told you that no other depositions

1 have been taken, that wouldn't surprise you, would
2 it? You wouldn't have any reason to disagree with
3 that?

4 A. I don't sitting here without again looking
14:30:11 5 at some more material.

6 Q. All right. And then could I draw your
7 attention to paragraph 27?

8 A. Sure.

9 Q. It says, "Throughout 2009 Simon Bernstein
14:30:21 10 and Ted Bernstein continued to make false
11 statements to Stansbury to hide the fact that LIC
12 and/or Arbitrage was their alter ego in that they
13 converted corporate property and corporate assets
14 of LIC," correct?

14:30:34 15 A. That's what it says.

16 Q. Now, assume for me for a moment that
17 discovery shows that in fact most of that conduct
18 was performed by Ted Bernstein. Would you agree
19 that then possibly the Estate of Simon Bernstein
14:30:48 20 could have a third party complaint against Ted
21 Bernstein?

22 MR. ROSE: Objection, under the same
23 grounds as before. I mean, first of all, the
24 statute prohibits the claim for contribution
14:31:02 25 which would be a third party claim for

1 contribution.

2 THE COURT: That's not a legal objection.

3 MR. ROSE: Also, he is the opposing party
4 in the lawsuit that's pending. I really object
14:31:11 5 to him asking him his opinion about strategy in
6 the case, which is -- I mean, it's a delicate
7 balance, I understand, but, you know.

8 THE COURT: Which is why I asked you first
9 if you think Judge Marx should hear this. So
14:31:24 10 if you want me to hear it, I've got to know
11 what's going on.

12 MR. ROSE: And I want you to hear it. It
13 would be the same issue in front of Judge Marx.
14 I am saying he is asking him trial strategy. I
14:31:32 15 understand what they are getting at with this
16 contribution thing. And the reason why I
17 suggest it's completely irrelevant is there
18 is --

19 THE COURT: Wait a minute. Are you
14:31:39 20 objecting trial strategy is work product as
21 between attorney and client? Do you see what I
22 am saying? I need a basis.

23 MR. ROSE: My basis for the record is this
24 is completely irrelevant because it's
14:31:49 25 undisputed in this record that there's no claim

1 for contribution which exists. So to ask about
2 a third party claim that doesn't exist I think
3 is an improper question and the objection
4 should be sustained.

14:31:59 5 THE COURT: I am overruling it. It goes
6 to the weight of the evidence and me deciding
7 overall whether or not there's a conflict. I
8 am going to let him explore his theory, but it
9 all goes to whether or not there's a conflict
14:32:12 10 that exists.

11 You may continue.

12 MR. FEAMAN: And with Your Honor's
13 permission I would just like to state for the
14 record that there's nothing in this record to
14:32:20 15 support what Mr. Rose has said. Thank you.

16 BY MR. FEAMAN:

17 Q. Now, so my question was --

18 THE COURT: Do you want it read back?

19 MR. FEAMAN: Yes.

20 (The following portion of the record was
21 read back.)

22 "Q. Now, assume for me for a moment that
23 discovery shows that in fact most of that
24 conduct was performed by Ted Bernstein. Would
25 you agree that then possibly the Estate of

1 Simon Bernstein could have a third party
2 complaint against Ted Bernstein?"

3 THE WITNESS: I don't know enough to make
4 that analysis sitting here right now because it
14:33:06 5 would have to go through -- actually it would
6 be two contribution statutes, related statutes
7 in Chapter 768 I can think of that one would
8 have to review besides the one that I have been
9 provided.

10 BY MR. FEAMAN:

11 Q. Okay.

12 A. And obviously then take that against what
13 the facts are that you are referencing that might
14 be disclosed in discovery, apply that against the
14:33:26 15 dismissal, release, look at the settlement
16 agreement that was signed, and take an analysis of
17 all of those items, to give you a correct answer to
18 your question.

19 Q. And you haven't seen the release even,
14:33:38 20 have you?

21 A. I have talked to Mr. Rose about it. I
22 haven't -- I don't have it in my hands. It's not
23 part of my files.

24 Q. You haven't made an independent
14:33:48 25 determination outside of what Mr. Rose may have

1 told you that there might be something in that
2 release which would somehow keep the Estate of
3 Simon Bernstein from suing Ted Bernstein out of the
4 Stansbury lawsuit, correct?

14:34:01 5 A. I don't know that. I understood it was a
6 confidential settlement.

7 Q. Okay. So then you don't know; is that
8 correct?

9 A. It is because, as I just said, I was told
14:34:10 10 it was a confidential settlement. I inquired of
11 Mr. Rose generally what the terms and conditions
12 was. I looked at the docket. I see the dismissal
13 with prejudice of the parties you referred to
14 before.

14:34:21 15 Q. And so going back to what the facts might
16 develop, you really don't know yet whether the
17 Estate of Simon Bernstein could sue Ted Bernstein
18 arising out of the conduct alleged in the Stansbury
19 lawsuit, correct?

14:34:35 20 A. Right. I think I have answered that, but
21 I will say it again. I don't have enough
22 information to apply case law. There's a Supreme
23 Court decision I can think of that deals with
24 contribution that would be relevant here, yeah, a
14:34:50 25 number of items. But I would have to start with

1 some sort of a factual basis, looking at documents,
2 what's the nature of the tort, what's the
3 contribution, if it's a contract claim, if there's
4 no contribution, all of those items would have to
14:35:05 5 be looked at because this complaint has contractual
6 claims and it has tort claims.

7 Q. Right. And assume for me, if you would,
8 that the release would not bar an action by the
9 estate. And assume for me that the facts would
14:35:18 10 support a jury's conclusion as to the truthfulness
11 of what's alleged in paragraphs 26, 27, 28 and 29.
12 Isn't it true that in that event, and I am
13 admitting now that you don't know this yet, but
14 that the estate could have an action against Ted
14:35:36 15 Bernstein?

16 A. Then I would --

17 MR. ROSE: I am going to object for the
18 record on multiple grounds, first of which is I
19 can't believe a lawyer in this courtroom who's
14:35:46 20 negotiated a general release --

21 MR. FEAMAN: Move to strike.

22 THE COURT: Hold on. One second, please.

23 MR. FEAMAN: He can object, Your Honor,
24 but he can't make statements like that.

14:35:55 25 THE COURT: I indicated at the very

1 beginning, remember point one, that no one was
2 to take a strike at the lawyer. If you want to
3 put on the law, put on the law.

4 MR. ROSE: Okay.

14:36:06 5 THE COURT: I am looking at 768.81.

6 You may proceed with your objection.

7 MR. ROSE: Can I clarify the point since
8 this is not pled and we are traveling --

9 THE COURT: Sure.

14:37:01 10 MR. ROSE: Is there a position taken in

11 this case by the movant that there is not a
12 mediation settlement agreement signed that

13 includes a general release negotiated by

14 counsel at a mediation, including Mr. Feaman

14:37:14 15 who was the lead counsel for the plaintiff,

16 that includes a general release of all

17 defendants? And if that's an issue, I need to

18 know that just to be on notice of what the

19 issues are in the case so I can be prepared to

14:37:26 20 meet the evidence that's going to be presented

21 today. I don't think it's too much to ask if

22 that's actually a disputed issue of fact today.

23 And if it is, I would submit to the Court that

24 when we prove the opposite it should reflect on

14:37:39 25 the credibility of the movant.

1 MR. FEAMAN: Move to strike --

2 MR. ROSE: And I have a legal objection
3 after I --

4 THE COURT: Mr. Feaman, it's the Court's
14:37:47 5 understanding there was a dismissal and a
6 settlement with regards to Ted individually
7 from the Stansbury lawsuit; is that correct?

8 MR. FEAMAN: That is correct.

9 THE COURT: All right. Move on, Mr. Rose.
14:37:58 10 That was the basis of your issue, correct?

11 MR. ROSE: But that included a release.
12 The settlement agreement that was signed
13 included a general release. I didn't know that
14 was a disputed issue of fact.

14:38:08 15 THE COURT: I don't think it's been raised
16 as a disputed issue of fact.

17 MR. ROSE: Okay. Then my legal objection
18 is --

19 THE COURT: I did not believe there was an
14:38:18 20 issue raised that it was a disputed issue. Was
21 in fact I believe there was a release executed
22 in the Stansbury litigation?

23 MR. FEAMAN: Right.

24 THE COURT: With regards to Ted Bernstein?

14:38:28 25 MR. FEAMAN: Correct. Now, there may be a

1 legal issue as to whether the terms of that --

2 THE COURT: I was going to say I am not
3 going there.

4 MR. FEAMAN: Correct.

14:38:35 5 THE COURT: The question is is there a
6 release?

7 MR. ROSE: So that's a stipulated fact for
8 the purposes of the hearing?

9 THE COURT: There are. A release has been
14:38:42 10 executed. The effect of that release to the
11 Court on this day is not making any
12 determination.

13 MR. ELIOT BERNSTEIN: Your Honor?

14 MR. ROSE: And then my legal objection is
14:38:48 15 the same as it was before under 768.81, 31,
16 sorry.

17 THE REPORTER: I'm sorry, what?

18 THE COURT: 768.31.

19 THE REPORTER: 768.31?

14:38:58 20 MR. ELIOT BERNSTEIN: Your Honor?

21 THE COURT: Is that correct? That was off
22 the top of my head. Is that correct?

23 MR. ROSE: Yes, Your Honor. I apologize,
24 I am not trying to disrupt the proceedings.

14:39:03 25 THE COURT: That's okay.

1 MR. ROSE: But I appreciate the
2 clarification.

3 THE COURT: Very spirited proceedings.
4 That's all right.

14:39:09 5 Yes, Mr. Eliot?

6 MR. ELIOT BERNSTEIN: Well, Your Honor, on
7 that settlement in Shirley's estate all parties
8 didn't enter into that settlement.

9 THE COURT: We are not -- that wasn't --
14:39:16 10 it was just --

11 MR. ELIOT BERNSTEIN: Oh, okay.

12 THE COURT: The only thing was whether or
13 not Stansbury had released Ted.

14 MR. ELIOT BERNSTEIN: Okay.

14:39:24 15 THE COURT: That was the only question.

16 MR. ELIOT BERNSTEIN: None of the
17 beneficiaries know about it.

18 THE COURT: I kept it very clear --

19 MR. ELIOT BERNSTEIN: Okay.

14:39:28 20 THE COURT: -- because I know there's a
21 lot of disputes within that one statement if I
22 go too far.

23 MR. ELIOT BERNSTEIN: Okay.

24 THE COURT: You may proceed.

14:39:35 25 MR. FEAMAN: Thank you, Your Honor.

1 THE COURT: Mr. Feaman, you may proceed.

2 MR. FEAMAN: Can you read back my last
3 question?

4 (The following portion of the record was
5 read back.)

6 "Q. And assume for me, if you would, that
7 the release would not bar an action by the
8 estate. And assume for me that the facts would
9 support a jury's conclusion as to the
10 truthfulness of what's alleged in paragraphs
11 26, 27, 28 and 29. Isn't it true that in that
12 event, and I am admitting now that you don't
13 know this yet, but that the estate could have
14 an action against Ted Bernstein?"

14:40:15 15 MR. ROSE: I object also on the grounds I
16 don't think you ask a fact witness to make
17 assumptions that aren't supported by the
18 record.

19 THE COURT: I am going to say he is
14:40:32 20 proposing a hypothetical which is often the
21 case even in medical malpractice and things of
22 that nature. So I will allow it.

23 Mr. Feaman, go ahead.

24 BY MR. FEAMAN:

14:40:40 25 Q. You may answer, sir.

1 A. Sure. Let's see if we can get to the
2 bottom of this by looking at 768.31(b)(5).

3 Q. Sure. What's the title of that statute?

4 A. Contribution Among Tort-Feasors.

14:40:50 5 Q. Okay. Does it relate to negligence?

6 A. Actually I think the Florida Supreme Court
7 has ruled in a 1970s case that it applies to all
8 tort actions.

9 Q. Okay.

14:41:10 10 A. But I'd have to have that case in front of
11 me.

12 Q. Well, take a look at Count II, if you
13 would, at page ten. That's a breach of an oral
14 contract against LIC Holdings, Arbitrage, Simon
14:41:38 15 Bernstein and Ted Bernstein, correct?

16 A. Right, a contract claim.

17 Q. Okay. And take a look, if you would, as
18 to Count III.

19 A. Count III, fraud in the inducement again
14:41:57 20 as to a contract.

21 Q. Right. That's an employment agreement
22 against Simon Bernstein and Ted Bernstein, correct?

23 A. Correct.

24 Q. Okay. Take a look at Count V. It's page
14:42:10 25 15.

1 A. I am sorry, did you say page five or
2 Count V?

3 Q. Count V. I am sorry, I may have
4 misspoken. Page 15, Count V, that's a civil
14:42:20 5 conspiracy against Simon Bernstein and Ted
6 Bernstein, right?

7 A. It incorporates Counts III and IV.

8 Q. Okay. And then take a look at Count VIII,
9 that's unjust enrichment, on page 18, again,
14:42:40 10 against all four defendants, including Simon
11 Bernstein and Ted Bernstein, correct?

12 A. That's what it says.

13 Q. Okay. And you cannot say with certainty
14 as you sit here today that under no circumstances
14:42:55 15 would the estate ever have a claim against Ted
16 Bernstein arising out of this Stansbury action, can
17 you?

18 A. I can't say with a hundred percent
19 certainty. But based on if there's a release,
14:43:11 20 there's a settlement, under the statute that I have
21 given you, there's no contribution, which I believe
22 is the topic we are debating here.

23 Q. Well, let's move on from contribution to
24 allowing a jury to apportion percentages of fault.
14:43:28 25 That certainly would be allowed, would it not, on a

1 jury verdict form --

2 MR. ROSE: Objection.

3 BY MR. FEAMAN:

4 Q. -- without a claim for contribution?

14:43:34 5 THE COURT: Legal objection?

6 MR. ROSE: Legal objection is that that
7 statute does not impose liability on the
8 person based on the percentages of fault.
9 Specifically that statute, as Your Honor is
10 well aware, liability is only apportioned on
11 the defendant. In the non-party defendants
12 they can be a hundred percent liable that
13 there's no --

14 THE COURT: I know, but your objection is
14:43:56 15 interpreting the statute. Do you have a
16 different legal objection?

17 MR. ROSE: It's a completely irrelevant
18 question as to this line of questioning is
19 irrelevant on that basis. It's a fiction. We
14:44:07 20 are doing this whole hearing based on a fiction
21 that there's some claim that doesn't exist,
22 based on negligence that doesn't exist under
23 the statute.

24 MR. FEAMAN: Goes to weight, not
14:44:19 25 admissibility, Your Honor.

1 THE COURT: I got to agree it goes to the
2 weight whether or not it could actually be
3 added as a nonparty defendant under the various
4 claims, whether -- I am not going to say
14:44:33 5 anything else. Based on the objection as you
6 have raised it I will overrule it.

7 MR. FEAMAN: Could you read it back,
8 please?

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

11 "Q. Well, let's move on from contribution
12 to allowing a jury to apportion percentages of
13 fault. That certainly would be allowed, would
14 it not, on a jury verdict form without a claim
14:45:11 15 for contribution?"

16 THE WITNESS: And are you talking about
17 what's -- I assume you are talking about what's
18 pled in the second amended complaint?

19 BY MR. FEAMAN:

14:45:17 20 Q. Yes.

21 A. I think the problem there is you don't
22 have a negligence count.

23 Q. You've got an unjust enrichment count,
24 correct?

14:45:25 25 A. I don't count that as a negligence count.

1 THE COURT: Mr. --

2 MR. FEAMAN: Okay. I will move on, Your
3 Honor.

4 THE COURT: Thank you.

14:45:34 5 BY MR. FEAMAN:

6 Q. Now, the reference to LIC Holdings and
7 Arbitrage, those are two entities that during
8 Mr. Simon Bernstein's lifetime and that of Ted
9 Bernstein they each owned at least 45 percent each
10 and possibly 50 percent each at the time of
11 Mr. Simon Bernstein's death, correct?

12 A. That I am not sure what the exact
13 ownership percentage was at that point.

14 Q. Okay.

14:46:02 15 A. That would be a guess, and I am not going
16 to guess.

17 Q. And have you investigated whether Mr. Ted
18 Bernstein, who kept running the corporations after
19 Simon Bernstein's death, made any payments to the
14:46:16 20 estate as a result of renewal commissions that
21 might have been paid --

22 MR. ROSE: Objection.

23 BY MR. FEAMAN:

24 Q. -- to Simon Bernstein?

14:46:25 25 THE COURT: Before you object I need to

1 hear the whole question.

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

4 MR. FEAMAN: Okay.

14:46:31 5 THE COURT: I need you to say it again. I
6 lost it.

7 MR. FEAMAN: Sure. Read it back again.

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

10 "Q. And have you investigated whether
11 Mr. Ted Bernstein, who kept running the
12 corporations after Simon Bernstein's death,
13 made any payments to the estate as a result of
14 renewal commissions that might have been paid
14:47:05 15 to Simon Bernstein?"

16 MR. ROSE: Objection as to relevancy and
17 materiality. It's beyond the scope of
18 examination.

19 THE COURT: Sustained. Next question.

14:47:11 20 BY MR. FEAMAN:

21 Q. Now, Mr. Rose represents Mr. Ted
22 Bernstein, correct?

23 A. In different capacities in different
24 proceedings.

14:47:21 25 Q. Okay.

1 A. In the call it the Bernstein matters, yes.

2 Q. Okay. And you are aware that both Simon
3 and Ted were running Arbitrage and LIC at the time
4 that Mr. Simon passed away, correct?

14:47:38 5 A. I know these entities involved the father
6 and son at various and sundry times.

7 Q. Okay.

8 A. I don't have any, of course, personal
9 knowledge of that. A lot of what I have been told
14:47:53 10 is that.

11 Q. Did you make an investigation as to
12 whether as a result of money that came in to LIC or
13 Arbitrage after Mr. Simon Bernstein's death should
14 have been payable to Mr. Simon Bernstein, but now
14:48:08 15 that he would be dead the estate, such that the
16 estate if those monies weren't paid would then have
17 a claim against Ted Bernstein?

18 MR. ROSE: Objection, same relevancy and
19 materiality, beyond the scope.

14:48:21 20 THE COURT: Sustained.

21 MR. FEAMAN: May I respond, Your Honor?

22 THE COURT: Sure.

23 MR. FEAMAN: If there's a potential that
24 the estate could have a claim against Ted
14:48:30 25 Bernstein for corporate misconduct after

1 Mr. Bernstein dies, because the corporations
2 may owe Mr. Simon Bernstein some money, that's
3 also potential conflict of interest between
4 Mr. Rose and now representing the estate.

14:48:43 5 THE COURT: Okay. That's argument. What
6 you just said that's your argument, but it is
7 beyond.

8 MR. FEAMAN: That's my respectful response
9 to your ruling.

14:48:55 10 THE COURT: No, I understand.

11 MR. FEAMAN: Okay.

12 BY MR. FEAMAN:

13 Q. Do you know what happened to the
14 commissions that Simon Bernstein was to receive
14:49:06 15 after his death?

16 MR. ROSE: Objection, same objection.

17 THE COURT: I don't want to try that
18 lawsuit now, okay? Thank you.

19 MR. FEAMAN: May I approach, Your Honor,
14:49:18 20 to grab an exhibit?

21 THE COURT: Absolutely. They are all up
22 here for you.

23 MR. ROSE: While he is doing that, for
24 scheduling purposes how much time do we have
14:49:31 25 for today?

1 THE COURT: Until 4:30.

2 MR. ROSE: Thank you.

3 MR. ELIOT BERNSTEIN: Your Honor, did you
4 get my exhibit list that I gave you last time?

14:49:35 5 THE COURT: I have your binder. But these
6 are exhibits entered into evidence he is
7 looking through. These were entered at the
8 last --

9 MR. ELIOT BERNSTEIN: Already.

14:49:44 10 THE COURT: Yes. They've already been
11 entered. The Court was holding them.

12 MR. ELIOT BERNSTEIN: My confusion, thank
13 you.

14 THE COURT: No.

14:49:50 15 MR. ELIOT BERNSTEIN: Just didn't see it
16 there.

17 THE COURT: Here's your book.

18 MR. ELIOT BERNSTEIN: Oh, no, don't lift
19 it.

14:50:00 20 THE COURT: It's got the colored tabs.

21 MR. ELIOT BERNSTEIN: Yes.

22 MR. FEAMAN: Your Honor, let the record
23 reflect that I am handing Your Honor a copy of
24 Exhibit 1, Rose Exhibit 1, so that you can read
14:50:08 25 along.

1 THE COURT: Thank you.

2 MR. ROSE: That's Trustee Exhibit 1 for
3 the record.

4 THE COURT: I can look at my exhibit list.

14:50:17 5 MR. ROSE: I don't want the record to
6 suggest there was a Rose exhibit that wasn't in
7 evidence.

8 THE COURT: I have this as Stansbury.
9 Stansbury entered all of these 1 through 8 are
14:50:33 10 without objection. The trustee --

11 MR. FEAMAN: This would be -- it's marked
12 as Trustee's Exhibit 1.

13 THE COURT: The PR waiver?

14 MR. FEAMAN: Yes.

14:50:43 15 THE COURT: That was Trustee's Number 1.

16 MR. FEAMAN: Yes. I am handing that to
17 the witness, Your Honor.

18 THE COURT: Thank you. I was just
19 checking my exhibit list.

14:50:50 20 MR. FEAMAN: Okay.

21 BY MR. FEAMAN:

22 Q. Now, the Trustee's Exhibit 1 was that
23 prepared by you?

24 A. My office, yes.

14:51:03 25 Q. Was there a draft prepared for you by

1 Mr. Rose?

2 A. Yes.

3 Q. And --

4 A. I made extensive revisions to it.

14:51:15 5 Q. I would like to draw your attention to
6 page two of Trustee's Exhibit 1. In the middle of
7 the page, the third paragraph that begins with "I
8 have been advised," do you see that?

9 A. Yes.

14:51:30 10 Q. Okay. And it says, "I have been advised
11 that Mrachek --" and you are referring for the
12 record that's Alan Rose's firm, correct?

13 A. Correct.

14 Q. Okay. "I have been advised that Mrachek
14:51:43 15 represented those defendants."

16 What defendants are you referring to
17 there?

18 A. That would be the defendants with whom the
19 I will call it the settlement was reached with
14:51:55 20 regard to this matter.

21 Q. With regard to the Stansbury litigation?

22 A. Stansbury litigation.

23 Q. Is that what you were referring to there?

24 A. Stansbury litigation, yes.

14:52:05 25 Q. Okay. "And the position taken is not in

1 conflict or adverse to the estate's position;" do
2 you see that?

3 A. I see that.

4 Q. Okay. So that's what they told you?

14:52:16 5 A. Well, that was part of the discussion that
6 I had with Mr. Rose. And, of course, from looking
7 at the lawsuit itself the interest of the estate is
8 to pay as little as possible to your client, which
9 is also the position that's being advocated by
14:52:32 10 Mr. Rose. And was his position when he was
11 representing the defendants who were dismissed as a
12 result of your settlement.

13 Q. Would you agree with me in this waiver
14 that there's nowhere that you take that position,
14:52:47 15 but the only place you make reference to there not
16 being in conflict with at least the ongoing lawsuit
17 that Stansbury has with the Mrachek firm
18 representing the estate is that one sentence?

19 A. Just give me one moment just to look at
14:53:07 20 page three.

21 Q. Sure.

22 A. That's the primary section that would deal
23 with conflict or uses the terminology of
24 conflict --

14:53:20 25 Q. All right.

1 A. -- besides the last sentence.

2 Q. All right. And would you agree with me
3 that your statement here makes absolutely no
4 reference to Mrachek's, the Mrachek firm's activity
14:53:36 5 on behalf of Ted Bernstein in what we call the
6 Chicago litigation, whereas you saw there was a
7 deposition admitted into evidence in this
8 proceeding that shows Mr. Rose representing Mr. Ted
9 Bernstein in that deposition in the Chicago action?
14:53:54 10 Would you agree with me that your statement here
11 makes no reference to any potential conflict that
12 might create between the Mrachek law firm and the
13 estate?

14 A. Well, the language here doesn't make any
14:54:08 15 reference to the Chicago litigation and the estate,
16 that's correct. But there's no involvement either
17 past, present or future contemplated by Mr. Rose
18 representing the estate in connection with the
19 Chicago litigation.

14:54:26 20 Q. No involvement --

21 MR. ROSE: I would object before -- I
22 waited until he finished the question. This
23 has now vastly exceeded the length of his
24 direct examination and it's very --

14:54:34 25 THE COURT: You do need to wrap it up.

1 MR. ROSE: -- argumentative.

2 THE COURT: I am not handling the
3 argument.

4 MR. ROSE: I know.

14:54:39 5 THE COURT: We need to --

6 MR. FEAMAN: Thank you. Just one
7 follow-up on that.

8 THE COURT: Absolutely.

9 BY MR. FEAMAN:

14:54:46 10 Q. You said no involvement past. Okay. But
11 are you not aware of the deposition that Mr. Rose
12 attended and appeared on behalf of Ted Bernstein in
13 that Chicago litigation where he made objections
14 and even instructed Mr. Bernstein not to answer a
14:55:02 15 question in that litigation?

16 A. I think you might not have heard my whole
17 answer.

18 Q. Okay.

19 A. Regarding representing the estate. I am
14:55:10 20 talking about Mr. Rose not having any involvement
21 in the Chicago litigation representing the estate.

22 Q. But he certainly had involvement in the
23 Chicago litigation representing Ted Bernstein who
24 is suing the estate, correct?

14:55:23 25 MR. ROSE: Objection, cumulative.

1 THE COURT: I will allow it. Just answer
2 the question.

3 THE WITNESS: I just recall that based on
4 this deposition that, yes, went into evidence
14:55:33 5 earlier he represented Ted Bernstein as a
6 witness in a deposition.

7 THE COURT: This is the Court being just
8 particular about the exhibits. Is this an
9 extra copy for me that you gave me or was it
14:55:42 10 the actual exhibit?

11 MR. FEAMAN: The actual exhibit is in
12 front of the witness.

13 THE COURT: Okay. Thank you. I just
14 wanted to make sure before I put it with my
14:55:51 15 notes. Thank you.

16 MR. FEAMAN: I am almost done, Your Honor.

17 THE COURT: Thank you.

18 BY MR. FEAMAN:

19 Q. Now, going back to your statement that's
14:56:00 20 Trustee's Exhibit 1.

21 A. Okay.

22 Q. Right here.

23 A. Got it.

24 Q. I want to draw your attention to the third
14:56:14 25 paragraph of page two.

1 A. Yes, I am there.

2 Q. You state that "Some of the direct and
3 indirect beneficiaries of the estate I am
4 administering advise me," and then continuing on,
14:56:37 5 "the beneficiaries wanted Mrachek to represent the
6 estate in the Stansbury lawsuit."

7 So that gets me to ask the question, if
8 only some of them, who is not consenting?
9 Obviously we know Mr. Eliot Bernstein who we have
14:56:55 10 already established is a beneficiary of the Simon
11 Bernstein estate. Who else in addition to
12 Mr. Bernstein if only some want Mr. Rose and his
13 firm to come in?

14 A. I am not aware of any objections from
14:57:09 15 anyone other than Mr. Eliot.

16 Q. Do you have any in writing, any consents
17 in writing from anybody?

18 A. I am not sure. There could be e-mail
19 correspondence on this. That I am not positive.

14:57:24 20 Q. You didn't actually take the time to have
21 people sign consents, did you?

22 A. Not formal consents.

23 Q. Okay.

24 A. That's why my best recollection this was
14:57:34 25 discussions, perhaps e-mails, but probably more

1 likely telephonic discussions with the various
2 counsel.

3 Q. And when you say indirect beneficiary,
4 would you be referring to one of the grandchildren?

14:57:47 5 A. Correct, contingent type beneficiaries.

6 Q. Eliot's?

7 A. Yes, that's the reference.

8 Q. All right. Now, have you ever made an
9 investigation as to whether any of Eliot's children
14:57:56 10 have actually reached the age of capacity and are
11 no longer minors?

12 A. Again, I'd need to look at the file. He
13 might have one child who is an adult.

14 Q. Okay. So if he has one child that's an
14:58:13 15 adult, then a consent from the guardian ad litem
16 as to his position would no longer be valid, would
17 it?

18 MR. ROSE: Objection, I think it calls for
19 a legal conclusion.

14:58:21 20 THE COURT: Sustained.

21 MR. ROSE: I'd like to be heard.

22 THE COURT: Sustained.

23 MR. ROSE: Thank you.

24 MR. FEAMAN: No further questions.

14:58:25 25 THE COURT: Thank you. All right.

1 MR. ROSE: I only have one redirect.

2 THE COURT: Well, you would be allowed to
3 call him in your case in chief.

4 MR. ROSE: That's fine.

14:58:35 5 THE COURT: Mr. O'Connell, let me ask that
6 you get off the stand at this time.

7 THE WITNESS: Yes, Your Honor.

8 MR. ELIOT BERNSTEIN: Can I redirect a
9 question or two?

14:58:50 10 THE COURT: I didn't let him do it, so,
11 no, I am not letting you do it. I did not let
12 Mr. Rose do the same thing you are asking me to
13 do. That's what he asked me to do.

14 MR. ELIOT BERNSTEIN: He is allowed to
14:58:58 15 call him back up as part of the proceeding, you
16 said?

17 THE COURT: No, we are done with this
18 witness now. So we are going to proceed to the
19 next witness in Mr. Feaman's case. But we are
14:59:07 20 going to take six minutes because I have to use
21 the restroom. Thank you.

22 (Witness excused.)

23 (A recess was taken.)

24 THE COURT: Mr. Feaman, are you ready to
15:04:39 25 proceed with the next witness?

1 MR. FEAMAN: I have a few questions of
2 Mr. Rose.

3 THE COURT: Okay.

4 MR. ROSE: I guess I can't object to being
15:04:48 5 called as a witness.

6 THE COURT: I think in this proceeding for
7 the very limited purpose of his representation,
8 I think that if we keep it limited to that,
9 which is what the motion is about, clearly I
10 don't expect or anticipate that Mr. Feaman will
11 be asking about strategy or anything like that.
12 It would be for the limited purposes of
13 representation. If we go beyond then you are
14 going to have to object on your own behalf.

15:05:05 15 MR. ROSE: I'd like permission to object
16 on my own behalf.

17 THE COURT: That's what I said, you have
18 to. I don't know how else to proceed.

19 MR. FEAMAN: I have no objection.

15:05:24 20 THE COURT: Okay.

21 MR. ROSE: And then I also -- just to be
22 very -- you know, I'd object to Eliot being
23 able to cross-examine me or at least request
24 that the Court give him very narrow latitude.

15:05:36 25 THE COURT: He will have the same latitude

1 as Mr. Feaman. It will be strictly related to
2 whether or not he represents various parties,
3 the extent of his representation of parties.
4 That is the limits of Mr. Rose being allowed to
15:05:50 5 be questioned, because he is still counsel, and
6 the only issue is representation. You don't
7 have to believe him. You don't have to like
8 it. But it's limited to that. Fair enough?

9 MR. ROSE: Fair enough.

15:06:02 10 THE COURT: Fair enough, Mr. Feaman?

11 MR. FEAMAN: Yes.

12 THE COURT: Fair enough, Mr. Eliot?

13 MR. ELIOT BERNSTEIN: I am not sure.

14 THE COURT: Okay. That's honest.

15 - - -

16 Thereupon,

17 ALAN B. ROSE,

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

15:06:10 20 THE WITNESS: I do.

21 THE COURT: Have a seat. Again, see, the
22 Court's a little nervous about this one, so go
23 ahead.

24 ///

25 ///

1 DIRECT (ALAN B. ROSE)

2 BY MR. FEAMAN:

3 Q. Please state your name.

4 A. Alan Rose.

15:06:20 5 Q. By whom are you employed?

6 A. I am employed by the law firm Mrachek,
7 Fitzgerald, Rose, Konopka, Thomas and Weiss.

8 Q. And for how long?

9 A. Sixteen years plus.

15:06:33 10 Q. Okay. Now, you are aware that in the
11 Chicago litigation that the Estate of Simon
12 Bernstein was not originally a party to that
13 litigation, correct?

14 A. Correct.

15:06:50 15 Q. And you are aware that at some point the
16 estate, as shown by the exhibits here today,
17 intervened in that litigation, correct?

18 A. Yes, but if I can explain?

19 MR. FEAMAN: It's just yes or no so we can
15:07:07 20 move on, Your Honor.

21 THE COURT: I know the facts.

22 THE WITNESS: Okay.

23 MR. FEAMAN: Okay. Just want to set a
24 predicate.

15:07:12 25 THE COURT: Yes.

1 BY MR. FEAMAN:

2 Q. And would you agree with me, Mr. Rose,
3 that when a motion was filed to allow the estate,
4 Ben Brown was the curator then, do you recall that,
15:07:23 5 to allow the estate to intervene and Ben Brown was
6 the curator, and there was a motion filed in front
7 of Judge Colin, correct?

8 A. Technically I think what happened was you
9 filed a motion to appoint an administrator ad litem
15:07:41 10 for the Chicago action, and the judge appointed Ben
11 Brown as the administrator ad litem.

12 Q. Okay.

13 A. And I objected on behalf of the trustee.

14 Q. And you objected on behalf of the trustee
15:07:53 15 when there was a motion filed to obtain the Court's
16 permission to in fact intervene in the Chicago
17 lawsuit, correct?

18 A. I don't understand exactly. What I did
19 was on behalf of the trustee we did not want the
15:08:12 20 estate's money being spent in Illinois in a
21 lawsuit. We had a hearing, and Judge Colin allowed
22 the intervention conditioned on Mr. Stansbury
23 paying it. And once Mr. Stansbury was paying the
24 expenses, so therefore there's no risk to the
15:08:26 25 estate, it is a great deal and I am in favor of it,

1 and I have not been involved beyond that.

2 Q. So on behalf of the trustee, you are
3 talking about Ted Bernstein as the trustee which is
4 the pour over trust to the Simon Bernstein estate,
15:08:41 5 correct?

6 A. Correct, Ted Bernstein as the trustee of
7 the trust which is the sole residuary beneficiary
8 of this estate.

9 Q. Right. So on behalf of Ted Bernstein
15:08:49 10 trustee you did not want the estate to intervene to
11 make a claim toward the \$1.7 million dollars in
12 Chicago in that case where Ted Bernstein is an
13 individual plaintiff on his own in that case,
14 correct?

15:09:03 15 A. I disagree.

16 Q. He is not an individual plaintiff in the
17 Chicago lawsuit?

18 A. No, that's not the part I disagreed with.
19 The part I disagreed with was I disagree with the
15:09:12 20 what you called the intent. My concern is the
21 person who's a witness of material information in
22 the Illinois case, who I had spoken with and whose
23 testimony I believe convinced me that the estate
24 has a non-winning case, which is free to pursue so
15:09:29 25 long as it doesn't deprive the beneficiaries of

1 their remaining limited assets, which is not
2 happening now that Mr. Stansbury is funding the
3 litigation.

4 So I don't agree that the motive of why we
15:09:42 5 objected is what you did. We did not object to
6 them intervening per se. Only we objected to the
7 further drain of the very limited resources of this
8 estate.

9 Q. Sure. And now in fact, though, you are
15:09:54 10 aware that the attorney up in Chicago representing
11 the estate is now even willing to take it on a
12 contingency, isn't he?

13 A. I don't understand -- I don't know the
14 answer to that.

15:10:08 15 Q. Okay.

16 A. And I didn't understand the question
17 because it had a double negative.

18 Q. Well, you said it was a non-winner of a
19 case. Are you aware that the attorney in Chicago
15:10:16 20 now wants to take the case on a contingency whereby
21 nobody would risk any money?

22 A. I am aware that Mr. O'Connell has filed a
23 motion asking for that relief, which we oppose.

24 Q. Okay. And you oppose on behalf of the
15:10:29 25 trustee?

1 A. Correct, and the beneficiaries.

2 Q. Okay. And that's the same person that you
3 represent is the same person who is the plaintiff
4 in Chicago, correct?

15:10:37 5 A. Well, that's the next motion we are going
6 to decide after this hearing, but -- and the judge
7 will decide the issue.

8 Q. I just want to establish and then I am
9 done. I just want to establish that you
15:10:47 10 represented Ted Bernstein as the successor trustee
11 to the pour over trust, not wanting the estate to
12 intervene in a case where that same client that you
13 represent was a plaintiff opposing the estate in
14 Chicago; is that correct?

15:11:03 15 A. I don't think that's an accurate
16 statement. And I think Mr. O'Connell was aware of
17 all that when he consented to our representation.

18 Q. And one more thing. You were here in the
19 court when Mr. O'Connell said that Mr. Bernstein,
15:11:19 20 Eliot, Mr. Eliot was a beneficiary of the Estate of
21 Simon Bernstein, correct? Correct? It's a
22 perfunctory. You heard him say that?

23 A. I didn't -- I blanked out on the question.

24 THE COURT: That's okay.

15:11:35 25 THE WITNESS: I apologize.

1 THE COURT: That's okay. We'll just have
2 it read back.

3 THE WITNESS: I was thinking about
4 something else.

15:11:38 5 THE COURT: That's okay. Let's have the
6 question read back.

7 BY MR. FEAMAN:

8 Q. You were here when Mr. O'Connell said that
9 Mr. Eliot is a beneficiary of the Simon Bernstein
10 estate, correct?
15:11:47

11 A. I was here when he said it. I have said
12 it. I don't dispute it. I have told the judge
13 that. I don't understand. For tangible personal
14 property.

15:11:55 15 Q. Okay.

16 THE COURT: What am I being handed?

17 BY MR. FEAMAN:

18 Q. I am handing you a pleading that you filed
19 in September 2015 entitled Trustee's Omnibus Status
20 Report and Request for Case Management Conference.
15:12:08

21 And the very first page you said, relating to
22 Mr. Eliot, he is not a named -- he is not named as
23 a beneficiary of anything. And it's in the Estate
24 of Simon Bernstein. So my question is when did you
15:12:25 25 suddenly become aware that he is a beneficiary of

1 the estate?

2 A. That sentence is -- I now see that
3 sentence is technically wrong. It's not -- I am
4 talking about where the money is and the money is
15:12:37 5 in the trust. He is not a beneficiary of the
6 trust. I may have made a misstatement.

7 THE COURT: Are you asking me to take this
8 into evidence?

9 MR. FEAMAN: Yes.

15:12:45 10 THE COURT: Objection?

11 MR. ROSE: No. It's in the court file.

12 THE COURT: I know. Let me just mark it.

13 MR. FEAMAN: No further questions.

14 THE COURT: All right.

15:12:55 15 MR. ELIOT BERNSTEIN: Can I?

16 THE COURT: Not yet. I can only mark and
17 think in small little doses.

18 And am I missing any exhibits up here,
19 Mr. Feaman?

15:13:09 20 MR. FEAMAN: I don't believe so, Your
21 Honor.

22 THE COURT: You had given Mr. O'Connell an
23 original. I just want to make sure it's
24 returned. I am very particular. I make myself
15:13:18 25 nuts. But nonetheless, we are stuck with me.

1 It was Number 1, the waiver. Did the original
2 waiver come back?

3 MR. FEAMAN: Yes, Your Honor.

4 THE COURT: Okay. Thank you. All right.

15:13:38 5 So Number 9 is entered into evidence.

6 (Claimant Stansbury's Exb. No. 9,
7 Pleading.)

8 THE COURT: Limited to what he discussed,
9 Mr. Eliot.

15:13:49 10 MR. ELIOT BERNSTEIN: Your Honor, I kind
11 of object that I didn't have time to prepare.
12 I didn't know this would be a witness today.
13 It wasn't on the witness list.

14 THE COURT: So noted.

15:13:56 15 MR. ELIOT BERNSTEIN: No time to prepare
16 proper questioning.

17 THE COURT: Okay.

18 MR. ELIOT BERNSTEIN: So I am just going
19 to wing it for a moment.

15:14:00 20 CROSS (ALAN B. ROSE)

21 BY MR. ELIOT BERNSTEIN:

22 Q. Mr. Rose, can you state your name and
23 address for the record.

24 THE COURT: We already had that.

15:14:06 25 MR. ELIOT BERNSTEIN: Oh, okay.

1 BY MR. ELIOT BERNSTEIN:

2 Q. Your Florida Bar number?

3 A. It's in evidence in every paper I file.

4 Q. You don't know it?

15:14:19 5 A. I do know it, 961825.

6 Q. Thank you.

7 You said to the Court today that Judge
8 Phillips entered an order from the validity hearing
9 stating that I was not a beneficiary and had no
10 standing; is that correct?
15:14:37

11 A. The validity trial resulted in a final
12 judgment. Thereafter there were a series of
13 hearings before Judge Phillips where he made what I
14 would call follow-on rulings that would implement
15 the result of the final judgment dated December 15,
16 2015.
15:14:53

17 Q. Well, you actually claimed to the Court
18 repeatedly that Judge Phillips on December 15th
19 ruled that, and you actually led the judge to
20 believe that and she said, oh, I am relying on that
15:15:10 21 order.

22 MR. ELIOT BERNSTEIN: I urge you, Your
23 Honor, to look up on that order on that
24 validity hearing --

15:15:17 25 THE COURT: We are going past --

1 (Overspeaking.)

2 MR. ELIOT BERNSTEIN: Oh, it's very
3 central to this, meaning that he made a
4 statement to the Court today --

15:15:23 5 THE COURT: Please, next question. Next
6 question.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Has there been a construction hearing of
9 who the beneficiaries are in any of these cases?

15:15:32 10 A. There was a final judgment that
11 resolved --

12 Q. Yes or no to the question. Was there a
13 construction hearing in any of these cases?

14 A. The construction matter that's in Count I
15:15:45 15 has been settled by agreement of all the
16 beneficiaries.

17 Q. And I am a beneficiary?

18 A. You are not a beneficiary of the trust,
19 the Shirley Bernstein Trust, which was the sole
15:15:57 20 subject of the construction proceeding. The only
21 thing relevant to the estate that was tried in this
22 case number 3698 was the narrow issue of whether
23 Simon Bernstein's will dated July 25, 2012, was
24 valid and enforceable according to its terms.

15:16:13 25 Q. So there has been no formal construction

1 hearing? You are basing it off of a validity
2 hearing?

3 A. There's nothing to construe with the will.
4 The will has never been challenged. Well, you have
15:16:25 5 challenged that the will is valid, but no one has
6 said that the will needed any construction. And
7 the only issue that needed some construction was
8 inside the Shirley Bernstein Trust. Before Judge
9 Colin would allow that issue to be heard, he wanted
15:16:38 10 a narrow issue tried, which is which documents were
11 valid so that we didn't construe a trust that he
12 later determined was invalid. And once he ruled
13 that and we had a guardian ad litem appointed to
14 protect the trust interests of all the
15:16:52 15 beneficiaries who were being represented by you,
16 then everyone entered into a mediated settlement
17 agreement that is one of the motions we are going
18 to seek approval for later today, including the
19 court-appointed guardian ad litem.

15:17:06 20 Q. Is your answer no, there was no
21 construction hearing in any of these cases?

22 A. I think I have answered your question.

23 Q. You haven't.

24 THE COURT: Okay. Let's move on because
15:17:15 25 this is about whether or not --

1 MR. ELIOT BERNSTEIN: Well, can I get an
2 answer to the question or show that he is
3 nonresponsive?

4 THE COURT: He did answer.

15:17:19 5 MR. ELIOT BERNSTEIN: Well, he didn't. He
6 answered something else.

7 THE COURT: Don't argue with me, please.
8 I understood. Certain things have been
9 determined and certain things haven't been
10 determined.

11 MR. ELIOT BERNSTEIN: Well, he is
12 misrepresenting what was determined, and that's
13 a serious problem.

14 THE COURT: Mr. Eliot?

15:17:31 15 MR. ELIOT BERNSTEIN: And it's exactly
16 moved to --

17 THE COURT: Mr. Eliot? Mr. Eliot?

18 MR. ELIOT BERNSTEIN: Yes, ma'am.

19 THE COURT: Remember I said you don't have
15:17:36 20 to like his answers?

21 MR. ELIOT BERNSTEIN: Oh, okay.

22 THE COURT: You don't have to like them.

23 MR. ELIOT BERNSTEIN: I just want the
24 truth. Okay.

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. At that validity hearing was the estate
3 represented by counsel?

4 A. As I explained earlier, Mr. O'Connell
15:17:59 5 entered into a stipulation that was, I think,
6 approved by Judge Colin or Judge Phillips that he
7 did not need to attend the hearing; he would abide
8 by the ruling to conserve resources.

9 So Mr. O'Connell was not technically
15:18:12 10 there. But what I was doing and what Ted Bernstein
11 as trustee was doing, we were advocating the
12 validity of the documents. So we were asserting
13 the position that Mr. O'Connell would have wanted
14 to assert, which is that the will was valid. So he
15:18:25 15 wasn't -- technically the estate wasn't represented
16 but their interests were being pushed by the
17 movant, the complainant, the plaintiff.

18 Q. Did you have a construction hearing in
19 Simon Bernstein's estate to determine the
15:18:36 20 beneficiaries?

21 A. It was not necessary.

22 Q. Okay. To your knowledge has Ted Bernstein
23 ever notified who you claim the beneficiaries are,
24 the grandchildren, that they are beneficiaries?

15:18:51 25 A. Under the terms of Simon Bernstein's trust

1 and also under his power of appointment, he
2 appointed the assets of the Shirley Bernstein Trust
3 into his trust to be distributed on the same terms.
4 The beneficiaries, technically ten trusts, none of
15:19:06 5 the grandchildren are individually beneficiaries.
6 There are ten trusts created. Each trust needs a
7 beneficiary. And because we don't have a
8 beneficiary for three of the trusts that Eliot
9 refused to serve, there's a guardian ad litem
15:19:18 10 appointed. But none of the grandchildren are
11 individually beneficiaries. They are indirect
12 beneficiaries through trusts created under Simon's
13 testamentary documents.

14 THE COURT: Understand.

15:19:27 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. Under those testamentary documents
17 do you have those trusts for each of the
18 grandchildren?

19 THE COURT: Mr. Bernstein?

15:19:34 20 MR. ELIOT BERNSTEIN: Yes.

21 THE COURT: Mr. Eliot, I am sorry, this is
22 about whether we remove him or not. It's not
23 -- it's like, in other words, you are getting
24 into bigger issues and fights that are for a
15:19:44 25 later day.

1 MR. ELIOT BERNSTEIN: Okay. Okay. I got
2 it.

3 THE COURT: We've got to stay on
4 Mr. Feaman's, Mr. William Stansbury, he
15:19:50 5 shouldn't represent.

6 MR. ELIOT BERNSTEIN: Okay.

7 BY MR. ELIOT BERNSTEIN:

8 Q. Were you party to the negotiated
9 settlement with Mr. Stansbury?

15:20:02 10 A. I am aware that there --

11 Q. Yes or no?

12 A. I am not a party to it.

13 Q. Were you a party to the settlement? Were
14 you there at the settlement with Mr. Stansbury?

15:20:11 15 A. Well, I am saying -- I was answering I am
16 not a party to it. But I am aware there were
17 settlement discussions. I have encouraged
18 settlement discussions that Mr. Stansbury has. He
19 entered into, I think, one agreement that was --

15:20:26 20 MR. FEAMAN: Objection. If the question
21 talks of -- the settlement was at a mediation.
22 So if the settlement with regard to
23 Mr. Bernstein and some of the other defendants
24 by Mr. Stansbury in the Stansbury action, if
15:20:39 25 it's questions about what happened at the

1 mediation, I would object because that's
2 confidential.

3 THE COURT: Let me --

4 MR. ELIOT BERNSTEIN: I am just asking if
15:20:46 5 he was there.

6 THE COURT: Whether or not he was there is
7 not confidential. Let me clarify something
8 that may be kicking up a little. He is not a
9 party. He might be an attorney for a party.

10 MR. ELIOT BERNSTEIN: A person, sorry.
15:20:56

11 THE COURT: No, I am only saying because
12 some of what you may interpret as being
13 defensive is just he is not a party, just like
14 no other lawyer is a party to a lawsuit.

15 MR. ELIOT BERNSTEIN: Right.
15:21:07

16 BY MR. ELIOT BERNSTEIN:

17 Q. Were you a person at the settlement?

18 THE COURT: And also let me also tell you
19 Mr. Feaman is correct and on point that you can
15:21:17 20 ask if he was present. Those negotiations are
21 confidential under law.

22 MR. ELIOT BERNSTEIN: I am not going to
23 ask that.

24 THE WITNESS: I think my answer does not
15:21:26 25 involve anything that happened at mediation.

1 If Mr. Bernstein would just step slightly to
2 the side, Mr. Feaman can correct me if I am
3 wrong. But I believe there was a written
4 settlement agreement between Mr. Stansbury and
15:21:38 5 Mr. O'Connell as the personal representative
6 that was presented to the Court that has
7 nothing to do with the mediation.

8 BY MR. ELIOT BERNSTEIN:

9 Q. No, I am talking about the Shirley trust
15:21:47 10 settlement, not the Simon settlement that you also
11 negotiated?

12 A. Was I present? I attended a mediation.

13 THE COURT: Okay.

14 BY MR. ELIOT BERNSTEIN:

15:21:54 15 Q. Did you represent any parties at that
16 mediation?

17 THE COURT: Settlement discussions and who
18 he represented -- I am --

19 MR. ELIOT BERNSTEIN: I just need to know
15:22:08 20 which parties he represented --

21 THE COURT: I know, but --

22 MR. ELIOT BERNSTEIN: -- to show a
23 conflict, Your Honor.

24 THE COURT: Not at the mediation. You can
15:22:13 25 pick another thing. If he is in court, if he

1 is at a discovery.

2 BY MR. ELIOT BERNSTEIN:

3 Q. Did you represent any parties in the
4 settlement?

15:22:21 5 THE COURT: Place your objection on the
6 record.

7 MR. ROSE: I am concerned that --

8 THE COURT: He could also violate
9 attorney/client privilege.

15:22:30 10 MR. ELIOT BERNSTEIN: I am not going to
11 ask him any questions about the settlement.

12 THE COURT: I know. But the -- I
13 understand you are not trying to go outside the
14 bounds. I am going to ask you to ask another
15:22:39 15 question because I don't want to put him in a
16 position of violating.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: But at the same time I am
19 trying to have your --

15:22:47 20 MR. ELIOT BERNSTEIN: Got you.

21 THE COURT: And if you could stick to
22 things that happened in court, because things
23 that happened in court are public record.

24 BY MR. ELIOT BERNSTEIN:

15:22:57 25 Q. Do you represent Ted Bernstein as a

1 defendant in the Stansbury action?

2 A. I do not. I did at one point in time.

3 Q. Did you also simultaneously represent Ted
4 Bernstein as the trustee for the Shirley Bernstein
15:23:18 5 Trust?

6 A. I did represent Ted Bernstein as the
7 trustee of the Shirley Bernstein Trust in the
8 Stansbury litigation defending the interests of the
9 trust, just as we proposed to defend the interests
15:23:33 10 of the estate. And I represented Ted Bernstein as
11 trustee of the Shirley Bernstein Trust in
12 proceedings in the probate court, various
13 proceedings.

14 Q. Okay. You stated today that you had
15:23:45 15 consent of all the beneficiaries. And Mr. Feaman
16 adequately asked you, am I a beneficiary of the
17 Simon estate? Yes or no? I don't need an
18 explanation.

19 A. The question has a --

15:24:09 20 MR. FEAMAN: Objection, asked and
21 answered.

22 MR. ELIOT BERNSTEIN: (Inaudible).
23 (Overspeaking.)

24 THE REPORTER: Excuse me.

25 MR. ELIOT BERNSTEIN: Sorry.

1 MR. FEAMAN: Object, asked and answered.

2 THE WITNESS: I did not --

3 THE COURT: Sustained. It's been
4 established that you are a tangible beneficiary
15:24:16 5 of the Simon Bernstein estate.

6 MR. ELIOT BERNSTEIN: Actually I don't
7 think there's a term tangible beneficiary. I
8 am a beneficiary of tangible property; is that
9 correct, for the record?

10 THE COURT: That is correct, you actually
11 did correct me.

12 MR. ELIOT BERNSTEIN: Got to be careful,
13 because that's -- there's a misinterpretation
14 going on.

15:24:34 15 BY MR. ELIOT BERNSTEIN:

16 Q. Okay. You said you had consent of all
17 beneficiaries to move forward on this settlement or
18 to have Ted come into this case. Do you have my
19 consent as a beneficiary?

15:24:48 20 A. I think what we said was they had the
21 consent of the direct and indirect beneficiaries of
22 the trust. I think what it actually says is that
23 Mr. O'Connell has the consent of the beneficiary,
24 which is Ted Bernstein as trustee, who is the
15:25:05 25 residuary beneficiary. And then all the indirect

1 beneficiaries who are the trustees of the ten
2 trusts, which is there are seven trusts for
3 grandchildren whose trustee is their parent who
4 have consented, and there are three trusts for
15:25:22 5 Eliot's children whose guardian has consented.

6 So the statement was intended to state
7 that consent was obtained from the direct
8 beneficiary -- residuary beneficiary, all of the
9 indirect beneficiaries. And in addition -- well,
15:25:44 10 that's....

11 Q. Were you aware at the time of the
12 guardianship hearings that gave Diana Lewis
13 guardianship power of my children that one of the
14 children was an adult child over the age of 18?

15:26:00 15 A. As I have explained, Your Honor, our view
16 of the interests and who are technically the
17 beneficiaries being trusts, it's also that issue
18 was appealed and the appeals have been dismissed at
19 the Fourth and at the Supreme Court. So I don't
15:26:14 20 think we are relitigating the issue of guardian ad
21 litem.

22 THE COURT: Okay. I want you to wrap up
23 this line of questioning because it was very
24 limited. One more question.

15:26:21 25 MR. ELIOT BERNSTEIN: Okay.

1 BY MR. ELIOT BERNSTEIN:

2 Q. So are you saying unequivocally that you
3 have consent of all the beneficiaries to Ted
4 Bernstein representing the estate of Simon, not the
15:26:34 5 trusts, the estate of Simon?

6 A. Well, I don't have your -- of everyone,
7 you would be the one person if we needed your --

8 Q. Yes or no, do you have consent of all?

9 THE COURT: Do not raise your voice. Do
15:26:51 10 not raise your voice.

11 MR. ELIOT BERNSTEIN: I am sorry, it's
12 getting difficult with these side tracks.

13 BY MR. ELIOT BERNSTEIN:

14 Q. Please, simple, do you have consent of all
15:26:58 15 the beneficiaries of the Simon estate, yes or no?

16 MR. ELIOT BERNSTEIN: Sorry.

17 THE COURT: That's okay.

18 MR. ELIOT BERNSTEIN: I am just
19 passionate.

15:27:07 20 THE WITNESS: To the extent that you are a
21 beneficiary, no.

22 BY MR. ELIOT BERNSTEIN:

23 Q. Okay.

24 THE COURT: Okay?

25 ///

1 BY MR. ELIOT BERNSTEIN:

2 Q. So that would be a no, correct?

3 THE COURT: He said no.

4 MR. ELIOT BERNSTEIN: Okay. Quantified it
15:27:17 5 or something.

6 THE COURT: That's it. Okay.

7 MR. ELIOT BERNSTEIN: Oh, can I ask one
8 last question?

9 THE COURT: One last question.

10 15:27:23 BY MR. ELIOT BERNSTEIN:

11 Q. Are you aware that two of my children are
12 adults and that there's never been a competency
13 hearing on either of them?

14 A. Well, I have testified to the structure of
15 15:27:34 the documents, and so I don't think I can answer
16 the question.

17 Q. So have you contacted my children --

18 THE COURT: All right.

19 BY MR. ELIOT BERNSTEIN:

20 15:27:44 Q. -- regarding settlement?

21 THE COURT: That's enough. Stop.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Do you have your own --

24 MR. ROSE: No questions.

25 15:27:50 THE COURT: You are good? Okay.

1 Mr. Feaman, any other witnesses?

2 MR. FEAMAN: I rest, Your Honor.

3 THE COURT: All right.

4 (Witness excused.)

15:27:56 5 MR. ELIOT BERNSTEIN: And I reserve my
6 rights to, you know, challenge this whole
7 hearing as part of a sham. I didn't have time.

8 THE COURT: Okay.

9 MR. ELIOT BERNSTEIN: You knew I was
15:28:03 10 medically unfit for three weeks. You have
11 medical evidence of that. And I am really
12 sorry you moved this way instead of you
13 allowing all this fraud to come out first. We
14 have wasted a lot of time and money, as they've
15:28:14 15 done all along with this nonsense.

16 THE COURT: Okay.

17 MR. ELIOT BERNSTEIN: By the way, Your
18 Honor, we are here all these years later
19 because Ted Bernstein's counsel committed fraud
15:28:25 20 and forgery to this Court, fraud on this Court.

21 THE COURT: All right.

22 MR. ELIOT BERNSTEIN: And Mr. Rose was one
23 of the people brought in by those people.

24 THE COURT: That's enough of a statement.

15:28:33 25 That was totally --

1 MR. ELIOT BERNSTEIN: Well, I didn't get
2 an opening so I am sorry to try to --

3 THE COURT: But you were late. But you
4 were late.

15:28:40 5 MR. ELIOT BERNSTEIN: I was sick.

6 THE COURT: Either way.

7 MR. ELIOT BERNSTEIN: And I petitioned.
8 It seems to have no compassion of this Court.

9 THE COURT: If -- I will not, if you
15:28:49 10 noticed, I don't tolerate disrespect from
11 anyone else. You have been very kind until
12 now. Let's not change it.

13 MR. ELIOT BERNSTEIN: Yes. Oh, and, Your
14 Honor, we have to go at the appointed time. I
15:29:08 15 thought that it was 3:30. But we have
16 commitments that we have to walk out this door
17 at 3:30, if that's okay?

18 THE COURT: Whatever you feel is
19 appropriate. I am going to continue until
15:29:16 20 4:30.

21 MR. ELIOT BERNSTEIN: Didn't you schedule
22 only for two hours? I am confused. Because
23 that would totally kill me.

24 THE COURT: Let me look at the order.

15:29:23 25 MR. ELIOT BERNSTEIN: Okay. Thank you.

1 THE COURT: I have it right here.

2 MR. ELIOT BERNSTEIN: Okay.

3 THE COURT: It says the continuation
4 hearing being held -- oh, this was just that
15:29:37 5 one. Does anybody have -- I do. Hold on. It
6 does indicate two hours were reserved.

7 MR. ELIOT BERNSTEIN: I am really sorry,
8 and I am going to have to go at the exact
9 minute. I have a child that is in need. And I
15:29:59 10 have been really sorry about that. But if you
11 want to continue without me, that's your
12 prerogative.

13 THE COURT: I did schedule this for two
14 hours.

15:30:10 15 MR. ELIOT BERNSTEIN: Yes, that was my
16 understanding.

17 THE COURT: This Court is very aware of
18 what needs to be done with regards to appellate
19 purposes. I scheduled this for two hours. I
15:32:06 20 will stick to that commitment. In two weeks we
21 will come back. Unless you have a trial or you
22 are having surgery, you will be here on the
23 date I am going to announce. Do we all
24 understand each other?

15:32:17 25 MR. FEAMAN: Yes, Your Honor.

1 THE COURT: We understand each other? I
2 am going to move something to make sure that we
3 come back in two weeks. And I am going to give
4 you a two-hour block. We are going to
15:32:28 5 conclude, if nothing else, this particular
6 matter on whether or not the part -- because it
7 will be too prejudicial to the parties to
8 continue beyond two hours.

9 Mr. Eliot is correct, I scheduled this for
15:32:41 10 two hours. He was within his rights. If a
11 lawyer asked me and said, I had this exact
12 circumstance occur yesterday, and I ended at
13 4:30 because someone had told me I had only
14 discussed 'til 4:30. So I am giving you the
15:32:56 15 same courtesy --

16 MR. ELIOT BERNSTEIN: I appreciate that.

17 THE COURT: -- I would extend to a lawyer.

18 MR. ROSE: Just briefly, Judge.

19 THE COURT: Yes.

15:33:01 20 MR. ROSE: I would suggest since the
21 evidence is closed we could submit written
22 final argument and --

23 THE COURT: You don't intend on calling
24 any other parties?

15:33:11 25 MR. ROSE: I mean, I don't think they've

1 made their case, and I have -- I mean, I would
2 move for involuntary denial of their motion
3 without having to put on evidence which in a
4 bench trial is a procedure. I don't know if
15:33:22 5 you want to hear evidence from me. I think you
6 have heard the evidence. But, you know, my
7 goal is to get beyond this because we have --

8 THE COURT: I would do that. I would
9 receive written closings from everyone, and I
10 will issue an order.

11 MR. ROSE: That's fine. And then we can
12 still set the other matters if you have two
13 hours --

14 THE COURT: I will give it to you.

15:33:40 15 MR. ELIOT BERNSTEIN: If that's the case,
16 then I would rather not schedule some
17 indiscriminate date. I don't know all of my
18 kids' schedules.

19 THE COURT: No, that's not how it works.
15:33:50 20 Sorry, I wouldn't give --

21 MR. ELIOT BERNSTEIN: I can't look at my
22 schedule?

23 THE COURT: You can look at your schedule
24 right now.

15:33:53 25 MR. ELIOT BERNSTEIN: I can't.

1 THE COURT: Well, then that's an
2 obligation. This Court --

3 MR. ELIOT BERNSTEIN: I have three kids
4 with obligations. I've got games --

15:34:00 5 THE COURT: If you can imagine if I let
6 everybody do that to me I would never get
7 anything set.

8 MR. ELIOT BERNSTEIN: Can't we agree on a
9 time when we get back like we always do for a
15:34:09 10 hearing?

11 THE COURT: No, we don't always do that.
12 I tell you a date.

13 MR. ELIOT BERNSTEIN: I thought that's how
14 we have been doing it.

15:34:15 15 THE COURT: I am going to -- I am not
16 promising you I will have an order done,
17 though, that's the problem, on this case by the
18 time you come back. How can I --

19 MR. ROSE: This is a very narrow issue. I
15:34:33 20 mean, there's no issue with I am going to be
21 involved in the estate proceedings either way.

22 THE COURT: Okay.

23 MR. ROSE: It's just a question of whether
24 I am going to be handling --

15:34:39 25 THE COURT: Okay. We can do that.

1 MR. ROSE: We can do everything else.

2 THE COURT: All right. March 16th, 2:00
3 o'clock, from 2:00 to 4:00.

4 MR. ELIOT BERNSTEIN: And, Your Honor, can
15:34:47 5 I ask? I put in a motion to vacate that we
6 haven't heard that would solve having any of
7 these hearings, based on the fraud that you
8 have seen in this court already, with him
9 changing statements that I am not a
15:34:58 10 beneficiary, beneficiary, not.

11 THE COURT: These have been -- we'll
12 decide when that will be heard next. These
13 have been rescheduled and rescheduled and
14 rescheduled on the docket.

15:35:06 15 MR. ELIOT BERNSTEIN: But that fraud issue
16 that you are not aware of in that motion to
17 vacate would preclude them from even
18 representing, because they've been misleading
19 this Court in fraud.

15:35:17 20 THE COURT: I have made my ruling.

21 MR. ELIOT BERNSTEIN: Thank you. Have a
22 good day.

23 THE COURT: I will have written rulings --
24 but I have to give you a date --

15:35:22 25 MR. ELIOT BERNSTEIN: Oh.

1 THE COURT: -- because you need to know
2 when I need the closing. March 16th, 2:00
3 o'clock, my JA will send out an order on things
4 that were not heard today. And I have that
15:35:32 5 order here. So --

6 MR. ROSE: I think we need to clarify too
7 because your case management order --

8 MR. FEAMAN: I didn't think Her Honor was
9 done.

15:35:40 10 THE COURT: I am not. I am not. Sit down
11 for a second. Thank you.

12 All right. I am looking at the order I am
13 relying on which ending this now that gave two
14 hours. The attorneys will submit written
15:35:53 15 closings on -- ready? And I am giving you,
16 they can be no more than ten pages in total,
17 written closings limited to ten pages double
18 spaced. Do not give me a single spaced ten
19 page, 25 page. Ten pages, single spaced --

15:36:18 20 MR. FEAMAN: Double spaced.

21 THE COURT: I am sorry, thank you, double
22 spaced. And that is on Stansbury's motion to
23 vacant, don't forget I have been briefed and
24 re-briefed, and Stansbury's motion to
15:36:30 25 disqualify. Okay? I would like those within

1 two weeks. So by March 16th the closings.

2 MR. ELIOT BERNSTEIN: Your Honor, could I
3 put in a pleading then? I mean, I was out.
4 You have a medical doctor saying that I was out
15:36:47 5 for three weeks heavily medicated. I still am
6 recovering.

7 THE COURT: Mr. Eliot?

8 MR. ELIOT BERNSTEIN: Yes, ma'am.

9 THE COURT: You are going to let me
15:36:54 10 finish.

11 MR. ELIOT BERNSTEIN: Okay.

12 THE COURT: And you keep interrupting me
13 and telling me --

14 MR. ELIOT BERNSTEIN: Pardon.

15:36:58 15 THE COURT: No. You keep telling me why I
16 can't do what I am going to do.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: And I am going to do it.

19 MR. ELIOT BERNSTEIN: Okay.

15:37:02 20 THE COURT: And then you can put
21 everything you want on the record, all right?

22 MR. ELIOT BERNSTEIN: All right.

23 THE COURT: Give me a second.

24 MR. ELIOT BERNSTEIN: Sure.

15:37:07 25 THE COURT: Written closings actually I am

1 only making it a week. I want them before
2 then. I want them by March 9th. Written
3 closings by March 9th, ten pages, double
4 spaced.

15:37:19 5 Our next hearing will be March 16th which
6 will be the trustee's motion to approve
7 retention of counsel and the trustee's ominous
8 response and reply, will be March 16th for two
9 hours.

15:37:34 10 MR. ROSE: I am going to interrupt. I
11 think technically I have one clarification. I
12 don't want to speak to Mr. Feaman directly. If
13 there's not going to be any additional evidence
14 on the motion to appoint Ted as guardian ad
15:37:48 15 litem, I mean as administrator ad litem, it's
16 the same issue with the conflict and all that,
17 we could submit written closings --

18 MR. FEAMAN: I concur.

19 MR. ROSE: -- on both of those.

15:37:55 20 THE COURT: No.

21 MR. ROSE: If not, then that's the next
22 motion.

23 THE COURT: That's the next motion.
24 That's what I am saying, the trustee's motion
15:38:03 25 to -- it's the administrator ad litem.

1 MR. ROSE: Yes.

2 MR. FEAMAN: Right.

3 THE COURT: Right. That's 3/16 I said,
4 March 16th.

15:38:10 5 MR. FEAMAN: Okay.

6 THE COURT: And we have the omnibus reply,
7 and Stansbury's motion for credit or discharge
8 will be 3/16. That's all I am setting for 3/16
9 because I have got two hours, and I have
10 watched how things have proceeded. Everything
11 else will be handled in due course. All right?
12 Thank you.

13 MR. O'CONNELL: Your Honor, could I just
14 make a statement on the record about the 16th,
15 not to change the date? But I personally
16 wouldn't be able to appear. So I just want
17 everyone to know that. If you want to call me
18 as a witness I am happy to be deposed.

19 THE COURT: Fair enough. They all know he
15:38:56 20 is not available and they can depose him if he
21 is not going to be here.

22 MR. O'CONNELL: And I will have someone
23 from my office here on behalf of the estate.

24 THE COURT: All right. Thank you.

15:39:03 25 MR. O'CONNELL: Just so the Court is

1 aware.

2 MR. ELIOT BERNSTEIN: I don't think we
3 need him as witness, do we?

4 THE COURT: I can't make that decision.

15:39:08

5 All right. Court is in recess.

6 MR. ROSE: Thank you, Your Honor.

7 THE COURT: Thank you.

8

9 (The proceedings adjourned at 3:39 p.m.)

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C E R T I F I C A T E

- - -

The State of Florida
County of Palm Beach

I, Lisa Mudrick, RPR, FPR, certify that I was authorized to and did stenographically report the foregoing proceedings, pages 119 through 241, and that the transcript is a true record.

Dated March 8, 2017.



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

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

/

PROCEEDINGS BEFORE
THE HONORABLE ROSEMARIE SCHER
VOLUME III

Thursday, March 16, 2017

North County Courthouse

3188 PGA Boulevard

Palm Beach Gardens, Florida 33410

2:00 p.m. - 4:20 p.m.

Reported by:

Joyce A. Halverson, Court Reporter

Notary Public, State of Florida

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- - -

1 BE IT REMEMBERED that the following
2 proceedings were had in the above-styled and
3 numbered cause in the North County Courthouse, City
4 of Palm Beach Gardens, County of Palm Beach, in the
5 State of Florida, before the Honorable Rosemarie
6 Scher, Judge of the above-named Court, on Thursday,
7 the 16th day of March, 2017, at 2:00 p.m., to wit:

8 - - -

9 THE COURT: Have a seat. Thank you so
10 much. Thank you all for being on time.
11 Appreciate it. I have the wrong document.
12 Sorry. All right. One second. I have left
13 something on my desk.

14 Okay. Appearances for the record, please,
15 starting on the far left.

16 MR. FEAMAN: Thank you. Peter Feaman,
17 Your Honor, on behalf of William Stansbury.
18 With me in court today is my law partner, Jeff
19 Royer, and Mr. Stansbury is here in court today
20 and his wife, Eileen Stansbury.

21 THE COURT: Thank you.

22 MR. ELIOT BERNSTEIN: Eliot Bernstein pro
23 se, Your Honor, and my wife.

24 THE COURT: Okay. Thank you.

25 MR. ROSE: Alan Rose, Your Honor, on

1 behalf of Ted Bernstein as trustee. Along with
2 me is Ted S. Bernstein and my associate,
3 Michael Kranz.

4 MR. ROTHMAN: Zac Rothman just to observe
5 for Brian O'Connell.

6 THE HONORABLE DIANA LEWIS: Diana Lewis,
7 Guardian Ad Litem for the Eliot Bernstein
8 children.

9 CINDY SWINAN: Cindy Swinan and my son
10 Keith and we are here in support of the
11 Bernsteins.

12 THE COURT: Okay. Don't take this wrong.
13 That doesn't narrow it down for me. Which
14 particular Bernsteins?

15 CINDY SWINAN: Eliot.

16 THE COURT: I didn't mean to be
17 disrespectful. Like I always refer to Mr.
18 Eliot as Mr. Eliot and Mr. Ted as Mr. Ted just
19 because, without disrespect, because we have a
20 lot of Bernsteins. All right. Thank you.

21 We are here pursuant to my order that was
22 issued on March 3rd. We'll start with
23 Trustee's Motion to Approve Retention of
24 Counsel -- and we have taken care of that one
25 -- to Appoint Ted S. Bernstein as

1 Administrator Ad Litem to Defend Claim Against
2 Estate by William Stansbury, Docket Entry 471.

3 Mr. Rose, you may begin.

4 MR. ROSE: Thank you. Do you want opening
5 or just witnesses? Five minute opening?

6 THE COURT: Sure. Five minutes per side.
7 I'm going to time it just because we are going
8 to end these two motions today and I am
9 diligently working on an order for you all.

10 MR. ROSE: From the podium?

11 THE COURT: Wherever you're comfortable.
12 Thank you.

13 MR. ROSE: So we are here on the second
14 half of the motion and Mr. O'Connell's
15 testimony -- there is an agreement that Mr.
16 Feaman and I reached on the record at the
17 deposition on Monday that Mr. O'Connell's
18 testimony from the prior hearing is, it's one
19 motion, is usable for the purpose of this
20 hearing. So we are going to --

21 THE COURT: Give it to the clerk,
22 hopefully.

23 MR. ROSE: We could or just the relevant
24 parts. But it was one motion. This is a
25 continuation of the same evidentiary hearing so

1 rather than asking the same questions, we have
2 agreed that his testimony is in the record.

3 THE COURT: Thank you. Good job.

4 MR. ROSE: Mr. O'Connell testified to you
5 as to his reasons for wanting to appoint an
6 administrator ad litem. And he testified that
7 it was mainly because he didn't have any
8 personal involvement in the underlying case.
9 Mr. Ted Bernstein did have direct involvement
10 in the underlying case --

11 THE COURT: I'm sorry. Go ahead. No
12 personal involvement in the underlying case.

13 MR. ROSE: -- whereas Ted Bernstein was a
14 principal of the company, worked with his
15 father and Mr. Stansbury, and is in much better
16 position to be the corporate representative or
17 the estate's representative at the trial and at
18 the same time to hire my law firm. And Mr.
19 O'Connell said those two things, in his mind,
20 went hand in hand and he has testified about
21 his reasons.

22 So what we believe makes the most sense is
23 to have Ted Bernstein appointed as the
24 administrator ad litem to handle the
25 litigation.

1 This is a case that has failed to settle
2 at two mediations and several motions were
3 brought before this Court to approve
4 settlements which motions have failed. And
5 the parties do not seem to be in any position
6 to settle the case so the only other way to
7 resolve the claim if you can't settle it is to
8 try it.

9 At the conclusion of a mediation in which
10 we were unsuccessful in settlement -- and we
11 can't talk about anything other than the fact
12 of unsuccessfulness -- the decision was made we
13 want to try the case as quickly as possible.
14 And the solution was that if Ted will serve as
15 the administrator for no fee and if my law firm
16 steps in, which has extensive knowledge on the
17 case, that was the group think decision.

18 Mr. O'Connell, exercising his business
19 judgment and his legal judgment, decided that
20 was in the best interest of the estate and he
21 has already testified to that.

22 So for the purposes of today, we have two
23 motions pending. The first one, obviously, is
24 on the administrator ad litem and Mr. Stansbury
25 has objected to Ted Bernstein serving as the

1 administrator ad litem. So, again, we have the
2 position where the plaintiff is trying to
3 decide who can represent the estate to defend
4 itself in a two and a half million dollar
5 claim.

6 Mr. Ted Bernstein will testify that he is
7 willing to serve for free because it will be
8 much less work for him if my law firm is
9 handling the matter. We have already
10 extensively worked and prepared the case. We
11 have taken the deposition of Mr. Stansbury.
12 Most of the document production is done. My
13 law firm is handling the case which we have
14 asked Your Honor to approve. Ted Bernstein is
15 the administrator ad litem. He will serve for
16 no fee. Mr. O'Connell said, on the other hand,
17 he would charge his hourly rate and, you know,
18 every hour he is involved in the case is a
19 substantial expense.

20 Another point, Mr. O'Connell is extremely
21 busy. There was a motion filed which we'll put
22 in evidence complaining that Mr. O'Connell was
23 unavailable to move this case forward. Mr.
24 Stansbury filed a motion in the trial court
25 saying I'm unhappy that Mr. O'Connell is

1 unavailable for months at a time and we need to
2 get the case moving.

3 That was also an impetus for this because
4 we want to get the case moving and concluded
5 and until we get the claim of Mr. Stansbury
6 resolved one way or the other, we can't close
7 out the estate and make progress and stop
8 incurring administrative expenses. So at the
9 end of the day, it is our belief and the
10 evidence will demonstrate it's in the best
11 interest of this estate.

12 I don't know how much evidence you need to
13 take on it. It's a fairly simple issue because
14 --

15 THE COURT: Two hours worth. We have two
16 motions. Essentially, I think that fairness
17 would say you're going -- I said five minutes
18 so you're going to sit down soon. I would
19 think we should have this one done by 3:00 --

20 MR. ROSE: I agree.

21 THE COURT: -- then have the last hour for
22 the other motion.

23 MR. ROSE: The arguments that are made by
24 Mr. Stansbury are, one, I think something with
25 this being an inherent conflict in settlement.

1 And Mr. O'Connell can handle the settlement of
2 the case if it's going to settle. We weren't
3 hired to settle the case. We were hired
4 because this was a case that cannot be settled
5 and it needs to be tried and my law firm is a
6 commercial litigation trial firm and, you know,
7 our goal is to try the case.

8 If Mr. Stansbury and Mr. O'Connell make a
9 settlement agreement, great, we'll have to give
10 notices and have hearings. That's a different
11 ball game. But until there is a settlement,
12 the only way to finish the case is to try it.

13 The other argument is conflict of interest
14 and Mr. O'Connell covered that and Mr.
15 Bernstein can, but there is no conflict between
16 the positions we want to take in this
17 courthouse, not this division but in the Palm
18 Beach County Circuit Court, we believe that Mr.
19 Stansbury's claim has no merit. He believes it
20 does.

21 Mr. Ted Bernstein and Mr. O'Connell are
22 100 percent aligned on that and our goals are
23 the same, minimize expenses, get the case tried
24 as quickly as possible and we don't believe
25 that the opposing party should decide who's

1 going to be representing the estate.

2 THE COURT: Thank you very much. Mr.
3 Feaman.

4 MR. FEAMAN: Thank you, Your Honor. May
5 it please the Court:

6 THE COURT: Thank you.

7 MR. FEAMAN: The premise of Mr.
8 Stansbury's objection to the appointment of Ted
9 Bernstein is based upon three points. Point
10 number one, in the Fungess case, which I sent
11 to Your Honor this morning -- I apologize
12 because of the late notice -- we have an extra
13 copy for Your Honor. We have handed them out
14 again today at this hearing. But the case says
15 in the Fourth District an administrator ad
16 litem must represent beneficiaries of the
17 estate with the same degree of neutrality and
18 fidelity as the personal representative of the
19 estate and administrator ad litem is also
20 subject to the supervision of appointing by the
21 court. It means that the administrator ad
22 litem has the same fiduciary duty to the estate
23 that a personal representative does. That is
24 premise number one.

25 Then premise number two is that we go to

1 Florida Statute 733.504 and that discusses the
2 removal of a personal representative and causes
3 for removal. And therein under Subsection 9 it
4 says a personal representative shall be removed
5 if he or she is not qualified to act and may be
6 revoked for any of the following causes.

7 Number 9: Holding or acquiring a conflicting
8 or adverse interest against the estate that
9 will or may interfere with the administration
10 of the estate as a whole.

11 So, therefore, if the administrator ad
12 litem has the same duty as the personal
13 representative to the estate and a conflict
14 would cause removal of the personal
15 representative, we see that Ted Bernstein is
16 clearly conflicted in this case because he is
17 suing, as Your Honor knows, now with the
18 evidence, he is suing the estate in Chicago,
19 both personally and as a purported trustee of a
20 1995 insurance trust.

21 THE COURT: Is he suing the estate or did
22 the estate intervene in his litigation against
23 the life insurance company?

24 MR. FEAMAN: Yes. The estate intervened
25 and now they are adverse, when they were first

1 brought but he is a plaintiff in that
2 personally. He is a plaintiff in that action
3 adverse to the estate because they are both
4 seeking the same pot of money, Mr. Bernstein
5 individually and the estate for its part.

6 So with that conflict and because the
7 administrator ad litem has the same duties as
8 the PR to not have a conflict, there is enough
9 in the record right now, Your Honor, for Your
10 Honor to say, you know what, I can't appoint
11 this gentleman as administrator ad litem
12 because he is suing the very estate that I'm
13 being asked to appoint him to represent and
14 that should be the end of it. I think Your
15 Honor can rule that right now.

16 And we are prepared to also put on
17 additional evidence as to why Mr. Bernstein
18 should not be appointed for reasons in addition
19 to his conflict of interest. But, as a matter
20 of law, I would respectfully suggest to the
21 Court that the fact that he is suing the estate
22 immediately precludes him from being the
23 administrator ad litem for the estate. It
24 doesn't matter what the capacity is. It is
25 simply because of the law.

1 Because the third case that we cite -- the
2 second case that we cited today was the
3 Campbell case and --

4 THE COURT: Just to be clear, he really
5 isn't suing the estate. The estate has
6 intervened and they are an adverse party. I
7 know I'm being particular but --

8 MR. FEAMAN: Okay. I'll rephrase. I'll
9 just quote the statute. In Chicago Mr. Ted
10 Bernstein holds a conflicting or adverse
11 interest against the estate.

12 THE COURT: Okay.

13 MR. FEAMAN: Okay. Because the estate
14 wants 1.7 million dollars and Mr. Ted Bernstein
15 wants part of 1.7 million dollars as an
16 individual plaintiff. Therefore, the Court
17 need inquire no further than already what is in
18 the record to say I'm sorry, I'm statutorily
19 bound not to allow an appointment of this
20 gentleman.

21 THE COURT: I have a question though. I'm
22 thinking if I want to ask it or not. Wouldn't
23 their positions be aligned for purposes of the
24 civil lawsuit?

25 MR. FEAMAN: Are they aligned for purposes

1 of the civil lawsuit?

2 THE COURT: Yes.

3 MR. FEAMAN: On paper, yes.

4 THE COURT: And isn't that the only
5 limited capacity that we are asking to appoint
6 an administrator ad litem?

7 MR. FEAMAN: Yes. But the Court cannot
8 otherwise ignore there is a conflict when, if
9 the administrator ad litem is acting adversely
10 to the estate in a related action.

11 THE COURT: No but that has nothing to do
12 with the civil. They are aligned. I know what
13 you're going to say.

14 MR. FEAMAN: No. It has everything to do
15 with it and I am going to tell you why.

16 THE COURT: Okay.

17 MR. FEAMAN: There is settlement
18 negotiations going on right now in Chicago
19 between the attorney representing Mr. Bernstein
20 and us.

21 THE COURT: Mr. Ted Bernstein?

22 MR. FEAMAN: Mr. Ted Bernstein. And the
23 attorney representing the estate who is
24 communicating with Mr. Stansbury, me and Mr.
25 O'Connell as to whether money should be paid

1 before trial.

2 Now, to have Mr. Ted Bernstein also
3 involved, whether directly or indirectly, in
4 settlement negotiations that may simultaneously
5 be taking place between the estate and Mr.
6 Stansbury's action, puts in effect the fox
7 guarding the hen house because here's Mr. Ted
8 Bernstein wanting to keep 1.7 million dollars
9 out of the estate.

10 His settlement judgment in that case and
11 the settlement judgment that he may have in the
12 Stansbury case has to be clouded and conflicted
13 because he has got -- on the other hand, he
14 wants the estate to get the money, you would
15 think, because he is also, by the way, he is
16 also the successor trustee of the pour-over
17 trust, which is the beneficiary of the Simon
18 Bernstein Estate. And as successor trustee,
19 you would want that person to want the estate
20 to get all of the money it can for its
21 beneficiaries who are the grandchildren. Yet
22 at the same time he is suing the estate in
23 Chicago to keep his trust from eventually
24 getting that money where he is successor
25 trustee.

1 So there is conflicts all over the place,
2 which is why we also filed a couple of months
3 ago for Your Honor to sua sponte take a look at
4 the conflict that Mr. Ted has as successor
5 trustee because how can he sue --

6 MR. ROSE: I object. It's not set for
7 hearing and it's an issue that has been ruled
8 on multiple times by Judge Phillips and where
9 he lacks standing --

10 THE COURT: I asked you a question so
11 conclude.

12 MR. FEAMAN: I'll conclude with this, Your
13 Honor. In the Campbell case, the Court held
14 that an administrator, which would be Mr. Ted,
15 stands in the position of a trustee holding the
16 estate in trust for the heirs, distributors and
17 creditors, of which Mr. Stansbury is one, while
18 acting in such trust capacity he cannot deal
19 with the beneficiary trust so as to acquire any
20 advantage onto himself.

21 Taking that language and applying it to
22 the case before Your Honor, he is trying to
23 take an advantage onto himself in the Chicago
24 litigation because he is a named plaintiff and
25 trying to take that money and at the same time

1 acting as an administrator for the very
2 estate.

3 And I don't think the Court is allowed to,
4 respectfully, parse whether, okay, I'll let him
5 represent the estate because in this action we
6 can separate it, especially when it's
7 complicated by the fact that the same attorney
8 --

9 THE COURT: I asked you. That wasn't an
10 unfair response. I did throw that out at you.

11 MR. FEAMAN: So I would conclude with that
12 the conflict is so present that I think that
13 they are asking the Court here to split hairs
14 and ignore what is going on in Chicago to allow
15 this.

16 And we believe that the evidence will show
17 that for that reason and others regarding Mr.
18 Bernstein and with regard to the testimony of
19 Mr. O'Connell, whose deposition we took this
20 week, that the only conclusion this Court can
21 make at the end of the day or even right now is
22 to say I just can't do this; you know, if you
23 want somebody to represent the estate at
24 counsel table at the trial, if it goes that far
25 with Mr. Stansbury, have a junior lawyer from

1 the attorney representing the estate. There is
2 situations where hospitals are defendants; they
3 send an HR person to sit through the trial.
4 That's really not a reason for this Court to
5 ignore, just it doesn't pass the look test of
6 he's adverse to the estate fighting over 1.7
7 million dollars and now is representing the
8 estate and representing the pour-over trust but
9 that's a different issue.

10 Thank you.

11 THE COURT: Thank you. Mr. Eliot.

12 MR. ELIOT BERSTEIN: Okay. In my view, we
13 are here today as part of a new fraud on the
14 Court and there have been prior frauds already
15 proven and admitted. I was here to appear
16 before Your Honor when you found that the
17 pleadings and the testimony before the Court by
18 officers of the Court was false and
19 misleading. I am a beneficiary. That is now
20 established. I have standing. And they don't
21 have the consent of all of the beneficiaries
22 for this little scheme they are pulling. That
23 now has been proven in the past pleadings in
24 all of the courts, the 4th DCA, the Illinois
25 federal complaint. That was thrown out because

1 I am not a beneficiary of Simon's estate,
2 according to Judge Robert Blakey.

3 So this new fraud here designed to allow
4 Ted and his counsel Alan to represent the
5 estate of Simon as a fiduciary and counsel in a
6 lawsuit against William Stansbury while already
7 acting as fiduciary and counsel in the Simon
8 Bernstein Trust in the Stansbury action and
9 already having acted as fiduciary in settling
10 himself out in the Shirley trust in regard to
11 the Stansbury lawsuit.

12 What the Court may not be aware of is the
13 adverse interest and conflict of interest of
14 Ted Bernstein with the Stansbury lawsuit that
15 have allowed Ted to already self deal at the
16 expense of the beneficiaries he claims to
17 represent in trusts where he has no personal
18 interest and thus stands nothing to lose
19 personally if the estate and trust of Simon's
20 beneficiaries are saddled with the entire
21 damages of the lawsuit.

22 The Stansbury lawsuit has Ted Bernstein as
23 an individual defendant and Simon Bernstein
24 individually as a defendant when it was filed.
25 The complaint, in fact, alleges Ted was the one

1 who directly committed the egregious acts of
2 bad faith, including fraud against Stansbury.

3 Now, how, the Court may ask, do these
4 adverse interests and conflict of interest of
5 Ted individually and Ted as a fiduciary allow
6 Ted to remove himself from liability personally
7 in the Stansbury action and shift the entire
8 liability to the Simon Bernstein Trust and
9 Simon Bernstein Estate beneficiaries for a
10 potential 2.5 million dollar damage claim and
11 how did he do this with no objections raised by
12 the fiduciary for the beneficiaries of the
13 estates and trusts of Simon and Shirley?

14 Well, it's obvious. Ted as a fiduciary
15 would have to pursue Ted on behalf of the
16 beneficiaries. So Ted's not going to pursue
17 himself for damages and object to settlement
18 that enabled him to slip out the back door like
19 he did already, acting as a fiduciary or file
20 counter-complaints or lawsuits on behalf of the
21 beneficiaries that allege Ted's the responsible
22 party and should pay all of the damages of 2.5
23 million.

24 This is because Ted Bernstein will not sue
25 or pursue Ted Bernstein. That is the

1 definition of a conflict of interest in adverse
2 interests. So Ted, by not raising any
3 objections as the fiduciary on behalf of
4 beneficiaries, has settled himself out of the
5 complaint already individually, shifting the
6 liabilities, and now the people who would
7 normally have a claim to say that Ted was the
8 responsible party, Ted did this, can't raise a
9 complaint because Ted is the fiduciary.

10 If you allow -- and, by the way, that's
11 why they tried to tell you I had no standing
12 and wasn't a beneficiary because they are
13 afraid of anybody making this argument to the
14 Court which would expose a 2.5 million dollar
15 fraud that is occurring through a breach of
16 fiduciary duties by ignoring conflict of
17 interest which Ted and his counsel are fully
18 aware of. So that's why they came to this
19 Court and lied because it wasn't just an
20 error.

21 And, by the way, if Mr. Rose, who put to
22 Your Honor and claimed that he erred before
23 this Court that I was a beneficiary, if he
24 doesn't know who the beneficiaries are by now
25 and his client doesn't --

1 THE COURT: The only thing I have a
2 problem with is, you know, no disrespect, you
3 can state what you believe but don't be rude.
4 Go ahead. You have been doing good, by not
5 being rude.

6 MR. ELIOT BERNSTEIN: Well, now I forgot
7 where I was. Could you read back my last
8 sentence? Sorry.

9 (Requested colloquy was read by reporter
10 as follows:

11 "And, by the way, if Mr. Rose who put to
12 Your Honor and claimed that he erred before
13 this Court that I was a beneficiary, if he
14 doesn't know who the beneficiaries are by now
15 and his client doesn't --"

16 MR. ELIOT BERNSTEIN: -- then the Court
17 needs to remove him just for incompetence. If
18 you don't know who the beneficiaries are --

19 THE COURT: I won't tolerate that.

20 MR. ELIOT BERNSTEIN: Okay. So that would
21 be a cause for removal, if the --

22 THE COURT: Move on.

23 MR. ELIOT BERNSTEIN: -- if the fiduciary
24 doesn't know who the beneficiaries are in his
25 peppered filing for two years with those claims

1 that I wasn't a beneficiary and had no standing

2 --

3 THE COURT: Move on. You have made your
4 point on that.

5 MR. ELIOT BERNSTEIN: I'm denied due
6 process. Okay. By the way, now, the Court has
7 this information that a fraud has been
8 committed before the Court or pleadings that
9 are full of false and misleading statements
10 that have led to a denial of due process rights
11 over the course of two years.

12 THE COURT: The Court has not made any
13 findings that way. You can go on.

14 MR. ELIOT BERNSTEIN: On the record you
15 stated I was a beneficiary in good standing.

16 THE COURT: I did but I didn't make a
17 finding of denial of anything at that point.

18 MR. ELIOT BERNSTEIN: Okay. That alone
19 contradicts all of the pleadings Mr. Rose has
20 submitted since Judge Phillips in effect had a
21 --

22 MR. ROSE: Objection. This is an improper
23 opening statement for the issue we have. It's
24 factually completely wrong because I have never
25 --

1 THE COURT: Sustained. One more minute.

2 MR. ELIOT BERNSTEIN: The Court should
3 also be aware that the Court has been misled
4 in these cases prior by, in the Shirley estate
5 and trust by Ted and the fiduciary's counsel,
6 Robert Spallina and Donald Tescher, who
7 committed a series of fraudulent acts to change
8 beneficiaries, they have come to the Court and
9 confessed they fraudulently altered my mother's
10 trust and sent it to my childrens' counsel.

11 MR. ROSE: Objection.

12 THE COURT: Sustained. That concludes
13 the openings. Thank you, Mr. Eliot.

14 Mr. Feaman, you said you had a case for
15 me. Do you want to give me that case?
16 Everyone have a copy of that case?

17 MR. ROSE: I think it was e-mailed to me
18 this morning.

19 THE COURT: I haven't read it so --

20 MR. FEAMAN: We e-mailed it at 10:00 and
21 also gave them additional copies today, this
22 afternoon.

23 THE COURT: Do you want the opportunity to
24 provide two cases in response?

25 MR. ROSE: I think this is totally... No.

1 THE COURT: I give you the right. Call
2 your first witness.

3 MR. ROSE: I would with one caveat. This
4 is expensive time and the --

5 THE COURT: I just asked. Call your first
6 witness.

7 MR. ROSE: Mr. Stansbury.

8 THE COURT: I'm very aware of how many
9 people are in the courthouse and the expense of
10 everything.

11 MR. ROSE: I was going to state if you
12 would rule that simply because as trustee, as
13 one trustee litigating in Illinois, he could
14 not possibly be the person to handle the
15 litigation here, like Mr. Feaman suggested, if
16 that's where you would go, we could avoid the
17 evidentiary hearing. I don't think that's
18 where you should go but --

19 THE COURT: I did not make a decision
20 yet. I promised I would not make that decision
21 until I came out and I am unbelievably -- what
22 is the word I want? -- I'm trying to think of
23 a word that is more judicial but compulsive is
24 the word coming to mind. I'm not capable of
25 having somebody say here's a case you need to

1 read and making a ruling without reading it.

2 Proceed.

3 MR. ROSE: That's fine.

4 Thereupon,

5 WILLIAM STANSBURY,

6 a witness, being by the Court duly sworn, was

7 examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. ROSE:

10 Q. Would you state your name for the record.

11 A. William Stansbury.

12 Q. You're suing the estate of Simon Bernstein
13 for a substantial sum of money?

14 A. Yes.

15 Q. And Eliot just stated that Ted is the
16 responsible party and should pay all of the damages;
17 that Ted is 100 percent responsible for the claims
18 you have made against Simon's estate. Do you agree
19 with that?

20 A. No, I don't.

21 Q. Do you agree that Ted is responsible for
22 most of the damages and most of the harm that was
23 caused to you by Simon Bernstein?

24 A. Most of my conversations regarding my
25 compensation were had with Simon.

1 Q. So there was a question at a prior hearing
2 in which you did not attend, where Mr. O'Connell was
3 asked if the estate should not be suing Ted
4 Bernstein because the complaint alleges that he did
5 most of the fraud against Mr. Stansbury and Simon
6 Bernstein was just a partner. Is that accurate?

7 MR. FEAMAN: Objection. You can't cross
8 examine or impeach somebody with someone else's
9 testimony. He has to ask for what his view
10 is. You can't say if so and so said this, what
11 do you think about this.

12 THE COURT: Sustained.

13 MR. ELIOT BERNSTEIN: May I object?

14 THE COURT: I sustained the objection.
15 What is your objection?

16 MR. ELIOT BERNSTEIN: My objection is this
17 witness wasn't on any witness list, wasn't
18 discussed during the trial.

19 THE COURT: Overruled. This isn't a
20 trial. You may proceed.

21 BY MR. ROSE:

22 Q. Do you believe your complaint alleges that
23 Ted Bernstein did most of the fraud and Simon
24 Bernstein was just a bystander and a partner?

25 A. No.

1 Q. In fact, you testified -- strike that.

2 You would agree, wouldn't you, that most
3 of your assumptions about your financial
4 arrangements with the companies that are part of the
5 underlying lawsuit, most of those discussions were
6 with Simon Bernstein, correct?

7 A. Correct.

8 Q. Simon was the chairman of the company?

9 A. Yes.

10 Q. You considered Simon to be the leader of
11 the company?

12 A. Yes.

13 Q. And Ted had a lesser role in the company
14 than Simon?

15 A. Yes.

16 Q. You don't recall having much discussion
17 with Ted Bernstein about your financial
18 arrangements, do you?

19 A. No.

20 Q. And part of your claim is fraud, correct,
21 that you were defrauded by Simon Bernstein?

22 A. Yes.

23 Q. And it's your testimony that the person
24 who spoke to you and communicated whatever words
25 would have constituted a fraud was Simon Bernstein?

1 A. Yes.

2 Q. Now, do you recall a time in July of 2016
3 where you filed a motion complaining that Mr.
4 O'Connell was not available to attend to this case
5 because of his other busy schedule?

6 A. I don't recall that, Mr. Rose.

7 MR. FEAMAN: Objection. Relevance.

8 THE COURT: Overruled.

9 MR. ROSE: May I approach?

10 THE COURT: You may.

11 MR. ROSE: I'll mark this as Trustee's
12 Exhibit 1.

13 THE COURT: Okay.

14 MR. ROSE: I have stickers except I have
15 to remove the sticker off my copy.

16 THE COURT: That's okay. I can use my
17 stamp. Whatever you want.

18 MR. ROSE: I'll put the stickers on for
19 now.

20 THE COURT: Trustee's 1?

21 MR. ROSE: Trustee's 1 for this hearing.

22 THE COURT: If you could write 12CP, I
23 think it's 4391 -- I think I memorized the
24 number on it -- that would be great.

25 MR. ROSE: 4391?

1 THE COURT: 4391, yes. Thank you.

2 MR. FEAMAN: Trustee's what?

3 MR. ROSE: For purposes of today is 1.

4 (Trustee's Exhibit No. 1, Plaintiff's

5 Motion for Case Management Conference to

6 Schedule Deposits)

7 BY MR. ROSE:

8 Q. Mr. Stansbury, I have handed you a
9 document that is called Plaintiff's Motion for Case
10 Management Conference to Schedule Depositions. Does
11 it say on the first sentence Comes Now Plaintiff,
12 William Stansbury?

13 A. It does.

14 Q. That would be you?

15 A. That is me. It is I.

16 Q. Were you aware of Mr. Feaman's filing? In
17 other words, did you receive copies, without telling
18 me any communications you had with him?

19 A. I may have. I assume I did. It's just
20 not something that immediately I recall doing.

21 Q. Mr. Feaman is your lawyer; he is
22 authorized to file papers in court asserting
23 positions for you, correct?

24 A. I would assume.

25 MR. ROSE: I move this into evidence as

1 Exhibit 1.

2 MR. FEAMAN: No objection.

3 THE COURT: So received. I have marked
4 this one into evidence.

5 BY MR. ROSE:

6 Q. This suggests Mr. O'Connell was
7 unavailable from July through the end of November
8 for deposition because of his schedule. Does that
9 ring a bell to you?

10 A. I guess. Now that I'm seeing it, it does.

11 Q. Is it important to you that your case,
12 your lawsuit against the estate, move forward at a
13 reasonably quick pace?

14 A. It is.

15 Q. Do you think Mr. O'Connell -- well, strike
16 that.

17 You are aware that Mr. O'Connell has
18 requested that Ted Bernstein be appointed as the
19 administrator solely to defend the claim that you
20 have brought? You are aware of that?

21 A. I have heard that. You know, I don't know
22 beyond what I heard what is going on but I have
23 heard that.

24 Q. But we are here today for the judge to
25 decide whether Ted can serve as the representative

1 of the estate to defend the lawsuit you brought,
2 correct?

3 A. That is why we are here today.

4 Q. And you oppose that?

5 A. I do.

6 Q. Is there any person you can think of,
7 other than yourself or Simon Bernstein, who's
8 deceased, that would have personal knowledge at the
9 same level as Ted Bernstein of the claims that you
10 have raised in this lawsuit?

11 A. Probably not.

12 Q. And you're a claimant in the estate so you
13 have some interest in, if you succeed, being able to
14 collect against the estate, correct?

15 A. Obviously, if I succeed I aim to collect
16 and it's against the estate, as I understand it.
17 The estate has the ability to recover any
18 deficiencies that are in it from other assets that
19 may be in the trust. I'm not sure this is the only
20 recovery option.

21 Q. But you would like there to be as much
22 money in the estate as possible if you win your
23 lawsuit, correct?

24 A. Certainly as much as I would win.

25 Q. So you are aware Mr. Ted Bernstein is

1 willing to serve for no fee as administrator ad
2 litem, whereas Mr. O'Connell is going to charge \$350
3 an hour for the hours he spends? Are you aware of
4 that?

5 MR. FEAMAN: Objection. Not relevant.

6 THE COURT: Overruled.

7 THE WITNESS: I don't know what Mr.
8 O'Connell charges and simply because something
9 is free doesn't necessarily mean it's the right
10 or fair deal.

11 BY MR. ROSE:

12 Q. Would you agree Mr. O'Connell knows
13 nothing about your company from personal knowledge
14 and from having been there in 2006 through 2012,
15 correct?

16 A. Are you referencing the time that I was
17 there in 2006 because it was 2003 through 2012? Is
18 that your line of questioning?

19 Q. You are suing LIC Holdings, correct?

20 A. I did.

21 Q. And your lawsuit arose out of your
22 relationship with LIC Holdings, right?

23 I'll withdraw the question.

24 A. Yes.

25 Q. I'll ask you a different question. From

1 2003 to 2012, was Brian O'Connell involved at all in
2 whatever business you were involved in?

3 A. Not that I'm aware of.

4 Q. Had you ever heard the name Brian
5 O'Connell at that time?

6 A. No.

7 Q. Wouldn't you agree with me that Ted
8 Bernstein knows a lot more about the case than Brian
9 O'Connell?

10 A. I would assume that he would, yes.

11 Q. Do you believe Ted is motivated to
12 adequately defend the estate against your claim; in
13 other words, seeking to defeat your claim?

14 MR. FEAMAN: Objection. Calling for the
15 witness to talk about the motivation of a third
16 party. He can't know that.

17 THE COURT: Sustained.

18 BY MR. ROSE:

19 Q. I'm not really asking about that. Do you
20 think -- do you have any reason to believe that Ted
21 will not adequately, aggressively and vigorously
22 defend the estate's interest against yourself in
23 this lawsuit?

24 A. I would have no way of knowing.

25 Q. And you have no way to believe that he

1 wouldn't, correct?

2 A. I know he is suing the estate so he is
3 trying to keep money out of it.

4 Q. Do you think Ted Bernstein is going to do
5 something to help you win your lawsuit?

6 A. I doubt it.

7 Q. Now, you have settled your dispute with
8 Ted Bernstein by giving him a general release,
9 correct?

10 A. I'm not a lawyer, Mr. Rose. So yes, he
11 was dropped as a defendant.

12 Q. And your counsel stipulated at the last
13 hearing that you gave a general release to Ted
14 Bernstein?

15 MR. FEAMAN: Objection. I don't recall
16 that stipulation. Mischaracterizes what is in
17 the record.

18 THE COURT: It actually was stipulated on
19 the record that a release was given.

20 MR. FEAMAN: Respectfully, I think the
21 stipulation was there was a settlement. The
22 terms of the settlement are not before this
23 court.

24 THE COURT: No. There was a settlement
25 and a release was executed. The terms of the

1 release was not put before the Court. The
2 terms of the settlement wasn't put before the
3 Court.

4 I'm going to ask you to move on to the
5 next question.

6 MR. ROSE: Your Honor, Your Honor's
7 recollection of the record is 100 percent
8 correct. I did not accept the dismissal.

9 MR. FEAMAN: Move to strike.

10 THE COURT: Sustained.

11 BY MR. ROSE:

12 Q. You're adverse to the estate, correct?

13 A. Yes.

14 Q. You're seeking to take all of the money or
15 more than all of the money that is in the estate and
16 the trusts, right, if you win your lawsuit?

17 A. I can't speak to what is there. I'm going
18 to take what I'm due. I have no idea what's there.

19 Q. Now, you were one of the proponents of
20 Brian O'Connell being appointed as the successor
21 personal representative; do you recall that?

22 A. I don't know that I would characterize
23 myself as a proponent. I don't know enough about
24 people or lawyers and what they do and how they do
25 it.

1 Q. You were at the hearing where Mr.
2 O'Connell was appointed PR, correct?

3 A. I was.

4 Q. And your counsel brought Mr. O'Connell to
5 the hearing?

6 A. He did.

7 Q. And Mr. O'Connell was appointed personal
8 representative?

9 A. Yes.

10 Q. And if, in his business judgment and his
11 legal judgment that what he's proposing to happen
12 with Ted as the administrator is in the best
13 interest of the estate, do you feel that he is
14 mistaken?

15 A. Based on what I have heard, I think it's a
16 mistake.

17 Q. You have had multiple chances to settle
18 your claim, correct?

19 MR. FEAMAN: Objection. Outside the
20 scope, whether he has settled. It's also
21 confidential.

22 THE COURT: Sustained.

23 BY MR. ROSE:

24 Q. You attended mediation in July, correct,
25 July 25th?

1 A. Yes.

2 Q. No settlement was reached and an impasse
3 was declared, correct?

4 A. Yes.

5 Q. Okay. So what is left to do with your
6 case now is to get it tried, right?

7 MR. FEAMAN: Objection. No predicate. No
8 foundation.

9 THE COURT: Overruled-. The Court can
10 take judicial notice the case is still going on
11 or we wouldn't be here, correct? If the case
12 isn't settled, it's still going on.

13 BY MR. ROSE:

14 Q. Is there any reason why you couldn't
15 negotiate a settlement with Mr. O'Connell at any
16 time you wanted to while Mr. Bernstein and his
17 counsel prepared to defend the case and get it ready
18 for trial and get it set for the estate to be
19 victorious?

20 A. I was led to believe that the estate's
21 assets were deminimus, which may at that point
22 require the trust to support any judgment or
23 settlement that I would have with the estate.

24 Based upon Mr. O'Connell's statements when
25 he was brought in, he didn't believe that Ted

1 Bernstein was officially qualified to be the trustee
2 of the trust. Therefore, I essentially may have
3 been negotiating for a settlement with a party who
4 didn't have the capacity to provide a settlement.
5 So what I have been asking for is just a hearing to
6 clarify whether Ted is qualified based on the
7 language of the trust or he isn't.

8 Q. So it's your testimony even Mr. O'Connell
9 is not qualified to discuss settlement with you?

10 A. I'm not sure that it's the settlement
11 discussion as much as what happens if there is a
12 settlement agreed to and the money needs to come
13 from another source other than the estate.

14 Q. But is there any reason you can't have
15 discussions with Mr. O'Connell while we get ready to
16 defeat your claim in court?

17 A. Sort of the -- I'll leave that to my
18 attorneys to figure it out.

19 MR. ROSE: Nothing further.

20 THE COURT: Mr. Eliot.

21 CROSS EXAMINATION

22 BY MR. ELIOT BERNSTEIN:

23 Q. Hi, Bill. Did you sue Ted in the lawsuit?

24 A. He was a defendant, yes.

25 Q. What did Ted do according to your lawsuit?

1 A. There was misrepresentation of, you know,
2 what was going on with my money and why I wasn't
3 being paid.

4 Q. Was there anything with your stock that
5 you talked with Ted about that didn't sit well with
6 you, according to your complaint?

7 A. Yes.

8 Q. Could you explain that to the court.

9 A. I was a 10 percent stockholder of the
10 company and Ted approached me in December of 2011
11 and told me that there had been some discussion with
12 the accounting firm that the firm used that might
13 result in an income tax liability to me for money
14 that would not be paid to me. In other words, from
15 other prior years of taxes that may have been
16 challenged. I don't know the details because I
17 didn't interface with the accounting firm.

18 He said if I wrote a letter to him ceding
19 my shares of stock back to the company, he would
20 hold it and it had to be dated in 2011 and if the
21 tax liability happened, then I wouldn't be
22 responsible for owing money for taxes on money that
23 I never received. So he said he would hold it and
24 if that issue didn't arise, then it would just be
25 torn up and thrown in the garbage.

1 Q. And so in your complaint you alleged that
2 Ted basically swindled you out of that stock?

3 A. I don't know that I used the word swindled
4 but I believe --

5 Q. Fraud?

6 A. I believe that it was a misrepresentation
7 of the determination of why I would have just one
8 day signed the stock back to the company for no
9 other reason.

10 Q. Okay. Did Ted cash the alleged checks you
11 claim were fraudulently cashed?

12 A. I don't know who cashed them, Eliot, but
13 they weren't cashed by me.

14 Q. Were you aware of any problems leading up
15 to your lawsuit with Simon and Ted, between those
16 two?

17 MR. ROSE: Objection. Relevance and
18 scope.

19 MR. FEAMAN: Overly broad.

20 THE COURT: Sustained.

21 BY MR. ELIOT BERNSTEIN:

22 Q. If Ted represented the lawsuit for the
23 estate, would Ted make a claim that he was
24 responsible for damages done to you in the lawsuit?
25 Would he sue himself or --

1 A. Doesn't seem like that would be a logical
2 thing for him to do.

3 Q. Because that is the definition of an
4 adverse interest. You are not going to pursue
5 yourself or sue yourself. Okay. Mr. Stansbury --

6 MR. ROSE: Objection. Move to strike.

7 THE COURT: Sustained.

8 MR. ELIOT BERNSTEIN: Do what?

9 THE COURT: The little commentary at the
10 end. You can't make your little comments.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Yes. Okay. All right. Have you seen
13 that letter before?

14 THE COURT: Have you given everyone a copy
15 of whatever it is you're showing him?

16 MR. ELIOT BERNSTEIN: Oh, do we have
17 copies of that? That might take me a minute to
18 find.

19 How many copies are there of that letter?
20 One? Yes. One. Can I make a copy? Do you
21 have a copier, by any chance?

22 THE COURT: I don't have an assistant this
23 week. Trust me, I have my own issues.

24 MR. ELIOT BERNSTEIN: I'll ask questions
25 from my own letter. Can you hand that back to

1 him to see if he knows that letter. It's a
2 June 20th... I'll give it to them.

3 THE WITNESS: Have I seen it before, is
4 that your question?

5 BY MR. ELIOT BERNSTEIN:

6 Q. Yes.

7 A. Yes.

8 MR. FEAMAN: May I approach the witness
9 and look at the letter the witness has?

10 THE COURT: Mr. Rose, if you want to as
11 well.

12 MR. ROSE: I think it's an exhibit to the
13 complaint. It's already in evidence. Mr.
14 Feaman wrote the letter. He has surely seen it
15 before.

16 MR. FEAMAN: Thank you.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Good to go. I'll just ask him... Sorry,
19 Bill. This is a June 20th, 2012 letter. It's
20 certified mail and it's marked personal and
21 confidential and it's to Ted Bernstein and it was
22 authored by your attorney, Mr. Feaman.

23 MR. ROSE: I think he misstates the
24 addressee of the letter though.

25 MR. ELIOT BERNSTEIN: Okay. Can you hand

1 it back to him?

2 BY MR. ELIOT BERNSTEIN:

3 Q. Who is it addressed to?

4 A. Mr. Ted Bernstein, President, LIC
5 Holdings, Inc., 950 Peninsula Circle, Boca Raton,
6 Florida 33487.

7 Q. Anybody else?

8 THE COURT: Mr. Eliot, just to explain the
9 objection, when you say Ted, if it's as
10 president, you just have to say that.

11 MR. ELIOT BERNSTEIN: If it's what?

12 THE COURT: As president of the company.
13 That was the objection.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: Next question?

16 BY MR. ELIOT BERNSTEIN:

17 Q. Nobody else?

18 A. No one else is listed on this.

19 Q. Okay. Fine. I'll take it back.

20 So in this letter -- prior to your
21 lawsuit, you write a letter to Ted Bernstein that
22 describes issues and concerns to Ted Bernstein of
23 Ted Bernstein's acts against you. In efforts to
24 stage this whole thing off at the pass, I guess, you
25 wrote a letter timely requesting that these

1 egregious acts be resolved and you contacted Ted.
2 Would you say that Ted Bernstein is responsible for
3 any teeny tiny amount of damages done to you? Is
4 that why you sued him?

5 A. Yes.

6 Q. Okay. So there would be, in your view, a
7 -- if Ted represented the estates and trusts that
8 you sued, there would be a possibility that those
9 estates and trusts were represented by a non adverse
10 party would raise a claim stating, hey, we shouldn't
11 pay all of the damages, Ted apportioned at least a
12 certain part, correct?

13 MR. ROSE: Objection. Calls for legal
14 conclusion.

15 THE COURT: Sustained.

16 I need you to wrap it up, Mr. Eliot. I
17 haven't let Mr. Feaman ask questions yet. So
18 one more question.

19 BY MR. ELIOT BERNSTEIN:

20 Q. To your knowledge, have you gotten
21 discovery of all of the records of LIC Holdings and
22 Arbitrage, International?

23 MR. ROSE: Objection. Relevance and
24 beyond scope.

25 THE COURT: I got hung up on the name.

1 Let me hear the question again, if you would
2 read back the question.

3 (Pending question read by reporter as
4 follows:)

5 "Q. To your knowledge, have you gotten
6 discovery of all of the records of LIC Holdings
7 and Arbitrage, International?"

8 THE COURT: Sustained.

9 MR. ELIOT BERNSTEIN: Those are parties to
10 the action.

11 THE COURT: It's not relevant to this
12 proceeding. All right. So thank you very
13 much, Mr. Eliot. Mr. Feaman.

14 MR. FEAMAN: No questions, Your Honor.

15 THE COURT: Thank you, sir. Redirect.

16 REDIRECT EXAMINATION

17 BY MR. ROSE:

18 Q. One question. Your stock claim is only
19 against Ted Bernstein and the company; isn't that
20 true? Let me hand you Count IV of the second
21 amended complaint. Can you take a look at it and
22 then after you have looked at it, I have a question
23 for you.

24 A. How much of this am I reading?

25 Q. Just the title.

1 A. Fraud in the inducement...

2 Q. I want you to read that. Do you see that
3 part there?

4 A. Do you want me to read it for myself or --

5 Q. Read it for yourself and take a look at
6 it. Have you done that?

7 A. I did.

8 Q. Does that refresh your recollection that
9 the only defendants in Count IV relating to the
10 stock are Ted Bernstein and the company?

11 A. Yes.

12 Q. And you have released both of those
13 entities in your settlement, right?

14 A. I guess.

15 Q. You are not suing Simon Bernstein's estate
16 for anything having to do with stock?

17 A. No, I am not.

18 MR. ROSE: Okay.

19 MR. ELIOT BERNSTEIN: Can I get redirect?

20 THE COURT: No. We don't go back again.

21 Thank you.

22 MR. ELIOT BERNSTEIN: Can I submit that as
23 evidence to the Court?

24 THE COURT: Any objection to the letter?

25 I think we have already got it in evidence

1 because it was attached to the complaint but --

2 MR. ROSE: No objection, Your Honor.

3 MR. FEAMAN: No objection.

4 THE COURT: This will be marked as
5 Interested Party's Number 1, without objection,
6 into evidence and Mr. Stansbury may step down.

7 (Interested Party's Exhibit No. 1, Letter
8 dated 6-20-12)

9 THE WITNESS: Thank you, Your Honor.

10 (Witness stepped down)

11 THE COURT: Thank you. Give me one second
12 to complete marking this.

13 Okay. Mr. Rose, next witness.

14 MR. ROSE: At the risk of turning this
15 into a circus, I'll call Ted Bernstein.

16 THE COURT: Are you guys going to hand me
17 some portions of Mr. O'Connell's deposition at
18 some point because you said that you have
19 agreed? I was hoping I would actually have a
20 hard copy of that testimony.

21 MR. ROSE: Not his deposition. I don't
22 care about the deposition. The testimony he
23 gave.

24 THE COURT: The testimony from the last
25 hearing?

1 MR. ROSE: I can provide that. I can read
2 it in closing. Actually, the same pages we
3 cited in our final arguments. His statement is
4 in the best interest.

5 THE COURT: I would still like a written
6 copy. I can make copies of that if you have
7 it. That would be awesome. Mr. Ted.

8 Thereupon,

9 TED S. BERNSTEIN,
10 a witness, being by the Court duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ROSE:

14 Q. State your name for the record.

15 A. Ted Bernstein.

16 Q. Now, you do not currently have a fiduciary
17 role in the Estate of Simon Bernstein; is that
18 correct?

19 A. Correct.

20 MR. FEAMAN: Objection. Calls for a legal
21 conclusion.

22 THE COURT: Overruled.

23 BY MR. ROSE:

24 Q. Mr. O'Connell is the personal
25 representative of the estate?

1 A. That's correct.

2 Q. Now, you are serving as the trustee of the
3 Simon Bernstein Trust?

4 A. I am.

5 Q. And the beneficiaries of the Simon
6 Bernstein Trust are 10 trusts created by your
7 father's trust?

8 A. 10 subtrusts, yes.

9 Q. And the trustee -- who are the trustees of
10 those subtrusts supposed to be?

11 A. The parents for the children.

12 Q. And other than Eliot, are the other
13 parents serving as trustees?

14 A. They are.

15 Q. All right. Now, at some point in time Mr.
16 O'Connell and yourself had discussions about how
17 best to handle the Stansbury case; is that true?

18 A. Yes, we did.

19 Q. And can you tell -- well, we have heard
20 what Mr. O'Connell has said about that. Do you
21 disagree with his version of those events?

22 MR. FEAMAN: Objection. Improper
23 question.

24 THE COURT: Sustained.

25 THE WITNESS: I agree with what Mr.

1 O'Connell said.

2 MR. FEAMAN: Move to strike.

3 THE COURT: Sustained.

4 BY MR. ROSE:

5 Q. In your own words, can you tell the judge
6 what the arrangement should be?

7 A. Sure. His firm is unable to tend to the
8 matter as quickly as everybody wanted it to be
9 tended to so he asked if I would help him manage the
10 litigation.

11 MR. FEAMAN: Objection. Hearsay.

12 THE COURT: Sustained on the last portion,
13 the portion that is asked if he would help
14 you. That's hearsay.

15 BY MR. ROSE:

16 Q. You reviewed the motion that has been
17 filed to appoint you as administrator ad litem?

18 A. Yes, I have.

19 Q. Do you believe you would do a good job
20 representing the interest of the estate against Mr.
21 Stansbury?

22 A. I do believe I would do an excellent job,
23 yes.

24 Q. Is there anyone else alive that knows more
25 about the facts and could take that role than

1 yourself?

2 A. No, there is not.

3 Q. And you have agreed to serve for what
4 compensation?

5 A. I agreed to do it for no cost.

6 Q. Why did you agree to do it for no cost?

7 A. Well, I don't think there is anybody else
8 that knows the matter as well as I do. I think that
9 I'm going to be involved in the case anyway and I
10 believe that most of my time has been spent in
11 preparing for, you know, what the case would involve
12 so there is really no big extra amount of time on my
13 part that would be required to do what is asked of
14 me.

15 Q. Do you have an opinion as to which law
16 firm should be defending the estate?

17 A. I do.

18 Q. Which law firm?

19 A. That would be your law firm.

20 Q. Why do you have that opinion?

21 A. Because nobody else can represent us in
22 that case more effectively than your firm because
23 you have already done what I consider to be a huge
24 amount of work in that case. Any other firm would
25 have to get up to speed and it's not a simple case;

1 this happened to be quite complex, and you're what I
2 consider to be up to speed.

3 Q. Now, assuming that the guardian ad litem
4 is representing the interest of Eliot's three
5 children in the trust for which there currently is
6 no serving trustee, is it accurate that all of the
7 trustees of the 10 trusts under Simon's trust are in
8 favor of this?

9 A. They are in favor of this, yes.

10 Q. Unanimously?

11 A. Yes, unanimously.

12 Q. Is it your belief that if the Court does
13 not remove my law firm and does appoint you, it will
14 result in any benefits to the estate?

15 A. Could you ask me that question again?

16 Q. If the judge does not disqualify or remove
17 our firm and appoints you so that what Mr. O'Connell
18 has asked for actually happens, will the estate
19 benefit by having lower expenses?

20 A. Yes, it will.

21 Q. Will it benefit by having the Stansbury
22 claim resolved faster?

23 MR. FEAMAN: Objection. Speculation.

24 THE WITNESS: Yes, it will.

25 THE COURT: The last objection is

1 sustained.

2 BY MR. ROSE:

3 Q. Did you see the motion Mr. Feaman filed
4 last summer that is in evidence, when it was filed
5 in July?

6 A. I'm sure I have seen it.

7 Q. Did it cause you concern to see that Mr.
8 O'Connell wasn't available for months to schedule
9 depositions?

10 A. Yes, it did.

11 Q. Is that one of the factors that led to the
12 discussion of appointing you as administrator?

13 A. Yes; very much so.

14 Q. Are you generally available to assist in
15 the defense?

16 A. Yes, I am.

17 Q. Are you willing to sit at trial, at
18 counsel table and assist in the defense?

19 A. Yes, I am.

20 Q. Would the estate have the same opportunity
21 to defend itself if you weren't sitting at counsel
22 table during the trial?

23 MR. FEAMAN: Objection. Speculation.

24 THE COURT: Could I hear the question
25 again?

1 (Pending question read by reporter as
2 follows:

3 "Q. Would the estate have the same
4 opportunity to defend itself if you weren't
5 sitting at counsel table during the trial?"

6 THE COURT: Okay. I'm sorry. The
7 objection?

8 MR. FEAMAN: Speculation.

9 THE COURT: Sustained.

10 BY MR. ROSE:

11 Q. If I was trying the case, would I want
12 anybody other than you next to me to defend the case
13 against Mr. Stansbury?

14 MR. FEAMAN: Objection. Calls for the
15 state of mind of Mr. Rose.

16 THE COURT: Sustained. The Court is
17 pretty clear on your state of mind. Not to
18 worry. You can move forward.

19 BY MR. ROSE:

20 Q. In your role as the trustee of the Simon
21 Trust, would you want anyone else other than you
22 sitting at that table?

23 A. No, I wouldn't.

24 Q. Third time was the charm so...

25 Now, in Illinois there is a dispute over

1 an alleged 1995 irrevocable life insurance trust
2 that was alleged to have been created by Simon
3 Bernstein. That's one claim and the other claim is
4 the estate; is that accurate?

5 A. Yes, it is accurate.

6 Q. And do you consider that you're personally
7 adverse to the estate, trying to take money out of
8 the estate?

9 MR. FEAMAN: Objection. His personal
10 opinion as to whether he holds interests I
11 don't think is proper or relevant.

12 THE COURT: Sustained.

13 BY MR. ROSE:

14 Q. What is your -- what do you believe --
15 well, strike that.

16 Do you believe that what is happening in
17 Illinois is determining what your father's intent
18 was with respect to his life insurance proceeds?

19 MR. FEAMAN: Objection to his commenting
20 on his deceased father's intent.

21 THE COURT: Sustained.

22 MR. ROSE: I am not asking for his
23 intent. I'm asking if that is the proceeding
24 to determine --

25 THE COURT: At this point it's not the

1 State of Illinois decision anyway.

2 BY MR. ROSE:

3 Q. That's fine. Is there any way that what
4 is happening in Illinois would, in your view, impact
5 your ability to adequately represent the interest of
6 the estate against Mr. Stansbury?

7 MR. FEAMAN: Objection.

8 THE COURT: Overruled.

9 THE WITNESS: No, I do not believe that
10 there is anything to be benefitted by it. They
11 are doing the best job they can.

12 THE COURT: Would you either push the mic
13 forward or move it closer to you?

14 BY MR. ROSE:

15 Q. If you're appointed administrator ad
16 litem, would you in any way interfere with Mr.
17 O'Connell's ability to settle the case?

18 A. No, I would not.

19 Q. Now, any settlement would still have to be
20 approved by the Court so you might have a say in the
21 approval process?

22 MR. FEAMAN: Objection. Leading.

23 THE COURT: Sustained.

24 BY MR. ROSE:

25 Q. Other than any role you play in an

1 approval process, would you in any way interfere or
2 impede Mr. Stanbury's ability to communicate with
3 Mr. O'Connell or Mr. O'Connell's ability to
4 communicate with Mr. Stansbury?

5 A. I would not.

6 MR. ROSE: I have nothing further.

7 THE COURT: Thank you. Mr. Eliot.

8 CROSS EXAMINATION

9 BY MR. ELIOT BERNSTEIN:

10 Q. Ted, did you settle with Stansbury
11 individually in the Stansbury action?

12 A. I did.

13 Q. Did you settle Shirley's trust as trustee,
14 settle her out of the Stansbury lawsuit?

15 A. It has been a while but I believe I did.

16 Q. Were you adverse to the beneficiaries of
17 Shirley's trust when you did that?

18 A. I'm sorry. I don't understand what you
19 mean.

20 Q. You don't understand what an adverse
21 interest is?

22 A. I don't understand what the question was.

23 Q. Did you have an adverse interest with the
24 beneficiaries of the estate when you settled
25 Shirley's trust?

1 A. I don't believe that I ever had an adverse
2 interest.

3 Q. Do you know what that is?

4 A. I think I understand what the word adverse
5 means.

6 Q. Okay. So you don't know what an adverse
7 interest is technically?

8 MR. ROSE: Objection. Asked and
9 answered.

10 BY MR. ELIOT BERNSTEIN:

11 Q. You were sued by Mr. Stansbury you heard
12 here and you're cognizant of -- and you heard Mr.
13 Stansbury say that you had, according to his
14 complaint, possible liability for the actions done
15 to him; is that correct?

16 MR. ROSE: Objection. In light of the
17 settlement he has no liability to Mr.
18 Stansbury.

19 THE COURT: Sustained.

20 BY MR. ELIOT BERNSTEIN:

21 Q. Prior to the settlement, did you have
22 liability in the Stansbury lawsuit?

23 MR. ROSE: Objection. Relevance and
24 materiality as to timing. We are not asking
25 him to be appointed back in when he was a

1 defendant.

2 THE COURT: Overruled.

3 THE WITNESS: I don't believe I had
4 liability, no.

5 BY MR. ELIOT BERNSTEIN:

6 Q. Well, you were sued so wouldn't that
7 represent a liability to you?

8 A. No.

9 Q. Okay. Let me ask you another question.
10 While you were representing Shirley's trust to
11 settle her out, could you have raised the claim that
12 you were the responsible party for the acts against
13 Mr. Stansbury?

14 MR. ROSE: Objection. Relevance and
15 materiality.

16 THE COURT: Sustained.

17 BY MR. ELIOT BERNSTEIN:

18 Q. You settled Shirley's trust as the
19 trustee. Did you make any investigation as to the
20 apportionment of damages to the parties of the
21 complaint?

22 MR. ROSE: Objection. Same, relevance and
23 materiality.

24 THE COURT: Sustained.

25 BY MR. ELIOT BERNSTEIN:

1 Q. Have you done any investigation into the
2 apportionment of damages to the parties you
3 represented in the Stansbury lawsuit?

4 MR. ROSE: Objection. Same objection.

5 THE COURT: To the parties he represented?

6 MR. ELIOT BERNSTEIN: Yes. He represented
7 Shirley's trust. They were sued, all these
8 parties.

9 THE COURT: I asked because I didn't
10 understand the question. That's why.

11 MR. ROSE: Objection. Relevance and
12 materiality.

13 THE COURT: Sustained.

14 BY MR. ELIOT BERNSTEIN:

15 Q. Have you, Ted, or your counsel provided
16 the Court with a full and complete inventory of all
17 LIC and Arbitrage records from 2008 to present?

18 MR. ROSE: Objection. Relevance.

19 THE COURT: Sustained.

20 BY MR. ELIOT BERNSTEIN:

21 Q. In June of 2012, did you receive a demand
22 letter addressed to you only from Peter Feaman on
23 behalf of William Stansbury; yes or no?

24 MR. ROSE: Objection. Leading.

25 THE COURT: Overruled.

1 THE WITNESS: Eliot, I honestly can't
2 remember the details of these things but about
3 that time I believe that I received a letter
4 from Mr. Feaman.

5 BY MR. ELIOT BERNSTEIN:

6 Q. Do you recall the allegations in that
7 letter?

8 A. Hardly.

9 Q. Do you recall the allegations against you
10 and your office for missing and opening mail and
11 forged checks?

12 A. I remember something about that, yes.

13 Q. When did you first read the will of Simon
14 Bernstein, the 2012 will?

15 MR. ROSE: Objection. Relevance. Clearly
16 beyond the scope.

17 THE COURT: Sustained.

18 BY MR. ELIOT BERNSTEIN:

19 Q. As a child of Simon Bernstein --

20 THE COURT: Last two questions.

21 BY MR. ELIOT BERNSTEIN:

22 Q. -- am I a beneficiary, am I a beneficiary
23 of Simon Bernstein or am I a child of Simon
24 Bernstein? Yes?

25 A. Pardon me?

1 Q. Am I a child of Simon Bernstein?

2 A. Are you his son, yes, you are.

3 Q. Are you familiar with any filings, letters
4 or petitions made by your counsel on your behalf to
5 the Court claiming I am not a beneficiary of
6 anything?

7 MR. ROSE: Object to the form.

8 THE COURT: Sustained.

9 One more question, Mr. Eliot.

10 MR. ELIOT BERNSTEIN: Can I ask why I'm
11 being limited? It's very important if he
12 should become a fiduciary here because we are
13 trying to establish that Ted Bernstein is
14 misusing fiduciary roles.

15 THE COURT: Ask him a question about him.
16 I told you one more question.

17 MR. ELIOT BERNSTEIN: I asked him if he is
18 aware of pleadings he made to the Court.

19 THE COURT: Pleadings?

20 MR. ELIOT BERNSTEIN: That claim I am not
21 a beneficiary which would materially affect --

22 THE COURT: All right. I'll allow it.

23 THE WITNESS: I'm sorry. Now, could you
24 please ask me the question again?

25 (Pending question read by reporter as

1 follows:)

2 "Q. Are you familiar with any filings,
3 letters or petitions made by your counsel on
4 your behalf to the Court claiming I am not a
5 beneficiary of anything?"

6 MR. ROSE: Objection. Relevancy. There
7 is no issue that he did not have standing for
8 the purpose of substantial personal property.
9 I didn't ask him any questions about whether he
10 had standing.

11 THE COURT: He's asking him on the stand
12 though. Overruled.

13 THE WITNESS: I'm not familiar enough with
14 the, whatever you characterize those things as,
15 to know what is inside of them. Just about you
16 being a beneficiary. That is my answer.

17 BY MR. ELIOT BERNSTEIN:

18 Q. Did you read the pleadings before the
19 Court that are filed on your behalf as a fiduciary?

20 A. Yes, I did.

21 Q. Have you taken any direct, or have you
22 found out through these proceedings that it was
23 claimed that I was not a beneficiary with no
24 standing by your counsel?

25 MR. ROSE: Objection. Relevancy, scope.

1 THE COURT: Overruled. Can you answer the
2 question, please, Mr. Bernstein?

3 THE WITNESS: Sure. I believe there was
4 some mention of documents filed that you were
5 not a beneficiary and in some limited way you
6 have been deemed as a beneficiary.

7 MR. ELIOT BERNSTEIN: Okay.

8 THE COURT: Okay. That was the last
9 question.

10 MR. ELIOT BERNSTEIN: Can I ask one last
11 follow-up?

12 THE COURT: Okay. One last follow-up.
13 That's it.

14 MR. ELIOT BERNSTEIN: That's a follow-up.
15 I want to say I feel and put on the record that
16 I'm being limited in my ability to question
17 witnesses.

18 BY MR. ELIOT BERNSTEIN:

19 Q. Have you ever, since finding that out,
20 have you corrected any of the filings that you filed
21 or were filed on your behalf that claimed to any
22 courts of law that I am not a beneficiary in Simon's
23 estate?

24 MR. ROSE: Objection. I think it's an
25 improper question. In the actual document he

1 is referring to, which is in evidence, at a
2 later point --

3 THE COURT: You are asking him for
4 information that is an attorney/client
5 privilege so I'm going to sustain the
6 objection. We're good. Last question. Thank
7 you.

8 Mr. Feaman, you're next. Thank you very
9 much.

10 MR. FEAMAN: Your Honor, I have this
11 witness under subpoena so I'll ask the Court's
12 permission to exceed the scope of direct and
13 handle him as my witness now at one time.

14 THE COURT: Rather than call him up again
15 as a separate witness?

16 MR. FEAMAN: Yes.

17 THE COURT: As long as everybody
18 understands that you're actually doing your
19 direct of your witness. But first I want to
20 know, before you do that, do you have any other
21 witnesses, Mr. Rose? No. Okay.

22 MR. ROSE: No, Your Honor.

23 THE COURT: The other thing, he would be
24 entitled to redirect.

25 MR. ROSE: I have no objection, to speed

1 things up, if Mr. Feaman does the examination
2 and I don't mind if he exceeds the direct, as
3 long as he stays within the scope of the narrow
4 issue we are deciding.

5 MR. FEAMAN: Now that I know he has no
6 other witnesses, I have one or two, and I can
7 call him to the stand.

8 THE COURT: Perfect.

9 CROSS EXAMINATION

10 BY MR. FEAMAN:

11 Q. Thank you. Good afternoon, sir.

12 A. Hello.

13 Q. Now, there was a chart here that was
14 referred to in your direct examination by your
15 counsel. Do you have that chart, Mr. Rose? This
16 one?

17 Okay. Now, there is a reference that the
18 trustees of the Simon trust were in an agreement
19 with the trustees of the subtrust for the
20 grandkids.

21 By the way, many of the grandkids are
22 adults now; are they not?

23 A. Yes.

24 Q. The trustees of the subtrusts, I believe
25 you testified as far as they exist, are in agreement

1 with you becoming the administrator ad litem,
2 correct?

3 A. That's correct. That's what I testified
4 to.

5 Q. Those other trustees, those are your other
6 siblings other than Mr. Eliot, correct?

7 A. Yes.

8 Q. And all of those other siblings are also
9 plaintiffs with you in the Chicago action; are they
10 not?

11 A. I believe so.

12 Q. Okay. So as far as any potential conflict
13 of interest that may exist that I know you deny,
14 they are in the same position as you relative to
15 being adverse to the estate in the Chicago action,
16 Bernstein estate, correct, sir?

17 MR. ROSE: Object to the form. A, calls
18 for legal conclusion. B, it's contrary to the
19 terms of the trust that we have talked about,
20 which Exhibit, paragraph 4J allows the
21 fiduciary to serve as a fiduciary even though
22 they are interested in some other aspects of
23 the estate or trust.

24 THE COURT: I'm just deciding as to the
25 appropriate question. I'm going to overrule

1 it. You can answer, if you can.

2 THE WITNESS: I'm sorry. Can you please
3 ask me that question again or --

4 BY MR. FEAMAN:

5 Q. I'll ask it again. All of these other
6 trustees of the subtrusts are your three other
7 siblings, not including Mr. Eliot, because there is
8 five of you, correct?

9 A. That's correct.

10 Q. So the four of you are all the trustees of
11 the subtrusts, correct?

12 A. Yes.

13 Q. Other than Mr. Eliot. And the four of you
14 are also plaintiffs in the Chicago litigation,
15 correct?

16 A. Yes.

17 Q. And the plaintiffs in that Chicago
18 litigation are adverse to the estate of Simon, of
19 your dad, in that litigation; is that correct?

20 A. Not correct. I'm not saying yes or no. I
21 feel like I'm being put in a box about this word
22 adverse. So my understanding of that word I feel is
23 a rock solid understanding of that word, but I feel
24 like I'm being put in a box today about what you're
25 trying to get me to say something about this

1 adversity. I don't think they are adverse. I don't
2 think my siblings are adverse other than they are
3 trying to collect the proceeds of a life insurance
4 policy.

5 Q. Right. If they don't collect, the money
6 is going to go to the estate, isn't it?

7 A. I'm not sure of that.

8 Q. Okay. Is that -- are you aware that's
9 what the estate is seeking in that action?

10 A. Well, I know that's what they're seeking
11 but you are asking me if I was aware if they were
12 going to go there.

13 MR. FEAMAN: That's all I have on cross,
14 Your Honor.

15 THE COURT: Direct. No, you don't get
16 redirect because he called him as a witness.

17 MR. ROSE: I need one second to think.

18 THE COURT: Sure. How it works, the
19 person calls the witness and everybody gets to
20 cross and the person that calls the witness
21 gets to question again.

22 MR. ELIOT BERNSTEIN: Do I get to question
23 again on this stuff?

24 THE COURT: No. No. When Mr. Feaman asks
25 his direct, you'll get an opportunity to do

1 whatever Mr. Feaman's questions are about.

2 MR. ELIOT BERNSTEIN: What does that mean,
3 the direct?

4 THE COURT: The person that calls the
5 witness is the direct.

6 MR. ELIOT BERNSTEIN: Mr. Feaman --

7 THE COURT: I'm sorry, sir. I want to
8 finish and then I'll explain. Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. ROSE:

11 Q. In seeking to uphold your father's
12 testamentary documents in Florida, were you
13 attempting to carry out what you believed to be his
14 wishes?

15 A. Yes.

16 Q. Is that what you're doing in Illinois?

17 A. Yes.

18 Q. And whatever your father's wishes were is
19 how the Illinois case will resolve?

20 MR. FEAMAN: Objection. Calls for
21 speculation, legal conclusion.

22 THE COURT: Sustained.

23 BY MR. ROSE:

24 Q. Whatever the ruling is in Illinois as to
25 what your father's wishes or intent were, will you

1 abide by that in your role, whatever roles you have
2 in this estate?

3 A. Yes, I will.

4 MR. ROSE: Nothing further. We rest --

5 THE COURT: Okay. Let me quickly answer
6 your question.

7 MR. ROSE: -- with the caveat that Mr.
8 O'Connell's testimony from the last hearing is
9 in evidence.

10 THE COURT: Which hasn't been given to
11 me.

12 MR. ROSE: I will give it to you.

13 THE COURT: When you subpoena a witness or
14 you call a witness or you represent a party --
15 and you can't because you are not a lawyer --
16 but when you call a witness to the witness
17 stand, like Mr. Rose called his own client to
18 the witness stand, he, because he is calling
19 his own client, gets the first round of
20 questions. Then you all get to ask questions
21 and he gets the last round and then that's it.

22 Now, Mr. Feaman has subpoenaed Mr. Ted so
23 now he is asking me to now call his subpoenaed
24 witness so he will get the first round of
25 questions and everyone will get to ask

1 questions and he will get the final hit. So
2 does that make sense?

3 MR. ELIOT BERNSTEIN: Called him from the
4 subpoena, right?

5 THE COURT: Yes. He subpoenaed him before
6 the first hearing and now he wants to call
7 him. We could have him technically walk back
8 down and walk back up.

9 MR. ELIOT BERNSTEIN: Is there a play book
10 on this direct, redirect or something that I
11 can be reading maybe? Rules of civil
12 procedure?

13 THE COURT: I don't want to be insulting.

14 Okay. You're still under oath. You're
15 up, Mr. Feaman. I want to remind you, you have
16 got until four and, Mr. Feaman, your motion is
17 next so if we get to it, we get to it. If we
18 don't get to it, we don't get to it.

19 MR. FEAMAN: Before I ask any questions, I
20 move for a directed finding based upon my
21 opening statement.

22 THE COURT: Denied. Go ahead.

23 MR. FEAMAN: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MR. FEAMAN:

1 Q. Okay. So please state your name.

2 A. Ted Bernstein.

3 Q. And your relationship to Simon is his son,
4 correct?

5 A. Yes.

6 MR. FEAMAN: And, Your Honor, I ask
7 permission to lead because he is a hostile
8 witness.

9 THE COURT: So granted.

10 BY MR. FEAMAN:

11 Q. The five adult children of Mr. Simon
12 Bernstein, your father, are Eliot and who are the
13 others?

14 A. You are asking me my siblings' names?

15 Q. Yes.

16 A. Pam Simon, Lisa Friedstein, Jill Iahtoni.

17 Q. Now, your father died in September of
18 2012, correct, sir?

19 A. That's right, yes.

20 THE COURT: September or December?

21 THE WITNESS: September.

22 BY MR. FEAMAN:

23 Q. September 2012. And the personal
24 representatives appointed by your father of the
25 estate were two gentlemen by the name of Robert

1 Spallina and Donald Tescher; is that correct?

2 MR. ROSE: Objection. Materiality and
3 beyond the scope of issues for today. We have
4 already got a personal representative.

5 MR. FEAMAN: I'm trying to lay a
6 foundation and predicate for my questions that
7 come later.

8 THE COURT: I need you to proffer where
9 you're going with this.

10 MR. FEAMAN: Okay. And then I am going to
11 then use information about their conduct as
12 personal representative and Ted's involvement
13 in their conduct as personal representative as
14 grounds to impeach Mr. Ted's character, his
15 honesty and his judgment because he is asking
16 this Court to appoint him as a fiduciary.
17 Therefore, I am delving into the, if you will,
18 the prior bad acts of both Messrs. Tescher,
19 Spallina and Mr. Bernstein with reference to
20 the Simon Bernstein estate in order to impeach
21 his character, judgment and honesty so that I
22 can argue, in addition to the conflict, he
23 otherwise should not be appointed by this Court
24 to hold a fiduciary position in the Estate of
25 Simon Bernstein.

1 THE COURT: And what authority are you --
2 I'm not saying this disrespectfully. I'm
3 asking what authority are you relying on that
4 allows you to do that?

5 MR. FEAMAN: What authority am I relying
6 on?

7 THE COURT: To go to the further prior bad
8 acts?

9 MR. FEAMAN: The Court is being asked to
10 make an appointment of somebody to be fiduciary
11 which entails positions of trust and honesty
12 and the Court can perfectly delve into the
13 proposed fiduciary's background in terms of
14 honesty, trustworthiness, character and
15 judgment. As it relates to the various estates
16 that he is asking to be the fiduciary for and
17 as it relates to his mother's estate, where he
18 did act as a fiduciary because if he was
19 dishonest in connection with his duties as a
20 fiduciary in his mother's estate, that's
21 relevant for the Court to consider in whether
22 this gentleman should be appointed as a
23 fiduciary in this lawsuit.

24 THE COURT: Do you have any proof of
25 dishonesty; in other words, any charges, any

1 removals, anything of that nature, or is this
2 just bantering and fighting amongst the
3 parties?

4 MR. FEAMAN: I have --

5 THE COURT: Do you see what I'm saying? I
6 know the other two were removed but he has not
7 been removed to the best of the Court's
8 knowledge.

9 MR. ROSE: No one was removed. Resigned.
10 If you look at the final judgment dated
11 December 16th when Judge Phillips heard the
12 trial which included the validity of the trusts
13 of Simon Bernstein, this Court specifically
14 made a finding that he played no role in
15 anything that those prior lawyers did.

16 MR. FEAMAN: That's not true. You're
17 misrepresenting things on the record, Mr. Rose.

18 THE COURT: Wait. I don't want you
19 arguing about what it says.

20 MR. FEAMAN: Thank you, Your Honor.

21 THE COURT: Give me one second, please. In
22 case -- the Shirley trust --

23 MR. ROSE: The Shirley trust construction,
24 we call it the trust construction case but it
25 was the one about the validity --

1 THE COURT: That's 2012.

2 MR. ROSE: It's a 2014 case.

3 THE COURT: Apparently she died after
4 him.

5 MR. ROSE: No. This is the trust
6 construction. She does die after him in 2012.
7 I'm sorry. She died first. I'm sorry. Yes.

8 THE COURT: All right. December 2015,
9 correct?

10 MR. FEAMAN: Correct.

11 MR. ROSE: Correct. December 16th.

12 MR. FEAMAN: That was not a trial of the
13 complete case, by the way, Your Honor. I might
14 add, it was only as to, I believe, Count II or
15 Count I, one or the other, involving the
16 validity of the underlying estate documents,
17 period.

18 THE COURT: The testamentary documents.

19 MR. FEAMAN: Correct.

20 THE COURT: I can read it. I just can't
21 pronounce it. Ted S. Bernstein played no role
22 in any questionable acts of the law firm
23 Tescher & Spallina. Move on. I'm sustaining
24 the objection. Next question, please.

25 BY MR. FEAMAN:

1 Q. Now, Mr. Spallina was your attorney before
2 you introduced him to your father, correct?

3 MR. ROSE: Objection. Relevance.

4 THE COURT: Sustained.

5 BY MR. FEAMAN:

6 Q. Now, Tescher & Spallina, specifically Mr.
7 Spallina, was also representing you personally
8 before the lawsuit in Chicago was filed, correct?

9 MR. ROSE: Objection. Relevance.

10 MR. FEAMAN: This is going to relate to
11 the Chicago action.

12 THE COURT: Overruled on that one.

13 THE WITNESS: Could you please ask me that
14 question again?

15 BY MR. FEAMAN:

16 Q. Mr. Spallina was representing you
17 personally and your siblings in negotiating with the
18 insurance company before the lawsuit in Chicago
19 first filed in state court and now in federal court
20 was commenced, correct?

21 A. Well, I don't recall him representing me
22 personally but it's going back years and years now
23 so...

24 Q. Did he represent -- was he your attorney
25 during that time period in connection with dealings

1 with the lead-up to the filing of the Chicago
2 litigation?

3 MR. ROSE: Objection. In what capacity
4 because he clearly was --

5 BY MR. FEAMAN:

6 Q. Any capacity?

7 A. Maybe counsel in his capacity as trustee
8 of the --

9 MR. ROSE: The objection is --

10 THE COURT: Excuse me. I'm hearing his
11 objection. Complete your objection.

12 MR. ROSE: My objection is I think he has
13 got to clarify the question because it's not
14 fair to ask him if he was his personal lawyer.

15 MR. FEAMAN: I'll clarify.

16 THE COURT: Thank you.

17 BY MR. FEAMAN:

18 Q. Did Mr. Spallina communicate in writing
19 with the Heritage Union Life Insurance Company in
20 connection with the life insurance policy that is at
21 issue in the Chicago litigation?

22 MR. ROSE: Objection to that as
23 relevancy.

24 THE COURT: Overruled.

25 THE WITNESS: I believe Mr. Spallina

1 corresponded with the insurance company.

2 BY MR. FEAMAN:

3 Q. And when he corresponded with the
4 insurance company, was he doing that on behalf of
5 you and your brothers and sisters, other than Mr.
6 Eliot, or was he doing it on behalf of the Estate of
7 Simon Bernstein?

8 A. I'm not sure. I can't tell you. I don't
9 know.

10 Q. Do you recall that in connection with the
11 1995 life insurance trust, which is the subject
12 matter of the Chicago litigation, that Mr. Spallina
13 represented to Heritage Union Life Insurance Company
14 that he was, in fact, the trustee of that 1995 life
15 insurance trust?

16 MR. ROSE: Objection. Relevance.

17 THE COURT: Sustained.

18 BY MR. FEAMAN:

19 Q. Did anybody other than you ever, to your
20 knowledge, ever represent to the Heritage Life
21 Insurance Company that they were the trustee and not
22 you?

23 MR. ROSE: Objection. Relevancy.

24 THE COURT: Sustained.

25 BY MR. FEAMAN:

1 Q. Were you aware that Mr. Spallina
2 represented to Heritage that he was the trustee?
3 Have you ever been aware of that?

4 MR. ROSE: Objection. Relevance.

5 THE COURT: Sustained.

6 BY MR. FEAMAN:

7 Q. Now, in the lawsuit in Chicago, you're
8 representing to the Court that you're the trustee
9 there, correct?

10 A. Yes.

11 Q. Did that change from November of 2012 to
12 the time that the lawsuit was filed in April of
13 2013?

14 MR. ROSE: Objection. Relevance. We are
15 not here to try the Illinois case.

16 THE COURT: Overruled. Back to the
17 alleged conflict so let me hear the response,
18 please.

19 THE WITNESS: Could you please ask me that
20 question again or read that back?

21 (Pending question read by reporter as
22 follows:)

23 "Q. Did that change from November
24 of 2012 to the time that the lawsuit was filed
25 in April of 2013?"

1 THE WITNESS: I think it changed because
2 the lawsuit was filed in Illinois and
3 Spallina's conversations with the insurance
4 company were out of Florida. So yes, to answer
5 your question, it changed. Something changed.

6 BY MR. FEAMAN:

7 Q. And did you become trustee in -- when did
8 you become trustee?

9 MR. ROSE: Objection. Relevance.

10 THE COURT: Overruled.

11 THE WITNESS: I think I was always the
12 trustee of the Illinois trust.

13 BY MR. FEAMAN:

14 Q. Do you know why Mr. Spallina would have
15 represented to the life insurance company that he
16 was the trustee?

17 MR. ROSE: Objection. Speculation.

18 THE COURT: Sustained.

19 BY MR. FEAMAN:

20 Q. Are you aware that Mr. Spallina asked the
21 life insurance company to send the money into his
22 trust account --

23 MR. ROSE: Objection. Hearsay.

24 BY MR. FEAMAN:

25 Q. -- in December of 2014?

1 MR. ROSE: Relevance.

2 BY MR. FEAMAN:

3 Q. December of 2012?

4 THE COURT: Sustained.

5 BY MR. FEAMAN:

6 Q. Do you recall when the personal
7 representatives of your father's estate, Simon
8 Bernstein's estate, withdrew?

9 MR. ROSE: Objection. Relevance.

10 THE COURT: What's the relevance?

11 MR. FEAMAN: I am laying a predicate that
12 he had knowledge and I'm going to impeach him
13 with some of his acts, Mr. Bernstein's acts as
14 trustee of the Shirley Bernstein Trust. So,
15 again, it goes -- I'm laying a predicate for
16 impeachment of the witness.

17 THE COURT: Could you read the question
18 back for me?

19 (Pending question read by reporter as
20 follows:)

21 "Q. Do you recall when the personal
22 representative of your father's estate, Simon
23 Bernstein's estate, withdrew?"

24 THE COURT: I'll allow that question.
25 Overruled.

1 THE WITNESS: Are you asking me for a
2 specific date?

3 BY MR. FEAMAN:

4 Q. Yes. Month and year?

5 A. I don't know.

6 Q. Okay. Let me see if I can refresh your
7 recollection.

8 MR. ROSE: January 2014 --

9 THE WITNESS: Sounds about right.

10 MR. ROSE: -- to speed things up.

11 BY MR. FEAMAN:

12 Q. Let me hand you what I have had premarked
13 for identification as Stansbury's Exhibit 16, which
14 appears to be a letter written by Donald Tescher
15 dated January 14th, 2014 withdrawing. Does that
16 refresh your recollection?

17 A. Yes, it does.

18 Q. And are you aware that under your mother's
19 trust, the Shirley Bernstein Trust by which you
20 became the trustee, that you were disinherited,
21 along with your children?

22 MR. ROSE: Objection. Relevance.

23 THE COURT: Sustained.

24 MR. ROSE: Also goes to the issue of the
25 final judgment.

1 THE COURT: Sustained.

2 BY MR. FEAMAN:

3 Q. And do you recall when -- do you recall
4 that the Shirley Bernstein Trust owned a condominium
5 on the ocean in Boca Raton called the Aragon? Do
6 you recall that?

7 MR. ROSE: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. FEAMAN:

10 Q. Do you recall that the condominium was
11 sold and you were given a legal opinion by your
12 attorneys as to how to distribute -- without telling
13 me what that opinion was -- as to how to distribute
14 the proceeds of the sale of that condominium?

15 MR. ROSE: Objection. Relevance and,
16 further, there is a motion pending to approve
17 settlement of that case, if we could ever get
18 there.

19 THE COURT: Sustained. I'll strike the
20 last comment.

21 MR. ROSE: I'll withdraw it and I'll
22 apologize.

23 BY MR. FEAMAN:

24 Q. Did you distribute the proceeds of the
25 sale of the Aragon Condominium to your children?

1 MR. ROSE: Objection. Relevancy.

2 BY MR. FEAMAN:

3 Q. In part?

4 MR. ROSE: Objection.

5 THE COURT: Sustained.

6 BY MR. FEAMAN:

7 Q. Did your attorneys at that time ever
8 advise you not to do that?

9 MR. ROSE: Objection. Calls for
10 attorney/client privilege --

11 THE COURT: Sustained.

12 MR. ROSE: -- and also relevance.

13 THE COURT: Mr. Feaman, how many more
14 witnesses do you have?

15 MR. FEAMAN: I have a portion of the
16 transcript, of about two minutes, of the
17 O'Connell deposition, and that's it.

18 THE COURT: Thank you. Can I ask you be
19 done within five minutes so I can let everyone
20 else get a chance, to conclude this matter?

21 MR. FEAMAN: Okay.

22 THE COURT: Thank you very much.

23 BY MR. FEAMAN:

24 Q. Now, let's get back to the Chicago
25 litigation. You agree, do you not, that your

1 position in the lawsuit is such that if you were to
2 prevail as a plaintiff, then the proceeds of the
3 life insurance policy would go to you eventually, I
4 guess you and your four siblings; is that correct?

5 A. Yes.

6 Q. That's what you're seeking, correct?

7 A. Yes.

8 Q. And you are aware that the estate has
9 intervened in that case, correct, the Estate of
10 Simon Bernstein?

11 A. Yes. I am aware of that, yes.

12 Q. Have you read any of the pleadings that
13 have been filed by your attorney or the attorney for
14 the estate in that case?

15 A. Yes. At some point I read them, yes.

16 Q. So you are aware then that the estate is
17 making a claim in that action that the Estate of
18 Simon Bernstein should be awarded the 1.7 million
19 dollars and not you and your siblings, correct?

20 MR. ROSE: Objection. Cumulative.

21 THE COURT: Sustained.

22 BY MR. FEAMAN:

23 Q. Now, so the beneficiary of the estate of
24 Simon Bernstein, should it prevail in the Chicago
25 litigation, is the pour-over trust which is of Simon

1 Bernstein, correct?

2 MR. ROSE: Objection.

3 THE COURT: I'm sorry. I need that
4 question read back before you even say the
5 objection. I don't think I follow you.

6 BY MR. FEAMAN:

7 Q. Let me try to rephrase. The Estate of
8 Simon Bernstein that would receive the 1.7 million
9 if it prevailed, according to this, the beneficiary
10 of the estate, the monetary beneficiary is the Simon
11 Bernstein Trust that was created down here in
12 Florida, correct?

13 A. Yes. You are asking me if the trust of
14 Simon was the --

15 Q. Yes.

16 A. Yes.

17 Q. And assume for the moment that Mr.
18 Stansbury is not successful or is unsuccessful in
19 his lawsuit against the estate, then that 1.7
20 million dollars would, in fact, pass through the
21 estate and go to the trust, correct?

22 A. I'm not sure that the money goes --

23 MR. ROSE: Objection. Calls for legal
24 conclusion. He said he is not sure and the
25 Court is well aware of the proceeds of the

1 estate.

2 THE COURT: I'll let him answer if he
3 knows.

4 THE WITNESS: So I believe that what
5 you're asking me is if the estate prevails, do
6 the proceeds, I think you said automatically go
7 into the trust, and if you did say that, then I
8 understood what you're asking me and I'm not
9 sure that is what happens.

10 BY MR. FEAMAN:

11 Q. I don't think I used the word
12 automatically. I think what I said was that after
13 the payment of all claims, creditors, the money, the
14 1.7 million dollars would then pass from the estate
15 to the Simon Bernstein Trust; is that correct?

16 A. That is my understanding, after those
17 payments.

18 Q. So that would not go to you in the Chicago
19 litigation, correct, or would not go to you as
20 plaintiffs in the Chicago litigation; it would go to
21 the trust, correct?

22 A. That's correct.

23 Q. Okay. And none of those adult children
24 who are plaintiffs in the Chicago litigation are
25 beneficiaries of the trust, are they?

1 A. No, they are not.

2 Q. And, in fact, it's all of their kids that
3 are beneficiaries of the trust through the
4 subtrusts, correct?

5 A. Yes.

6 MR. ROSE: Objection to the form.

7 THE COURT: Overruled. Mr. Feaman, last
8 question.

9 BY MR. FEAMAN:

10 Q. So if the money goes to the 10
11 grandchildren of Mr. Simon Bernstein that is being
12 litigated in Chicago and not the five adult
13 children, okay, and you are the successor trustee
14 for the trust where the money goes to the
15 grandchildren and yet at the same time you are the
16 plaintiff in the Chicago action, don't you see that
17 as a conflict?

18 A. No.

19 Q. Let me ask one more. Are you watching out
20 for you as a plaintiff in the Chicago litigation or
21 are you watching out for the 10 grandchildren of
22 your father as successor trustee of the trust that
23 is the beneficiary of the estate down here in
24 Florida?

25 MR. ROSE: Objection. Argumentative.

1 THE COURT: Sustained. It doesn't have
2 parameters.

3 Okay. Mr. Eliot.

4 CROSS EXAMINATION

5 BY MR. ELIOT BERNSTEIN:

6 Q. Ted, your counsel stated that there is 10
7 subtrusts that are the beneficiaries of Simon and
8 Shirley for the grandchildren; is that correct? Is
9 that what you believe?

10 A. Yes. That's what he said.

11 Q. Are you serving as a subtrustee of your
12 childrens' trust?

13 A. Yes, I am.

14 Q. Okay. Did you sue the subtrust in your
15 Shirley trust lawsuit?

16 MR. ROSE: Objection.

17 MR. ELIOT BERNSTEIN: This is very
18 important, Your Honor.

19 THE COURT: I get to hear his objection.
20 Don't tell me how important it is.

21 MR. ROSE: First of all, it's a matter of
22 public record. He is required in our lawsuit,
23 which you looked at, 3698 of the complaint, we
24 had to sue every single person that could
25 potentially be a beneficiary.

1 THE COURT: You can answer the question.

2 Overruled. Answer, if you can.

3 THE WITNESS: Yes.

4 BY MR. ELIOT BERNSTEIN:

5 Q. Okay. So can I show you -- and there is
6 your complaint, Mr. Rose, so if you need a copy, let
7 me know.

8 THE COURT: In which case for the record?

9 MR. ELIOT BERNSTEIN: The 3698 complaint
10 that was served, the amended complaint.

11 BY MR. ELIOT BERNSTEIN:

12 Q. Ted, on that complaint --

13 THE BAILIFF: Sir, behind the podium.

14 BY MR. ELIOT BERNSTEIN:

15 Q. Sorry. -- you sued Alexandra Bernstein.
16 Do you know who that is?

17 MR. ROSE: Objection. Relevance.

18 THE COURT: Sustained. Move on.

19 BY MR. ELIOT BERNSTEIN:

20 Q. Okay. Did you sue your children's
21 subtrusts as beneficiaries?

22 A. Was that the last question that you asked
23 me? Yes.

24 Q. You did. Can you point out in the caption
25 where you sued them?

1 A. Can I point out in the caption where I
2 sued the defendants?

3 Q. The subtrusts for your children. Mr. Rose
4 just said you had to sue all of the potential
5 beneficiaries.

6 MR. ROSE: Objection. Docket speaks for
7 itself, if you read the caption. This is just
8 improper questioning.

9 MR. ELIOT BERNSTEIN: I can't see where he
10 sued the subtrusts so I'm asking him if maybe
11 he could show me.

12 THE COURT: I'm wondering how it relates
13 to this hearing.

14 MR. ELIOT BERNSTEIN: Oh, it relates.

15 THE COURT: That's not good enough.

16 MR. ELIOT BERNSTEIN: Let me explain.
17 What is being argued here is that these
18 beneficiaries exist that all of this affects,
19 all of these hearings, obviously, and what I'm
20 establishing is the groundwork that the 10
21 subtrusts don't factually exist.

22 THE COURT: Move on.

23 BY MR. ELIOT BERNSTEIN:

24 Q. Okay. Ted, in your lawsuit you sued a
25 Simon Bernstein Trust dated 9-13-12; is that

1 correct? Do you see that there?

2 A. I see that there.

3 Q. Okay. Are you aware of your father on
4 9-13-12, the day he died, between the hours of 12
5 and two a.m., when he was code blue, that he
6 formulated any trust on that date?

7 MR. ROSE: Objection. It's an improper
8 question on a couple of grounds, but if I can
9 help the Court, the trust creates 10 subtrusts
10 on the date of his death so he didn't create
11 anything new. It's based upon the 7-25-12
12 trust that the Court has already validated.

13 THE COURT: I got it.

14 BY MR. ELIOT BERNSTEIN:

15 Q. You didn't sue the 7-25 trust; you signed
16 a Simon Bernstein Trust dated on the day he died.
17 Do you have a trust in your possession of Simon
18 Bernstein's dated 9-13-12?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Well, you --

23 THE COURT: No. I made the ruling. Next
24 question, please.

25 MR. ELIOT BERNSTEIN: I'm getting to the

1 next question.

2 THE COURT: Excellent.

3 BY MR. ELIOT BERNSTEIN:

4 Q. You sued me as trustee of the Simon
5 Bernstein Trust dated 9-13-12; are you aware of
6 that? Is that what it says in that caption?

7 A. Yes. That's what it says.

8 Q. Okay. So am I the trustee of the Simon
9 Bernstein Trust dated 9-13-12, that you are aware
10 of?

11 MR. ROSE: Objection. May I be heard
12 because --

13 THE COURT: Sure.

14 MR. ROSE: -- he would be the trustee
15 under the terms of the trust agreement if he
16 had accepted his role.

17 THE COURT: I know.

18 MR. ROSE: On the basis to accept his
19 role, we have a guardian. It's cumulative and
20 there is no point in asking the question.

21 THE COURT: Sustained.

22 BY MR. ELIOT BERNSTEIN:

23 Q. Did you sue yourself as trustee of your
24 childrens' trust under the 9-13-12 trust?

25 MR. ROSE: Objection. Cumulative,

1 relevance.

2 THE COURT: Sustained.

3 BY MR. ELIOT BERNSTEIN:

4 Q. Okay. Has there been a construction
5 hearing to determine the beneficiaries of the Simon
6 or Shirley Trust that you're representing?

7 MR. ROSE: Objection. Relevance.

8 THE COURT: Sustained.

9 BY MR. ELIOT BERNSTEIN:

10 Q. Did you file a pleading in the Illinois
11 Court stating that I wasn't a beneficiary of the
12 Simon Bernstein Estate?

13 A. I don't think so.

14 Q. Okay. Are you aware of a ruling by Judge
15 John Robert Blakey of Illinois that states that
16 based on your pleading claiming that I wasn't a
17 beneficiary of Simon's estate, that I was being
18 removed from that federal lawsuit?

19 MR. ROSE: Objection. Relevance.

20 THE COURT: Sustained.

21 BY MR. ELIOT BERNSTEIN:

22 Q. Were you the fiduciary of Shirley's estate
23 and trust when your counsel filed fraudulent
24 documents with the court?

25 MR. ROSE: Objection.

1 THE COURT: Okay. That will be the last
2 question after this one. Overruled. Excuse
3 me. Sustained.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: Last question.

6 BY MR. ELIOT BERNSTEIN:

7 Q. Were fraudulent documents submitted to the
8 court while you were a fiduciary?

9 MR. ROSE: Objection. Relevance,
10 materiality, beyond the scope of the
11 examination.

12 MR. ELIOT BERNSTEIN: Well, definitely due
13 to the fact whether he qualifies or not to
14 become a fiduciary.

15 THE COURT: It's an inappropriate
16 question. Sustained. All right. Thank you.
17 Mr. Rose.

18 MR. ELIOT BERNSTEIN: Can I state on the
19 record that I have been denied my access to the
20 witness.

21 THE COURT: You may. Go ahead, Mr. Rose.

22 MR. ELIOT BERNSTEIN: I will.

23 CROSS EXAMINATION

24 BY MR. ROSE:

25 Q. Assuming the Illinois lawsuit results in

1 the money coming into the estate, that would leave a
2 lot of money available to pay Mr. Stansbury's claim;
3 would it not?

4 A. Yes, it would.

5 Q. All the more reason to have Mr. O'Connell
6 as the personal representative represented by the
7 people that give you the best chance of winning that
8 case, right?

9 A. That's right.

10 MR. ROSE: Nothing further.

11 MR. FEAMAN: No redirect.

12 THE COURT: You may step down. Thank
13 you.

14 (Witness stepped down)

15 THE COURT: All right. Now, at this time
16 Mr. O'Connell's testimony from the last
17 hearing, is it being submitted in its entirety
18 to the Court?

19 MR. ROSE: I'm only going to put a few
20 passages in. I'm going to read them. I can
21 hand them to the Court.

22 THE COURT: I'll mark them into evidence
23 if Mr. Feaman is of the same mindset and he can
24 hand me the pages. Did you have any pages?

25 MR. ELIOT BERNSTEIN: I would like to

1 submit the full thing.

2 THE COURT: Do you have the full thing of
3 his testimony? If you have all of his
4 testimony, I'll take all of it.

5 MR. ROSE: I have underlined the parts I
6 wanted to put in evidence so I think it would
7 be easier to read. I could read for the first
8 two or three minutes and you would get
9 everything you needed and then you wouldn't
10 have to read the entire transcript.

11 THE COURT: If you do that again, Mr.
12 Eliot, I will have you leave. You continue to
13 laugh and snarf and I do not tolerate that in
14 my courtroom. I don't allow anyone to do it to
15 you.

16 MR. ELIOT BERNSTEIN: Okay.

17 THE COURT: Do you have the pages prepared
18 here today that you wish to submit, Mr. Eliot?
19 This is the time.

20 MR. ELIOT BERNSTEIN: No. I'll submit
21 them afterwards.

22 THE COURT: If you have them here today,
23 this is the time when we submit evidence.

24 (Trustee's Exhibit No. 2, Brian O'Connell
25 Excerpts of 3-2-17 Hearing Testimony)

1 THE COURT: Mr. Feaman, do you have what
2 you wish to submit?

3 MR. FEAMAN: I do. For the record, if
4 Your Honor wants to take notes, it's Mr.
5 O'Connell's deposition taken this past Monday,
6 on March 13th. And as it relates to the
7 appointment of Mr. Ted Bernstein as
8 administrator ad litem, we are doing this in
9 the interest of time rather than calling the
10 witness and having -- I was going to call Mr.
11 Royer and have him read --

12 THE COURT: I think I'm confused. Did you
13 all agree on the deposition or his testimony at
14 the prior hearing?

15 MR. FEAMAN: I said he could put in
16 whatever he wanted from the prior hearing. I'm
17 not seeking to put in anything from the prior
18 hearing of Mr. O'Connell, but if he wants to, I
19 said I have no objection.

20 MR. ROSE: Prior hearing?

21 THE COURT: Yes, prior hearing first.

22 MR. ROSE: Do you want me to read it
23 quickly? It's not many passages.

24 THE COURT: No. I actually want them in
25 my hand, to be honest with you. Just identify

1 it for the record.

2 MR. ROSE: I have page 1, which just is
3 the cover page. I'll take out the appearances
4 of counsel. So there's designations on pages
5 14, 15, 16, 22, 23, 24, 25, 26, 27, 28 and 31,
6 which I have circled or underlined.

7 THE COURT: Now you can read it. Now go
8 ahead and read it. So I'll take the hard copy
9 but go ahead and read it.

10 MR. ROSE: I'll read it first. Okay.

11 THE COURT: Take your time.

12 MR. ROSE:

13 "Q. Now, you have not gotten -- you said
14 that you wanted to retain Mr. Rose to represent
15 the estate here in Florida, correct?

16 "A. Yes. But I want to state my position
17 precisely, which is as now has been pled that
18 Ted Bernstein should be the administrator ad
19 litem to defend that litigation. And then if
20 he chooses, which I expect he would, employ
21 Mr. Rose and Mr. Rose would operate as his
22 counsel."

23 Picking up on line 15 -- page 15, line
24 14:

25 "A. Here's why, yes, because of events.

1 You have an apple and an orange with respect to
2 Illinois. Mr. Rose and Ted Bernstein is not
3 going to have any -- doesn't have any
4 involvement in the prosecution by the estate of
5 its position to those insurance proceedings.
6 That's not on the table."

7 "THE COURT: Say it again, Ted has no
8 involvement.

9 "THE WITNESS: Ted Bernstein and Mr. Rose
10 have no involvement in connection with the
11 estate's position in the Illinois litigation,
12 Your Honor. I am not seeking that. If someone
13 asked me that, I would say absolutely no.

14 Page 22, line 15:

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

19 "A. Right.

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

25 "A. Correct.

1 "Q. And notwithstanding that, you still
2 believe that it's in the best interests of the
3 estate as a whole to have Ted to be
4 administrator ad litem and me" -- Alan Rose was
5 asking the question -- "to represent the estate
6 given our prior knowledge and involvement in
7 the case, right?

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

18 "Q. And clearly you are adverse to Mr.
19 Stansbury, right?

20 "A. Yes."

21 Page 24, line 5:

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

25 "A. Approximately, yes."

1 MR. ROSE: That's referring to Mr.
2 Stansbury.

3 Page 25:

4 "Q. Okay. So despite that order, you
5 have personal knowledge that he is \$40,000 in
6 arrears with the Chicago counsel?

7 A. I have knowledge from my counsel."

8 26, line 5:

9 "Q. Would you--"

10 MR. FEAMAN: Objection as to relevancy as
11 to the administrator ad litem issue. Mr.
12 Stansbury , whether he owes money or not,
13 supposedly Chicago counsel might go to the
14 discharge issue but not to the administrator
15 ad litem with regard to Ted Bernstein.

16 MR. ROSE: I believe if you're in contempt
17 of a, or in violation of a court order, the
18 court has the power to disregard your filings
19 and your objections if you violate a court
20 order which as Mr. --

21 MR. FEAMAN: There is no finding of
22 violation of a court order.

23 THE COURT: I need the question again.

24 MR. ROSE: I'll withdraw the question for
25 the purposes of this hearing.

1 THE COURT: Thank you. Mark through it,
2 if you would, and identify what page and line
3 that was.

4 MR. ROSE: 24, 5 through 9 and 25, 22
5 through 25, would you like me to remove them?

6 THE COURT: Excellent. If you provide the
7 Court the hard copy that has been read into
8 evidence, it will just be for my records.

9 MR. ROSE: I agree.

10 Page 26:

11 "Q. Would you agree with me that you have
12 spent almost no money defending the estate so
13 far as the Stansbury litigation?

14 "A. Well, there's been some money spent.
15 I wouldn't say no money. I have to look at the
16 billings to tell you.

17 "Q. Very minimal? Minimal?

18 "A. Not a significant amount.

19 "Q. Okay. Minimal in comparison to what
20 it's going to cost to try the case?

21 "A. Yes."

22 Page 27:

23 "Q. And if Ted is not the administrator
24 ad litem, you are going to have to spend money
25 to sit through a two-week trial?

1 "A. Yes."

2 Line 9:

3 "Q. Would you agree with me that you know
4 nothing about the relationship, personal
5 relationship between Ted, Simon and Bill
6 Stansbury, personal knowledge? Were you in any
7 of the meetings between them?

8 "A. No, not personal knowledge."

9 MR. ROSE: I want to withdraw page 28
10 because it's not -- it goes to the last
11 hearing.

12 On page 31:

13 "Q. You agreed to this procedure that I
14 would become counsel and Ted would become the
15 administrator ad litem because you thought it
16 was in the best interests of the estate as a
17 whole, right?

18 "A. For the reasons stated previously,
19 yes.

20 "Q. And other than having to go through
21 this expensive procedure to not be
22 disqualified, you still agree that it's in the
23 best interests of the estate that our firm be
24 counsel and that Ted Bernstein be administrator
25 ad litem?

1 "A. For the defense of the Stansbury
2 civil action, yes.

3 "Q. And that's the only thing we are
4 asking to get involved in, correct?

5 "A. Correct."

6 MR. ROSE: And that's it. Nothing
7 further.

8 THE COURT: Thank you.

9 MR. ROSE: I'll tender to the Court the
10 hard copy.

11 THE COURT: Thank you. These are just for
12 my records.

13 MR. FEAMAN: May I approach Your Honor?

14 THE COURT: You may.

15 MR. FEAMAN: The excerpts that I'm going
16 to identify on the record and copies for you of
17 Mr. O'Connell's deposition deal with the
18 exhibit marked at the deposition.

19 THE COURT: Hold on one second. Again,
20 this is just a copy for my reference of what
21 you will be reading into the record?

22 MR. FEAMAN: Yes, Your Honor.

23 THE COURT: And this I'll receive into
24 evidence which is just as the exhibit to those
25 pages. It is the Objection to Accounting of

1 the Simon Bernstein Trust. So that will be on
2 Stansbury's 1. What's going on?

3 (Stansbury's Exhibit No. 1, Objection to
4 Accounting)

5 MR. ELIOT BERNSTEIN: Can I enter that
6 into evidence?

7 THE COURT: After I'm complete with him.

8 MR. ROSE: Might I see a copy of the
9 transcript that he is going to rely upon?

10 MR. FEAMAN: It's on your desk. There is
11 a copy right there.

12 MR. ROSE: Thank you, sir. Appreciate it.

13 THE COURT: You may proceed.

14 MR. FEAMAN: Thank you. For Your Honor's

15 --

16 THE COURT: I'm sorry. We have an
17 emergency I need to sign.

18 MR. FEAMAN: This will be quick.

19 THE COURT: No. I have to sign the
20 emergency.

21 MR. FEAMAN: Okay.

22 THE COURT: Thank you. You may proceed.

23 MR. FEAMAN: We are submitting for the
24 record page 20 of the deposition taken of Brian
25 O'Connell on March 13th, page 22, line 14

1 through page 27, line 1. And then within that
2 I want to read a subpart into the record.

3 THE COURT: Okay.

4 MR. FEAMAN: Specifically page 25, line
5 18:

6 "Handing you what's been marked as
7 Exhibit 3, can you identify that for the
8 record, please, Mr. O'Connell?

9 "A. That's an objection that I filed as
10 the personal representative of the Estate of
11 Simon Bernstein to an accounting that was
12 prepared and served by Ted Bernstein as trustee
13 of the Simon Bernstein Trust.

14 "Q. All right. And that's your signature
15 on page 3?

16 "A. Yes.

17 "Q. On Exhibit 3? Or is that Joy
18 Foglietta? Is that yours or is that Joy's
19 initials for you?

20 "A. They have all been hers."

21 Line 11:

22 "Q. Will you stipulate that Joy signed on
23 your behalf with your full knowledge and
24 consent?"

25 MR. FEAMAN: Joy Foglietta, Your Honor,

1 is another lawyer.

2 "A. That's correct.

3 "Q. These objections to the accounting,
4 was there ever a hearing on these objections?

5 "A. No.

6 "Q. These objections, are they still
7 pending?

8 "A. Still pending.

9 "Q. Do you know if there was a revised
10 accounting ever done in response to the
11 objection that you filed on behalf of the
12 estate?

13 "A. I am not sure."

14 Thank you.

15 MR. ROSE: Just briefly, page --

16 THE COURT: Go ahead.

17 MR. ROSE: -- page 94, line 16:

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

22 MR. FEAMAN: Objection. Repetitive,
23 cumulative.

24 THE COURT: I think it has to be taken
25 from a different vein from than was asked of

1 Mr. Bernstein but this is the PR. So
2 overruled. Thank you.

3 MR. ROSE:

4 "A. Not that I can think of. It would be
5 the two of them would seem to have the most
6 knowledge of their dispute with one another
7 most personal knowledge at least.

8 "Q. Now, if the Court did not want to
9 appoint Ted Bernstein as administrator ad
10 litem, would you still want the court to
11 appoint someone else as administrator ad
12 litem?

13 "A. I haven't given that any
14 consideration. But probably in the interests
15 of trying to move the case along I would have
16 to have sort of an internal discussion to see
17 who could advance that defense the quickest,
18 in-house, getting an ad litem involved, getting
19 another law firm involved. So those are the
20 things I am giving you the conditions I would
21 have to weigh if that happened but we would do
22 something to keep the case going."

23 95, line 5:

24 "Q. Anything Ted Bernstein would be
25 doing, attending a deposition or reviewing

1 documents or meeting with witnessess, he would
2 not be charging?"

3 "A. That's my understanding of the setup.

4 "Q. And that would result in lower costs
5 to the estate?

6 "A. It should.

7 "Q. Which would not only be in the best
8 interest of the beneficiaries but also really
9 in the best interest of Mr. Stansbury because
10 it would lower the amount of money that would
11 be drained from the estate to defend his claim?

12 "A. True."

13 MR. ROSE: No further questions.

14 MR. FEAMAN: All right. My turn, Your
15 Honor. Page 98, line 13:

16 THE COURT: 98, 13.

17 MR. FEAMAN: Yes. Question by Mr.
18 Feaman:

19 "All right. Now, in response to a
20 question asked by Mr. Rose, you said that you,
21 Mr. O'Connell, would be handling any settlement
22 discussions arising out of the independent
23 action by Mr. Stansbury against the estate,
24 correct?

25 "A. Correct. Because that's what you

1 have and I have actually done that.

2 "Q. But if the case got rolling and
3 discovery was taken, depositions were taken,
4 documents were produced, all of which has not
5 taken place yet, you would have to speak to Mr.
6 Rose and Ted Bernstein to get their opinion on
7 how the case is going, wouldn't you?

8 "A. Well, I'd speak to them and I'd take
9 a look at the discovery or motions. I know
10 there's a motion for summary judgment that was
11 pending, for example. So I would speak and
12 then take a look at the record. I would do
13 both.

14 "Q. And how many lawyers do you
15 presently have in your law firm, sir?

16 "A. Approximately 32.

17 "Q. Okay. And of those how many are
18 commercial or business litigators?

19 "A. Primarily? Because some people --

20 "Q. Primarily?

21 "A. There's some overlap.

22 "Q. Yes, of course.

23 "A. Even in our own department. So
24 there's -- I'd say principally two for sure.

25 "Q. Okay.

1 "A. But that's primarily what they do.

2 "Q. Do you think that they are, in your
3 opinion, competent and capable of defending the
4 estate in connection with Mr. Stansbury's
5 claims in his independent action?"

6 THE COURT: There is an objection by you.
7 I just overruled it but you can continue.

8 MR. FEAMAN: Page 100, line 4:

9 "Q. You can answer."

10 Line 5:

11 "A. Yes, I think they have the skill set
12 to do that. It's the other instances that I
13 don't want to repeat because they are already
14 sort of in our pleading as to why we chose this
15 course of action."

16 MR. FEAMAN: Nothing further.

17 THE COURT: Mr. Eliot, what do you want to
18 submit?

19 MR. ELIOT BERNSTEIN: I wanted to submit
20 the deposition of Mr. O'Connell in full. I
21 hate to be --

22 THE COURT: I have to mark that -- hold on
23 -- because it's going into evidence.
24 Objections?

25 MR. ELIOT BERNSTEIN: And then --

1 THE COURT: Hold on. Objections?

2 MR. ROSE: To the whole deposition coming
3 in?

4 THE COURT: Yes.

5 MR. ROSE: I don't think it's appropriate
6 to just enter a deposition in evidence but to
7 speed things up...

8 MR. ELIOT BERNSTEIN: I will be relying on
9 parts of it too.

10 THE COURT: No. If you're putting in the
11 whole thing, there is no need to be relying on
12 parts.

13 MR. ELIOT BERNSTEIN: Okay. I got what
14 you're saying. Okay. Great.

15 THE COURT: Mr. Feaman.

16 MR. FEAMAN: No objection.

17 MR. ELIOT BERNSTEIN: Your Honor --

18 THE COURT: Wait. I'm still waiting for
19 Mr. Rose.

20 MR. ROSE: If Your Honor is willing to
21 read the whole transcript, to save time --

22 THE COURT: I'll read it.

23 MR. ROSE: Then I would allow you to read
24 it, preserving our objections for the record.

25 THE COURT: To any further hearings. I

1 got it.

2 MR. ROSE: To the form objections that are
3 stated in there. I can trust Your Honor to
4 rule on those as you read it.

5 THE COURT: Okay. Give me a second, Mr.
6 Eliot. I have to mark everything
7 appropriately. This is Interested Party's
8 Number 2. Yes.

9 (Interested Party's Exhibit No. 2, Brian
10 O'Connell deposition 3-13-17)

11 MR. ELIOT BERNSTEIN: I'm sorry. We are
12 six minutes over and I am going to be six
13 minutes late to a commitment that my kids are
14 relying on. And I believe you only scheduled
15 two hours again and I base my life and
16 childrens' life on those two hours. So I have
17 to fly but I want to make sure that I get a
18 chance to call witnesses at some point to this
19 hearing.

20 THE COURT: Now is the time.

21 MR. ELIOT BERNSTEIN: I don't have time.
22 You scheduled two hours.

23 THE COURT: Who are you going to call and
24 did you subpoena witnesses to be here today?

25 MR. ELIOT BERNSTEIN: I was going to call

1 Diana Lewis.

2 THE COURT: Has she been subpoenaed for
3 today? Answer my question.

4 MR. ELIOT BERNSTEIN: No.

5 THE COURT: So she wouldn't be --

6 MR. ELIOT BERNSTEIN: Well, they have
7 called other witnesses that weren't subpoenaed
8 and you allowed that.

9 THE COURT: They called parties.

10 MR. ELIOT BERNSTEIN: What?

11 THE COURT: They called parties.

12 MR. ELIOT BERNSTEIN: She is a party.

13 THE COURT: She is not considered a party.

14 MR. ELIOT BERNSTEIN: She is not a
15 trustee.

16 THE HONORABLE DIANA LEWIS: I'm a
17 guardian.

18 THE COURT: She is a guardian of the trust
19 of the children. How long was your --

20 MR. ELIOT BERNSTEIN: Probably 15, 20
21 minutes. And then I have Ted Bernstein that I
22 was going to call and Alan Rose perhaps.
23 Probably 30, 40 minutes more at least.

24 THE COURT: You didn't tell me that until
25 right now.

1 MR. ELIOT BERNSTEIN: You gave two hours.

2 THE COURT: Let's finish it. Go ahead and

3 --

4 MR. ELIOT BERNSTEIN: I have got to leave.

5 THE COURT: This is the second time you
6 have done that but I'm willing to today. I
7 made it clear we are going to conclude this
8 hearing. If you want to call Diana Lewis today
9 she is here. We can conclude this. You said
10 20 minutes.

11 MR. ELIOT BERNSTEIN: I don't have time.

12 THE COURT: By 5:00.

13 MR. ELIOT BERNSTEIN: Your order said two
14 hours.

15 THE COURT: Wait, Mr. Bernstein. We are
16 not going to play this game because I want to
17 conclude this hearing. When you're telling me
18 there is other commitments, everyone in here
19 has other commitments. I want to conclude this
20 hearing because this has been set for this
21 time, this particular motion as well, is my
22 recollection. So I don't want to misstate. At
23 the last hearing I set this one. We had two
24 matters set. I want to conclude this today.
25 Last time I continued it because you told me

1 you had other commitments.

2 MR. ELIOT BERNSTEIN: And I do again. I'm
3 sorry. But, listen, you can go on without me.

4 THE COURT: Wait but I want to be very
5 clear. I'll stay and let you call your
6 witnesses that are here.

7 MR. ELIOT BERNSTEIN: You scheduled it for
8 two hours. I told you at the hearing that it
9 would take longer probably and you said no. So
10 now we are at the point where everybody used
11 all of the time. I hardly had any time.

12 THE COURT: You had equal time throughout
13 every witness.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: As long as you understand the
16 Court is willing to stay. Are all of the other
17 attorneys willing to stay?

18 MR. ROSE: Yes.

19 MR. FEAMAN: Yes.

20 THE COURT: I want you to know I'll stay
21 for you.

22 MR. ELIOT BERNSTEIN: We should have
23 scheduled a proper time for the hearing.

24 THE COURT: I do appreciate your
25 position.

1 MR. ELIOT BERNSTEIN: Okay.

2 THE COURT: The Court will then be
3 ruling.

4 MR. ELIOT BERNSTEIN: Thank you,
5 everyone.

6 THE COURT: As you understand, Mr. Feaman,
7 we didn't get to your other hearing. I don't
8 have a JA today. I'm going to put it on the
9 table. I can't give you a date because when I
10 touch my calendar, I do bad things. I'll issue
11 another order, okay. I'll get these two orders
12 out. The Court is very aware that you all want
13 orders. I haven't had it that long so bear
14 with me. In fact --

15 MR. ROSE: Can we do that hearing now,
16 discharge administrator ad litem? It's to
17 discharge his funding obligations --

18 THE COURT: I am not going to do that
19 because I would have concluded, giving Mr.
20 Eliot time on the other one. I'm not going to
21 do the other one outside of his presence. I
22 wanted to finish this one which I made clear
23 from the beginning of this hearing.

24 Thank you very much. We're in recess.

25 THE BAILIFF: Court's in recess.

1 MR. FEAMAN: Could we do a two minute
2 closing?

3 THE COURT: I can do that.

4 MR. FEAMAN: I'm serious about two
5 minutes. I'm not going to go to five.

6 THE COURT: I can do that, absolutely.

7 Mr. Rose, do you want to start with
8 closing?

9 MR. ROSE: Sure. I will be very brief.
10 It's the same argument we made in our written
11 final argument, you know, these are proceedings
12 to administer an estate. I think, as I said in
13 my written final argument, I think your choice
14 is fairly simple and binding one way or the
15 other.

16 Are you going to let O'Connell run the
17 estate the way he thinks is best? You have
18 heard testimony of O'Connell and Bernstein as
19 to what is best for the estate, to reduce
20 costs, speed things up, and it's what Mr.
21 O'Connell wants to do.

22 You have seen that Mr. Stansbury even
23 moved the Court to speed up the case because
24 Mr. O'Connell wasn't available. He's a busy
25 trial lawyer. It's in evidence. He blocked

1 off months at a time because he had other
2 cases. So in order to move the cases along --
3 and you can't close this estate until we try to
4 understand Mr. Stansbury's claim. So we
5 respectfully request that you allow Mr.
6 O'Connell's plan that we support to go into
7 effect.

8 This idea of a conflict of interest is
9 really a red herring. Clearly everyone has a
10 conflicting interest. Mr. Stansbury is aligned
11 with the estate in Illinois because he wants
12 the money to come in and he wants to take it
13 out at the other end.

14 But you should not allow the person who is
15 suing the estate for two and a half million
16 dollars to get to choose who sits at the table
17 to defend him. He wants a less qualified, less
18 experienced attorney, or a less knowledgeable
19 attorney. And Mr. O'Connell's testimony is
20 that he has two commercial litigators in his
21 firm. That is not a lot of commercial
22 litigators in a firm. We are a litigation
23 boutique with 14 lawyers but only do commercial
24 litigation.

25 And you heard from Mr. Bernstein. He is

1 trying to do what is in the best interest of
2 his family, who are the beneficiaries, to
3 protect them from Mr. Stansbury and we would
4 like you to allow that plan to go into effect.

5 THE COURT: Mr. Eliot.

6 MR. ELIOT BERNSTEIN: I object to
7 everything. I have got to go. I object that
8 the hearing is going on without me.

9 THE COURT: It's not. If you don't want
10 to do a closing, Mr. Feaman.

11 MR. ELIOT BERNSTEIN: No. I was denied
12 time to do this by the Court.

13 THE COURT: Again, we'll stay until five.
14 Call your witnesses.

15 MR. ELIOT BERNSTEIN: No. It's okay.

16 (Mr. Eliot Bernstein left the courtroom)

17 THE COURT: Okay. Mr. Feaman.

18 MR. FEAMAN: In order to try to
19 crystallize for the Court why there is a
20 conflict that precludes Mr. Ted Bernstein from
21 becoming the administrator ad litem -- and, by
22 the way, it's not that Mr. Stansbury wants to
23 tell the Court who it should be. First of all,
24 there doesn't have to be an administrator ad
25 litem.

1 Mr. O'Connell never said he's not
2 available to sit at counsel table coming up.
3 There has been no testimony on the record
4 prospectively, only retrospectively that
5 somehow he can't attend. No testimony that he
6 couldn't. There is no lawyer from his office
7 but the lawyer is a different thing.

8 So to crystallize the conflict, let's
9 reverse the order of things. Let's say that
10 Mr. Ted was appointed administrator ad litem
11 first before the Chicago action existed and he
12 is representing the estate in connection with
13 Mr. Stansbury's action against the estate.
14 Okay. He is also the successor trustee to the
15 pour-over trust. Okay. No argument there.

16 Now, let's say that Mr. Ted Bernstein then
17 decides that he is going to bring an action to
18 fight over this 1.7 million dollars that the
19 estate says that's our money. Mr. Ted
20 Bernstein says no, that's my money. And so
21 then all of a sudden he's now becoming
22 plaintiff up there.

23 The personal representative or anybody,
24 any beneficiaries, interested person of the
25 estate could now easily say now, wait a minute,

1 Mr. Personal Representative, you need to take a
2 look at this because where once Mr. Ted
3 Bernstein had no conflict, now he is fighting
4 over this 1.7 million dollars. He's clearly
5 adverse to the estate. How can he hold a
6 fiduciary position as administrator ad litem on
7 behalf of the estate because now it's changed.
8 Now he is adverse.

9 So I think it crystallizes if you reverse
10 the chronological order of things to show that,
11 gee, now he clearly holds a conflict of
12 interest and he should step down as the
13 administrator ad litem. It makes no difference
14 what order it comes in but it does crystallize
15 the fact that Mr. Ted Bernstein and that has
16 nothing to do with Mr. Rose. But just, Mr. Ted
17 Bernstein, you're trying to keep 1.7 million
18 dollars out of the hands of the estate. On
19 paper that is a conflict. Under the law that I
20 mentioned in opening statement and under the
21 statute that a person holding fiduciary duty
22 should not, that position should not be blessed
23 by this Court. Thank you.

24 MR. ROSE: Just if you look at his cases,
25 they are situations where you're actually suing

1 the estate. We are not suing the estate. We
2 are both parties in an interpleader trying to
3 determine what did Simon Bernstein intend to
4 happen to his life insurance proceeds. That
5 case is going to happen whatever happens.

6 Mr. O'Connell is correct, it's apples and
7 oranges, and you have got to look at what's in
8 the best interest of these estates to get the
9 case done quickly, cheaply and efficiently.
10 And I don't know how you're going to, you know,
11 not think it's in the best interest to have the
12 guy that knows the facts sitting at the table
13 for free defending the estate and there is no
14 one that has suggested he's going to do a bad
15 job or not going to do it wholeheartedly.

16 I believe we -- obviously, it's your
17 decision. We think that if you go the path of
18 letting them set this course, that I don't know
19 where the estate goes from here because the
20 case was floundering.

21 THE COURT: All right. We got it. Thank
22 you, everyone, very much. Court is in recess.

23 (At 4:20 p.m., Court stood in recess)
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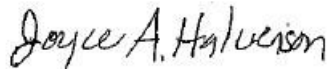
C E R T I F I C A T E

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, JOYCE A. HALVERSON, Court Reporter,
certify that I was authorized to and did
stenographically report the foregoing
proceedings and that the transcript is a true
record.

Dated this 23rd day of March 2017.



JOYCE A. HALVERSON

Court Reporter

2014 CP 063698

WILL OF
SHIRLEY BERNSTEIN

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.



Pi
12-15-15

CONFIRMED COPY

WILL OF

SHIRLEY BERNSTEIN

The original of this Will is being held in the safe deposit box of the law firm of Tescher & Spallina, P.A.

I, SHIRLEY BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. My spouse is SIMON L. BERNSTEIN ("SIMON"). My children are TED S. BERNSTEIN ("TED"), PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to SIMON, if SIMON survives me, my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if SIMON does not survive me, I give this property to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical, and if neither SIMON nor any child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. RESIDENCES

I give to SIMON, if SIMON survives me, my entire interest in any real property used by us as a permanent or seasonal residence, subject to any mortgage or other lien. If SIMON does not survive me, such interest shall pass with the residue of my estate.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate to the Trustee then serving under my revocable Trust Agreement dated today, as may be amended and restated from time to time (the "Existing Trust"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

LAST WILL
OF SHIRLEY BERNSTEIN

TESCHER & SPALLINA, P.A.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint SIMON and TED, one at a time and successively in that order, as my Personal Representative (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by-law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. Powers of Personal Representatives. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

LAST WILL
OF SHIRLEY BERNSTEIN

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TESCHER & SPALLINA, P.A.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right

to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without

cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Articles I and II of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. Spouse. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

[remainder of page intentionally left blank]

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 20 day of May, 2008.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testatrix to be the Testatrix's Will in our presence, and at the Testatrix's request and in the Testatrix's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this _____ day of _____, 2008.

/s/ Robert L. Spallina residing at 7387 Wisteria Ave
[Witness Signature] [Witness Address]

Parkland, FL 33076
[Witness Address]

/s/ Diana Banks residing at 23415 Boca Trace Dr.
[Witness Signature] [Witness Address]

Boca Raton, FL 33433
[Witness Address]

LAST WILL
OF SHIRLEY BERNSTEIN

TESCHER & SPALLINA, P.A.

State Of Florida

SS.

County Of Palm Beach

I, SHIRLEY BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

/s/ Shirley Bernstein
SHIRLEY BERNSTEIN, Testatrix

We, Robert L. Spallina and Diana Banks have been sworn by the officer signing below, and declare to that officer on our oaths that the Testatrix declared the instrument to be the Testatrix's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testatrix and of each other.

/s/ Robert L. Spallina
Witness

/s/ Diana Banks
Witness

Acknowledged and subscribed before me, by the Testatrix, SHIRLEY BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Diana Banks, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SHIRLEY BERNSTEIN and the subscribing witnesses, all on this 20 day of May, 2008.

Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012

/s/ Kimberly Moran
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

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LAST WILL
OF SHIRLEY BERNSTEIN

TESCHER & SPALLINA, P.A.

SHIRLEY BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

2014CP003698



TESCHER & SPALLINA, P.A.

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SHIRLEY BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20 day of MAY, 2008, and is between SHIRLEY BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SHIRLEY BERNSTEIN, of Palm Beach County, and SHIRLEY BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for his Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SHIRLEY BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Specific Cash Devise. The Trustee shall set aside in a separate trust the sum of Two Hundred Thousand (\$200,000.00) Dollars for MATTHEW LOGAN, and said separate trust shall be administered as provided in Subparagraph II.F below. If MATTHEW LOGAN does not survive me this devise shall lapse.

C. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "Family Trust" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

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2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "Marital Trust."

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

D. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

E. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by my spouse as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph II.E. below.

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F. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

G. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

H. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

I. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be

liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

J. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

K. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

SHIRLEY BERNSTEIN
TRUST AGREEMENT

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1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate

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takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneraton. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL LANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

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2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "My spouse" is SIMON L. BERNSTEIN ("SIMON").

6. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "Welfare" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "per stirpes" each generation shall be represented and counted whether or not it has a living member.

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8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

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H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or

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at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

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2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and

personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "Business Entities"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

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b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under

a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SIMON and TED, one at a time and successively in that order, shall serve as successor Trustee. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

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2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SIMON and TED, one at a time and successively in that order, shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25) years.

e. Trustee of Separate Trust for MATTHEW LOGAN. In regard to a separate trust held MATTHEW LOGAN, his mother, DEBORAH BERNSTEIN ("DEBORAH"), shall serve as Trustee until MATTHEW attains age 25 years, at which time he shall serve as a co-Trustee with DEBORAH of such separate trust.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

a. The remaining Trustees, if any; otherwise,

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b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled,

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

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2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV, G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

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J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy,

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. Family Trust. I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. Marital Trust. I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. Misc. I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

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Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to

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a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and

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5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the property disposed of pursuant to the prior paragraphs captioned "Disposition of Tangible Personal Property", "Specific Cash Devise" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise.

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manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

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IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Signature]
SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

[Signature]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Signature]
Print Name: TRACI KEATISH
Address: 16068 CLENCREST AVENUE
DELERY BEACH, FL 33446

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.

NOTARY PUBLIC STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.
[Seal With Commission Expiration Date]

[Signature]
Signature - Notary Public-State of Florida

Print, type or stamp name of Notary Public

Personally Known [initials] or Produced Identification _____
Type of Identification Produced _____

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SHIRLEY BERNSTEIN
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ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SHIRLEY BERNSTEIN, Settlor and Trustee

ELIOT BERNSTEIN

FAMILY TRUST

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

ELIOT BERNSTEIN

FAMILY TRUST

THIS IRREVOCABLE TRUST AGREEMENT is made and entered into this 20 day of May, 2008, by and between SIMON L. BERNSTEIN, a resident of Palm Beach County, Florida, as grantor, hereinafter referred to in the first person, and SIMON L. BERNSTEIN and SHIRLEY BERNSTEIN as co-trustees (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee), and ROBERT L. SPALLINA as the independent trustee (referred to as the "*Independent Trustee*," which term more particularly refers to all individuals and entities serving as independent trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor independent trustee). I have delivered to the Trustee certain property as set forth in the Attachment annexed hereto, receipt of which is hereby acknowledged by the Trustee. Such property, and any additions to such property, shall be held in trust as provided in this Agreement.

ARTICLE I. TRUST ADMINISTRATION

A. Additions, Substitutions and Trust Irrevocable. I or any other person may cause additional property to be added hereunder at any time during life or at death by will, insurance or death benefit beneficiary designation or otherwise. I shall have no right or power, either alone or in conjunction with any other person, to alter, amend, revoke or terminate any of the terms of this Agreement in any manner whatever. Unless and until surrendered by me in a writing delivered to the Trustee, I retain the power, to be exercised in an individual and nonfiduciary capacity (*i.e.*, without any fiduciary duty to any beneficiary with respect to its exercise or nonexercise) and without requiring the consent or approval of any person, to from time to time reacquire trust principal by substituting other property of equivalent value for said principal. Notwithstanding the foregoing, said right of substitution shall not apply to any insurance policies on my life owned by this Trust that would cause me to have any incidents of ownership as that term is defined under Section 2042 of the Code and the Regulations thereunder. I shall have the right at any time or times by an instrument, in writing, delivered to the Trustee to relinquish the right of substitution provided for herein.

B. Rights of Withdrawal. In any calendar year during my life in which property is contributed to the Trust by gift, each Withdrawal Beneficiary with respect to such contribution, acting personally or through his or her legal or natural guardian or attorney-in-fact, is hereby granted the absolute right, with respect to each such contribution, by written instrument or instruments delivered to the Trustee prior to the termination of such right, to withdraw from the principal of the Trust, from time

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to time, an amount having an aggregate value (as of the date or dates of withdrawal) equal to such Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution. Any such right to withdraw shall terminate at the earliest time and then to the extent that any such termination will not result in a taxable gift made by the individual holding the right, provided, no part of any right to withdraw shall terminate less than 60 days after the contribution to the Trust to which such right relates.

1. For purposes of this Subparagraph I.B., a Withdrawal Beneficiary with respect to a contribution to the Trust shall mean each person designated by the contributor to the Trustee in writing contemporaneously with such contribution, provided, in the event the contributor fails to make any such designation with respect to a contribution, my then living lineal descendants and their spouses shall be the Withdrawal Beneficiary with respect to such contribution.

2. For purposes of this Subparagraph I.B., each Withdrawal Beneficiary's Withdrawal Amount with respect to a contribution shall be such amount designated by the contributor to the Trustee in writing contemporaneously with the contributor's designation of such person as a Withdrawal Beneficiary, provided, if the contributor of such contribution fails to designate a Withdrawal Amount with respect to any Withdrawal Beneficiary, then each Withdrawal Beneficiary's Withdrawal Amount with respect to such contribution shall be an amount equal to a fraction (defined below) multiplied by the lesser of (i) the value of such contribution (at the time of such contribution), or (ii) the sum of the amounts of all federal gift tax exclusions then available to the contributor with respect to all Withdrawal Beneficiaries with respect to such contribution. The numerator of said fraction shall be the amount of any federal gift tax exclusion available to such contributor with respect to such Withdrawal Beneficiary (at the time of such contribution) and the denominator shall be the sum of the amounts of all federal gift tax exclusions then available to such contributor with respect to all such Withdrawal Beneficiaries. One-half of a contribution made by a married person shall be treated as a second separate contribution made by his or her spouse, provided, if such married person's spouse is then one of such Withdrawal Beneficiaries, only one-half of the excess of such contribution (at the time of such contribution) over the amount of the federal gift tax exclusion then available to such contributor with respect to his or her spouse shall be so treated.

3. Regardless of anything in this Subparagraph I.B. to the contrary, each contributor of a contribution to this Trust shall have the right with respect to such contribution by a written instrument delivered to the Trustee at the time of such contribution (i) to exclude any person who would otherwise have a right of withdrawal from exercising such power; (ii) to increase or decrease the amount subject to any right of withdrawal except that the amount subject to all withdrawal rights shall not exceed the amount of the contribution; and/or (iii) to change the period during which any right of withdrawal may be exercised.

4. The Trustee shall inform any Withdrawal Beneficiary of the existence of such right of withdrawal within ten days after it comes into existence but not later than the last day of the calendar year in which it comes into existence. Any such Withdrawal Beneficiary or his or her guardian may, after receiving such notice at least once, waive further notices by an instrument in writing delivered to the Trustee.



C. Trusts for ELIOT BERNSTEIN and my Lineal Descendants. The Trust shall be administered as follows for its beneficiaries:

1. Initial Beneficiary. My son, ELIOT BERNSTEIN, shall be the first principal beneficiary of the Trust.

2. Net Income and Principal Distributions.

a. The Trustee shall pay to or apply for the benefit of a principal beneficiary and the lineal descendants of a principal beneficiary dependent on such principal beneficiary for support, so much of the net income and then principal of his or her separate Trust as the Independent Trustee determines in its sole, absolute and unreviewable discretion, provided, however, that while a principal beneficiary is serving as Trustee hereunder, he or she may make distributions to or for the benefit of himself or herself for such beneficiary's Needs without any authorization from the Independent Trustee. Having in mind the extent to which funds will be available for expenditure for the benefit of such beneficiaries, the Independent Trustee is authorized to expend such amounts as it, in its sole, absolute and unreviewable discretion, shall determine to maintain the then current lifestyle of such beneficiaries, including, but not limited to, complete authority to provide for their personal care and comfort in any manner whatsoever. Net income that is not distributed shall be added to principal on an annual basis.

b. The Independent Trustee is specifically authorized in its sole, absolute and unreviewable discretion to acquire, hold and maintain one or more residences (whether held as real property, condominium or cooperative apartment) for the use and benefit of the principal beneficiary and his or her cohabitating spouse and lineal descendants, and to sell or otherwise dispose of such residences when not desired for such use and benefit. The Independent Trustee is authorized to pay all carrying charges of such residences, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair, renovation, improvement and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of such beneficiaries.

c. In exercising the discretions conferred in this Subparagraph, the Independent Trustee should give due consideration to the advisability of using the principal beneficiary's own assets and resources in order to reduce the amount of the principal beneficiary's taxable estate, thereby minimizing the amount of the principal beneficiary's future taxes. Further, it is my intent that this Trust be used to enhance the principal beneficiaries' quality of life, including (without limitation) travel, purchase of a home, cultural appreciation and enjoyment (music, arts, etc.), and education. In addition, I would like this Trust to provide a source of funds in the event that a principal beneficiary, through accident or misfortune, does not have sufficient sources of income to provide for his or her own support. I expect my lineal descendants to support themselves independently and to be productive members of their communities and not to become dependent upon distributions from the Trusts to the extent that they lose their ambition and incentive. When a beneficiary is able to be gainfully employed

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and is not actively engaged in raising his or her children, the Independent Trustee should give due consideration in exercising its discretion to not using Trust assets to replace the beneficiary's own efforts to work and accumulate financial security. However, it is not my intent to force a parent to work outside the home when he or she has determined that it is important to stay at home to raise a family. In addition, I do not intend that the Independent Trustee place undue emphasis on the amount a beneficiary earns if he or she is actively engaged in a worthwhile pursuit, including working as an unpaid volunteer for charitable purposes. In prioritizing distributions between the principal beneficiary and his or her lineal descendants, it is my intent that my first priority is the principal beneficiary. In addition to the foregoing guidance, I request, but do not require, that my lineal descendants take adequate precautions for the protection of our family's wealth and property from marital discord through the use of prenuptial agreements or other similar planning and devices. I also request, but do not require, that my lineal descendants pursue higher education, to the best of their abilities and individual circumstances. For some descendants this may mean the completion of a college education, the receipt of a masters or a doctorate, or a professional degree, and for others this may mean training in their chosen vocation. It is not my goal that the Independent Trustee reward professional students, nor punish those lineal descendants for whom life or individual circumstances indicate that the pursuit of higher education is not practical or advantageous, but only to encourage my lineal descendants to take full advantage of all educational opportunities open to them and not rush their entry into the workplace. I do not intend by these expressions of intent to bind the Independent Trustee or alter the absolute discretion it has been granted hereunder or create enforceable obligations to any beneficiary, but merely to provide general guidance to the Independent Trustee in the exercise of its discretions.

3. Death of a Principal Beneficiary. If a principal beneficiary dies with assets remaining in his or her separate Trust, upon his or her death he or she may appoint all or part of his or her Trust, in trust, to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such principal beneficiary and such principal beneficiary's creditors, estate, and creditors of such principal beneficiary's estate), provided that any such appointment to a surviving spouse of a principal beneficiary shall be limited to a life estate in all or a lesser portion of such principal beneficiary's separate Trust, and such spouse's separate trust shall be administered as provided in Subparagraph I.D. below. Any part of his or her Trust such principal beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons with such persons to become the principal beneficiary thereunder;

- a. for his or her lineal descendants then living, *per stirpes*; or
- b. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse, SHIRLEY BERNSTEIN.

Such separate Trusts shall be administered as provided for trusts under this Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.



D. Administration of Separate Trust for Spouse. The Independent Trustee shall pay to the spouse of a principal beneficiary, so much of the net income and principal of his or her separate trust as is proper for such spouse's Needs. Net income that is not distributed shall be added to principal on an annual basis. Upon the death of a spouse of a principal beneficiary, the remaining assets of his or her separate trust shall be divided among and held in separate Trusts for his or her lineal descendants then living, *per stirpes*, who are also lineal descendants of the predeceased principal beneficiary who established this Trust for his or her spouse pursuant to the power of appointment granted to said principal beneficiary under Subparagraph I.C. above. Each lineal descendant for whom a separate trust is established shall become the principal beneficiary of such separate Trusts and such separate trusts shall be administered as provided under Subparagraph I.C., or added to Trusts established for such principal beneficiaries that are already in existence under Subparagraph I.C.

E. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate Trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such Trust is in the best interests of its current principal beneficiary, the Independent Trustee in its discretion may terminate such Trust and pay it to said principal beneficiary.

F. Contingent Gift. If at any time property of a Trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of Florida then in effect.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE II. GENERAL

A. Disability. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for such a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt by such payee is a complete release to the Trustee.

B. Substance Abuse.

1. In General. If the Independent Trustee reasonably believes that a beneficiary of any trust (which for purposes of this Subparagraph II.B.1 includes the lineal descendants of a principal beneficiary who are eligible to receive distributions from that trust):

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Independent Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights (if any), and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees and Independent Trustees will be suspended. In that event, the following provisions of this Subparagraph II.B will apply.

2. Testing. The Independent Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Independent Trustee of the results of all such examinations. The Independent Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Independent Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Independent Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Independent Trustee. If the beneficiary consents to the treatment, the Independent Trustee may, in its absolute and unfettered discretion, pay the costs of treatment including directly to the provider of those services.

4. Resumption of Distributions. The Independent Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Independent Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Exoneration. No Independent Trustee (nor any doctor retained by the



Independent Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Independent Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph II.B. The Independent Trustee (and any doctor retained by the Independent Trustee) is to be indemnified from the Trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph II.B, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute amounts to a beneficiary.

6. Tax Savings Provision. Despite the provisions of this Subparagraph II.B, the Independent Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Independent Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

C. Income on Death of Beneficiary. Subject to the following Subparagraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any principal beneficiary, all accrued or undistributed income of such deceased principal beneficiary's Trust shall pass with the principal of his or her Trust but shall remain income for trust accounting purposes.

D. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from birth by a married couple through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children shall only include TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and my lineal descendants shall include only said named individuals and their respective lineal descendants.

2. Code. "*Code*" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "*Disabled*" or being under "*Disability*" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a

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Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Needs Distributions. Payments to be made for a person's "*Needs*" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

5. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

6. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

7. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees and distribution recipients upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The Trust will be administered as if that person had died upon the happening of the terminating event described above.

8. Gender Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.



E. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

F. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual) to support such beneficiary; and no Trustee shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein.

G. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

H. Protective Provision. No beneficiary of any Trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of the beneficiary in this Trust and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the Trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

Handwritten signature and initials in black ink, located in the bottom right corner of the page.

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of the Independent Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees including Independent Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all such Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee, including myself and an Independent Trustee, that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in paragraph II.D.3 hereof.

ARTICLE III. FIDUCIARIES

A. Powers of the Trustee. The Trustee has the powers now or hereafter provided by law and the following powers exercisable without court approval, provided, however, that the Trustee shall



exercise all powers in a fiduciary capacity:

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to make purchases from my estate, any trust established by me during my lifetime, for full and adequate consideration and to make loans to my estate for adequate and reasonable interest and security, and the Trustee is expressly authorized to purchase stock and securities for adequate and full consideration owned by my estate, any trust established by me during my lifetime, whether such stock and securities are issued by closely held corporations or publicly traded corporations; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not



reduce any income distributions otherwise required hereunder for a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the Trustee may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of the real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

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9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "***Business Entities***"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer,



or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. The Trustee (or the Independent Trustee if I am serving as Trustee or if a Related or Subordinate Party is serving as Trustee) is authorized to purchase one or more life insurance policies on my life, the life of any beneficiary described herein, or any spouse or lineal ascendant or lineal descendant of myself or such beneficiaries. The following provisions shall apply with respect to any insurance policies constituting an asset of any trust herein created:

a. General Powers. The Trustee shall have the power to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as part of the principal of the trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no Trustee other than a sole Trustee may exercise any incidents of ownership with respect to policies of insurance insuring the Trustee's own life.

b. Payment of Premiums. The Trustee shall be under no obligation to pay the premiums which may become due and payable under the provisions of any policy of insurance subject to this trust, or to make certain that such premiums are paid by myself or any other person, or to notify any persons of the nonpayment of such premiums, and it shall be under no responsibility or liability of any kind in case such premiums are not paid, except that it shall apply any dividends received by it on such policy to the payment of premiums thereon. Upon notice at any time during the continuance of this trust that the premiums due upon such policies are in default, or that premiums to become due will not be paid, either by myself or by any other person, the Trustee, within its sole discretion, may apply any cash values attributable to such policy to the purchase of paid-up insurance or of extended term insurance, or may borrow upon such policy for the payment of premiums due thereon or may accept the cash values of such policy upon its forfeiture. If facts shall occur, under the terms of the policy which shall enable a waiver of the payment of future premiums, the Trustee, upon receipt of written notice of such facts, shall promptly notify the insurance company which has issued such policy, and shall take any and all steps necessary to make such waiver of premium provision effective.



c. Collection of Proceeds. Upon the death of an insured the proceeds of the insurance policies insuring that life which are then subject to this trust shall be collected by the Trustee. The Trustee shall have full authority to take any action with regard to the collection that it deems best and to pay any expenses thereof out of the trust estate. However, it shall not be required to enter into or maintain any litigation to enforce payment of such policies until it shall have been indemnified to its satisfaction against all expenses and liabilities to which it might, in its judgment, be subjected by any such action on its part. The Trustee shall have full authority to make any compromise or settlement with respect to any such policies and to give to all insurance companies the necessary and proper releases and acquittances in full discharge of all their liabilities under such policies. Only the net proceeds of insurance policies subject to this trust shall be collected by the Trustee.

d. Liability of Insurance Company. No insurance company, whose policies shall be subject to this trust and who shall make payment of the proceeds thereof to the Trustee, shall be required to inquire into or take notice of any of the terms or conditions of this trust or to see to the application or disposition of the proceeds of such policies. The receipt of the Trustee to any such insurance company shall be effectual to release and discharge it for any payment so made and shall be binding upon every beneficiary of the trusts herein created.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at

the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

22. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint successor Trustees, but may remove such successor Trustees so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

23. Fiduciary Outside Domiciliary State. In the event no Trustee shall be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are given to the appointing Trustee with respect to the trust. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required of any Trustee or agent acting under the provisions of this paragraph. No periodic court or statutory accounting shall be required of such appointed Trustee.

24. Additions. To receive and accept additions to the Trusts in cash or in kind from



donors, Personal Representatives, administrators, Trustees or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

25. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own names or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

26. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

27. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

28. Tax Reimbursement. To pay, from time to time in the Independent Trustee's sole and absolute discretion, to me or the Personal Representatives of my estate, on a cumulative basis as may be necessary, such amounts as I or my Personal Representatives shall certify as is necessary to discharge my tax liability (whether federal, state or otherwise) in respect of income realized by the Trust and not distributed to me; provided, however, this authority shall only be exercised by the Independent Trustee hereunder, and I shall not make or participate in making any discretionary distribution pursuant to this Subparagraph. The Independent Trustee shall have no obligation to reimburse me for any income taxes imposed on me by law and paid by me on Trust income or gains.

If I am serving as Trustee hereunder or if a Related or Subordinate Party is serving as Trustee hereunder, any powers and discretions provided under this Subparagraph III.A. to the Trustee that would result in gross estate inclusion of assets of this Trust under Code §§ 2036, 2038, or 2042, or successor provisions thereto, shall not be exercisable by me or such related or subordinate Trustee, and shall be exercisable only by the other Trustees who are not related or subordinate to me, or if none, by the Independent Trustee.

B. Resignation or Removal. The Trustee may resign with or without cause, by giving written notice, specifying the effective date of such resignation to his or her successor Trustee and to the current income beneficiaries, at the time of giving notice. I (or my spouse if she is serving as sole Trustee) reserve the right to remove a Trustee or co-Trustee from office, with or without cause, by giving written notice, specifying the effective date of such resignation to the removed Trustee, to his or her successor Trustee, and to the current income beneficiaries. Upon the resignation or removal of a Trustee, such Trustee shall be entitled to reimbursement from the Trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor. For purposes of this Subparagraph, the Trustee shall include the Independent Trustee.



C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation (including the Independent Trustee), or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee (including the Independent Trustee), I (or my spouse if she is serving as sole Trustee) may appoint any person or persons as successor Trustee, co-Trustee or Independent Trustee, and in the case of the Independent Trustee it shall not be a Related or Subordinate Party, nor a person related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve. There shall always be a Trustee and an Independent Trustee serving hereunder, provided that the same person or entity may serve in both capacities.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph III.C, subsequent to the death of the survivor of my spouse and me, I specifically appoint the following person or persons as Trustee of the following Trusts:

a. Trustee of Separate Trusts for My Lineal Descendants. With regard to a separate trust held for a lineal descendant of mine hereunder under which such lineal descendant is the principal beneficiary, each such lineal descendant of mine shall serve as co-Trustee with the then serving Trustee upon attaining age thirty (30) years, and each such lineal descendant shall serve as sole Trustee upon attaining age thirty-five (35) years, provided, however, that there shall always be an Independent Trustee serving of such separate trust. While serving as sole Trustee, a lineal descendant of mine may designate an co-Trustee to serve with such lineal descendant and each such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

b. Trustee of Separate Trust for a Spouse of a Lineal Descendant of Mine. A corporate fiduciary shall serve as Trustee and Independent Trustee of any separate trust held for the benefit of a spouse of a lineal descendant of mine. Such corporate fiduciary shall be an entity with trust powers under state law and no less than One Billion (\$1,000,000,000.00) Dollars under trust management (itself and its affiliates).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee (including the Independent Trustee) is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee (or Independent Trustee, as the case may be) or the last person or entity designated to serve as Trustee of the applicable trust (or Independent Trustee, as the case may be) may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee or Independent Trustee (who may be one of the persons making the appointment if over the age of thirty years):



- a. The remaining Trustees, if any; otherwise,
- b. The principal beneficiary or the spouse of a principal beneficiary for whom a separate trust is held.

The appointment shall be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will.

4. Power to Remove Trustee. Subsequent to the death of the survivor of my spouse and me, the age 35 or older principal beneficiary of a Trust, or the spouse of a principal beneficiary for whom a separate trust is held, shall have the power to unanimously remove a Trustee, co-Trustee or Independent Trustee of such Trust at any time with or without cause other than a successor Trustee or Independent Trustee appointed by me or my spouse at death under our last Wills, with the successor Trustee or Independent Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

F. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under the preceding paragraph, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for

indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, Personal Representatives, legal successors and assigns of a Trustee.

3. **Indemnification of Trustee - Additional Provisions.** I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

G. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the Trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

H. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a Trust upon the written request of any adult vested beneficiary of such Trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such Trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a Trust.

I. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make

loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

J. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

K. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a Trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

L. Multiple Trustees. Except as specifically provided herein as to the allocation of powers or discretion of the Independent Trustee, if two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE IV. INDEPENDENT TRUSTEE

A. In General. The Independent Trustee shall have only those duties, obligations, and powers hereunder expressly provided to it, and the Trustee shall not participate in any affirmative duties



provided to the Independent Trustee. Otherwise, the provisions hereunder applicable to the Trustee shall be applicable also to the Independent Trustee except where the context differentiates between a Trustee and an Independent Trustee, including without limitation provisions relating to liability and indemnification of trustees. In the event of any conflict between the powers granted hereunder to both the Trustee and the Independent Trustee, the powers of the Independent Trustee shall have priority over the Trustee. Thus, for example, if the Independent Trustee determines to invest in a Closely Held Interest, such investment is permissible notwithstanding that it reduces the assets available for other investments by the Trustee.

B. Who May Serve. Notwithstanding any other provisions of this Trust Agreement to the contrary, including without limitation powers in myself or others to appoint additional or successor Trustees or Independent Trustees, at no time shall a person or entity serve as an Independent Trustee hereunder if such person or entity is a Related or Subordinate Party or is related or subordinate to me within the meaning of Code Section 672(c), the Treasury Regulations issued thereunder, and successor provisions thereto, nor shall I be eligible to serve.

C. Limited Power of Amendment.

1. **Amendment Power.** In the case of each separate Trust at any time in existence hereunder, such Trust's then Independent Trustee, other than any (i) who has ever made a gift transfer to such trust, or (ii) who is prohibited by the provisions of Subparagraph IV.C.2 below from participating in the amendment involved, from time to time may, notwithstanding any other provision of this instrument, amend or restate this instrument, including its dispositive, administrative and other provisions of all kinds, in order to permit the Trustees hereunder (including the Independent Trustee):

a. To address tax and/or other circumstantial changes that may affect such Trust and/or its beneficiaries,

b. To take advantage of changed trust drafting approaches to address potential trust problems, and/or

c. To remove from the governing trust instrument any provisions which have become "deadwood" (i.e., no longer operative in the ongoing administration of such trust due to changed circumstances)

with respect to (i) such Trust, and (ii) all trusts that are subsequently to come into existence under this instrument to hold part or all of the assets of such Trust, in whatever way or ways, such Independent Trustee, in the exercise of its sole discretion, may deem appropriate in the best interests, as interpreted by such Independent Trustee alone, of the principal beneficiary of such Trust(s) and of each such principal beneficiary's family as a whole. Such Independent Trustee shall be guided by what, in the sole judgment of such Independent Trustee alone, would apparently be my original intent hereunder in the light of the changed circumstances. This power of amendment shall include, by way of example and not limitation, the power to:



d. Grant, reduce or eliminate general (as defined in Code Section 2041) and special powers of appointment with respect to part or all of any trust property (such powers may be made subject to any conditions or consents and limited to such objects as may be described in the grant or reduction of each power);

e. Add mandatory distribution or set aside provisions for one or more beneficiaries or permissible distributees;

f. Divide a Trust into separate trusts or merge separate trusts together;

g. Provide for the creation of one or more separate subaccounts (equivalent to a separate trust) in any Trust hereunder with respect to which such subaccounts are more restrictive or other administrative or dispositive provisions are made applicable in order to permit some or all of the properties or interests that may at any time be held in or allocable to that Trust to be segregated and transferred to that subaccount to achieve some tax or other benefit that would otherwise not be available to such property or interest or to the principal beneficiary or one or more of the other current beneficiaries of that Trust (such as, by way of example and not limitation, to permit (i) such property, interest or beneficiary to qualify for some governmental or tax benefit, generation-skipping transfer tax exemption or Code Section 2032A election, or (ii) a disclaimer to be made; and

h. Restrict in any way, revocably or irrevocably, the future exercise of any power held by any beneficiaries, myself, and/or a Trustee (including Independent Trustee) hereunder.

2. Limitations on Amendment Power. Notwithstanding the foregoing, however, under no circumstances shall any such amendment:

a. Extend the period of any such trust's existence beyond the already applicable rule against perpetuities limitation period specified in Subparagraph I.G.;

b. Diminish in any way (that is not controlled by the beneficiary) any enforceable right any beneficiary may already have (under the then terms of this instrument) to receive the income of any trust, currently or at any time in the future (but, to the extent an amendment benefits or grants a power to a current beneficiary of any trust, it may diminish the rights of one or more beneficiaries to receive in the future the income of that trust or of any trust subsequently to come into existence to hold part or all of the assets of that trust);

c. Reduce in any way the restrictions and limitations on or liabilities of (i) myself hereunder, including without limitation Subparagraph I.A. or as a fiduciary as set forth in Subparagraph III.F., or (ii) this Article IV. This shall not be interpreted to limit the ability of the Independent Trustee to increase such restrictions, limitations and liabilities;

d. Result in any direct or indirect financial benefit to anyone who is not presently or in the future a lineal descendant of mine or the spouse of lineal descendant of mine while



married to a lineal descendant of mine;

e. Make any change that would have the effect of disqualifying any such trust insofar as such trust, prior to such amendment, otherwise qualified for and was in fact already taking advantage of, while such advantage otherwise will continue, (i) any exemption from a surviving spouse's elective right or from any creditor's right to levy on any beneficiary's interest in any such trust, or (ii) any substantial deduction, credit, exclusion or other tax benefit (such as any charitable deduction, any annual gift tax exclusion, Code Section 2032A election, a generation-skipping tax exemption, the opportunity to be a stockholder in an S corporation without adversely affecting the S election of such corporation, a significant grandfathered status under some changed law, and so on).

3. Method of Amendment. Any such amendment shall be by written instrument, executed by such amending Independent Trustee with all the formalities of a deed, setting forth the trust or trusts hereunder to which the amendment applies and the effective date of such amendment.

ARTICLE V. ADDITIONAL TAX MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such Trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in Trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a Trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such Trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares.

I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the Trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. For purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation



(occurring between the valuation date and the date of distribution) in all of the assets from which such distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. The valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this Trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this Trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this Trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such



additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that the principal of a Trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a Trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such Trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee[s] shall (a) hold such stock as a substantially separate and independent share of such Trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

D. Taxes. The Trustee shall pay to the Personal Representative of my estate from the principal of the Trust, but not from the portion of any asset or the proceeds thereof which would not otherwise be includible in my gross estate for estate tax purposes, such as the proceeds of insurance policies that are not includible in my estate, such amounts as the Personal Representative certifies, in writing, are required for the payment of estate, inheritance, succession and transfer taxes, including any interest or penalty thereon, which are payable by said Personal Representative by reason of my death and are attributable to assets held in this Trust (*i.e.*, to the extent that such taxes are increased by the taxability of such Trust assets). The Trustee may rely upon the correctness of such certifications and is exonerated from all liability for making payments in reliance thereon. Notwithstanding any distribution requirement herein, subsequent to my death the Trustee is authorized to retain in trust any amounts designated to be distributed until the earlier of the issuance of an estate tax closing letter from the Internal Revenue Service in regard to my estate or the closing of the federal estate tax statute of limitations for estate taxes arising by reason of my death.

E. Taxpayer Identification Number. By executing this Trust Agreement, the Trustee authorizes Tescher & Spallina, P.A. to apply for a taxpayer identification number from the Internal Revenue Service for the Trust.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

GRANTOR and CO-TRUSTEE:

[Handwritten Signature]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

[Handwritten Signature]

Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton FL 33433

[Handwritten Signature]

Print Name: TRACI KRATICH
Address: 16068 GLENCREST AVE
DEER BEACH, FL 33446

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008,

by SIMON L. BERNSTEIN
NOTARY PUBLIC STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

[Handwritten Signature]

Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known or Produced Identification _____
Type of Identification Produced _____

CO-TRUSTEE:

[Signature]
SHIRLEY BERNSTEIN

This instrument was signed by SHIRLEY BERNSTEIN in our presence, and at the request of and in the presence of SHIRLEY BERNSTEIN and each other, we subscribe our names as witnesses on this 1st day of May, 2008:

[Signature]
Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton FL 33433

[Signature]
Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DEER BEACH, FL 33446

STATE OF FLORIDA
COUNTY OF PALM BEACH

SS.

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SHIRLEY BERNSTEIN.


NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2012
[Seal with Commission Expiration Date]

[Signature]
Signature - Notary Public

Print, type or stamp name of Notary Public


Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

INDEPENDENT TRUSTEE:




ROBERT L. SPALLINA

This instrument was signed by ROBERT L. SPALLINA in our presence, and at the request of and in the presence of ROBERT L. SPALLINA and each other, we subscribe our names as witnesses on this 24th day of May, 2008:



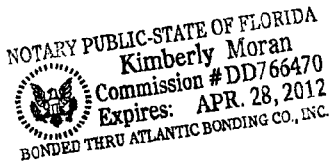
Print Name: Diana Banks
Address: 23415 Boca Trace Dr
Boca Raton, FL 33433

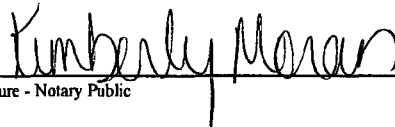


Print Name: TRAII KEATISA
Address: 16068 GLENCREST AVE
DEERBAY BEACH, FL 33446

STATE OF FLORIDA
SS. ◦
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by ROBERT L. SPALLINA.





Signature - Notary Public

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

TRUST

ATTACHMENT

<u>ITEM NO.</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
1	Cash	\$1.00

WILL OF

SIMON L. BERNSTEIN

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED
OCT - 2 2012
SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

2014CP003698
PLAINTIFF'S
EXHIBIT
4

LAW OFFICES
TESCHER & SPALLINA, P.A.

P4
12-15-15

TS004297

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

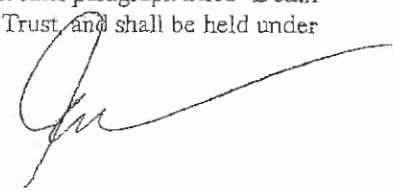
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "Shirley Trust"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "Existing Trust"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust and shall be held under

LAST WILL
OF SIMON L. BERNSTEIN

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the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. Appointment and Bond. I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. Powers of Personal Representatives. My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. Distributions or Divisions. To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. Management. To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

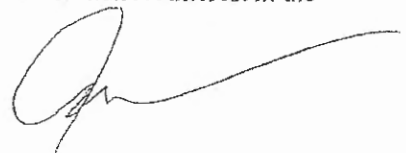
d. Borrowing. To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL
OF SIMON L. BERNSTEIN

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estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL
OF SIMON L. BERNSTEIN

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operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

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OF SIMON L. BERNSTEIN

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k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

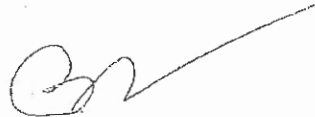
4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL
OF SIMON L. BERNSTEIN

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interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. Reimbursement for Debts and Expenses. My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. Expenses of Handling Tangible Personal Property. All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. Dealing with Estate. Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. Spouse. The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

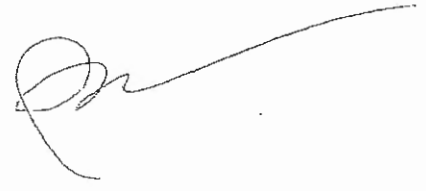
9. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

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LAST WILL
OF SIMON L. BERNSTEIN

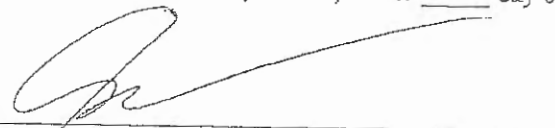
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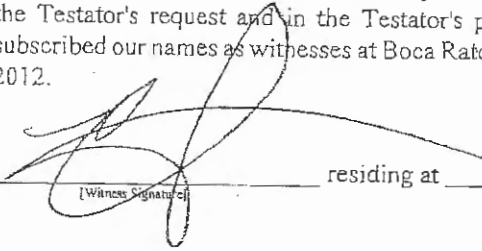



TS004303

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 25 day of July, 2012.


SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.


[Witness Signature] residing at ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076
[Witness Address]


[Witness Signature] residing at Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433
[Witness Address]

LAST WILL
OF SIMON L. BERNSTEIN

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

[Signature]
Witness

Kimberly Moran
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]
Signature - Notary Public-State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

LAST WILL
OF SIMON L. BERNSTEIN

SIMON L. BERNSTEIN

TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN

TRUST AGREEMENT

This Trust Agreement is dated this 20th day of May, 2008, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "*Trustee*," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee). Said Trustee acknowledges receipt of the property described in the Attachment to this Agreement, and agrees to hold said property and all additions, in trust, as provided in this Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare, and also may in its discretion pay to my spouse such amounts of said net income and principal as is proper for her Welfare. Any income not so paid shall be added to principal.

C. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. **Recipients.** The gifts may be made only to my spouse and my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

2. **Trustee Limited.** When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent

SIMON L. BERNSTEIN
TRUST AGREEMENT

TESCHER & SPALLINA, P.A.



(5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

D. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

B. Marital Deduction Gift. If my spouse survives me:

1. Family Trust. The Trustee shall hold as a separate "*Family Trust*" (i) all property of the trust estate as to which a federal estate tax marital deduction would not be allowed if it were distributed outright to my spouse, and (ii) after giving effect to (i), the largest pecuniary amount which will not result in or increase any federal or state death tax otherwise payable by reason of my death. In determining the pecuniary amount the Trustee shall assume that none of this Family Trust qualifies for a federal estate tax deduction, and shall assume that all of the Marital Trust hereinafter established (including any part thereof disclaimed by my spouse) qualifies for the federal estate tax marital deduction. I recognize that the pecuniary amount may be reduced by certain state death taxes and administration expenses which are not deducted for federal estate tax purposes.

2. Marital Trust. The balance of the trust remaining after the establishment of the Family Trust shall be held as a separate "*Marital Trust*."

Notwithstanding the foregoing, prior to the funding of the Family Trust and the Marital Trust under this Subparagraph II.B., or only the Family Trust if my spouse does not survive me, the Trustees of this Trust



or the Personal Representatives of my estate as the case may be, shall finalize the sale of my shares in LIC HOLDINGS, INC., a Florida corporation or its successor in interest ("**LIC HOLDINGS**"), owned by me or this Trust at the time of my death, pursuant to that certain buy-sell agreement entered into by and between my son, TED S. BERNSTEIN, and me. Upon the sale of such shares, the Trustee shall fund the trust(s) provided for hereunder.

3. Disclaimer. Any part of the Marital Trust my spouse disclaims shall be added to the Family Trust. My spouse shall not be deemed to have predeceased me for purposes of such addition. I suggest that my spouse or my spouse's fiduciaries consider an appropriate partial disclaimer to minimize the death taxes due upon both of our deaths.

If my spouse does not survive me, the entire trust shall be held as the Family Trust without regard to the provisions of Subparagraph II.B.1 describing or limiting which assets shall be held thereunder.

C. During Spouse's Life. Commencing with the date of my death the Trustee shall,

1. Marital Trust. Pay to my spouse from the Marital Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare; and

2. Family Trust. Pay to my spouse from the Family Trust, the net income, and such amounts of principal as is proper for my spouse's Welfare. I request (but do not require) that no principal be paid to my spouse from the Family Trust for my spouse's Welfare unless the Marital Trust has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available.

D. Disposition of Trusts Upon Death of Survivor of My Spouse and Me. Upon the death of the survivor of my spouse and me,

1. Limited Power. My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or for the benefit of one or more of my lineal descendants and their spouses;

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, shall be divided among and held in separate Trusts for my lineal descendants then living, *per stirpes*. Any assets allocated under this Subparagraph II.D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trusts, established by me as grantor on even date herewith (the "**Family Trusts**" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. The provisions of the Family Trusts are incorporated herein by reference, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts



for such lineal descendants and administered as provided in Subparagraph II.E. below. Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "*beneficiary*," with their separate trusts to be administered as provided in Subparagraph II.E. below.

E. Trusts for Beneficiaries. The Trustee shall pay to a beneficiary the net income of such beneficiary's trust. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the principal of such beneficiary's trust as is proper for the Welfare of such individuals. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any child of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of my lineal descendants and their spouses (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living who is also a lineal descendant of my spouse.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

F. Termination of Small Trust. If at any time after the death of the survivor of my spouse and me in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

G. Contingent Gift. If at any time property of a trust held under this Agreement is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if my spouse and I had each then owned one-half of such property and had each then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.



H. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

I. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years as provided in F.S. § 689.225(2)(a)(2), nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

J. Florida Homestead Possessory Rights. Notwithstanding anything herein to the contrary, if any portion of any Florida improved residential real estate (excluding commercial multi-unit rental property) is an asset of the Marital Trust, my spouse shall have the exclusive and continuous present right to full use, occupancy and possession of such real estate for life. It is my intention that my spouse's interest in such property shall constitute a "beneficial interest for life" and "equitable title to real estate" as contemplated by Section 196.041(2) of Florida Statutes, as amended from time to time or any corresponding provision of law.

ARTICLE III. GENERAL

A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary (other than my spouse as beneficiary of the Marital Trust) is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.



C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended (excluding, however, mandatory income rights under the Marital Trust). In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to



the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("*TED*") and PAMELA B. SIMON ("*PAM*"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.



2. Code. "**Code**" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "**Disabled**" or being under "**Disability**" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "**education**" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. My Spouse. "**My spouse**" is SHIRLEY BERNSTEIN ("**SHIRLEY**").

6. Needs and Welfare Distributions. Payments to be made for a person's "**Needs**" means payments for such person's support, health (including lifetime residential or nursing home care), maintenance and education. Payments to be made for a person's "**Welfare**" means payments for such person's Needs, and as the Trustee determines in its sole discretion also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

7. Per Stirpes. In a division "**per stirpes**" each generation shall be represented and counted whether or not it has a living member.



8. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

9. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

10. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself and other than my spouse as Trustee of the Marital Trust) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.



H. Presumption of Survivorship. If my spouse and I die under circumstances which make it difficult or impracticable to determine which one of us survived the other, I direct that my spouse shall be deemed to have survived me for purposes of this Agreement (except in regard to any property passing hereunder that became part of this trust solely by reason of passage to my probate estate or this trust from the probate estate of or a revocable trust established by my spouse in which case the opposite presumption shall apply), notwithstanding any provisions of law which provide for a contrary presumption. If any person other than my spouse shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Mandatory Notice Required by Florida Law. The trustee of a trust may have duties and responsibilities in addition to those described in the instrument creating the trust. If you have questions, you should obtain legal advice.

L. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or



at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.



2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and



personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the Trustee with the following powers and authority in regard to Business Entities:

a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;

b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;

c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;

e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;

f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;

h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorised and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to

exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under



a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Selection of Assets for Marital Trust. The Trustee shall have sole discretion to determine which assets shall be allocated to the Marital Trust; provided, if possible no assets or the proceeds of any assets which do not qualify for the federal estate tax marital deduction shall be allocated to the Marital Trust. To the extent that other assets qualifying for the marital deduction are available, the Trustee shall not allocate to the Marital Trust any assets with respect to which a credit for foreign taxes paid is allowable under the Code, nor any policy of insurance on the life of my spouse. Any allocation of assets among the Family Trust and the Marital Trust shall, with respect to each such trust, be comprised of assets having an aggregate market value at the time of such allocation fairly representative of the net appreciation or depreciation in the value of the property available for such



allocation between the date of valuation for federal estate tax purposes and the date or dates of said allocation and selection.

26. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

27. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

28. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate or my spouse's estate.

29. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

30. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, SHIRLEY and WILLIAM E. STANSBURY ("**BILL**"), or either of them alone if the other is unable to serve, shall serve as successor co-Trustees or Trustee as the case may be. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a



trust hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances:

a. Trustee of the Marital Trust. SHIRLEY shall serve as Trustee of the Marital Trust. While serving as Trustee, my spouse may designate a co-Trustee to serve with my spouse and my spouse may remove and/or replace such co-Trustee from time to time.

b. Trustee of the Family Trust. SHIRLEY shall serve as Trustee of the Family Trust. While serving as Trustee, my spouse may designate a co-Trustee that is not a Related or Subordinate Party to serve with my spouse and my spouse may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

c. Trustee of Separate Trusts for My Children. Each child of mine shall serve as sole Trustee of his or her separate trust. While serving alone as Trustee, a child of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such child and such child may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

d. Trustee of Separate Trusts for My Lineal Descendants Other Than My Children. In regard to a separate trust held for a lineal descendant of mine other than a child of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon reaching age twenty-five (25).

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two



witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 25 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.C.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from



the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without



liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts.

1. **Family Trust.** I direct (a) that the Trustee shall divide any trust other than the Marital Trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions of this Trust Agreement relating to the trust that is being divided) so that the generation-skipping tax inclusion ratio of one such trust is zero.

2. **Marital Trust.** I direct that, if possible, (a) the Trustee shall divide the Marital Trust into two separate Marital Trusts (each subject to the provisions hereof concerning the Marital Trust) so that through allocation of my GST exemption remaining unallocated at my death and not otherwise allocated to transfers occurring at or by reason of my death (including allocations to the Family Trust), if any, the generation-skipping tax inclusion ratio of one such Marital Trust is zero (the GST Marital Trust), (b) my Personal Representative to exercise the election provided by Code Section 2652(a)(3) as to the GST Marital Trust, and (c) that upon the death of my spouse the total amount recoverable by my spouse's estate from the property of the Marital Trusts under Code Section 2207A shall first be recoverable in full from the non-GST Marital Trust to the extent thereof.

3. **Misc.** I direct that (a) upon the death of the survivor of me and my spouse, any property then directed to be paid or distributed which constitutes a direct skip shall be paid first from property then exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) to the extent thereof, (b) property exempt from generation-skipping taxation (by reason of the allocation of any GST exemption) and not directed to be paid or distributed in a manner which constitutes a direct skip shall be divided and distributed as otherwise provided herein and held for the same persons designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and lineal descendants, in such estates, interests, and proportions as such beneficiary may, by a will specifically referring to this general power appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution, or otherwise or is not reasonably available. Notwithstanding any other provision of this Trust Agreement, for purposes of funding any pecuniary payment or trust division to which there is allocated any GST exemption, such payment or trust division allocation shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such

distribution or allocation could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. In regard to the division or severance of a trust hereunder, including the Marital Trust, such division or severance shall be made in a manner that all resulting trusts are recognized for purposes of Chapter 13 of the Code, including without limitation complying with the requirements of Treas.Reg. §26.2654-1(b). Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this Article which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.



2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.



The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property" nor from the Marital Trust.

E. Marital Trust. I intend the maximum obtainable reduction of federal estate tax due by reason of my death by use of the federal estate tax marital deduction, and qualification of all property of the Marital Trust for the marital deduction. This Agreement shall be construed and all powers shall be exercised consistent with such intent. For example, the Trustee shall not allocate any receipt to principal or any disbursement to income if such allocation understates the net income of the Marital Trust under Florida law; and upon the written demand of my spouse, the Trustee shall convert unproductive or underproductive property of said trust into productive property within a reasonable time notwithstanding any other provision hereunder. The foregoing notwithstanding, if my spouse survives me but dies within six months after my death, the Marital Trust provided in Subparagraph II.B will be reduced to that amount, if any, required to obtain for my estate an estate tax marital deduction resulting in the lowest combined estate taxes in my estate and my spouse's estate, on the assumption that my spouse died after me on the date of my death, that my spouse's estate is valued on the same date and in the same manner as my estate is valued for federal estate tax purposes, and that elections in my spouse's estate were made that would be consistent with minimizing taxes. The purpose of this provision is to equalize, insofar as possible, our estates for federal estate tax purposes, based on the above assumptions.

F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. Regardless of anything herein to the contrary, while any residential real property located in Florida is owned by a trust, I, or my spouse if I am not then living and such trust is the Marital Trust, shall have the right to use, possess and occupy such residence as a personal residence so that such right shall constitute a possessory right in such real property within the meaning of Florida Statute Section 196.041.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Signature]
SIMON L. BERNSTEIN

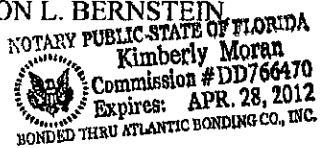
This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 20 day of May, 2008:

[Signature]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Signature]
Print Name: TRACI KRATISH
Address: 16068 GLENCREST AVE
DEERBERRY BEACH, FL 33446

STATE OF FLORIDA
SS.
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 20 day of May, 2008, by SIMON L. BERNSTEIN.



[Signature]
Signature - Notary Public-State of Florida

[Seal with Commission Expiration Date]

Print, type or stamp name of Notary Public

Personally Known ✓ or Produced Identification _____
Type of Identification Produced _____

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ATTACHMENT

The following property has been delivered in trust under this Agreement:

One Dollar (\$1.00) Cash

During my life, the Trustee has no duty to maintain, invest, review, insure, account for, or any other responsibility with respect to trust property other than income producing property, or any duty to pay premiums on life insurance payable to the trust, and shall receive no fee for its services as Trustee based on any trust property other than income producing property.



SIMON L. BERNSTEIN, Settlor and Trustee

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.



PS
12-15-15

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 26 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT



LAW OFFICES
TESCHER & SPALLINA, P.A.

C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

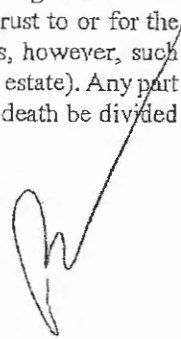
B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

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1. for his or her lineal descendants then living, *per stirpes*; or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.

G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

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A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

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in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

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raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

a. the legal termination of the marriage to my descendant (whether before or after my death), or

b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

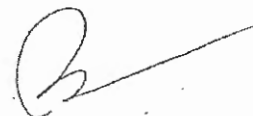
G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract, (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this trust due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. **Disability of Beneficiary.** Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested



beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph 1A hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee: During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla.Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.

9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

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proprietorship, or other form (all of which business entities and enterprises are referred to herein as "*Business Entities*"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select, including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death, no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust



hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

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entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1, each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

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and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the

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Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

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designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

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2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph 1. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

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F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

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AMENDED AND RESTATED TRUST AGREEMENT

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IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten Signature]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 25 day of July, 2012:

[Handwritten Signature]

Print Name: **ROBERT L. SPALLINA**
Address: **7387 WISTERIA AVENUE**
PARKLAND, FL 33076

[Handwritten Signature]

Print Name: **Kimberly Moran**
Address: **6362 Las Flores Drive**
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten Signature]

Signature - Notary Public - State of Florida

[Seal with Commission Expiration Date]
NOTARY PUBLIC STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

[Handwritten Signature]

Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

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

CASE NO. 502012CP004391XXXXNB-IH
Probate – Judge John L. Phillips

IN RE:

ESTATE OF SIMON L. BERNSTEIN.

_____ /

**TRUSTEE'S OMNIBUS STATUS REPORT AND REQUEST
FOR CASE MANAGEMENT CONFERENCE**

Ted S. Bernstein, as Successor Personal Representative of the Estate of Shirley Bernstein, as Successor Trustee of the Shirley Bernstein Trust, and as Successor Trustee of the Simon Bernstein Trust which is the residuary beneficiary of the Estate, files this Omnibus Case Status Report and Requests a Case Management Conference in all pending matters, in advance of the one-hour Status Conference set for Tuesday, September 15, 2015, at 9:30a.m.

Introduction

The overarching issue in these cases is Eliot Bernstein. He is not named as a beneficiary of anything; yet he alone has derailed these proceedings for more than two years and has harassed and attacked the prior judges, fiduciaries and their counsel. (See, by way of example only, Exhibit A) His demands have caused the former curator and now the PR to incur far in excess of \$100,000 in unnecessary fees, pursuing his agenda not their own. With regard to Judge Colin's final action before recusing himself, Eliot's delay of the Trust's sale of real estate is going on six months, and already his objections and "appeal" to the Florida Supreme Court have cost the Trust more than \$125,000. These sums are not insignificant in this case – these are relatively small trusts and estates which likely will have between \$1 million to \$2 million left to distribute in the end. Even less with every billable hour incurred, especially if things continue on their current path.

For reasons which will become apparent to the Court, although these matters should be fully concluded by now – Shirley died first, nearly five years ago, and Simon followed nearly three years ago – it feels like we still are closer to the starting line than the finish line. The sole reason for the lack of progress is their disinherited son, Eliot Bernstein.

If the Court were to appoint a guardian ad litem ("Guardian") for Eliot's three kids, who are beneficiaries of both trusts, everything else could be resolved quickly and easily between the remaining parties. Instead, while Eliot continues to turn the courtroom into his private circus and continues his online attacks, the limited assets in these estates and trusts continue to dwindle. This has been going on far too long, and now that this Court is overseeing these matters,¹ Eliot must be stopped before it is too late to salvage anything for the beneficiaries.

By way of brief background, in 2008, Simon and Shirley created their estate plan and executed mirror image documents. Their plan was simple and typical of a long-term marriage – the surviving spouse would receive everything for life, and the limited right to decide who to benefit when he or she died. The residuary of each Estate passed to a Revocable Trust. The surviving spouse was the sole successor trustee and beneficiary for life, and was granted a limited power of appointment. Simon, as the survivor, had the sole and absolute right to do whatever he pleased with his own assets, and also possessed a limited power to appoint the assets remaining in the Shirley Trust to any of Shirley's lineal descendant or their spouse.

¹ *In Re: Estate of Simon L. Bernstein, Case #502012CP004391XXXXNB;*
In Re: Estate of Shirley Bernstein, Case #502011CP000653XXXXNB;
Eliot Bernstein, etc., et al. v. Theodore Stuart Bernstein, etc., et al.,
Case #502015CP001162XXXXNB;
Ted Bernstein, etc., et al. v. Alexandra Bernstein, et al.,
Case #502014CP003698XXXXNB;
Oppenheimer Trust Co. v. Eliot Bernstein, et al., Case #502014CP002815XXXXNB.

When Shirley died, Simon was PR, successor Trustee, and sole beneficiary of her estate and trust. He apparently did as he pleased with her estate and her assets, and shared virtually no information about Shirley's assets or finances with any of his children. The Shirley Estate was opened in early 2011, and by early 2012 Simon wanted to close it. He had taken all of her assets, as was his right, and he requested that each of his children sign a waiver of accounting etc. to close the estate. It is undisputed that each child signed a Waiver – Eliot was the first to sign. Shirley's estate would have been closed long ago except Judge Colin required Waivers to be notarized and the six Waivers in this case (one by Simon and one by each of the five children) were not notarized. So the Waivers were rejected by the Court, and Simon had died before the last Waiver was signed. Rather than move the Court to overlook the notary requirement, someone in the office of Simon's counsel falsely traced the original signatures onto a new Waiver document and falsely put a notary stamp. The irony here is that while the Court had rejected all six of the original, *authentic* Waivers; the Court accepted the false ones and closed the Estate.²

Shirley had appointed her eldest child, Ted, to succeed Simon after his death. Soon thereafter, Eliot learned that his parents left behind only a small fortune – then estimated at less than \$4 million, to be split among ten grandchildren. Eliot had been expecting for himself a sizeable share of what he believed would be \$100 million; instead he got nothing and his children stood to inherit a tiny fraction of what Eliot expected and hoped for. After learning of his poor fortune, Eliot embarked on a mission to destroy everyone involved with this, starting with his father's lawyers and his older brother Ted, acting as a fiduciary appointed by his mother, and anyone else who stands in his way.

² The only persons to benefit from closing Shirley's estate were the beneficiaries. The lawyers whose employee falsely notarized the document stood to *gain nothing*, and stood only to lose legal fees to be earned administering and closing the estate. But they clearly and inexcusably erred.

The starting point for Eliot, beyond simply complaining that someone must have stolen the rest of his parents' \$100 million, was the notary of the Waiver form. Although Eliot signed the Waiver, he knew it had not been notarized, so he complained about this issue. The Shirley Estate was reopened; the Will specified that Ted Bernstein³ be the successor PR; and Ted has been trying to re-close the estate ever since; so far with no luck.

Eliot now is the self-proclaimed detector of fraud and fabricated documents, and is crusading against what he perceives to be corruption in the court system. His circus will continue until either (i) the money runs out and all the professionals go home; or (ii) the Court stops him by appointing a guardian ad litem and requiring him to cease, desist, and remove the harassing internet nonsense about judges, PRs, Trustees and their lawyers.

Ted has tried to sell the Trust's real estate and distribute monies to the intended beneficiaries. He has been thwarted at every turn, and viciously attacked on the internet as well, solely by Eliot. Every aspect of this case is on display at <http://tedbernsteinreport.blogspot.com/> or <http://tedbernsteininsurance.blogspot.com/>, with Ted being accused of "massive fraud, forgery and alleged murder." Eliot leaves no one out of his trashing internet harassment, including Judge Colin. It is difficult to find any professional (lawyer or accountant) willing to submit to such abuse by agreeing to work on these matters. That appears to be Eliot's plan, which must be stopped.

³ Ted is the oldest of Simon's and Shirley's five children; lives in Palm Beach County; worked essentially as equal partner with Simon in businesses from the early 2000s through Simon's death. The other family members are three daughters who live in Chicago. Since the death of his father in September, 2012, Ted has faithfully carried out his duties as Trustee. Ted is not a beneficiary of any of these trusts and estates, and stands to gain nothing personally. Indeed, none of the five children are beneficiaries, as all of their parents' wealth was left to ten grandchildren.

The Court may be wondering "Who is Eliot Bernstein?" and "Why is he doing this?" It is an important question, as Eliot is the proverbial elephant in this room. Eliot appears to be disillusioned and disappointed due to his apparent belief that he would inherit tens of millions when his parent's died, but in the end their fortune was modest and they left none of it to him: "[Eliot] . . . shall be deemed to have predeceased me as I have adequately provided for [him] during my lifetime."⁴ Eliot now apparently is without income or assets, or at least claims to be in numerous indigency filings he makes with courts to avoid paying filing fees. But while his parents were alive he lived the life of Riley⁵ – he lived and continues to live expense free in a home his parents bought and renovated for him; his parents paid him over \$100,000 annually in health insurance and living expenses⁶; and his parents while alive apparently paid more than \$75,000 per year to send Eliot's three boys to a Boca Raton private school.

Eliot, now flat-broke with no visible means of supporting himself, has decided to avenge the loss of his inheritance by punishing everyone associated with these trusts and estates, even suing his father's estate for Eliot's living expenses after his father died. He has been prolific in filing motions, complaints, responses and objections in these proceedings. The net result of his legal filings has

⁴ Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/2012 at 6.

⁵ "The expression, 'Living the life of Riley' suggests an ideal contented life, possibly living on someone else's money, time or work. Rather than a negative freeloading or golddigging aspect, it implies that someone is kept or advantaged." en.wikipedia.org/wiki/The_Life_of_Riley

⁶ Pursuant to a written contract entered on or about August 15, 2007, Simon and Shirley agreed to make advances to Eliot of a portion of his inheritance, in the amount of \$100,000 per year. As preconditions for this arrangement, Eliot could not "harass or threaten to sue or initiate litigation with anyone in the family at any time" and had to allow his parents the opportunity to visit their grandchildren at least four times a year. In June 2008, the parents also purchased a home for him in Boca Raton, titled in the name of an LLC, and encumbered by a \$365,000 second mortgage which is one of the largest assets in the estate.

been nothing but a loss for the grandchildren – after three years of him searching, there are no additional assets to be found. All of his considerable efforts simply have delayed the progress of the case and *dramatically* increased the expense in these modest trusts and estates.

For the past three years, Eliot has questioned and viciously challenged virtually every action taken by the fiduciaries, has continued to harass and threaten (including repeatedly threatening persons involved in this estate or end up in prison), and when none of that worked, has taken to the internet blogosphere to trash and tarnish the reputations of everyone involved. This is a tragedy of significant proportion to the ten grandchildren of Simon and Shirley Bernstein, the sole beneficiaries of their wealth. The fiduciaries and beneficiaries of Simon and Shirley Bernstein are trapped in Eliot's game, being played at no cost to him but at a very high price to the beneficiaries. Three of these ten grandchildren are Eliot's kids, but he acts as if he rather burn all of the remaining money than let his kids settle for 30% of what remains.

Status of Significant Current and Pending Motions:

SHIRLEY ESTATE:

Motion to Re-Close Estate
Eliot's Objections to Estate Inventory and Accounting

SHIRLEY TRUST

Count II of Complaint to Determine Validity/Authenticity of Trusts and Wills
Count I of Complaint for Construction of Trust
Petition to Remove Ted S. Bernstein as Trustee
Eliot's Counterclaim against numerous lawyers and others (currently stayed)
Professional/Fiduciary Fees and Potential Claims vs. Former Counsel
Distribute Assets to Beneficiaries of Trust
Motion to Compel Trust Accounting

SIMON ESTATE

Resolve claim of claimant, William Stansbury
Resolve claim of claimant, Eliot Bernstein
Resolve interpleader litigation in Illinois relating to Life Insurance
Objections to Accounting and Potential Claims vs. Former PR/Counsel
Discharge PR and Distribute Assets to Trust

SIMON TRUST

Petition to Remove Ted S. Bernstein as Trustee
Professional/Fiduciary Fees
Distribute Assets to 10 Grandchildren as Beneficiaries of Trust

Matters to be Filed if Needed

The above is a short list of items that could be accomplished quickly and easily if Eliot were not involved. Now is the time to appoint a Guardian. And, once there is a Guardian in place and up to speed, the Court can decide what else needs to be done to close the administration, while some funds still remain available. Left to Eliot's devices, the pursuit of his agenda and conspiracy theories will end only when the money runs out. The choice is very clear: Is Eliot or the court-appointed fiduciaries going to run this estate?⁷ If there is a Guardian appointed, almost all of the above-listed "pending issues" can be avoided because a Guardian likely would be willing to mediate and likely settle the controversies given the amounts in dispute. Eliot has no interest in letting anything go or in negotiating, advising on several occasions that he does not negotiate with "terrorists."

Importantly, in addition to considering whether to appoint a Guardian as a suitable representative for Eliot's children, the Trustee believes the Court immediately should impose a

⁷ In a related case, Oppenheimer moved for appointment of a Guardian. It is a compelling Motion. Judge Colin deferred. It is anticipated that some of the beneficiaries here will be filing a similar motion, as will the Trustee. Now, or at some point in near future, this Court needs to consider such an appointment, before it is too late.

confidentiality order on these proceedings to prevent further internet bombardment and harassment of professionals, fiduciaries, and this Court. This case involves minor grandchildren and young adult grandchildren *who are the sole beneficiaries of Simon and Shirley Bernstein* – there should be nothing on the internet about this private civil matter. And, if it is not stopped, a Guardian no doubt will become the next victim, as might this Court in the event it should ever rule against Eliot on a significant matter. Also, the beneficiaries believe that Eliot's threats are causing the successor PR, Brian O'Connell, to take steps which cause unnecessary expense, solely to appease Eliot.

For example, Eliot, who claims he cannot afford a lawyer, has engaged a systematic effort to make it difficult for Ted to retain professionals. Eliot somehow got the Clerk of the Court to add onto the docket sheet the word "Respondent" after the names of all lawyers in these cases. After doing that, Eliot advised that the undersigned is a party to the case and should hire his own lawyer and withdraw due to the conflict of interest. When the harassment did not work, he moved to disqualify counsel, which was heard and denied at an evidentiary hearing on July 11, 2014. Next, he filed a Counterclaim against the undersigned personally and professionally, and against my law firm for legal malpractice, even though he is not our client and has no standing to do so.⁸ This was done not to assert a legitimate claim, but solely in an attempt to force our withdrawal. It seems that when a lawyer appears to take adverse positions to Eliot, Eliot demands that the lawyer cease representing the party and withdraw due to serious conflicts of interest:

[I] "remind you again that you and your client Ted are defendants who have been formally served process in related matters to these and your continued representation

⁸ Judge Colin stayed Eliot's counterclaims and, eventually, entered an Order prohibiting Eliot from filing any paper without first sending it to the Court for review. For the sake of apparent fairness, the Court imposed the same requirement on all parties, that no new motions or claims be filed without first being submitted to Judge Colin for review.

without counsel appears to be conflicted and more"; "in your capacity as defendant . . . do you have counsel yet that I may contact"; "will you be representing yourself pro se"; "I have you served formally already as a partner in your firm and wondered as the firm is also sued if you have their counsel's name and yet will the partners, et al. be representing themselves or have individual counsel"; "please take a lesson from all of Ted's former counsel . . . and resign as his counsel in these continued frauds and frauds on the Courts (state and federal) for irreconcilable differences as they did, as it appears you are only compounding problems for yourself, the beneficiaries, the Courts and others."

In an e-mail Mr. Bernstein further advised the undersigned: "you were involved ground floor in the schemes and advancing me taking fraudulent distributions and more since . . . I will notify the Florida Bar in your ongoing complaint with their offices . . . and other state and federal authorities."

The attacks are most vicious against Ted Bernstein, who was left behind in charge of the business he and Simon started together, and who became the fiduciary under the terms of Shirley's will and trust. Anyone who "googles" Ted Bernstein hits blogs run by Eliot and his colleague. Insurance is a trust business; many of Ted's clients are law firms representing clients in estate and wealth planning. All one need do is Google the name Ted Bernstein and on the front page is the Ted Bernstein report (<http://tedbernsteinreport.blogspot.com/>), accusing Ted of "massive fraud and forgery."

Ted has tried to ignore the onslaught of Eliot's cyber attacks. Judge Colin was aware of them, but did not fully appreciate the magnitude or effectiveness of this information in harming Ted. Although Judge Colin too was a target of the attacks, as a sitting jurist not running a business built on trust relationships, he may not have appreciated the severity of these issues. Indeed, at a recent hearing, Judge Colin wondered who in the world would see any of this nonsense on the internet. What this Court needs to understand as we move forward is that, in this day and age, everyone about

to engage in a significant transaction "googles" the other side, and regardless of the fact that no one might randomly stumble on this false information, everyone who googles Ted Bernstein finds this nonsense almost instantly. It is having a very harmful and negative effect on Ted Bernstein's ability to conduct his business affairs, and destroyed any chance of trying to sustain the companies Ted and Simon started.

Before agreeing to serve in this case, there was no negative press on Ted or internet "blogs" tarnishing his reputation. No one who agrees to serve as a fiduciary should be forced to put up with any such attacks, nor to be pressured to deviate from the decedent's wishes by either giving in to Eliot's demands or resigning from this important duty. And, the only family member who opposes Ted serving is Eliot – the others simply want this administration process to conclude.

These attacks branch out to each new person who steps in Eliot's way, and are expected to shortly include Brian O'Connell, PR, once he too is forced to take action adverse to Eliot. Ted has had difficulty retaining an accountant to help in these estates, because no amount of fee is worth being attacked online or sued simply for performing professional services. Ted already has attempted to curtail these attacks, but now will be filing formal motions to appoint a guardian ad litem and to stop the internet harassment of professionals. The Court needs to be aware of this critical issue as the case moves forward, and we believe should address these issues first.

As a final point on the Shirley Bernstein Trust, this Court needs to be aware of what is occurring right now. When Ted became successor trustee after his father's death, there were two primary assets in the Trusts: (i) an oceanfront condo; and (ii) a single family residence which was his parents' homestead. The condo was sold in an arm's length sale, through a highly-reputable real estate broker. Eliot continues to threaten some litigation to clawback the property, and refused to

accept for his children the partial interim distribution the Trustee elected to make to each of the ten beneficiaries. In mid-March 2015, the Trustee finally obtained a contract to sell the remaining property, a single family home in a country club community. The house was on the market for over 1,000 days. The offer accepted was the first in excess of a million dollars and was by far the highest and best offer ever received for the property. The buyer wanted to pay \$1.1 million, all cash, and close quickly, because the country club equity membership fee was increasing by \$30,000. Because it is a large home in a country club, the monthly carrying costs are very high. Eliot objected to the sale, and Judge Colin agreed to delay the sale so Eliot could obtain an independent appraisal or provide competent evidence to support his claim that the house was being sold in a fire sale fashion. At the evidentiary hearing in May, Eliot produced no witnesses and no admissible evidence. Judge Colin entered a final order approving the sale on May 6, 2015, and the closing was set for June 10th. The delay between March 31st and June 10th cost the Trust at least \$75,000.

Eliot did not timely appeal the sale order, but on June 10, 2015, the date of the projected closing, filed a Petition for All Writs with the Florida Supreme Court. The transaction still cannot close until that Petition is resolved. To date, and despite the fact that he produced no evidence to support his assertion that the property was being sold too cheaply, and despite the fact that he is not a beneficiary of the trust, Eliot's obstinance and disregard has cost the Trust far more than \$125,000 and counting in actual cash lost due to extra sale expenses, carrying costs, repair costs, and the legal fees incurred solely to get a simple real estate transaction closed. And there remains no end in sight.

Despite the best efforts of the Trustee and counsel, the need to react to Eliot has been driving this case, dictating its pace and dictating which issues get heard, to the exclusion of all of the other beneficiaries and their best interests. There are two simple but significant issues which must be

addressed before we can make any progress in the Shirley Bernstein side of the equation. First, the Court must consider how to re-close Shirley's Estate which has no assets. (There are prior Waivers signed by all potential beneficiaries, including Eliot Bernstein, and in the past five-plus years, nothing new has been found.) In particular, because Simon outlived Shirley and was thus alive at the time of her bequests to him, Eliot is not a beneficiary of Shirley's estate. The belts and suspenders of getting a waiver from him, which he admittedly signed, should not overshadow the fact that the empty estate simply should be closed.

Second, because Eliot alone contests Simon's exercise of his power of appointment over the funds in the Shirley Bernstein Trust, and unless the matter can be resolved with a rational Guardian for Eliot's kids, some Trust Construction Action is needed. That action has been filed, as a one-count Complaint, and names as defendants all 14 potential beneficiaries. Eliot Bernstein is named solely because he is a potential beneficiary and is the parent and natural guardian of three of the other potential beneficiaries. This is not a personal attack on him; it simply is a legal issue which needs to be resolved by the Court through a trial. The trial affects everyone, not simply Eliot Bernstein. Those two issues must be resolved, and once they are, the Shirley Bernstein Trust can begin the process of final wind down and distribution once the remaining assets are liquidated. Those two things must happen and without them we will go nowhere, other than continuing to burn money fulfilling the visions, delusions and fantasies of Eliot Bernstein.

Conclusion

There is not enough room in this filing nor would one expect this Court to have the patience to learn the entire tragedy. The purpose of this summary is to focus the Court on where we started, and where we have been for the past three years. The Court must decide where we need to go to from here to close the administration of these estates and trusts, and distribute what little wealth will remain to Simon and Shirley's grandchildren. There is documentary evidence and testimony of witnesses with competent and relevant evidence to support the assertions set forth herein. In stark contrast, almost four years after Simon's death there are no documents, evidence or credible testimony to support the assertions of Eliot Bernstein. Eliot might be smart and clever, and skilled in maneuvering through the court systems. One would have to at least have some experience litigating to file papers as lengthy and often as he does. It is unclear if this is real or a game to him,⁹ but what is absolutely clear is: **Eliot will not inherit any money, and his kids will not inherit enough to sustain his lifestyle.**

Although very sad, what is important here is that the Court put an end to Eliot's involvement in this case and order him to remove all of the blogs he and Crystal Cox have created that refer to these matters or the judiciary, fiduciaries or professionals involved. Eliot lacks standing because he is not a beneficiary of either Simon's or Shirley's trusts. He has demonstrated no desire to serve the best interest of his children. Now is the time for the Court to take back control from Eliot.

⁹ Through nearly three years of litigation here, Eliot has been given the benefit of the doubt many times, and it remains unclear how much of what he files he actually believes. For example, Eliot has asserted in recent court filings: his minivan was car bombed; his father was murdered; and he needs to be placed into the federal witness protection program as a whistle blower who has been exposing judicial corruption throughout the land. He has demanded emergency loans, despite the fact that he has turned down several distributions the Trustee tried to make for his kids' benefit.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 14th day of September, 2015.

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Attorneys for Ted S. Bernstein, as Successor Personal
Representative

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST - Case No. 502011CP000653XXXXNBIJ

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Pam Simon
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Exhibit A

Florida Probate Fraud, Forgery and Corruption; Simon Berns Estate Case

Florida Estate and Probate Case, Forgery, and Alleged Murder, blog written upon information, knowledge and belief of Crystal L. Co Blogger.

Alan Rose	7020 Lions Head Lane Boca Raton	Docket Northern Illinois Case	Simon Bernstein Trust Heritage Jackson National District Court
Shirley Bernstein Estate Docket	Simon Bernstein Estate Docket	7020 Lions Head Lane Boca Raton	Shirley Bernstein Simon Bernstein
Tescher, Spallina, Ted Bernstein, Proskauer Rose MAJOR Technology Theft Case	Judge David E. French	Robert Spallina	Mark Manceri Donald Tescher
Tescher and Spallina Law Firm	Mark Manceri	Petition to Freeze Estate Assets	Estate Fraud Docket Insurance Proceed Scheme Donald Tescher
Robert Spallina	Ted and Deborah Bernstein	Life Insurance Concepts Boca	Ted Bernstein Fraud

Sunday, August 2, 2015

Why is Judge Martin Colin Still on the Bench with as much as the Department of Justice and the FBI clearly knows about him?

YEARS and YEARS of Corruption and Judge Martin Colin continues to Dish it out, WHY?

"Anonymous said...

The JQC does nothing! We have a corrupt sick Judge in Palm Beach County MARTIN COLIN. He abused his step son, had attys rep his now Betsy Savitt and did NOT disclose any conflicts. ROOT, HANDLER, KARTAGENA appear before him. READ THE BAEZ DECISION 4th DCA. JQC WAKE UP!!

August 3, 2008 at 11:26 AM

Anonymous said...

I agree Judge Martin Colin must be REMOVED. He is corrupt! Colin is a case fixer! Ignores the 4th DCA in BAEZ....

THE JQC SHOULD REMOVE COLIN NOW!!!

October 7, 2008 at 6:40 PM

Anonymous said...

CORRUPTION IS RAMPANT IN PALM BEACH COUNTY.... WINNET AND COLIN ARE SICK EVIL CORRUPT JUDGES AND SHOULD BE JAILED.. MARTIN COLIN IS A CRIMINAL....

THE FEDS ARE HOT ON THE ROBES OF COLIN..... AND HIS BOCA RATON BUDDIE HENRY HANDLER AND THE BOYS.. SCHUTZ, ROOT, JETTE...

CMON FEDS -- DO YOUR JOB!!!

October 16, 2008 at 8:54 AM

Anonymous said...

THE JQC is a "JOKE" The protect these corrupt Judges... Brooke Kennerly should be removed... Gov. Crist does NOT a clue and looks the other way.... Just Look at Palm Beach County judge Martin Colin, a corrupt judge.....

October 25, 2008 at 10:32 AM

Anonymous said...

Serial CORRUPT JUDGE MARTIN COLIN has been sent to the CIVIL Court - Judge Kroll removed Colin from the FAMILY COURT.

JUST THE START - HENRY HANDLER & CAROL A. KARTAGENER soon to be charged by the Florida Bar for many ETHICAL VIOLATIONS and other crimes.

Its about time, KARTAGENER was CAUGHT making perjurious statements to Judges Burton, Colin & Crow. One lie after another. KARTAGENER IS A HABITUAL & PATHOLOGICAL LIAR!!!! A sick a demented evil lady ---- Lacking Skills....

December 30, 2008 at 1:46 PM

To Read this WHOLE BLOG posts on the bottom right page. Don't let this Florida Insurance FRAUD and Forg YOU.

Posts

Alan B. Rose of Page Mr Fitzgerald & Rose LI...

Eliot Bernstein iVieW I Interview Dick Wo...

Alexandra aka Monica in Bernstein

Alan B. Rose is MADD as he ain't goin...

Hey Lindsay, you may w the ol' digital...

Alan B. Rose of Page Mr Fitzgerald & Rose Ge...

UNITED STATES DISTRICT SOUTHERN DISTRICT OF

You know that Mark Twi: "Truth is stranger...

John Pankauski, Pankau Alan B. Rose, ...

Who does Alan B. Rose (Mrachek, Fitzgerald ...

Don Sanders, Jackson N seems to have m...

Oh and you Spineless, C Lawless, Free Spee...

Burke, Warren, Mackay i Taking a Look

Alan B. Rose of Page Mr Fitzgerald & Rose se...

Folks, Alan Rose is a MA Hypocrite. ...

Alan B. Rose, Esq. seem suppressing speech...

Eliot Bernstein and iVie

Isn't Armonk, New York Lamont's neck of th...

Don Sanders, assistant \ National Life ...

Life Reassurance Corp. Bankers Life Insu...

Judge Amy J. St. Eve is Davis Polk & W...


Anonymous said...
THE "FEDS" WERE AT THE OFFICES OF WEISS & HANDLER....

JUSTICE SOON!!!"

Source
http://fraudonthecourt.blogspot.com/2008/07/july-11-2008-certified-mail-return.html

More on Judge Martin Colin's Reign of Corruptin
http://judgemartincolin.blogspot.com/

Posted by Crystal L. Cox at 11:31 AM No comments:

 Recommend this on Google

Judge Martin Colin Gets CAUGHT over and over protecting Florida Corruption and Florida Probate Attorneys. Why are those attorneys still licensed and why is Judge Martin Colin still on the Bench BREAKING THE LAW and Violating Constitutional Rights?

SERIOUS Abuse of Power, Violations of Ethics, Aiding and Abetting Corruption, Protecting Attorneys and Violating the rights of Florida Citizens.

Judge Martin Colin has been CAUGHT and yet is still ruining lives with BOGUS, Lawless, Fraud on the Court Rulings.

Hey remember when Judge Martin Colin wanted the Millions in Heritage Life / Jackson National insurance money moved from Illinois Courts to his tiny lawless court. MILLIONS in life insurance in regard to a man that the Palm County Sheriff Office is SUPPOSED to be investigating the Murder of???

Corruption in FLORIDA is very Bad. And Judge Martin Colin seems to be in charge of protecting the most lawless schemes in Florida and aiding HUGE RICH law firms such as Tescher and Spallina and Alan Rose / Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Fla.

Judge Martin Colin has no issue with the deceased signing documents, nor attorneys forging documents, and has no respect for the law, rights or children, judicial cannons or well, anyone that is not possibly bribing him or giving him some other motive to BREAK THE LAW and Ruin Lives.

So why is the Palm County Sheriff NOT looking into murder allegations, forgery, fraud and more in the Simon Bernstein Estate Case? Well I suppose its because they are seriously CORRUPT. And Judge Colin seems to be their buddy.

The PBSO has NO Respect for CIVIL Rights or the Law PERIOD.

Check this Out:

"FBI Raid on PBSO: Deputies Routinely Violate Civil Rights of Minorities!

WEST PALM BEACH – This week’s FBI activity at the Palm Beach County Sheriff’s Office came after a push by Guatemalan-Maya Center lawyer Jack Scarola for the U. S. Department of Justice to investigate what he claims is the unfair treatment of minorities by sheriff’s deputies.

Jack Scarola

Guatemalan-Maya Center lawyer Jack Scarola (via Facebook)

It’s another Gossip Extra exclusive: Last month, Scarola wrote a lengthy letter to U. S. Attorney General Eric Holder that outlined a series of PBSO shootings and incidents of brutality against minorities, mostly Hispanics.

The letter also blasted Sheriff Ric Bradshaw’s handling of such incidents, including the agency’s “growing militarization” and the sheriff’s message in television appearances that minority neighborhoods are akin to “war zones.”

And to make sure that Holder got the message that PBSO’s handling of such incidents didn’t pass muster, Scarola forwarded his missive to members of the local delegation to the U.S. Congress, including U.S. Reps. Patrick Murphy, Alcee Hastings and Lois Frankel.

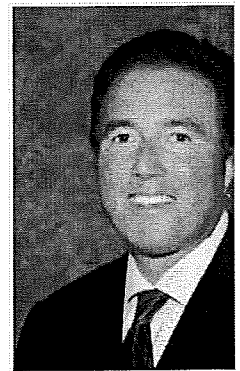
When asked if his effort caused Monday’s arrival of the feds at PBSO headquarters on Gun Club Road, Scarola said: “There have been stranger coincidences.”

“I’m not surprised,” the high-profile lawyer said. “And I am pleased they’re acting as requested. I contacted various government officials about this problem and I’m just pleased someone’s taking action.”

WOW, a full days wages National Empl...
Pam and Ted CUT out of they seem to be...
Whatch all worried about Fines, Judgement...
Not Getting Much Work ya? I sure ho...
303 East Wacker Drive S Chicago Illinois
STP Enterprises, Inc. - F
Jackson National Life Di Registere...

So Where Does Christop Ex Proskauer...
Carol Ann Kindred at He Life Insurance...
Heritage Union Life Insu is well awar...
So, who at Jackson Natl palms, all ...
So is Pamela Simon the i in all this?...
Jackson National Life In Company has HUGE L...
oh and Don't Forget the CONDO and how...
More on Michael A. Well National Life Co...
Looks to me like Jackso Little SPOO...
So Funny, that Heritage Insurance Compa...
Heritage Union Life Insu is well awar...

Ted Bernstein



Life Insurance Concepts

Blog Posts

Is Google Really the Best Conduct a Fraud, ...
Welcome Back, How is t Investigation Goi...
Order for Discharge and Counsel Tesc...
Morgan Stanley Group N Tescher & Spalli...
Judge Martin Colin seen the Right Thi...
Why is Ted Bernstein NC to this Story? ...
Motion to Halt Hat Trick Believe this is ...
Hmmm.. Friend or Foe?

Scarola said the riots in Ferguson, Missouri, that followed the shooting death of a black man by a white police officer have placed a renewed emphasis on the use of lethal force by police on minorities.

But, Scarola says, the FBI's apparent investigation into PBSO is independent of what's happening near St. Louis.

"I believe that I wrote a persuasive letter," Scarola said.

Gossip Extra broke the story last night: FBI agents were spotted at PBSO Monday to seize files pertaining to deputy-involved shootings and complaints.

Among the documents taken by the G Men were files about the public's complaints against Lake Worth deputy Russell Brinson.

Minority leaders in Lake Worth have been asking that Brinson be fired after they found out he had a long string of use-of-force incidents, and most of them involving minorities.

Instead, the 40-year-old Brinson was re-assigned to Palm Beach International Airport security.

In his letter, Scarola mentioned one Brinson incident in which a Hispanic immigrant who tried to report a crime to Brinson was allegedly beaten down.

Scarola also reminded Holder of the principles of modern policing, including that the cooperation of the public with police is inversely proportional to police's use of physical force.

There is, Scarola's letter reads, a growing perception in Palm Beach County that (deputies) "are too quick to resort to the use of force — even deadly force — particularly when confronting members of the civilian population whose racial and ethnic appearance differs from their own."

Source

<http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/>

The Florida / Palm Beach County Sheriff DOES NOTHING to help solve murder cases, jewelry and real estate theft, massive attorney fraud, corruption and collusion in the Simon Bernstein Case. And Judge Martin Colin seems to be assisted by Palm County to violate the rights of the poor, minorities or anyone that Judge Colin does not WANT to be on top of the PILE. Maybe it's about who pays him the most. As I allege that Judge Martin Colin has taken bribes from Tescher and Spallina and possible Ted Bernstein's legal team including Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. in West Palm Beach, Florida.

"What will the FEDS do — They should start with SA Dave Aronberg & Alan Johnson — i.e., there relationship with the crooks at Weiss Handler & Cornwell, P.A. Fraud case fixing fraudulent documents Civil theft and legal Malpractice.

Legal Assistants sleeping with certain wealthy clients and be billed as well.. Handler is operating a brothel for his clients.


Handler creates fraudulent and back dates legal DOCS. Does Handler BILL his client for his legal assistant to sleep with clients.... Mostly, yes, before Judge Martin Colin in South County.

Colin is on the handler "PAYROLL" FBI SAC Piro you have your work cut out for you.. Henry Handler and Howard Weiss should be indicted and jailed.... BTW Jack Scarola is well aware of Weiss Handler... Jack, perhaps you should write a letter to DOJ regarding WEISS HANDLER. This is CORRUPTION COUNTY!!!! As Judge Kastranakes!!!! He indicted most of em..."

Source

<http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/>

Posted by Crystal L. Cox at 11:23 AM No comments:

 Recommend this on Google

Saturday, August 1, 2015

WOW Judge Martin Colin protecting Corruption?? no say it ain't so... - and WOW the Palm County Sheriff Office involved?? Hmmm

"November 27, 2014 at 9:24 am

What will the FEDS do — They should start with SA Dave Aronberg & Alan Johnson — i.e., there relationship with the crooks at Weiss Handler & Cornwell, P.A. Fraud case fixing fraudulent documents Civil theft and legal Malpractice. Legal Assistants sleeping with certain wealthy clients and be billed as well.. Handler is operating a brothel for his clients.

Alan B. Rose, Mrachek, I Rose, Konopka &...

Hello Marc Randazza, W PARTY, Hope yo...

Alan Rose Wants the Fir to Be Set Asid...

Hey Liars, Thugs, Thieve Murdering, Gre...

Hey Alan B. Rose, Mrach Rose, Konop...

Judge Martin Colin has a protecting the...

I keep waiting for Judge punish, o...

Whatch hiding FROM Bo

Hey Flushing New York . Raymond or possib...

Objection to Motion to Personal Repres...

Objection to Motion to Personal Repres...

I am getting me some "E that somethin...

Why is Heritage Union L Company Filin...

"Criminal Action through Simulated Legal Pr...

Letter to Judge Martin Opposition to Ted...

What is Going on with J about not ...

Motion for Appointment Administrator...

Ted Petition for Appoin Successor Personal...

Alan Rose Esq., John J. Pankauski Law F...

Chicago Insurance and C Litigation Law Fi...

Morgan Stanley Group, 1 and Tescher & ...

Wow, the Fraud Sure Se Piling Up. Is Ted ...

Full Docket Of Heritage Insurance Case ...

Heritage Lawsuit Illinois Response Regar...

Reported as a Murder, y checked is medic...

"The Document in Ques the Inheritance ...

Looks like the Tescher & Bernstein F...

Ted Bernstein, Tescher and Spi

- Florida Estate Forgery, F DOCKET

Donald Tescher on Left



Ted Bernstein, Tescher and Spi


Handler creates fraudulent and back dates legal DOCS. Does Handler BILL his client for his legal assistant to sleep with clients.... Mostly, yes, before Judge Martin Colin in South County.

Colin is on the handler "PAYROLL" FBI SAC Piro you have your work cut out for you.. Henry Handler and Howard Weiss should be indicted and jailed.... BTW Jack Scarola is well aware of Weiss Handler... Jack, perhaps you should write a letter to DOJ regarding WEISS HANDLER. This is CORRUPTION COUNTY!!!! As Judge Kastanakes!!!! He indicted most of em..."

Source

<http://www.gossipextra.com/2014/11/26/fbi-raid-palm-beach-county-sheriff-civil-rights-violations-4196/>

Posted by Crystal L. Cox at 8:04 PM No comments:

 Recommend this on Google

Monday, July 20, 2015

Is Detective Andrew Panzer Investigating this fraud, forgery, theft and possible murder case or NOT?

Detective Andrew Panzer Letter from Eliot Bernstein January 2015


<https://drive.google.com/file/d/0Bzn2NurXrSkiMHNpa29Zc2VmbEU/view>

Why has Detect Andrew Panzer not arrested anyone? The FACTS sure look pretty clear. Why are these lawyers still creating victims and even still in business? The Palm County Sheriff has known for years and yet all these same players / attorneys are still in business and harming more people.

Below is lot's of details, in this Florida Supreme Court Filing

<https://drive.google.com/file/d/0Bzn2NurXrSkiZFdpU3F3WjZQWnM/view?usp=sharing>

Posted by Crystal L. Cox at 5:09 PM No comments:

 Recommend this on Google

Monday, June 29, 2015

Why has the Palm County Sheriff office NOT arrested Robert Spallina and Donald Tescher? Why is Palm Beach County Sheriff's Office protecting Robert Spallina and Donald Tescher even in the face of admitted crimes. Has the PBSO Office been paid off or threatened? Has Andrew Panzer personally been paid off or threatened? Are these admitted crimes legal in Palm Beach County ? With detectives like Andrew Panzer it is easy to see where there is so much probate crime in Palm Beach County Florida.

The Simon Bernstein Estate Case and the Shirley Bernstein Estate Case out of Boca Raton Florida is still going on, three years later. Judges are not ruling per law, Detectives are looking the other way and high finance crimes are RAMPANT.

Below is an email yet AGAIN from Eliot Bernstein to Palm Beach County Sheriff's Office, Detective Andrew Panzer, who seems to have no interest in protecting the victims of crimes in Palm Beach county Florida.

"From: Eliot Ivan Bernstein [mailto:iviewit@gmail.com]

Sent: Monday, June 29, 2015 5:58 AM

To: Detective Andrew Panzer @ Palm Beach County Sheriff (PanzerA@pbso.org); Captain Carol Gregg @ Palm Beach County Sheriff (greggc@pbso.org)

Subject: Bernstein Cases - RE: CASES NO: 13097087 MORAN FORGERY AND FRAUDULENT NOTARIZATION; 13159967 JEWELRY THEFT, 14029489 TESCHER AND SPALLINA ET AL. SUPPLEMENTAL, 12121312 ALLEGED MURDER OF SIMON BERNSTEIN

Detective Panzer,

After our last several calls it is apparent that the PBSO investigations into the Bernstein case matters has been derailed, stymied and delayed and that instead of investigating these ongoing crimes you have begun doing research on my federal RICO filed and who I copy on emails to you as if this were more important than the crimes reported to your agency.

I am not sure why it matters to you at all why I copied Judge Scheindlin on these matters, especially where there are growing correlations between these new crimes committed to my prior RICO filed and those defendants.

Blog Archive

▼ 2015 (116)

▼ August (3)

Why is Judge Martin on the Bench with ...

Judge Martin Colin G over and over prot

WOW Judge Martin G Corruption?? no ...

► July (1)

► June (4)

► May (22)

► April (63)

► March (8)

► February (7)

► January (8)

► 2014 (248)

► 2013 (31)

Ted Bernstein Insurance

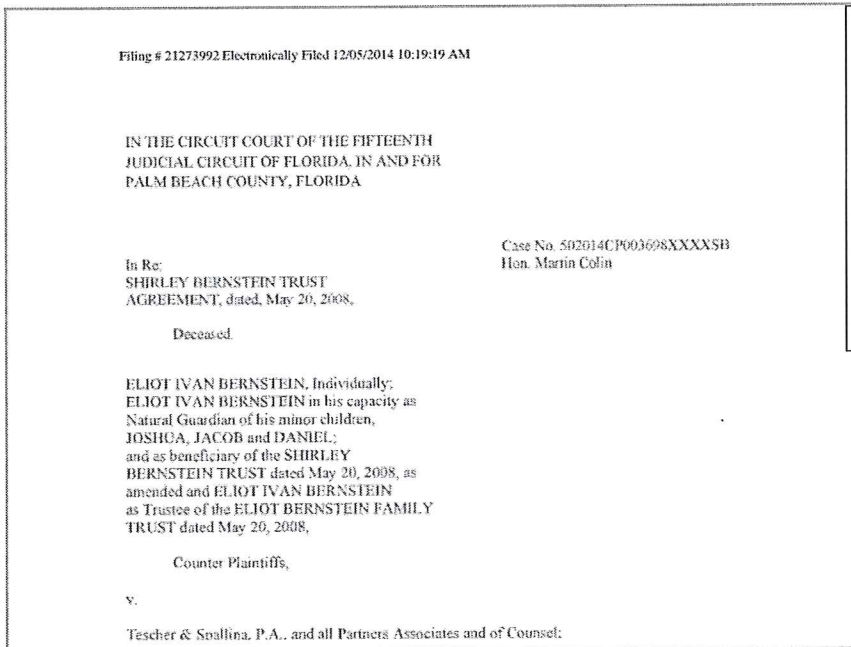
written upon knowledge and belief of Crystal L. Cox

Friday, December 5, 2014

Petition to Remove Ted Bernstein and attorney Alan Rose along with him in Florida Estate Case riddled with fraud, alleged murder, forgery, bullying, abuse of court documents, dead guys signing legal documents and more.

Blog Archive

- ▼ 2014 (4)
 - ▼ December (1)
 - Petition to Remove Ted Bernste attorney Alan...
 - May (2)
 - January (1)
- 2013 (5)



Click Below to Read the Petition to Remove Ted Bernstein
<https://docs.google.com/file/d/0Bzn2NurXrSkISd2OGVqRmRxeUU/edit>

More documents and information at
<http://tedbernsteinreport.blogspot.com/>

Posted by Crystal L. Cox at 12:13 PM No comments: Recommend this on Google

Friday, May 23, 2014

Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski and the case of Florida estate fraud, forgery and fraudulent documents. Ted Bernstein is HOPPING mad and wants access to EVERYTHING, Everywhere or ELSE you all are FIRED. See, if you will not aid and abet Ted Bernstein of Life Insurance Concepts, well then what's the use in him paying ya???

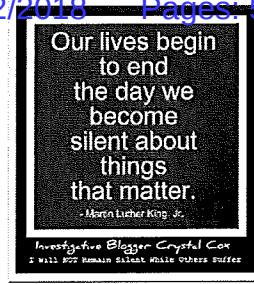
Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski - John J. Pankauski - Pankauski Law Firm PLLC sure seem to be up to NO GOOD.

Ted Bernstein, Life Insurance Concepts, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski - John J. Pankauski - Pankauski Law Firm PLLC sure seem to be up to NO GOOD.

Ted Bernstein, Alan B. Rose of Mrachek, Fitzgerald & Rose and John Pankauski like to operate in the dark. The thing is God / Goddess, the Great Spirit has a way of bringing the dark to the light, in support of the "good guy" and of doing the right thing.

Poor Baby TEDDY does not want to spend another dime on attorneys who will not cover up his corruption, aid and abet him or defend his rights to break the law.

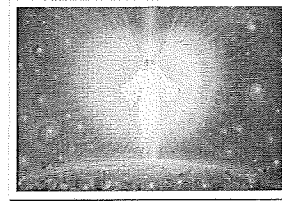
Below is an eMails that seems to suggest "Foul Play" and lawless, over the top aggressive, you be the judge. And also read this entire blog, and I would say that FLORIDA is not the best place to actually have your wishes carried out when you die. Especially not with this gang of seemingly corrupt THUGS.



oH and Ted Bernstein accusing Crystal Cox, me, of Extortion, but no BALLS to file a police report, what? If I have extorted your whiny, corrupt ASS then file a police report, ya spineless coward.

God / Goddess works in mysterious ways and this eMail is one of those ways in which the LIGHT is coming in and God is working for the Greater Good.

Thank You God <takes a bow> <hands firmly pressed>



*

"Alan - I want Eliot's deposition scheduled as soon as you can notice him. We can discuss the strategy once he is served. I want to go through each claim with you and/or John to determine the legal necessity to respond. If any reply is necessary, the record must be straight with respect to each.

This is a rambling, filled with contradictions that need to be exposed for what they are. If John does not want to tangle with Eliot, remove John immediately. I am sorry to be this blunt, but I do not want to address the John issue again.

If he is not 100% in support of me as trustee, including how I have protected myself with trust assets and will continue doing so as necessary, and being aggressive and forceful, if need be, with eliot, remove him as counsel.

I do not want to spend another unnecessary dollar with counsel that is not going to zealously defend me as trustee and protect trust assets.

I cannot be more decisive re this and I say this with no animosity - simply for efficiency sake and my best interest.

Eliot is in default of production. Let's serve notice on him that he is in default.

I want Eliot to produce everything he has with respect to these cases, including:

Documents he refers to having that provide trusts for him and/or his children.

Agreements he has signed with my father and mother, together or separately.

All correspondence between him and my parents, together or separately concerning anything he has referenced in his rambles through this one.

Anything and everything pertaining to iviewit, including his harassment of Jerry Lewin, Al Gortz of Proskauer and their firms.

I want court proceedings, lawsuits, all correspondence to him and from him including paper and electronic, including video tapes and electronic interviews.

History of incidents at st. Andrews school.

All correspondence with bill Stansbury. Everything related to Feaman / Stansbury

All bank accounts, credit cards, sources of income, loans and gifts.

All correspondence with anyone he has shared estate details.

All correspondence of every type with: walker, puzzio, SAHM, Diana banks, Scott banks, NACLERIO, Dietz, Gefen and every person on his email distribution list. If he doesn't comply, I want all of them deposed.

Everything in which he has mentioned my name including emails, phone calls, letters, complaints to whatever agencies he has made complaints including police, federal, state, regulatory.

Everything and anything he is doing that we are not yet aware of such as online web site attacks.

