

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

This First Amendment is dated this _____ day of _____, 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, Florida 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 SHIRLEY 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 the said Trust Agreement, in whole or in part.

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.
3. I hereby ratify and reaffirm the Trust Agreement as amended by this First Amendment.

[remainder of page intentionally left blank]

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

2014CP003698



(P3) 12-15-15

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the date first above written.

SETTLOR and TRUSTEE:

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 18 day of Nov, 2008:

Print Name: ROBERT L. SPALLINA
Address: 7387 VICTORIA AVENUE
PARKLAND, FL 33076

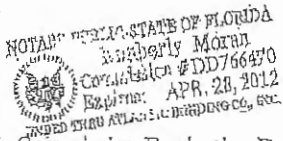
Print Name: Rachel Walker
Address: 100 Plaza Real South
Apt. 308
Boca Raton, FL 33432

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 18 day of November, 2008, by SHIRLEY BERNSTEIN.



[Seal with Commission Expiration Date]

Signature - Notary Public - State of Florida

Print, type or stamp name of Notary Public

Personally Known or Produced Identification
Type of Identification Produced _____

NONPDAT\MrbBernstein, Shirley & Simon\2008 Estate Planning\First Amendment to Shirley Bernstein Trust Agreement vpd (11/09/26 14:08)

FIRST AMENDMENT TO
SHIRLEY BERNSTEIN TRUST AGREEMENT

TESCHER & SPALLINA, P.A.

From the Desk of :

Joshua Ennio Zander Bernstein

2753 NW 34th Street, Boca Raton, FL 33434

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC

Diana Lewis

2765 Tecumseh Drive

West Palm Beach, FL 33409

(561) 758-3017 Telephone

dzlewis@aol.com

(Fla. Bar No. 351350)

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

Attention Diana Lewis, Esq.,

My name is Joshua Ennio Zander Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly acting as Guardian Ad Litem for me since since April 07, 2016 allegedly as a “minor child” of Eliot Ivan Bernstein and Candice Michelle Bernstein.

I make this voluntary request for you to now Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

As I show in this letter, at all times relevant in these Estate and Trust cases both Ted Bernstein who is my uncle, his lawyer Alan Rose, lawyer Steven Lessne and yourself have all had actual knowledge that I was over the age of 18 before this Guardianship via a Guardian Ad Litem for minors was ever established and thus was never a “Minor”. Therefore, since I was over the age of 18 years at the time of the “Guardianship” this could only occur after a “competency hearing” which of course has never occurred and you, Ted Bernstein, Alan Rose, Brian O’Connell and Steven Lessne have at all times had actual knowledge of these facts and the illegality of the Guardianship which appears to have been used as a predatory weapon against my family to interfere in proper rights of Inheritance and to cover up frauds in the cases.

Further, all of you actually know and have known that no “competency hearing” was ever held against me nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an “Officer of the Court” is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was over the age of 18 years prior to the Guardianship itself, but have even gone as far as to give alleged “Consents” on my behalf to various actions by Ted Bernstein and Alan Rose and entered into “Settlements” on my behalf again giving “Consent” all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know, you and I have never even spoken to one another.

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose and Steven Lessne, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

“Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" **include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.**

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.” See, <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

Ted Bernstein, who is my uncle by blood. and his attorney Alan Rose have at all times known my Birthdate particularly in relation to exorbitant and fraudulent legal Fees billed after the passing of my grandfather Simon Bernstein and the refusal to release my car Registration to me, which had been a birthday gift to me from my Grandfather only days before he passed that Ted and others tried to claim was an asset of the Estate of my grandfather. My birthdate was specifically raised in those proceedings and the Guardian Ad Litem proceedings and thus, these parties at all times knew that I was not a “minor” at the time the predatory Guardian Ad Litem was approved.

You apparently accepted Guardian Ad Litem over me as a “minor”, however, I have been Sui Juris since my 18th birthday on August 27, 2015 having been born on August 27, 1997.

Having been over the age of 18 years and thus not a “minor” under Florida law as of August 27, 2015, the Petitions filed on January 04, 2016 in the Shirley Trust case and January 07, 2017 in the Oppenheimer case and the Orders appointing you as Guardian Ad Litem on March 01, 2016 in the Shirley Trust case and March 03, 2016 in the Oppenheimer case, and your Acceptance of the appointments in both cases on April 07, 2016 all were done illegally and with knowledge that I was Sui Juris at the time and therefore every action taken on my behalf through the Guardian Ad Litem must now be corrected to reflect your lack of proper and legal jurisdiction over me.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

On March 01, 2016, while I was Sui Juris, in CASE NO.: 502014CP003698XXXX (NB)

“Shirley Bernstein Trust” styled,

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC
BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY SIMON;
PAMELA B. SIMON, Individually and
as Trustee f/b/o Molly Simon under the
Simon L. Bernstein Trust Dtd 9/13/12;
ELIOT BERNSTEIN, individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under
the Simon L. Bernstein Trust Dtd
9/13/12, **and on behalf of his minor
children D.B., Ja. B. and Jo. B. [emphasis added]**; JILL
IANTONI, Individually, as Trustee f/b/o
J.I. under the Simon L. Bernstein Trust
Dtd 9/13/12, and on behalf of her Minor
child J.I.; MAX FRIEDSTEIN; LISA
FRIEDSTEIN, Individually, as Trustee
f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12,
and on behalf of her minor child, C.F.,

Defendants.

in the Florida Probate Court an Order (SEE EXHIBIT 1 – GAL ORDER) was issued for
Guardian Ad Litem based on pleadings filed that represented that **the GAL was for minor
children** of Eliot and Candice. The Order states in part,

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

“2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his **minor children**, as their parent and natural guardian, in this Trust Proceeding.” **[emphasis added]**

“4. ...Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her **minor child**. *Mistretta v. Mistretta*, 566 So. 2d 836, 83 7-38 (Fla. 1st DCA 1990) (best interests of a **minor** are not fully protected when adverse to the interests of the parent); *Florida Natl. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for **minor child** when it was apparent that the interests of the **minor** conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed when the parents' interests were adverse to the **minor child**s).” **[emphasis added]**

“5. ...Second, Fla. Stat. 731.303 (4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... **a minor** ... ” **[emphasis added]**

On April 04, 2016, while I was Sui Juris, you were appointed as the Guardian Ad Litem to represent the interests of Eliot Bernstein’s **MINOR** children. See (SEE EXHIBIT 2 –SHIRLEY TRUST GAL Order)

On March 03, 2016, while I was Sui Juris, in CASE NO.: 502014CP002815XXXXNB (IH) titled,

“OPPENHEIMER TRUST COMPANY OF DELAWARE,
in its capacity as Resigned Trustee of the Simon
Bernstein Irrevocable Trusts created for the benefit
of Joshua, Jake and Daniel Bernstein,

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors, [emphasis added]

Respondents.

”

in the Florida Probate Court an Order (SEE EXHIBIT 3 – GAL ORDER OPPENHEIMER) was issued. That Order states in part the following;

“...(the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, **minors, Joshua, Jake and Daniel Bernstein** (the "Grandchildren Trusts").” [emphasis added]

“1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), **are Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries")**. Neither Eliot nor Candice Bernstein (the "Bernsteins") were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries. [emphasis added]

“2. The Bernsteins have been shown to have multiple conflicts of interest with the **Minor Beneficiaries**...All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the **Minor Beneficiaries** in this litigation. [emphasis added]

On April 07, 2016, while I was Sui Juris, you filed a “NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B.IN THE ABOVE STYLED CASE” in the Shirley Trust Construction case (Filing # 40000163 E-Filed 04/07/2016 04:06:21 PM) (SEE EXHIBIT 4 – NOTICE) which states in part;

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

“NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE COMES NOW Diana Lewis and notifies the court of her **acceptance of appointment as Guardian ad litem for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B.** pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein.” **[emphasis added]**

Similarly, on April 07, 2016, while I was Sui Juris, you filed a “NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE” in the Oppenheimer Case (Filing # 39999717 E-Filed 04/07/2016 04:03:08 PM), which states in part;

COMES NOW Diana Lewis and notifies the court of her acceptance of appointment as Guardian ad litem for JOSHUA, JAKE and DANIEL BERNSTEIN **(the "Minor Beneficiaries")** pursuant to this court's order dated April 4, 2016. **[emphasis added]**

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases (Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

The March 01, 2016 Oppenheimer Order states,

“4. For the above reasons, the guardian ad /item appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian ad /item for the Minor Beneficiaries in this case, **with sole and exclusive authority to represent the Minor Beneficiaries' interests in this case** .Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE” **[emphasis added]**

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

As you can see from my birthday listed above I turned 18 on August 27, 2015 and AT NO TIME IN THESE PROCEEDINGS WAS I A MINOR AND I WAS SUI JURIS WHEN ORDERS WERE ISSUED AND PLEADINGS WERE MADE BY ATTORNEYS AT LAW ALAN B. ROSE and STEVEN LESSNE to gain a predatory guardianship on me while I was an Adult by falsely pleading to the Court that I was a Minor and I have been advised that this guardianship is in violation of Florida Criminal and Civil Statutes and perhaps Federal law.

The 2016 Florida Statutes - Title XLIII - DOMESTIC
RELATIONS - Chapter 744 - GUARDIANSHIP

744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.

History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.

Note.—Created from former s. 746.12.

"Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."

https://umshare.miami.edu/web/wda/ethics/gurardianship_rev1-07.pdf

No adult Guardianship proceedings under The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS GUARDIANSHIP Chapter 744 took place for me as legally required as I was an adult at the time guardianship was sought for and gained over me and no capacity hearing was held at any time. As you can see from the Pleadings and Orders submitted in the case and outlined herein the Guardian Ad Litem was ILLEGALLY gained over me while an adult and I

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

was misrepresented to the Court as a minor by Officers of the Court, Alan B. Rose, Esq. and Steven Lessne, Esq. and Fiduciary of the Estates and Trusts of my grandparents Simon and Shirley Bernstein, my uncle Ted Bernstein. I have been made aware that my uncle Ted and all other parties knew at the time my legal age and that I was Sui Juris.

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, immediately;

1. **CEASE AND DESIST** from any further representations of myself, Joshua Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Court that **ALL OF YOUR PRIOR REPRESENTATIONS AND ACTS ON BEHALF OF JOSHUA BERNSTEIN** are and always have been improper and illegal and cease and desist this **KNOWINGLY, GROSS, WILLFUL, WANTON** and **RECKLESS** criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Joshua Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Joshua Bernstein, was placed as an adult illegally in a guardianship for minors and that no legal adult guardianship proceedings were held giving you legal authority from the onset of your legal representations on my behalf, receive discharge and turn over all records and properties regarding the guardianships as required.
5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions that you have never had proper guardianship for me as an adult.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,
 - a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:
 - i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
 - ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
 1. OLD CASE # Was Civil but Colin transferred to Probate ?
502014CA014637XXXXMB
 - iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
 - iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
 - v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
 - vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
 - vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
 - viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
 - ix. Case # 50-2010-CP-003125-XXXX-SB - – Jacob Jake Bernstein alleged 2010 Trust Case Colin
 - x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

- b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE
Cymonie Rowe, case:
- i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S.
Bernstein et al. -
- c. The Florida 4th District Court of Appeals – Note – Do not submit any information
to Chief Judge Corey Ciklin who is conflicted in these matters already as being a
former law partner of Personal Representative of the Estate of Simon Bernstein,
Brian O’Connell’s law firm, Ciklin Lubitz Martens & O’Connell, where Judge
Ciklin already has Sua Sponte removed himself from proceedings he was
involved with in these matters and removed his name from several prior issued
Orders at that court.
- i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON
BERNSTEIN
 - ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER
TRUST CO. OF DELAWARE, ET AL.
 - iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER
TRUST CO. OF DELAWARE, ET AL.
 - iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER
TRUST CO. OF DELAWARE, ET AL.
 - v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE, ET AL.
 - vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE, ETC., ET AL.
 - vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE, ETC., ET AL.
 - viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE. ET AL.
 - ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E.
STANSBURY, et al.
 - x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E.
STANSBURY, et al.

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

- d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.
 - i. SC16-29
 - e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.
 - i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois
 - f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.
 - i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm, will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive

Page 13 of 22
11/11/2017



Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

10. **TURN OVER** all records, documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34th Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT.**

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,
2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

ELIOT BERNSTEIN, individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under
the Simon L. Bernstein Trust Dtd
**9/13/12, and on behalf of his minor
children D.B., Ja. B. and Jo. B.**

Please provide a copy of the “**Simon L. Bernstein Trust Dtd 9/13/12**” and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather’s death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014^{1 2 3} where I learned from the attached articles, “But Ticktin, a 35-year-old

¹ “Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin” By Jane Musgrave - Palm Beach Post Staff Writer

Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014

<http://www.mypalmbeachpost.com/news/local-govt--politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11Jdl>

² “Race for Palm Beach County Circuit Judge Group 14 seat is personal” July 19, 2014 | By Brittany Shammass, Sun Sentinel

http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.


That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to investigate and prosecute any prior and future criminal acts, so please **govern yourself accordingly** in any future actions you may take in any matters relating to my family and myself.

³ "Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor" Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa
<http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/>

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF


I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X: 
Joshua Ennio Zander Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7/11/17

Witness:

X: 
Name: Jacob Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7/11/17


Page 17 of 22
July 11, 2017

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 1

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.


**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ ^{The} Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued ^{to} advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." ¹ Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse + destructive to the children's interest} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB} _^

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ^{each of the parties shall submit a list of three} upon notice from the Trustee's counsel the Court shall randomly

^{names of potential Guardian Ad Litem's, each of whom has agreed to} appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a ~~suitable~~ ^{acceptable} Guardian Ad Litem. ^{with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.}

Handwritten initials

9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

^{proposed}
** Parties shall furnish a ^{proposed} order appointing GAT with the lists. The Court will act without further hearing on the appointment, if possible.*

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

JOHN L. PHILLIPS

CIRCUIT COURT
NORTH COUNTY COURTHOUSE
3188 PGA BOULEVARD
PALM BEACH GARDENS, FL 33410

Case: 1:13-cv-03643 Document #: 297-27 Filed: 11/09/17 Page 25 of 48 PageID #:15747

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247



Eliot Bernstein and Candice Bernstein
2753 NW 34th Street
Boca Raton, FL 33434



**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 2

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR
ELIOT BERNSTEIN'S CHILDREN, J.O.B.; J.A. B.; and D.B.

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016,
on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests
of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments
of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly
advised in the premises, the Court entered an Order in this matter, and a companion order in Case
No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

RECEIVED, 5/18/2016 4:40 PM, Clerk, Fourth District Court of Appeal

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

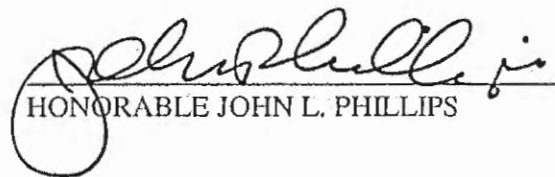
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein.

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 18 DAY OF May 2016

SHARON R. BOCK
CLERK & COMPTROLLER

By *Victoria Kanger*
DEPUTY CLERK

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY
OF DELAWARE, in its capacity as
Resigned Trustee of the Simon Bernstein
Irrevocable Trusts created for the benefit
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors,

Respondents.

**ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS,
JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the “Minor Beneficiaries”). Neither Eliot nor Candice Bernstein (the “Bernsteins”) were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries’ benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint*, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; *Objection to Oppenheimer Accountings*, pp. 1 and 20. In addition, the Bernsteins insist that their overarching goal in this litigation “is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more.” *Counter-Complaint*, ¶ 212. No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer’s Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southn Distreict of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continued violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case “are void as a matter of law, and are of no legal force and effect.” *Petition for All Writs (dated January 29, 2016)*, ¶ 101. Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id.*, ¶ 106-107. All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries’ interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the Minor Beneficiaries];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein”), and the “Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production” (the “Objection”) filed by

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem*'s duties.

9. ^{The pending Motion for Contempt as to} Eliot and Candice Bernstein ~~are also held to be in contempt of court~~ for their willful violation of Judge Martin Colin's May 4, 2015 Order, ^{in MOST.} ~~The Court withholds coercive sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins' pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on 3-1-, 2016.

Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JOSHUA BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 4

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein Trust
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon
L. Bernstein Trust Dtd 9/13/12, and on behalf of his
minor children D.B., Ja. B. and Jo. B.; JILL
IANTONI, Individually, as Trustee f/b/o J.I. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her Minor child J.I.; MAX FRIEDSTEIN; LISA
FRIEDSTEIN, Individually, as Trustee f/b/o Max
Friedstein and C.F., under the Simon L. Bernstein
Trust Dtd 9/13/12, and on behalf of her minor child,
C.F.,

Defendants.

_____ /

NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

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; Email Electronic Transmission; FedEx; Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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

TED BERNSTEIN, as Trustee
Of the Shirley Bernstein Trust Agreement
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMO;
PAMELA B. SIMON, Individually and as
Trustee f/b/o Molly Simon under the
Simon L. Bernstein Trust Dtd. 9/13/12;
ELIOT BERNSTEIN, individually as Trustee
f/b/o D.B., Ja. B and Jo. B. under the
Simon L. Bernstein Trust Dtd. 9/13/12
and on behalf of his minor children
D.B., Ja.B. and Jo.B.; JILL IANTONI,
individually, as Trustee f/b/o of J.I.
under the Simon L. Bernstein Trust Dtd.
9/13/12, and on behalf of her Minor child
J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,
individually, as Trustee f/b/o Max
Friedman and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on
bealf of her minor child, C.F.,

Defendants.

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her
acceptance of appointment as Guardian *ad litem* for Eliot
Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to
this court's order dated April 4, 2016, and the terms and
conditions set forth therein.

Page Two

Case no.: 2014CP003698 (IH)

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com

By: /s/ Diana Lewis
Diana Lewis (Fla. Bar No. 351350)
(Mediator No.:32461 R)

Page Three
2014CP003698

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:Eliot.I.Bernstein@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
[\(john@jmorrisseylaw.com\)](mailto:john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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

OPPENHEIMER TRUST COMPANY OF
DELAWARE, in its Capacity As Resigned
Trustee of the Simon Bernstein Irrevocable Trusts
Created for the Benefit of of Jo. B., Ja. B., and D.B.,
Minors

Probate Division
Case No.: 502014CP002815XXXXSB(IY)

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN, in their
Capacity as Parents and Natural Guardians of Jo. B.,
Ja. B., and D.B., Minors
Respondents.

_____ /

NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

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; Email Electronic Transmission; FedEx; Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein
Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Steven A. Lessne, Esq.
GrayRobinson, P.A.
225 N.E. Mizner Blvd., Suite 500
Boca Raton, FL 33432
(561) 368-3808
Email: steven.lessne@gray-robinson.com
Counsel for Petitioner

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,
in its capacity as Resigned Trustee of
the Simon Bernstein Irrevocable Trusts
created for the benefit of Joshua, Jake
and Daniel Bernstein,

Petitioner,

vs.

Probate Division
Case No.:2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and
natural guardians of JOSHUA, JAKE
AND DANIEL BERNSTEIN, minors,

Respondents.

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR
JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to this court's order dated April 4, 2016.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP002815 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

Page Two

SERVICE LIST Case No.: 2014CP002815

Steven A. Lessne
Gunster, Yoakley & Stuart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

From the Desk of :

Jacob Bernstein

2753 NW 34th Street, Boca Raton, FL 33434

July 11, 2017

ADR & MEDIATIONS SERVICES, LLC

Diana Lewis

2765 Tecumseh Drive

West Palm Beach, FL 33409

(561) 758-3017 Telephone

dzlewis@aol.com

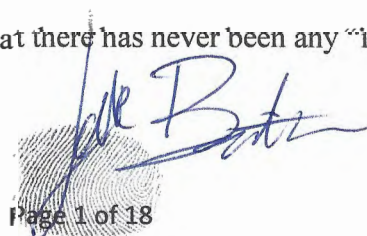
(Fla. Bar No. 351350)

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

Attention Diana Lewis, Esq.,

My name is Jacob Noah Archie Bernstein and it has come to my attention that you are an attorney and former Judge in Palm Beach County and Officer of the Court, allegedly continuing to act as Guardian Ad Litem for me since April 07, 2016 allegedly as a “minor child” of Eliot Ivan Bernstein and Candice Michelle Bernstein.

While I understand that there is likely major legal problems with the proceedings leading up to your Appointment and Acceptance as Guardian ad Litem on my behalf, I turned 18 on January 01, 2017 and have not been a “Minor” for over 6 months and yet you have failed to Discharge the Guardianship and knowingly continue to purport to act on my behalf as a minor and make Court appearances for me and tender “Consents” on my behalf which were never provided to you and you have done this at all times knowing that there has never been any “incapacity” or



Page 1 of 18

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

“competency” Hearing since I turned 18 and thus no basis in law or fact to continue to act on my behalf after my 18th Birthday.

I now make this voluntary request for you to Cease and Desist all actions allegedly as my Guardian Ad Litem, turn over all records, discovery and information obtained in the course of your actions as my alleged Guardian and correct any and all frauds in all Courts or elsewhere impacted by this illegal Guardianship, including but not limited to, the Estate and Trust cases of my deceased grandparents, Simon and Shirley Bernstein.

Since I have been over the age of 18 years since January 01, 2017, you, Ted Bernstein, Alan Rose, Brian O’Connell and Steven Lessne have at all times had actual knowledge of these facts and the requirement to Discharge the Guardianship or conduct a proper Hearing with Due Process Notice and thus have continued to illegally use this Guardianship as a predatory weapon against myself and my family to interfere in proper rights of Inheritance and to cover up frauds in these cases.

Further, all of you actually know and have known that no “competency hearing” was ever held against me in over 6 months since turning the age of majority of 18, nor have I ever been provided ANY Due Process Notice or been served to appear in any proceeding or have an Opportunity to be heard at any of the relevant proceedings to date.

What is even more egregious about your conduct as a former Judge and done as an “Officer of the Court” is that you not only have continued in your actions as alleged Guardian in this illegal Guardianship despite being specifically advised that I was now over the age of 18 years but have also even gone as far as to give alleged “Consents” on my behalf to various actions by Ted

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

Bernstein and Alan Rose and entered into "Settlements" on my behalf again giving "Consent" all without my knowledge, without my Consent and without any Notice of Opportunity to be heard provided to myself. In fact, as you actually know, you and I have never even spoken to one another.

Like my older brother Joshua who was 18 even before the Guardian Ad Litem was created and accepted by you, I have come to learn that under Federal law under Title 18 USC Sec.242 it is a Federal Criminal Offense for Civil Rights Violations for 2 or more persons to conspire to Violate my US Constitutional rights, which have been violated by your actions in this case together in common with Attorney Alan Rose, Fiduciary Ted Bernstein and with the compliance and acquiescence of attorney Brian O'Connell as current Personal Representative of my grandfather Simon's Estate.

Please take notice that I have copied the US Dept of Justice Civil Rights Division head Tom Wheeler and offices of the FBI and US Attorney on this request.

I have further learned the following from the US Dept. of Justice Website:

"Section 242 of Title 18 makes it a crime for a person acting under color of any law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.

For the purpose of Section 242, acts under "color of law" **include acts not only done by federal, state, or local officials within their lawful authority, but also acts done beyond the bounds of that official's lawful authority, if the acts are done while the official is purporting to or pretending to act in the performance of his/her official duties. Persons acting under color of law within the meaning of this statute include police officers, prisons guards and**

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials. It is not necessary that the crime be motivated by animus toward the race, color, religion, sex, handicap, familial status or national origin of the victim.

The offense is punishable by a range of imprisonment up to a life term, or the death penalty, depending upon the circumstances of the crime, and the resulting injury, if any.” See, <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

I have never spoken with you, met with you, granted you any authority over me and in any way enabled or allowed your acting in any capacity and in any matter on my behalf as an adult. This is a Cease and Desist demand to stop all further illegal acts on my behalf.

I am unaware of any Guardian Ad Litem Orders entered in the Simon and Shirley Probate Cases (Case # 502012CP004391XXXXSB – Simon Bernstein Estate and Case # 502011CP000653XXXXSB – Shirley Bernstein Estate) giving you any guardianship powers over me to make any representations or take any actions on my behalf in those cases.

Ja.B. AND D.B. IN THE ABOVE STYLED CASE” **[emphasis added]**

The Shirley Bernstein Trust Order Appointing Guardianship is similarly limited to legal authority of the guardianship in that case only and only for MINOR CHILDREN.

The 2016 Florida Statutes - Title XLIII - DOMESTIC RELATIONS - Chapter 744 - GUARDIANSHIP
744.521 Termination of guardianship.—**When a ward becomes sui juris** or is restored to capacity, when the guardian has been unable to locate the ward through diligent search, or, for a guardian

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

of the property, when the property subject to the guardianship has been exhausted, the guardian shall file a final report and receive his or her discharge. A guardian of the person is discharged without further proceeding upon filing a certified copy of the ward's death certificate. The court may require proof of the removal of incapacity.

History.—s. 1, ch. 74-106; ss. 21, 26, ch. 75-222; s. 4, ch. 86-120; s. 89, ch. 89-96; s. 63, ch. 90-271; s. 1110, ch. 97-102.

Note.—Created from former s. 746.12.

"Minor Ward Reaches 18 Unless the minor is incapacitated, at the age of 18 he or she is no longer a minor and is deemed to be legally old enough to manage his or her own finances or property. The guardianship is terminated and the assets are distributed to the minor."

https://umshare.miami.edu/web/wda/ethics/gurardianship_rev1-07.pdf

Therefore, due to your lack of legal authority over me despite any Court Orders gained through simulated legal process, I immediately request that you;

1. **CEASE AND DESIST** from any further representations of myself, Jacob Noah Archie Bernstein, in any proceedings, settlements or other matters involving me.
2. **NOTIFY** the Florida Courts and Correct all actions taken on my behalf since turning the age of majority on January 01, 2017, have been improper and illegal and cease and desist this **KNOWINGLY, GROSS, WILLFUL, WANTON** and **RECKLESS** criminal violation of your fiduciary duties as a Guardian Ad Litem .
3. **WITHDRAW** any and all Consent you have given in any matters relating to Jacob Bernstein.
4. **FILE** immediately within or without the final report the fact that I, Jacob Bernstein, turned the age of majority on Jan. 01, 2017 and that no legal adult guardianship proceedings were held giving you legal authority from such date to the present,

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

discharge the Guardianship and turn over all records and properties regarding the guardianships as required.

5. **MAKE NO** further appearances in Court on my behalf or state in any pleadings consent on my behalf or take any any action whatsoever on my behalf claiming that you are a acting as Guardian Ad Litem for me.
6. **NOTIFY ALAN ROSE AND STEVEN LESSNE** to similarly take all actions to remove and strike all pleadings, orders, settlements, etc. in any court cases made on my behalf as a minor and correct any and all Court Orders and actions impacted by these defects and cease and desist any further acts on my behalf.
7. **NOTIFY ALL COURTS** affected by your actions since I turned the age of majority of 18 on Jan. 01, 2017.
8. **NOTIFY ALL COURTS** that you have made improper representations in pleadings and hearings in the Simon and Shirley Bernstein Estate and Trust cases and the Oppenheimer cases where you have never been granted a legal guardianship over me. The Courts to be notified and cases related to your actions that have been affected by the misconduct shall include but not be limited to,
 - a. The Florida Probate Court – HONORABLE Judge Rosemarie Scher, cases:
 - i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
 - ii. Case # 502015CP001162XXXXNB – Simon Bernstein Trust to Remove Ted Bernstein
 1. OLD CASE # Was Civil but Colin transferred to Probate ?
502014CA014637XXXXMB
 - iii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
 - iv. Case # 502014CP003698XXXXNB – Shirley Trust Construction
 - v. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

- vi. Case # 502015CP002717XXXX Colin Closed and transferred to Coates Eliot Bernstein v. Simon Estate Case for Claims
- vii. Case # 502014CA014637XXXXMB BERNSTEIN, ELIOT I VS BERNSTEIN, THEODORE S
- viii. Case # 50-2010-CP-003128-XXXX-SB – Joshua Bernstein alleged 2010 Trust Case Colin
- ix. Case # 50-2010-CP-003125-XXXX-SB - – Jacob Jake Bernstein alleged 2010 Trust Case Colin
- x. Case # 50-2010-CP-003123-XXXX-SB– Daniel Danny Bernstein alleged 2010 Trust Case Colin

b. The Florida 15th Judicial Civil Circuit Court and HONORABLE JUDGE

Cymonie Rowe, case:

- i. Case # 502012CA013933XXXXMB William E. Stansbury v. Ted S. Bernstein et al. -

c. The Florida 4th District Court of Appeals – Note – Do not submit any information to Chief Judge Corey Ciklin who is conflicted in these matters already as being a former law partner of Personal Representative of the Estate of Simon Bernstein, Brian O’Connell’s law firm, Ciklin Lubitz Martens & O’Connell, where Judge Ciklin already has Sua Sponte removed himself from proceedings he was involved with in these matters and removed his name from several prior issued Orders at that court.

- i. Case 15-3849 ELIOT BERNSTEIN ESTATE OF SIMON BERNSTEIN
- ii. Case 16-1449 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- iii. Case 16-1476 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- iv. Case 16-2249 ELIOT IVAN BERNSTEIN OPPENHEIMER TRUST CO. OF DELAWARE, ET AL.
- v. Case 16-0222 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ET AL.
- vi. Case 16-1478 ELIOT IVAN BERNSTEIN TED BERNSTEIN, AS TRUSTEE, ETC., ET AL.

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

- vii. Case 16-3314 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE, ETC., ET AL.
- viii. Case 16-0064 ELIOT IVAN BERNSTEIN TED BERNSTEIN,
AS TRUSTEE. ET AL.
- ix. Case 16-3162 ELIOT IVAN BERNSTEIN WILLIAM E.
STANSBURY, et al.
- x. Case 16-4120 ELIOT IVAN BERNSTEIN WILLIAM E.
STANSBURY, et al.

d. The Florida Supreme Court – Note – Do not submit any information to Chief Judge Jorge Labarga as he is conflicted with the Eliot Bernstein family in these matters.

i. SC16-29


e. The United States District Court Northern District of Illinois Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company – HONORABLE Judge John Robert Blakey and Chief Judge Ruben Castillo.

i. Case # 13-cv-03643 - Federal Lawsuit in the US District Court of Eastern Illinois

f. United States Court of Appeals for the Seventh Circuit - Chief Judge Diane P. Wood in relation to the Lower Court Case 1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company.

i. Case No. 17-1461 APPEAL UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

9. **TURN OVER** all of your professional and individual insurance policies and bonding information to me as claims against you individually and professionally and your firm,



Page 8 of 18
July 11, 2017

RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

will be forthcoming for the massive damages caused to me from your breaches of fiduciary duties and other misconduct. Your firm appears as follows and I believe it was set up specifically for liability purposes for these matters with my family, immediately prior to your acceptance of Guardian Ad Litem for me:

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

10. **TURN OVER** all records, documents, emails, faxes, information of any kind regarding me obtained by and during these illegal actions to my attention at my permanent address of, 2753 NW 34th Street, Boca Raton, FL 33434.

I have been notified that on repeated occasions over the past year my father and mother Eliot and Candice Bernstein have notified you directly of my Sui Juris status and you have refused to take any actions to end the improper Guardian Ad Litem and continue to make representations, agreements and settlements on my behalf and hopefully this notice will cause you to **IMMEDIATELY CEASE AND DESIST THIS ILLEGAL CONDUCT.**

I have also been made aware that my father and mother, Eliot and Candice Bernstein have notified state and federal authorities of your misconduct on my behalf, including but not limited to acts such as,

1. Dissolving various Trusts in my name set up by my grandparents,

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

2. Dissolving Bernstein Family Realty, LLC, set up by my grandparents of which I am a 33% owner,
3. Making appearances in various court and legal proceedings illegally on my behalf,
4. Consenting to various legal agreements illegally on my behalf,
5. Consenting to various settlements illegally on my behalf.

I have learned that in Case # 502014CP003698XXXXNB – Shirley Bernstein Trust in the Fifteenth Judicial Probate Court you are acting under an alleged Trust created in my name that I was sued as a defendant under with my father, Eliot Bernstein, as Trustee and where I have never received formal notice of any such trust, nor do I believe my parents or any other party, including the courts have received, although I am a beneficiary allegedly under this trust. The Trust I am sued under is titled,

**ELIOT BERNSTEIN, individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under
the Simon L. Bernstein Trust Dtd
9/13/12, and on behalf of his minor
children D.B., Ja. B. and Jo. B.
[Emphasis added]**

Please provide a copy of the “**Simon L. Bernstein Trust Dtd 9/13/12**” and any subtrusts held thereunder in my name supposedly created on 9/13/12 the date of my grandfather’s death. If you are in possession of any such trust or subtrust OR ANY OTHER TRUST in my name, please instantly turn over all records regarding this legal entity I have been sued under and that you are acting illegally as a Guardian Ad Litem over my person in such legal action under such trust.

I have done preliminary research into your name online since learning of this predatory Guardian Ad Litem placed knowingly upon me as an adult and have learned that you are a FORMER

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247
RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF

Judge and no longer a Florida Registered Judge who has lost her judgeship to Jennifer Ticktin since on or about 2014^{1 2 3} where I learned from the attached articles, “But Ticktin, a 35-year-old partner at Ticktin Law Group and a Boca Raton resident, says she targeted Lewis for a reason. She cited a 2013 Palm Beach County Bar poll in which Lewis ranked last among 34 circuit court judges in categories including knowledge and application of the law, impartiality and judicial demeanor. "I think that right now we have an issue with the incumbent judge," Ticktin said. "Last time she was given a second chance, and I don't think that she did well with that second chance. I think it's time for change." In noting your bar association number above I believe that as both a former judge and current registered attorney at law I need not educate you on your obligations to notify all tribunals, criminal and civil and all parties with any liabilities resulting from your and others you worked in conspire with actions, as required by both State and Federal - Civil, Criminal and Ethical Rules and Statutes.

That these Knowingly, Gross, Willful, Wanton and Reckless Acts, which appear as Financial Exploitation of an Adult through an ILLEGAL GUARDIAN AD LITEM FOR A MINOR and further appear part of a larger conspiracy against the rights of my father, my mother and my brothers are simultaneously being forwarded to state and federal criminal authorities to

¹ “Ugly PBC judicial campaign pits Diana Lewis and Jessica Ticktin” By Jane Musgrave - Palm Beach Post Staff Writer

Updated: 12:41 p.m. Friday, August 08, 2014 | Posted: 7:00 a.m. Friday, August 08, 2014

<http://www.mypalmbeachpost.com/news/local-govt-politics/ugly-pbc-judicial-campaign-pits-diana-lewis-and-jessica-ticktin/NczV3oHgQuXksyXpl11Jdl>

² “Race for Palm Beach County Circuit Judge Group 14 seat is personal” July 19, 2014 | By Brittany Shammass, Sun Sentinel

http://articles.sun-sentinel.com/2014-07-19/news/fl-election-palm-circuit-judges-14-20140719_1_lewis-incumbent-judge-ticktin-law-group

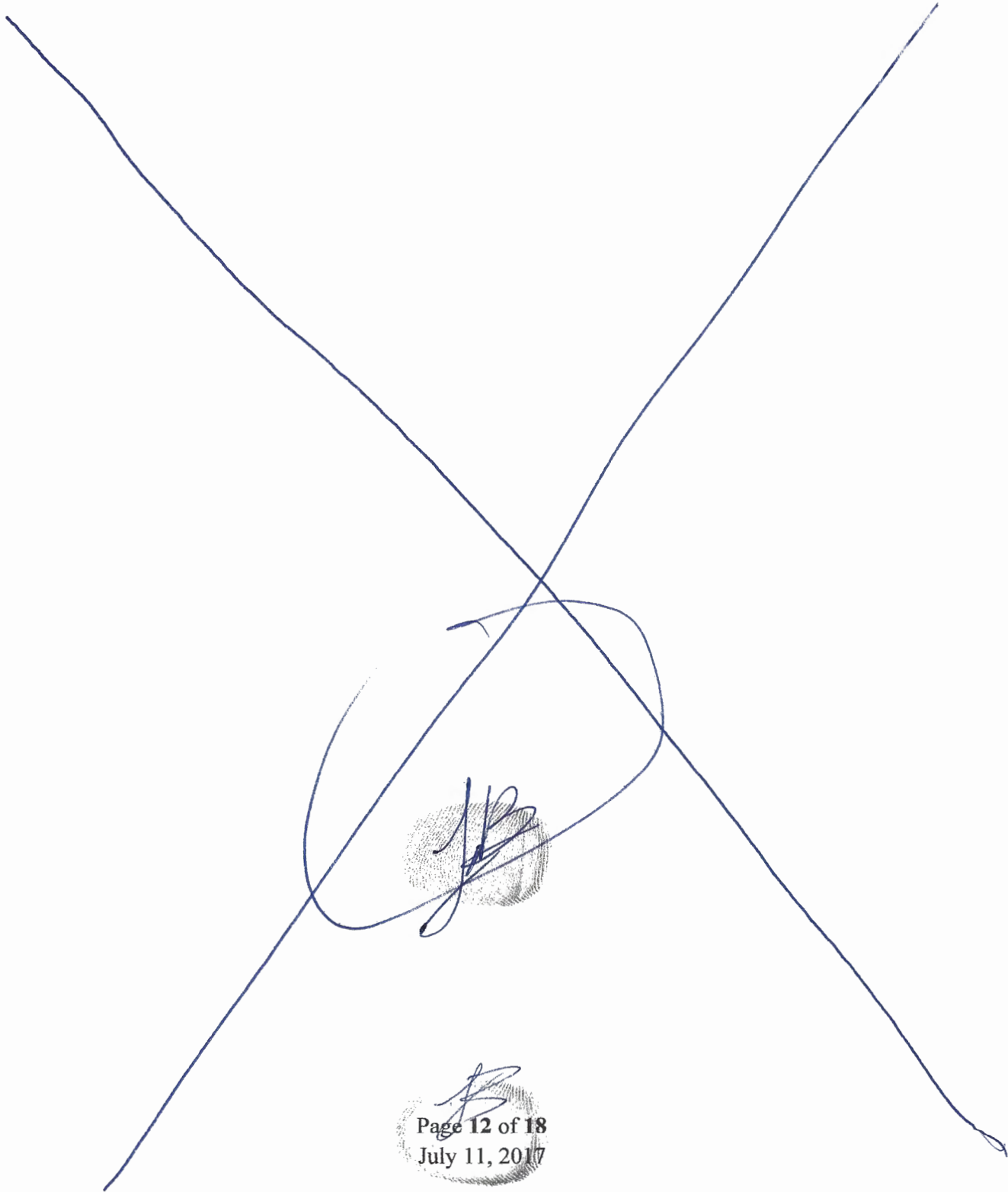
³ “Palm Beach Judge Diana Lewis Loses Judicial Seat to Challenger Raising Issues with Demeanor” Florida You Judge Wednesday, August 27th, 2014 at 5:26 pm by admin by Haydee Oropesa

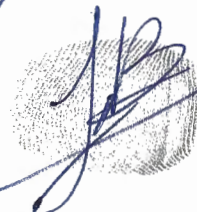
<http://www.floridayoujudge.com/palm-beach-judge-diana-lewis-loses-judicial-seat-to-challenger-raising-issues-with-demeanor/>


**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

investigate and prosecute any prior and future criminal acts, so please **govern yourself**
accordingly in any future actions you may take in any matters relating to my family and myself.

~~_____~~








Case: 17-2595 Document: 12-24 Filed: 03/12/2018 Pages: 247
**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

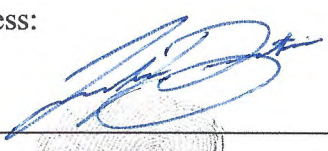
I authorize this Statement and Cease and Desist Request to be filed in any and all state and federal proceedings as relevant and necessary.

Sincerely,

X: 
Jacob Noah Archie Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7-11-17

Witness:

X: 
Name: Joshua Bernstein
2753 NW 34th Street
Boca Raton, FL 33434

Dated: 7/11/17

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 1

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.


**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ ^{The} Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued ^{to} advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." ¹ Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse + destructive to the children's interest} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB}

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, ^{each of the parties shall submit a list of three} upon notice from the Trustee's counsel the Court shall randomly

^{names of potential Guardian Ad Litem's, each of whom has agreed to} appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a ~~suitable~~ ^{acceptable} Guardian Ad Litem. ^{with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.}

Handwritten initials

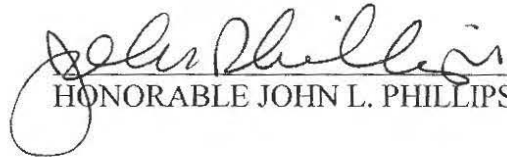
9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

^{proposed}
** Parties shall furnish a ^{proposed} order appointing GAT with the lists. The Court will act without further hearing on the appointment, if possible.*

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

JOHN L. PHILLIPS

CIRCUIT COURT
NORTH COUNTY COURTHOUSE
3188 PGA BOULEVARD
PALM BEACH GARDENS, FL 33410

Case: 1:13-cv-03643 Document #: 297-28 Filed: 11/09/17 Page 21 of 44 PageID #:15791

Case: 17-3595 Document: 12-24 Filed: 03/12/2018 Pages: 247



UNITED STATES POSTAGE
PITNEY BOWES
\$ 000.48
02 1P
0000873891 JAN 13 2016
MAILED FROM ZIP CODE 3340



Eliot Bernstein and Candice Bernstein
2753 NW 34th Street
Boca Raton, FL 33434



MAILED FROM ZIP CODE 33410
0000807991 MAR 01 2016
02 1P
\$ 000.30
PITNEY BOWES
UNITED STATES POSTAGE

~~RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD~~

~~LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF~~

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 2

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR
ELIOT BERNSTEIN'S CHILDREN, J.O.B.; J.A. B.; and D.B.

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016,
on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests
of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments
of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly
advised in the premises, the Court entered an Order in this matter, and a companion order in Case
No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

RECEIVED, 5/18/2016 4:40 PM, Clerk, Fourth District Court of Appeal

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

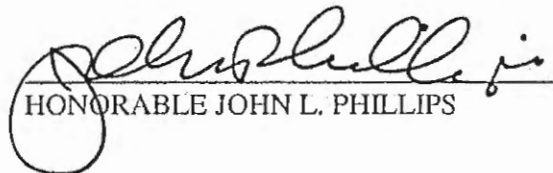
5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein.

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com



STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 18 DAY OF May 2016

SHARON R. BOCK
CLERK & COMPTROLLER

By *Victoria Kanger*
DEPUTY CLERK

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 3

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

OPPENHEIMER TRUST COMPANY
OF DELAWARE, in its capacity as
Resigned Trustee of the Simon Bernstein
Irrevocable Trusts created for the benefit
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors,

Respondents.

**ORDER APPOINTING GUARDIAN AD LITEM FOR MINORS,
JOSHUA, JAKE AND DANIEL BERNSTEIN**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016 upon the *Omnibus Motion (I) To Appoint A Guardian Ad Litem For The Minor Beneficiaries Of The "Grandchildren Trusts;" (II) To Hold Eliot And Candice Bernstein In Contempt Of Court For Their Continued Violation Of A Court Order And Repeated Statements Assaulting The Dignity Of The Court; And (III) To Establish A Schedule And Protocol For Accounting And Turnover Proceedings* (the "Motion") filed by Petitioner, Oppenheimer Trust Company Of Delaware ("Oppenheimer"), in its capacity as the resigned trustee of three Irrevocable Trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, minors, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"). Having considered the Motion

and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court rules as follows:

1. The sole beneficiaries of the Grandchildren Trusts, and the only real parties in interest in this litigation (other than Oppenheimer), are Joshua, Jake and Daniel Bernstein (the “Minor Beneficiaries”). Neither Eliot nor Candice Bernstein (the “Bernsteins”) were sued in their individual capacities by Oppenheimer, nor have they moved for, or been granted, permission to intervene in their individual capacities. They have been afforded standing in these proceedings, to date, solely as the parents and natural guardians of the Minor Beneficiaries.

2. The Bernsteins have been shown to have multiple conflicts of interest with the Minor Beneficiaries. For example, in their pleadings, they repeatedly allege that the trusts created for the Minor Beneficiaries’ benefit are fraudulent and that they, and not their children, are the true beneficiaries. *Counter-Complaint*, ¶¶ 44-50, 52-60, 65, 109-110, 186 and 253; *Objection to Oppenheimer Accountings*, pp. 1 and 20. In addition, the Bernsteins insist that their overarching goal in this litigation “is to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians and more.” *Counter-Complaint*, ¶ 212. No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such an agenda at the risk of dissipating their own inheritance is in their best interest.

3. Eliot Bernstein also has a history of vexatious litigation and public disrespect for and disobedience to the judicial system and its officers, as detailed in Oppenheimer’s Motion. Eliot Bernstein was adjudicated a vexatious litigant by the United States District Court for the Southn Distreict of New York and enjoined from filing further specified claims in any court without its prior permission. Yet, Eliot Bernstein asserted those enjoined claims in his Counter-

Complaint in apparent violation of the injunction. The Bernsteins are in continued violation of a May 4, 2015 Order entered by Judge Martin Colin, which required compliance over nine months ago, and in recent filings with Florida appellate courts, the Bernsteins insist that all orders entered in this case “are void as a matter of law, and are of no legal force and effect.” *Petition for All Writs (dated January 29, 2016)*, ¶ 101. Further, the Bernsteins have repeatedly alleged that multiple judges have committed fraud in their official capacities in these proceedings and that all Florida judges have conflicts of interest which prohibit them from presiding over these proceedings. *Id.*, ¶ 106-107. All of the above, and certainly in combination, render the Bernsteins inappropriate and inadequate representatives for the Minor Beneficiaries in this litigation.

4. For the above reasons, the guardian *ad litem* appointed in Case No.: 502014CP003698XXXXNB shall be deemed appointed simultaneously as the guardian *ad litem* for the Minor Beneficiaries in this case, with sole and exclusive authority to represent the Minor Beneficiaries’ interests in this case. The guardian *ad litem* shall be entitled to petition for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Minor Beneficiaries from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

5. The Answer and Counter-Complaint filed by Eliot and Candice Bernstein (which they purport to file (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the Minor Beneficiaries];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein”), and the “Objection to Final Accounting; Petition for Formal, Detailed Audited and Forensic Accounting and Document Production” (the “Objection”) filed by

Eliot and Candice Bernstein, "individually and on behalf of [their] minor children, who are alleged qualified beneficiaries of Settlor's Estate and Trusts," are hereby stricken.

6. The guardian *ad litem* shall have 45 days from his/her appointment within which to file a response to Oppenheimer's Petition and objections, if any, to Oppenheimer's accountings.

7. Oppenheimer and the guardian *ad litem* shall confer in good faith regarding a resolution of this matter and/or a timeframe within which to try any unresolved issues.

8. Neither Eliot nor Candice Bernstein shall take any action which interferes with the guardian *ad litem*'s duties.

9. ^{The pending Motion for Contempt as to} Eliot and Candice Bernstein ~~are also held to be in contempt of court~~ for their willful violation of Judge Martin Colin's May 4, 2015 Order, ^{in MOST.} ~~The Court withholds coercive sanctions based upon the appointment of a guardian *ad litem* and striking of the Bernsteins' pleadings, which renders the Bernsteins' compliance moot.~~

DONE AND ORDERED in Chambers, Palm Beach County, Florida on 3-1-, 2016.

Hon. John L. Phillips, Circuit Judge

Copies furnished to:

Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

**RE: DIANA LEWIS DEMAND TO CEASE AND DESIST ILLEGAL GUARDIAN AD
LITEM OF JACOB BERNSTEIN, CORRECT ALL FRAUD, OTHER RELIEF**

EXHIBIT 4

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein Trust
Dtd 9/13/12; ELIOT BERNSTEIN, individually, as
Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon
L. Bernstein Trust Dtd 9/13/12, and on behalf of his
minor children D.B., Ja. B. and Jo. B.; JILL
IANTONI, Individually, as Trustee f/b/o J.I. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her Minor child J.I.; MAX FRIEDSTEIN; LISA
FRIEDSTEIN, Individually, as Trustee f/b/o Max
Friedstein and C.F., under the Simon L. Bernstein
Trust Dtd 9/13/12, and on behalf of her minor child,
C.F.,

Defendants.

_____ /

NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

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; Email Electronic Transmission; FedEx; Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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

TED BERNSTEIN, as Trustee
Of the Shirley Bernstein Trust Agreement
Dated May 20, 2008, as amended.

Plaintiff,

v.

Probate Division
Case No.:2014CP003698 (IH)

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMO;
PAMELA B. SIMON, Individually and as
Trustee f/b/o Molly Simon under the
Simon L. Bernstein Trust Dtd. 9/13/12;
ELIOT BERNSTEIN, individually as Trustee
f/b/o D.B., Ja. B and Jo. B. under the
Simon L. Bernstein Trust Dtd. 9/13/12
and on behalf of his minor children
D.B., Ja.B. and Jo.B.; JILL IANTONI,
individually, as Trustee f/b/o of J.I.
under the Simon L. Bernstein Trust Dtd.
9/13/12, and on behalf of her Minor child
J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN,
individually, as Trustee f/b/o Max
Friedman and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on
bealf of her minor child, C.F.,

Defendants.

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR
Jo.B., Ja.B. AND D.B. IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for Eliot Bernstein's minor children, Jo.B., Ja.B. and D.B. pursuant to this court's order dated April 4, 2016, and the terms and conditions set forth therein.

Page Two

Case no.: 2014CP003698 (IH)

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP003698 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com

By: /s/ Diana Lewis
Diana Lewis (Fla. Bar No. 351350)
(Mediator No.:32461 R)

Page Three
2014CP003698

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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

OPPENHEIMER TRUST COMPANY OF
DELAWARE, in its Capacity As Resigned
Trustee of the Simon Bernstein Irrevocable Trusts
Created for the Benefit of of Jo. B., Ja. B., and D.B.,
Minors

Probate Division
Case No.: 502014CP002815XXXXSB(IY)

Petitioner,

v.

ELIOT AND CANDICE BERNSTEIN, in their
Capacity as Parents and Natural Guardians of Jo. B.,
Ja. B., and D.B., Minors
Respondents.

_____ /

NOTICE OF FILING AND OF SERVING NOTICE OF ACCEPTANCE

Ted S. Bernstein (the "Trustee"), as Successor Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, hereby gives notice of filing the attached, *Notice of Acceptance of Appointment as Guardian Ad Litem for Jo.B., Ja.B., and D.B.* as requested by appointed Guardian Ad Litem, Diana Lewis.

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; Email Electronic Transmission; FedEx; Hand Delivery this 7th day of April, 2016.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone | (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mchandler@mrachek-law.com

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

SERVICE LIST

Eliot Bernstein
Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Steven A. Lessne, Esq.
GrayRobinson, P.A.
225 N.E. Mizner Blvd., Suite 500
Boca Raton, FL 33432
(561) 368-3808
Email: steven.lessne@gray-robinson.com
Counsel for Petitioner

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

OPPENHEIMER TRUST COMPANY OF DELAWARE,
in its capacity as Resigned Trustee of
the Simon Bernstein Irrevocable Trusts
created for the benefit of Joshua, Jake
and Daniel Bernstein,

Petitioner,

vs.

Probate Division
Case No.:2014CP002815 (IH)

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and
natural guardians of JOSHUA, JAKE
AND DANIEL BERNSTEIN, minors,

Respondents.

**NOTICE OF ACCEPTANCE OF APPOINTMENT AS GUARDIAN AD LITEM FOR
JOSHUA, JAKE AND DANIEL BERNSTEIN IN THE ABOVE STYLED CASE**

COMES NOW Diana Lewis and notifies the court of her **acceptance** of appointment as Guardian *ad litem* for JOSHUA, JAKE and DANIEL BERNSTEIN (the "Minor Beneficiaries") pursuant to this court's order dated April 4, 2016.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been furnished to the parties by E-mail Electronic Transmission on the attached Service List for Case No.: 2014CP002815 (IH) this 7th day of April, 2016.

ADR & MEDIATIONS SERVICES, LLC
Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 Telephone
Email: dzlewis@aol.com
By: /s/ Diana Lewis
(Fla. Bar No. 351350)

Page Two

SERVICE LIST Case No.: 2014CP002815

Steven A. Lessne
Gunster, Yoakley & Stuart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Eliot and Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

August 23, 2017

CASE NO.: 4D17-1932

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that on July 19, 2017, this court ordered appellant to show cause why sanctions should not be imposed. Having considered appellant's August 8 and August 18, 2017 partial responses and motions for extension of time to respond, we deny the request for extension of time in the August 18, 2017 motion (we granted a short extension requested in the August 8, 2017 motion) and determine that sanctions are appropriate. For the reasons set forth in the July 19, 2017 order to show cause, we now impose sanctions pursuant to *Johnson v. Bank of New York Mellon Trust Co.*, 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013). 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.

Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Ralph S. Janvey
Albert Gortz
Eliot Ivan Bernstein
Theodore Stuart Bernstein
James Dimon
Neil Wolfson
Cbiz Mhm, Llc
Brian Moynihan
Clerk Palm Beach

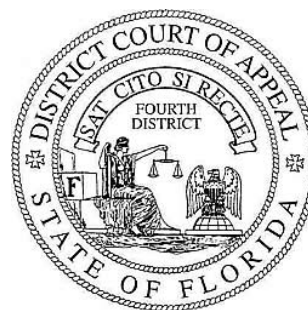
Brian M. O'Connell
Steven A. Lessne
Kenneth S. Pollock
Peter Marshall Feaman
Dennis McNamara
Joseph M. Leccese
Byrd "biff" F. Marshall, Jr.
Lisa Friedstein
Pamela Beth Simon
William McCabe
Stp Enterprises, Inc.
Heritage Union Life Ins.
Life Insurance Concepts

Mark R. Manceri
Charles D. Rubin
John Pankauski
Donald R. Tescher
Kimberly Moran
Hunt Worth
Robert Spallina
Jill Iantoni
Dennis G. Bedley
Gerald Lewin
Lindsay Baxley
David Lanciotti
T&s Registered Agents, Llc

ka

Lonnn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

November 01, 2017

CASE NO.: 4D17-1608

L.T. No.: 2012CP004391

ELIOT IVAN BERNSTEIN

v. ESTATE OF SIMON L. BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellee's October 9, 2017 motion to dismiss is granted, and the above-styled case is dismissed for lack of prosecution.

GERBER, C.J., LEVINE and FORST, JJ., concur.

Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
Kenneth S. Pollock
Peter Marshall Feaman
Kimberly Moran
Steven A. Lessne
Lisa Friedstein
Theodore Stuart Bernstein
Dennis G. Bedley
Kimberly Moran
STP Enterprises, Inc.
Cbiz Mhm, LLC
Heritage Union Life Ins.
Hunt Worth
C. F. , A Minor
Pankauski Law Firm PLLC

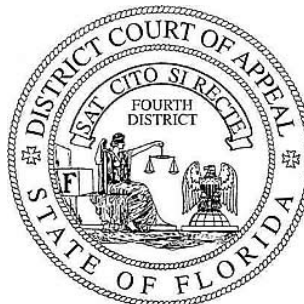
Brian M. O'Connell
Steven A. Lessne
John Pankauski
Donald R. Tescher
Albert Gortz
Charles D. Rubin
Jill Iantoni
Pamela Beth Simon
James Dimon
Gerald Lewin
Ralph S. Janvey
T&S Registered Agents
David Lanciotti
Byrd "biff" F. Marshall, Jr.
M. F. , A Minor
Adr & Mediations Services

Mark R. Manceri
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Robert Louis Spallina
Eliot Ivan Bernstein
Theodore Stuart Bernstein
Dennis McNamara
William McCabe
Neil Wolfson
Lindsay Baxley
Joseph M. Leccese
Brian Moynihan
J. I. , A Minor
Tescher & Spallina, P. A.
Clerk Palm Beach

kh



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 50 2012-CP-4391 XXXXNB

IN RE: THE ESTATE OF:
SIMON BERNSTEIN,

Deceased.

_____ /

- - -
MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
HAD BEFORE THE HONORABLE ROSEMARIE SCHER
- - -

DATE: OCTOBER 19, 2017

TIME: 1:59 - 3:04 P.M.

1 APPEARING ON BEHALF OF CLAIMANT WILLIAM STANSBURY:

2 Peter Feaman, Esq.
3 PETER M. FEAMAN, P.A.
4 3695 Boynton Beach Boulevard, Suite 9
5 Boynton Beach, Florida, 33436

6 APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:

7 Alan B. Rose, Esq.
8 PAGE, MRACHEK, FITZGERALD & ROSE, P.A.
9 505 South Flagler Drive, Suite 600
10 West Palm Beach, Florida 33401

11 APPEARING ON BEHALF OF PERSONAL REPRESENTATIVE OF
12 THE ESTATE:

13

14 Brian M. O'Connell, Esq.
15 Ashley Crispin Ackal, Esq.
16 CIKLIN, LUBITZ & O'CONNELL
17 515 North Flagler Drive, 20th Floor
18 West Palm Beach, Florida 33401

19

20 ELLIOT BERNSTEIN, Pro Se

21

22 - - -

23 BE IT REMEMBERED, that the following testimony
24 and proceedings were had in the above-entitled cause
25 before the Honorable Rosemarie Scher, in Room 4, in
the Palm Beach County Courthouse, City of Palm Beach
Gardens, State of Florida, on Thursday, the 19th day
of October, 2017, to wit:

26 - - -

27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES:

BRIAN O'CONNELL DIRECT CROSS

By Ms. Crispin 9
By Mr. Feaman 18
By Mr. Bernstein 24
By Mr. Rose 35

BRIAN O'CONNELL

By Mr. Bernstein 41

JAMES STAMOS

By Ms. Crispin 52
By Mr. Feaman 55
By Mr. Bernstein 59
By Mr. Rose 62

1 THE COURT: We have a court call
2 appearance. Let's see. We have Mr. Stamos on
3 court call but we'll call him when we're ready
4 for him to testify.

5 Appearances for the record, please.

6 MS. CRISPIN: Your Honor, Ashley Crispin
7 on behalf of Brian O'Connell, the Personal
8 Representative of the Estate of Simon
9 Bernstein.

10 THE COURT: Thank you.

11 MR. ROSE: Alan Rose, Your Honor, on
12 behalf of Ted Bernstein as Trustee. The only
13 thing I would -- there might have been another
14 beneficiary that was going to be participating
15 in court call. I'm not sure. They called this
16 morning to see if they could. It was too late
17 so they were checking with court call.

18 THE COURT: I didn't get a notification
19 but I can call. We'll have to disconnect if
20 it's -- well, generally speaking, we don't have
21 the witnesses listed until we receive a court
22 call but we can call and see if the beneficiary
23 is there. I didn't get a notification though.
24 we have someone else appearing. I'm not sure
25 who that is.

1 MR. FEAMAN: Peter Feaman on behalf of
2 William Stansbury, Claimant.

3 THE COURT: Thank you very much.

4 Mr. Elliot?

5 MR. BERNSTEIN: Elliot Berstein, pro se.
6 Your Honor, can I have my wife sit next to me?
7 I have cough syncope and I faint and fall.
8 She's been next to me 24 hours a day for three
9 months. It's a medical condition that I've
10 got.

11 THE COURT: Yes. That's fine.

12 MR. BERNSTEIN: It isn't fine.

13 THE COURT: No. I didn't mean to
14 insinuate your condition was fine at all.

15 All right. Are we ready to proceed? This
16 is Mr. O'Connell's motion.

17 MS. CRISPIN: Yes, Your Honor, we're ready
18 to proceed.

19 MR. BERNSTEIN: Could I ask about your
20 jurisdiction to hear this prior to the hearing
21 or during the hearing?

22 THE COURT: No. I have jurisdiction. I
23 will announce I have jurisdiction to hear this.
24 So we'll continue. Thank you.

25 MS. CRISPIN: Your Honor, I'll call Mr.

1 O'Connell to the stand.

2 MR. FEAMAN: If it please the Court, I'd
3 just like to put a statement on the record if I
4 could before we actually begin the testimony.

5 THE COURT: Yes. Mr. O'Connell -- do you
6 mind if he sits there?

7 MR. FEAMAN: No, not at all.

8 On behalf of Mr. Stansbury, Your Honor, we
9 just -- even though you have already denied our
10 motion, our amended motion to specially
11 sequence this hearing behind another one, we
12 just want to reiterate our position that this
13 hearing should not go forward at this time
14 until the propriety of Mr. Ted Bernstein's
15 position as successor trustee be determined by
16 the Court one way or the other. I'm mindful
17 that Your Honor has already denied that request
18 but I wanted to put it on the record so there
19 wouldn't be any construction of waiver or
20 anything like that.

21 THE COURT: Fair enough.

22 MR. BERNSTEIN: Your Honor, could I put
23 something on the record? We were told that my
24 two adult children were going to be notified of
25 this hearing as necessary parties by Mr. Rose.

1 They haven't even been notified they're
2 beneficiaries ever, but in court he said he was
3 going to notify them and have them here and
4 they're not here and they're necessary parties
5 to a settlement that's happening that they
6 don't even know about. They haven't been
7 involved, haven't been summoned, nothing
8 served.

9 THE COURT: If they're adult children, you
10 can't represent them.

11 MR. BERNSTEIN: I'm not representing them.

12 THE COURT: No, but you are --

13 MR. BERNSTEIN: I'm saying they're
14 necessary parties on the hearing.

15 THE COURT: Mr. Elliot, if you want to say
16 that, that's fine, but you cannot speak on
17 their behalf if they are an adult.

18 MR. BERNSTEIN: I'm not going to. I'm
19 going to speak about them in the hearing, I
20 think, but they're not here. And, by the way,
21 there's one more point. There's one more
22 point. They have counsel and they've been
23 trying to enter this case now almost for over a
24 year or so, but Mr. Rose is refusing their
25 counsel to give them any of the dispositive

1 documents or trusts regarding that.

2 THE COURT: All right. That is so noted.
3 Obviously it's a public court file. They can
4 get the -- I don't have a notice of appearance
5 but --

6 MR. BERNSTEIN: But she's asking for the
7 full records.

8 THE COURT: That would be a different
9 hearing. Okay. Are we ready to proceed?

10 MR. ROSE: Just for the record, I dispute
11 what he just said. The only thing I would just
12 say, just so you know where we stand, my
13 client's position is he's in favor of the
14 settlement. I think Mr. Feaman --

15 THE COURT: Thank you. I mean thank you
16 for your position.

17 MR. ROSE: Mr. Feaman, I think his client
18 advised us both on several occasions is taking
19 no position with regard to settlement. The
20 only person objecting is Elliot Bernstein.

21 THE COURT: Okay. Thank you.

22 All right. You may proceed.

23 THEREUPON,

24 BRIAN M. O'CONNELL, ESQ.,

25 called as a witness in his behalf, having been first

1 duly sworn by the Court, in answer to questions
2 propounded, was examined and testified as follows:

3 MS. CRISPIN: Your Honor, we're here, just
4 so the court reporter has it, we're here on
5 Mr. O'Connell's verified motion for approval of
6 settlement agreement entered in the Illinois
7 federal action. I have another copy for
8 Mr. Bernstein if you need it.

9 Do you need it?

10 MR. BERNSTEIN: What is it?

11 MS. CRISPIN: Another copy of the motion
12 set for today.

13 Your Honor, I'd also like to approach the
14 witness. I've marked it as Exhibit 1 although
15 it's already in the court file.

16 THE COURT: Sure. And I have a copy.
17 Thank you.

18 DIRECT EXAMINATION

19 BY MS. CRISPIN:

20 Q Mr. O'Connell, please state your name and
21 your position in this matter.

22 A Brian O'Connell, and I'm the personal
23 representative of the Estate of Simon Bernstein.

24 Q And for how long have you been serving?

25 A At this point since 2014, June of 2014, so

1 a little over three years, almost three and a half
2 years.

3 Q And you're currently aware of a pending
4 litigation entitled Simon Bernstein Irrevocable
5 Insurance Trust, et al, vs. Heritage Union Life
6 Insurance Company, correct?

7 A I'm familiar with that litigation, yes.

8 Q Okay. For how long have you been familiar
9 with the litigation?

10 A Pretty much since my appointment.

11 Q So since June or so of 2014?

12 A Yes.

13 Q And has the estate entered an appearance
14 in that litigation?

15 A It has.

16 Q And you have counsel in your role as
17 personal representative?

18 A I do.

19 Q And who is that?

20 A James Stamos.

21 Q And has that always been the counsel
22 that's represented the estate and thus you?

23 A To my knowledge, yes.

24 Q And can you just give me generally what
25 the nature of that litigation is?

1 A That was a dispute over who was the
2 beneficiary of an insurance policy, whether it would
3 be a trust, a free-standing trust that was alleged
4 to be the beneficiary by some of the Bernstein
5 family members, or the default being the estate,
6 probate estate being the beneficiary.

7 Q Okay. And in the litigation, if you can
8 explain, really there was competing positions by the
9 insurance trust and by the estate?

10 A Oh, absolutely.

11 Q And tell me what the position of the
12 insurance trust is to the best of your knowledge as
13 a litigant.

14 A Well, the trust through the trustee was
15 claiming a hundred percent of the policy proceeds.
16 The estate through myself was claiming we were
17 entitled, the estate was entitled to a hundred
18 percent of the policy proceeds.

19 Q And to the best of your knowledge, who is
20 the trustee of the irrevocable insurance trust as
21 part of that litigation?

22 A Ted Bernstein.

23 Q And other than you, has there ever been a
24 prior fiduciary that appeared in that proceeding on
25 behalf of the estate?

1 A Ben Brown who was a curator was allowed to
2 intervene in that litigation for some period of
3 time. I don't think it was very long.

4 Q Now, did there come a time when you had
5 made the decision to explore settlement in the case?

6 A Correct.

7 Q And when was that?

8 A It actually started probably six, eight
9 months ago, the beginnings of discussions, to see if
10 some resolutions could be made. Prior to that,
11 there might have been some isolated talk but nothing
12 real concrete.

13 Q And can you take a look at what I've
14 marked as Exhibit 1?

15 A Yes.

16 Q And is this your motion for approval of
17 the settlement agreement?

18 A It is.

19 Q And have you signed it and read the facts
20 that are alleged in the motion?

21 A I have.

22 Q And do you believe that they're true to
23 the best of your knowledge?

24 A I do.

25 Q Okay. One of the attachments to the

1 motion is the actual proposed settlement agreement?

2 A Correct.

3 Q And you signed that agreement, correct?

4 A I did.

5 Q And is it contingent on this Court's
6 approval?

7 A It is.

8 Q And as part of your motion, have you asked
9 the Court to go ahead and approve you entering into
10 the settlement agreement?

11 A I am seeking the Court's approval, yes.

12 Q Why?

13 A That's a contingency under the agreement.

14 Q And why do you believe that the settlement
15 agreement should be approved by this Court?

16 A Because it's in the best interest of the
17 estate given the nature, extent of the litigation,
18 the cost of litigation, the uncertainties of
19 litigation, that the matter be settled on this
20 basis.

21 Q Okay. I'm asking you not to draw on
22 attorney-client privilege or work product here
23 because the agreement has not yet been approved, but
24 can you explain at least for the Court monetarily,
25 if you are were looking at this agreement, how it

1 works out in part an analysis about why this
2 settlement agreement is in the best interest of the
3 estate and its beneficiaries?

4 A Sure. The way the litigation is posited
5 right now, it's an all-or-nothing situation, as in
6 either the estate gets all of the policy proceeds,
7 about a million, seven hundred thousand dollars, or
8 none of the proceeds. There's no middle ground.
9 There's no way you approach 50 percent or something
10 of that nature.

11 So when you consider that scenario and you
12 also have to look at the fact that there's cost of
13 litigation, meaning out-of-pocket costs, attorney's
14 fees that would have to be expended, and based on
15 more recent rulings, the fact that Mr. Stansbury no
16 longer has to fund the litigation, that combination
17 of factors along with a summary judgment having been
18 denied, we moved for summary judgment in our favor
19 and that was denied, put the matter into the trial
20 mode, it would have been frankly tried the end of
21 this summer.

22 So that put it to me in a settlement
23 posture, see what the best that could be done in the
24 way of a settlement, especially considering the fact
25 that we might have had to switch this to a

1 contingency fee situation which would have, if we
2 were victorious, eaten into the proceeds; of course,
3 if we were successful, we would have had a benefit
4 of not expending any further fees. But it's sort of
5 drawing on that combination of factors. And not
6 that it's an exact midpoint. The settlement was
7 about \$700,000, is the dollar amount, but when you
8 look at it from that standpoint with an
9 all-or-nothing scenario, that was sort of the driver
10 in my thinking at least as to why the settlement was
11 appropriate at this particular time.

12 Q Okay. Let's talk particularly about if we
13 were operating under an hourly fee arrangement just
14 so we can talk monetarily about how the settlement
15 really works monetarily. So if we were using an
16 hourly fee situation, have you done the, at least
17 rough math to try to determine sort of what this
18 settlement really is worth to the estate?

19 A Roughly.

20 Q Okay. And can you share that with the
21 Court?

22 A Well, you have right now a \$708,000
23 recovery, in the way of a settlement.

24 Q Okay. And have you computed sort of what
25 that mathematically is?

1 A I think it's about 40 percent of the, I
2 think, top value of the claim. If we recovered
3 every dollar, that would represent a 40 percent
4 portion of a hundred percent victory.

5 Q And other than the \$708,000 that will
6 actually be garnered by the estate, are there any
7 other monetary benefits by virtue of the settlement?

8 A Payment of some fees.

9 Q Savings of fees or...?

10 A Payment of fees being, I guess,
11 eliminated.

12 Q Okay.

13 A Which could have been about \$75,000. My
14 counsel had estimated that would be the cost from
15 say the spring going forward through trial.

16 Q And then you also talked about a
17 contingency situation. Have you evaluated it, had
18 you changed the nature of the representation to a
19 contingency fee agreement, what was the fee that
20 would have been assessed by Mr. Stamos if you went
21 to trial?

22 A For going to trial, we would have charged
23 40 percent of what was recovered. So it would bring
24 you down to a net, again, if you won a hundred
25 percent, about a million, one hundred thousand with

1 the balance going to him towards fees.

2 Q And that would be a best-day scenario?

3 A Best day.

4 Q Now, in an hourly situation, if you didn't
5 settle the case and in fact the estate lost, have
6 you looked at what the ramifications to the estate
7 would be monetarily?

8 A Yes. There would be two things. You'd be
9 out of pocket, again let's use Mr. Stamos' estimate
10 that there is \$75,000 that would be required by him.
11 Then I would have some fees and costs. Obviously I
12 have to attend the trial. Things of that nature to
13 be involved would have been an extra expense on top
14 of that, could have easily been ten, twelve thousand
15 dollars there.

16 Q And with respect to your fees, that would
17 have been incurred by the estate whether you won or
18 lost under an hourly or contingency fee arrangement,
19 correct?

20 A Correct.

21 MS. CRISPIN: Your Honor, I ask that we be
22 able to admit into evidence the verified motion
23 for approval of settlement agreement as Exhibit
24 1.

25 THE COURT: Thank you. So admitted. You

1 may proceed.

2 MR. FEAMAN: By the way, Your Honor, by
3 not objecting to the admission, I just want to
4 make it clear to the Court that agreement
5 contemplates a payment to my client, Mr.
6 Stansbury, of a certain amount of money.
7 Mr. Stansbury does not agree that that amount
8 of money is all he would be entitled to.

9 MR. BERNSTEIN: And I object to the
10 settlement being entered because the parties
11 that are named in there aren't all here.

12 THE COURT: So noted. So admitted.

13 MS. CRISPIN: I have nothing further for
14 Mr. O'Connell on direct.

15 THE COURT: Mr. Rose?

16 MR. ROSE: No questions.

17 THE COURT: Mr. Feaman?

18 MR. FEAMAN: Just a few, Your Honor.

19 MR. ROSE: Can I reserve, Your Honor?

20 THE COURT: You may.

21 CROSS EXAMINATION

22 BY MR. FEAMAN:

23 Q Mr. O'Connell, you stated that settlement
24 discussions started about six to eight months ago,
25 is that correct?

1 A In earnest. Again, prior to that, there
2 had been some general, call them discussions, but
3 things got more serious let's say.

4 Q Six or eight months ago from today or from
5 when the settlement agreement was signed?

6 A Probably from when the settlement
7 agreement was entered into.

8 Q All right. And, in fact, there was a
9 formal mediation by telephone in May of 2017, this
10 year, correct?

11 A Correct. That was sort of the drive to
12 get it across the finish line.

13 Q But it didn't settle at the mediation,
14 correct?

15 A No.

16 Q But at that point, things began to really
17 ramp up in terms of serious settlement discussions,
18 is that correct?

19 A That's true.

20 Q So that in June of 2017, then is it fair
21 to say that you were very close to settling; in
22 fact, since you signed this on July 5th, you
23 probably had an agreement prepared in June for
24 circulation, I would imagine, is that correct?

25 MR. ROSE: Objection, relevance.

1 MS. CRISPIN: Objection, relevance.

2 THE COURT: Sustained.

3 MR. FEAMAN: The relevance is I'm laying a
4 predicate for when we come back for fees, Your
5 Honor.

6 THE COURT: It's not relevant for today
7 though.

8 BY MR. FEAMAN:

9 Q With regard to those settlement
10 negotiations, Mr. Stansbury in the May, June time
11 frame, he was not involved in the negotiations,
12 correct?

13 A Not to my knowledge.

14 Q And, in fact, to your knowledge, I was not
15 involved, correct?

16 A I don't believe you were, sir.

17 Q And to your knowledge, nobody from my
18 office was involved, correct?

19 A I don't recall anyone from your office
20 being involved.

21 Q Okay. And you mentioned Ben Brown was the
22 first one that intervened, he was allowed by the
23 Court. Do you recall that that was actually at the
24 behest of Mr. Stansbury's motion, is that correct?

25 MR. ROSE: Objection, relevance to the

1 issues today.

2 THE COURT: Sustained. We're just
3 approving the settlement.

4 THE WITNESS: Mr. Feaman, I just want --
5 with regard to some of the questions about your
6 firm's involvement, you and I had discussions
7 as the case was evolving about there might be a
8 settlement and some generalities like that. So
9 I wanted to give a hundred percent. To
10 distinguish, you weren't physically say on the
11 phone or attending an in-person mediation but I
12 know you were --

13 BY MR. FEAMAN:

14 Q But we were never involved in discussing
15 numbers, were we?

16 A Not specific numbers, I don't recall that.
17 Just more we were trying to settle it, here's what
18 was transpiring with the case, and I know
19 Mr. Stansbury had some conversation with Mr. Stamos.

20 Q Okay. Now, the settlement negotiations,
21 when they were in earnest in May and June, was
22 Mr. Rose involved in those?

23 A I think he was to some extent and I have
24 to answer it that way because the telephone
25 mediation was a mediation literally where the

1 mediator would call one side and then call the other
2 side. It wasn't -- just to sketch it for the Court,
3 it wasn't like an en masse mediation with everyone
4 present at the same time. So I have to be a little
5 cautious as to exactly who was involved in that.

6 Q That's fine. And who was Mr. Rose
7 representing?

8 A I'm not sure.

9 MR. ROSE: Objection as to relevance.

10 THE COURT: Mr. Feaman, do you not want me
11 to approve? Because I thought you weren't
12 taking a position. I'm losing why we're
13 talking about this now.

14 MR. FEAMAN: Well, we previously raised
15 the issue of conflict, Your Honor.

16 THE COURT: Yes, and I denied the order
17 and we're here today and you said you're not
18 taking a position on approval of the
19 settlement.

20 MR. FEAMAN: Not on the merits of the --

21 THE COURT: Yes, so that will discontinue
22 the questions.

23 MR. FEAMAN: I don't think we're in a
24 position to comment on the merits one way or
25 the other not having been involved in the

1 litigation directly other than causing it to
2 happen.

3 THE COURT: Exactly. So for purposes of
4 today, I ask that you stay on point.

5 MR. FEAMAN: Okay. Thank you.

6 BY MR. FEAMAN:

7 Q Do you have an opinion as to the
8 probability of success by the estate if the case
9 were to go to trial?

10 MS. CRISPIN: To the extent it calls for
11 attorney-client privilege or work product, I'd
12 object and instruct you not to answer.

13 THE WITNESS: I would have to draw on some
14 privileged information, Your Honor, from
15 counsel here.

16 MS. CRISPIN: He asked for analysis.

17 THE WITNESS: I can try to answer it on my
18 own.

19 MS. CRISPIN: I wouldn't have a problem
20 with that.

21 THE COURT: Answer what you can without
22 drawing on any privilege.

23 THE WITNESS: Sure.

24 A I think it was a good case as in the
25 probabilities were more in favor of the estate, but

1 nothing being a hundred percent in light, again, of
2 what I mentioned before. Of course, when we had
3 summary judgment denied, obviously that makes it
4 more of a horse race than it would be if summary
5 judgment were granted, case over. But just to kind
6 of sketch that out for you, it was certainly a
7 meritorious case that was worth pursuing, ergo I
8 did.

9 MR. FEAMAN: Thank you.

10 THE COURT: Mr. Elliot?

11 MR. BERNSTEIN: Your Honor, can I stay
12 here? Just so I don't fall up there.

13 THE COURT: Absolutely.

14 MR. BERNSTEIN: Thank you.

15 CROSS EXAMINATION

16 BY MR. BERNSTEIN:

17 Q Mr. O'Connell, your pleading today states
18 that you entered the settlement with Ted Bernstein
19 as trustee of a 1995 trust. Are you in possession
20 of that trust?

21 MR. ROSE: Objection, relevance.

22 THE COURT: Overruled. Go ahead.

23 A Not an original, to be specific.

24 BY MR. BERNSTEIN:

25 Q Excuse me?

1 A I don't have an original of that trust.

2 Q Do you have an executed copy?

3 A I don't.

4 Q So you've never seen the trust. How do
5 you know Ted Bernstein is the trustee of that trust
6 then?

7 A Because that was the claim that they were
8 making.

9 Q Okay. And are you aware that Judge Blakey
10 in the Illinois case which is hearing this matter
11 properly in the Federal Court has determined that
12 that trust hasn't been proven and it's one of the
13 reasons summary judgment was denied?

14 A I don't have the summary judgment in front
15 of me. When you're saying proven, I'm a little
16 uncertain about --

17 MR. BERNSTEIN: I'd like to enter that
18 summary judgment as evidence, please.

19 MS. CRISPIN: I haven't seen it.

20 MR. BERNSTEIN: Anybody else need it?

21 There is two of them. Can somebody give
22 Brian the copy I gave, maybe his attorney for
23 Brian as a witness?

24 THE COURT: No. His attorney right now is
25 reviewing it. Do you have an extra copy for

1 Mr. O'Connell?

2 MR. BERNSTEIN: If I don't give one to the
3 judge.

4 THE COURT: You're supposed to bring one
5 for everybody.

6 MR. BERNSTEIN: I didn't know how many
7 people were here.

8 THE BAILIFF: These are the extra copies.

9 MR. BERNSTEIN: So here's one for the
10 judge and I need one.

11 THE COURT: Mr. Elliot, be mindful of your
12 time. I'm keeping track of how long everybody
13 has spoken. So you have about four more
14 minutes.

15 MR. BERNSTEIN: What?

16 THE COURT: Yes, you have about four more
17 minutes with this witness. Go ahead, ask your
18 question.

19 MR. BERNSTEIN: Okay. He needs one of
20 these too. That's the second summary judgment.
21 Do you need it?

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

23 MR. BERNSTEIN: It's a summary judgment in
24 the Illinois court.

25 THE COURT: Thank you.

1 BY MR. BERNSTEIN:

2 Q Have you seen this document?

3 A In the past, yes.

4 Q And are you aware that in the second
5 summary judgment -- in the first summary judgment,
6 I'm a party to the action and in the second one, I'm
7 dismissed from the complaint based on the fact that
8 I'm not a beneficiary with standing in my father's
9 estate?

10 MR. ROSE: Objection, relevance to today.

11 MR. BERNSTEIN: It's all going to be
12 relevant to today's settlement.

13 BY MR. BERNSTEIN:

14 Q Judge Blakey in this, if you go to the
15 first order --

16 THE COURT: He's disputing the settlement
17 so he gets to talk about --

18 BY MR. BERNSTEIN:

19 Q The date is on the top, 3-15-16.

20 A I see it, yes.

21 Q Do you see on Page 4, the last two
22 paragraphs, can you read that?

23 A Does that start, while the above sources?

24 Q Right.

25 A While the above sources do provide some

1 evidence that the trust was created --

2 Q Which trust, the 1995 trust?

3 A The '95 trust.

4 Q Okay. Just to be clear.

5 A That evidence is far from dispositive of
6 the issue. In fact, the intervenor has presented
7 argument and evidence casting material doubt on
8 whether, one, the trust was actually created and,
9 two, the terms of the trust are as explained by the
10 plaintiffs.

11 Want me to keep going?

12 Q Well, let me ask you a real quick
13 question. Are you the intervenor?

14 A No.

15 Q You're not?

16 A The estate is, not me.

17 Q So you're representing the estate?

18 A Yes, me as personal representative, not me
19 individually. That's what I thought you were
20 asking.

21 Q So, in fact, the estate has made the
22 argument that this trust does not exist?

23 A Correct.

24 Q And there are no terms that are
25 applicable, so how can you be saying that you know

1 that Ted is the trustee?

2 A I'm saying Ted claims to be the trustee.

3 Q No. In your pleading, you said you
4 entered into the settlement with Ted Bernstein as
5 trustee, a factual assertion, that he was trustee of
6 a trust, but yet now you're stating there there is
7 no trust and you're not sure of the terms and one of
8 those terms would be Ted Bernstein, is that correct?

9 MR. ROSE: Objection --

10 THE COURT: Hold on. You know the rules
11 if I hear an objection. Mr. Rose?

12 MR. ROSE: Objection, argumentative.

13 MS. CRISPIN: Join.

14 THE COURT: Sustained.

15 BY MR. BERNSTEIN:

16 Q Okay. Did you argue that the trust was
17 actually created?

18 A Did the estate argue that it was created?

19 Q Yes.

20 A In the summary judgment or in the case?

21 Q These are -- this is from the intervenor
22 stating that the trust wasn't actually created.

23 A That was the legal position we took, ergo
24 there was a dispute.

25 Q And you took the assertion that the terms

1 of the trust are just as what was explained by the
2 plaintiffs, not the trust because you don't know the
3 terms because we don't have a valid copy, correct?

4 A The position that the estate took is
5 what's set forth in Judge Blakey's order, correct.

6 Q Okay. And then read Judge Blakey's next
7 statement.

8 THE COURT: I'm just reminding you that
9 you have about three more minutes.

10 MR. BERNSTEIN: Well, I need some more
11 time, Your Honor. This is going to take a long
12 time.

13 THE COURT: Well, it's going to take till
14 2:30 as this was set for an hour and giving
15 equal time. So you can keep on moving and ask
16 a question.

17 MR. BERNSTEIN: Where does it say it was
18 set for an hour? I thought it was until five.

19 THE COURT: I believe I was asked by
20 Mr. Rose on the phone the other day and I said
21 you have an hour reserved.

22 MR. BERNSTEIN: You never told us that.

23 THE COURT: Well, I'm telling you now.

24 MR. BERNSTEIN: This is going to take me
25 hours.

1 THE COURT: Well, sorry about that. Ask
2 the next question.

3 MR. BERNSTEIN: This is a serious
4 settlement.

5 THE COURT: Would you rather take the time
6 arguing with the Court or --

7 MR. BERNSTEIN: Well, can we get it
8 extended?

9 THE COURT: No. Ask your next question.

10 MR. BERNSTEIN: Okay. I'll ask my next
11 question.

12 BY MR. BERNSTEIN:

13 Q Can you read the next sentence?

14 A However -- there?

15 Q No. The results and timing of the
16 plaintiff's search for the trust.

17 A The results and timing of the plaintiff's
18 search for the trust raises doubts about their
19 version of events. The plaintiffs claim that David
20 Simon found a hard copy and electronic version of
21 the trust in his office. David Simon has offered
22 testimony here that he aided Simon Bernstein in
23 creating the trust and that he kept both versions of
24 the unexecuted trust.

25 Keep going?

1 Q No, that's good. And the missing trust
2 was one of Judge Blakey's reasons for denying
3 summary judgment, those are still issues of fact, if
4 there is a trust, if Ted's the trustee, correct?

5 A The order speaks for itself.

6 Q Correct. So it's not been determined Ted
7 Bernstein is a trustee of any trust because nobody
8 has a copy, correct?

9 A In connection with this proceeding, the
10 summary judgment?

11 Q In connection with this proceeding. Ted
12 Bernstein hasn't been determined to be the trustee
13 of the '95 trust that you are entering into
14 settlement with because nobody has the trust,
15 correct?

16 A Well, Ted Bernstein claims to be the
17 trustee of the 1995 trust --

18 Q Before you entered into settlement --

19 THE COURT: Let him finish.

20 A -- and this settlement resolves the
21 litigation over -- the entire litigation, who gets
22 the proceeds, how much of the proceeds, how they're
23 split between the defendant and the plaintiff.

24 Q So you haven't verified that Ted Bernstein
25 is the trustee that you're entering into the

1 settlement?

2 A There's no way to verify whether Ted
3 Bernstein is the trustee of the trust. We reached a
4 settlement because of the doubt as to whether the
5 trust existed or not, who was the trustee, so that
6 journey is over. That's why you settle cases.

7 Q I'm sorry, you entered in this pleading
8 that you settled with Ted Bernstein who is trustee,
9 a factual assertion, of a 1995 trust. Are you
10 stating that again today here?

11 A It's not my factual assertion. I think
12 that's the problem we're having, Mr. Elliot.

13 Q Well, the heading in your pleading, you
14 start out with, This settlement was entered into
15 between Brian O'Connell, PR of the estate, and Ted
16 Bernstein, trustee of a 1995 trust.

17 A That's true, because that's the capacity
18 that he was seeking relief from the District Court
19 under.

20 Q Okay. And I've got some other questions
21 real quick. Am I beneficiary of my father's estate
22 with standing?

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

25 MR. BERNSTEIN: He's the PR of the estate.

1 MR. ROSE: It's already been --

2 THE COURT: Overruled. You can answer the
3 question.

4 A Are you a beneficiary of the tangible
5 personal property of the estate? Yes.

6 BY MR. BERNSTEIN:

7 Q Okay. So I'm a beneficiary of the estate
8 with standing?

9 THE COURT: Of tangible personal property.

10 BY MR. BERNSTEIN:

11 Q Whatever property, I'm a beneficiary,
12 correct?

13 A You're a beneficiary of the tangible
14 personal property.

15 THE COURT: Last question.

16 MR. BERNSTEIN: I need to finish --

17 THE COURT: No. Last question,

18 Mr. Elliot.

19 MR. BERNSTEIN: This is just --

20 THE COURT: I'm sorry. What was that?

21 MR. BERNSTEIN: I'm rushing through.

22 THE COURT: Okay. Last question.

23 BY MR. BERNSTEIN:

24 Q Mr. O'Connell, are you aware that Judge
25 Blakey dismissed me on summary judgment claiming

1 that I was not a beneficiary of my father's estate
2 with standing?

3 A I recall your being dismissed but I'd have
4 to review the --

5 Q Go ahead. It's right there.

6 MR. BERNSTEIN: It's the bigger thicker
7 judgment, Your Honor, for your edification.

8 MR. ROSE: I object to relevance.

9 THE COURT: Sustained. Okay. Redirect?

10 MR. BERNSTEIN: Your Honor, what just
11 happened? I'm a little slow.

12 THE COURT: I sustained the objection.
13 Okay. Mr. Rose?

14 CROSS EXAMINATION

15 BY MR. ROSE:

16 Q Mr. O'Connell, is it fair to say that
17 Judge Blakey also denied the estate's motion for
18 summary judgment?

19 A He did.

20 Q The first motion for summary judgment was
21 filed by the Illinois plaintiff, this insurance
22 trust, correct?

23 A Correct.

24 Q And that was denied?

25 A Correct.

1 Q And on the strength of that, the estate
2 moved for summary judgment, correct?

3 A And that was denied.

4 Q And part of the evidence that was
5 submitted contrary to your claim was an affidavit of
6 Mr. Spallina?

7 A Correct.

8 Q And it's Mr. Spallina's testimony, if it
9 was believed, that Simon Bernstein discussed the
10 terms of the 1995 insurance trust and Simon
11 Bernstein intended that trust to give all the money,
12 correct?

13 A That was his testimony per his affidavit.

14 Q And if you take the litigation all the way
15 to the end, there's a chance that you would lose and
16 end up with nothing?

17 A There's always that chance; hence we
18 settled.

19 Q If Mr. Spallina's affidavit is believed by
20 the judge, that would be strong evidence against
21 your position?

22 A It would be and that would be one of the
23 key points, is that believable or not.

24 Q And if you hire Mr. Stamos at a 40 percent
25 contingency, my math on a million seven says that

1 the fee is going to be about \$680,000?

2 A Correct.

3 Q A million dollars minus 680, \$700,000 fee
4 and some costs, I assume, your best case is a
5 million?

6 A Under a contingency arrangement, that's
7 the math I did too.

8 Q Because someone has to pay for you,
9 Mr. O'Connell's time to fly to Chicago, sit through
10 a trial, however long it takes, to interact with Mr.
11 Stamos?

12 A Correct.

13 Q And you still have to pay back
14 Mr. Stansbury for whatever he's incurred?

15 A Yes.

16 Q And in your view, the settlement is in the
17 best interest taking everything into account
18 including all the questions you were asked by all
19 the parties?

20 A Yes.

21 MR. ROSE: Nothing further.

22 MR. BERNSTEIN: Can I ask more after that?

23 THE COURT: No. It goes back to Ms.
24 Crispin.

25 MR. BERNSTEIN: Do I get another shot at

1 that?

2 THE COURT: No.

3 MS. CRISPIN: I have nothing further for
4 this witness.

5 THE COURT: Okay. You may step down.
6 Everybody has a copy of the proposed
7 settlement, correct, the motion?

8 Mr. Elliot, did you want these two orders
9 in evidence? You didn't actually --

10 MR. BERNSTEIN: I do.

11 THE COURT: I will mark them as a
12 composite exhibit for you.

13 MR. BERNSTEIN: Thank you. So that would
14 be 1?

15 THE COURT: Elliot's Composite Exhibit 1.

16 MR. BERNSTEIN: Okay. Thank you.

17 THE COURT: You're welcome.

18 All right. Next witness?

19 MS. CRISPIN: Mr. Stamos, please.

20 THE COURT: All right. Let me call.

21 Mr. Stamos? Hello?

22 MR. SIMON: This is Adam Simon.

23 THE COURT: All right.

24 MR. ROSE: I believe he's one of the
25 counsel in --

1 THE COURT: I don't know.

2 MS. CRISPIN: That's not Mr. Stamos.

3 THE COURT: I know. Is Mr. Stamos
4 available? He's not on court call. Is anyone
5 calling Mr. Simon?

6 MR. SIMON: Mr. Simon is on the phone.

7 THE COURT: I know. I'm not sure why.

8 MR. ROSE: I think he's counsel of record
9 in the Illinois case for the trust.

10 MR. SIMON: I'm just listening.

11 MR. BERNSTEIN: And I might want to ask
12 him questions since he's there.

13 MS. CRISPIN: Judge, can I use my phone to
14 call?

15 THE COURT: Yes.

16 Go ahead. Ask some questions,
17 Mr. Bernstein.

18 Do you have a notary public there? Did
19 you arrange to have a notary public for him if
20 you wish to call him as a witness?

21 MR. BERNSTEIN: I'm not his lawyer.

22 THE COURT: I know, but if you wish to
23 call a witness by telephone, you need to
24 arrange that they have a notary public so they
25 can be sworn in.

1 MR. BERNSTEIN: He's the counsel.

2 THE COURT: I know, but he still needs a
3 notary public because he's not in front of me
4 to swear him in.

5 MR. BERNSTEIN: So, no. I didn't know
6 that he was going to be here.

7 THE COURT: All right. Next witness, Ms.
8 Crispin? Oh, you're on the phone. Sorry.

9 MS. CRISPIN: Your Honor, I don't have
10 anyone after Mr. Stamos.

11 THE COURT: Any witnesses, Mr. Rose?

12 MR. ROSE: No.

13 THE COURT: Any witnesses, Mr. Feaman?

14 MR. FEAMAN: No, Your Honor.

15 THE COURT: Call your first witness, Mr.
16 Elliot.

17 MR. BERNSTEIN: I'm waiting for
18 Mr. Stamos.

19 THE COURT: No. We're waiting and for
20 court efficiency, call your first witness.

21 MR. BERNSTEIN: Brian O'Connell.

22 THE COURT: You can call him for about
23 eight minutes.

24 MR. O'CONNELL: He's calling in now, Your
25 Honor.

1 THE COURT: All right. He'll call in to
2 court call. In the meantime, go ahead and get
3 back on the stand. I told him he has about
4 eight minutes and we'll have Mr. Stamos -- if
5 you're on the phone with Mr. Stamos, you can
6 tell him to be ready by ten to three.

7 MS. CRISPIN: Okay.

8 (Mr. O'Connell resumed the stand.)

9 THE COURT: You're still under oath.
10 Go ahead. It's all you.

11 DIRECT EXAMINATION

12 BY MR. BERNSTEIN:

13 Q Are you aware of a 2000 insurance trust
14 that was executed that the policy in question has
15 been assigned to in the year 2000?

16 MS. CRISPIN: Asked and answered.

17 THE COURT: Sustained. You already asked
18 him that.

19 MR. BERNSTEIN: No, a 2000 insurance
20 policy.

21 THE COURT: Oh, overruled. Thank you.

22 BY MR. BERNSTEIN:

23 Q That supersedes a 1995 trust?

24 A You'd have to show me a document.

25 Q Okay. Here.

1 MR. STAMOS: Hello?

2 THE COURT: Mr. Stamos?

3 MR. STAMOS: Yes, ma'am.

4 THE COURT: Okay. This is the judge. I'm
5 going to ask you to just hang on while we
6 complete the testimony of another witness.

7 MR. STAMOS: Okay. How long will that be,
8 how long do you think?

9 THE COURT: About eight minutes.

10 MR. STAMOS: All right. I will step away
11 from my desk for five minutes and I'll pick up
12 then, okay?

13 THE COURT: Sounds good.

14 MR. STAMOS: Thank you.

15 BY MR. BERNSTEIN:

16 Q Mr. O'Connell, have you seen that trust
17 before?

18 A Sitting here today, I don't recall it but
19 it's possible in the volume of documents in this
20 case that I could have, but I couldn't tell you
21 definitively.

22 Q Do you notice that it's Bates stamped by
23 Tescher & Spallina, the former attorneys who
24 committed forgery and fraud in this matter that you
25 replaced and those documents were transferred to you

1 by Ben Brown and you actually argued -- can you
2 answer that question?

3 A I see Bates stamps at the bottom.

4 Q So these would be part of your record,
5 correct?

6 A I'm not sure. I'd have to look on my
7 record to be sure.

8 Q And you're aware that the state has argued
9 in Illinois Federal Court that this 2000 trust
10 supercedes the '95 trust, thereby rendering it moot,
11 the '95 trust you're entering into settlement with,
12 is that correct?

13 A I'd have to see some more documents. If
14 you're talking about -- has there been something in
15 writing submitted taking that position?

16 Q Yeah. Your summary judgment arguments
17 rely on this 2000 trust superseding -- in that 2000
18 trust, can you read from Page 1, the trust, the
19 first paragraph and the Number 1?

20 MR. ROSE: Objection. The document is not
21 in evidence, hearsay.

22 THE COURT: Sustained.

23 MR. BERNSTEIN: Can I submit it as
24 evidence?

25 THE COURT: Objections?

1 MR. ROSE: Authenticity.

2 THE COURT: Sustained.

3 MR. BERNSTEIN: It's Bates stamped.

4 THE COURT: It doesn't matter. Sustained.

5 MR. BERNSTEIN: It's been submitted into
6 the record.

7 THE COURT: Sustained.

8 MR. BERNSTEIN: We can't enter this?

9 THE COURT: No. I sustained the
10 objection. It's an evidentiary objection.

11 MR. BERNSTEIN: Okay. Am I allowed to ask
12 him questions about this document?

13 THE COURT: If you ask a question and
14 there's an objection, I'll entertain it. I
15 can't tell you how to proceed.

16 MR. BERNSTEIN: Okay.

17 BY MR. BERNSTEIN:

18 Q Can you read the first paragraph and
19 Number 1 of that document?

20 MR. ROSE: Objection, hearsay. The
21 document is not in evidence.

22 THE COURT: Sustained.

23 MR. BERNSTEIN: Okay.

24 BY MR. BERNSTEIN:

25 Q You argued in Illinois in the federal

1 action on behalf of the estate that this 2000
2 document superseded the 1995 trust?

3 MS. CRISPIN: Asked and answered. He said
4 he needed further documentation to see it in
5 writing.

6 THE COURT: Sustained.

7 BY MR. BERNSTEIN:

8 Q In a recent similar case to this with
9 allegations of fraud in the Bivens case, are you
10 aware of the Oliver Bivens case?

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

13 THE COURT: Sustained.

14 BY MR. BERNSTEIN:

15 Q Have you been charged with breach of
16 fiduciary duties and negligence recently and found
17 guilty by a jury of your peers in a federal court?

18 MR. ROSE: Objection, relevance.

19 MS. CRISPIN: Argumentative.

20 THE COURT: I have to overrule those
21 objections because it would go to bias.

22 MS. CRISPIN: Your Honor, he used the word
23 charged. That was my problem for the
24 argumentative.

25 THE COURT: Okay. With regard to the word

1 charged, sustained.

2 BY MR. BERNSTEIN:

3 Q Is there a verdict that claims you
4 breached fiduciary duties and negligence in the
5 handling of an estate?

6 A There was a verdict but the matter has
7 been settled and the case has been dismissed with
8 prejudice pursuant to a confidential settlement.

9 Q Who was your attorney in that settlement?

10 A Wicker, Smith.

11 Q Was it Alan Rose?

12 A Alan Rose came in after the verdict to
13 represent the law firm while Ms. Crispin and I were
14 represented by the Wicker, Smith firm as we had been
15 from the inception of the case.

16 Q So the verdict stood?

17 A No.

18 MR. STAMOS: Hello ?

19 THE COURT: Hang out for me, Mr. Stamos.

20 BY MR. BERNSTEIN:

21 Q So there was a jury verdict that you had
22 breached and committed negligence with Ashley
23 Crispin, correct?

24 MR. ROSE: Objection, relevance and
25 repetitive.

1 THE COURT: Sustained.

2 MR. BERNSTEIN: By the way, Your Honor,
3 something strange here has occurred. Mr. Rose
4 is O'Connell's counsel.

5 THE COURT: Excuse me. Do you have a
6 question for this witness? You have one
7 question left.

8 BY MR. BERNSTEIN:

9 Q If there is a 2000 trust, would it not be
10 a necessary party to any settlement if it deals with
11 the same insurance policy?

12 A I'm not aware that that trust exists, the
13 2000 trust exists.

14 Q If it exists? Since I can't enter it into
15 evidence.

16 A I'd have to review the documents to make
17 sure.

18 Q But after you reviewed them, if you found
19 that it existed, would it be a necessary part to any
20 settlement?

21 MR. ROSE: Objection, calls for a legal
22 conclusion and the facts are that trust and no
23 trustee has intervened or sought to do anything
24 in the Illinois case so it's an irrelevant
25 question.

1 MR. BERNSTEIN: Your Honor, that's really
2 relevant because the reason this trust is
3 suppressed is because my sister, Pam Scott --
4 I'd like to enter another piece of evidence
5 where they discussed suppressing this and
6 hiding it from the court.

7 THE COURT: Sustained. Last question.

8 BY MR. BERNSTEIN:

9 Q When you found out that I was a
10 beneficiary of my father's estate and Judge Blakey
11 removed me on summary judgment claiming that I was
12 not a beneficiary based on res judicata from this
13 court, when you found out again and admitted in
14 court at the first hearing that I attended with
15 Judge Scher here in the courtroom that I was a
16 beneficiary, did you notify the federal court that I
17 was a beneficiary with standing in my dad's estate?

18 MR. ROSE: Objection, relevance,
19 argumentative, and I think these issues are the
20 ones that were decided by the federal judge in
21 Illinois.

22 MS. CRISPIN: Objection, compound.

23 THE COURT: I'll let him answer the
24 question. He either did or he didn't.

25 A I guess to answer your question, I'd have

1 to go back and review your intervention and review
2 the order and --

3 BY MR. BERNSTEIN:

4 Q The order is there.

5 A It would take some time to do it to say
6 whether that would be --

7 Q Well, let me ask you a question.

8 THE COURT: No, that was it.

9 MR. BERNSTEIN: It's the same question.

10 THE COURT: Then it's been asked and
11 answered.

12 MR. BERNSTEIN: Well, let me help him
13 answer what he said, Your Honor. Would that be
14 okay?

15 THE COURT: That would be okay.

16 BY MR. BERNSTEIN:

17 Q The question is, after a review, if you
18 found that I was a beneficiary with standing in the
19 estate and the Illinois court was under the
20 impression that I was not and had dismissed me,
21 would I need to be reinstated as a party in that
22 action who would be a party to this settlement?

23 A That would be between you and the Illinois
24 federal court using that hypothetical.

25 THE COURT: Okay. That about does it for

1 that. Follow up, Ms. Crispin?

2 MS. CRISPIN: None.

3 THE COURT: You may step down,

4 Mr. O'Connell.

5 We're ready to proceed. Do you have a
6 notary public there with you, Mr. Stamos?

7 MR. STAMOS: Yes. It will just take one
8 second, Your Honor.

9 THE COURT: Thank you.

10 MR. STAMOS: She's present. Okay. Shall
11 we begin?

12 THE COURT: May I speak with the notary,
13 please?

14 MR. STAMOS: Yes.

15 MS. VASQUEZ: I'm here.

16 THE COURT: Hello. This is Judge
17 Rosemarie Scher. What is your name, ma'am?

18 MS. VASQUEZ: My name Denise Vasquez.

19 THE COURT: Are you a notary public in the
20 State of Illinois?

21 MS. VASQUEZ: Yes, I am.

22 THE COURT: When does your commission
23 expire?

24 MS. VASQUEZ: October 31st, 2021.

25 THE COURT: In Illinois, do you have a

1 number? Do you have a commission number?

2 MS. VASQUEZ: No.

3 THE COURT: In Florida we do. That's the
4 only reason I'm asking.

5 All right. Do you know the gentleman in
6 front of you?

7 MS. VASQUEZ: Yes, I do.

8 THE COURT: Do you know him personally or
9 has he produced identification?

10 MS. VASQUEZ: Personally.

11 THE COURT: All right. Who is the
12 gentleman in front of you?

13 MS. VASQUEZ: James Stamos.

14 THE COURT: All right. Would you please
15 ask him to raise his right hand?

16 MS. VASQUEZ: Raise your right hand.

17 THE COURT: And swear or affirm to tell
18 the truth?

19 MS. VASQUEZ: Do you swear or affirm to
20 tell the truth?

21 MR. STAMOS: Yes, I do.

22 THE COURT: Excellent. Ms. Vasquez, thank
23 you so much for serving the Court.

24 Mr. Stamos, you are on. Ms. Crispin will
25 begin her questioning.

1 MR. STAMOS: Thank you.

2 DIRECT EXAMINATION

3 BY MS. CRISPIN:

4 Q Mr. Stamos, can you hear me?

5 A I can.

6 Q This is Ashley Crispin. We've met before.

7 I represent Brian O'Connell. We share a client.

8 A Yes.

9 Q And I'm going to be asking you some
10 questions. Your full name, please?

11 A James J. Stamos. Middle name is John.

12 Q And you currently represent who in the
13 pending litigation Simon Bernstein Irrevocable
14 Insurance Trust, et al, vs. Heritage Union Life
15 Insurance Company, et al?

16 A I represent the estate.

17 Q And currently the fiduciary position is
18 held by Mr. O'Connell as personal representative,
19 correct?

20 A That's my understanding.

21 Q And how long have you been representing
22 the estate in this litigation?

23 A Since 2015, if I'm correct. I think it
24 was the summer of 2015.

25 Q And your primary area of practice?

1 A I'm a litigator. I do principally
2 professional liability defense as well as commercial
3 litigation.

4 Q And you're aware of the settlement
5 agreement that was reached between the parties in
6 this matter, correct?

7 A Yes, I am.

8 Q And you reviewed the settlement agreement
9 before it was executed by Mr. O'Connell, correct?

10 A Yes. I think I might have suggested some
11 changes.

12 Q But you reviewed the final version before
13 Mr. O'Connell executed it, correct?

14 A Yes, I did.

15 Q And it's contingent on this Court, meaning
16 the Probate Court in Palm Beach County's approval,
17 correct?

18 A That's my understanding.

19 Q Now, without drawing on your
20 attorney-client communications with Mr. O'Connell,
21 are you able to give the Court an analysis of the
22 settlement?

23 A I think I can without breaching
24 confidentiality.

25 Q Okay. Can you do that, please?

1 A Let me ask you something. Tell me exactly
2 what you'd like me to talk about. I'm not sure
3 whether you want me to talk about whether it's
4 reasonable or its terms.

5 Q Exactly, if it's reasonable. The Court
6 has the terms in front of it so now we're just
7 talking about whether or not it was a reasonable
8 settlement.

9 A Yes. I think it is reasonable. I base
10 that on, and I don't think this is an
11 attorney-client or work product assessment, I base
12 it on a number of factors. The first being that I
13 believe that it's a case that we would be able to
14 win, that we should be able to win, but I thought
15 that there were a number of issues that could make
16 that challenging. One was that the Court had not
17 granted summary judgment for us when I thought the
18 Court should have which made me think that perhaps
19 his view of the facts would be slightly different
20 than our view of the facts.

21 I also thought that our winning the case
22 was really going to come down to a credibility
23 question and while I thought we had a much better
24 credibility argument, nonetheless the judge was
25 going to have to look at the witnesses and make

1 decisions about whether he was going to believe the
2 witnesses for the plaintiff in terms of why they
3 thought the trust was -- frankly why they thought
4 the trust existed and was entitled to money. And I
5 thought the fact that there were basically the same
6 people on both sides, I mean I realize they're
7 different, they're the parents and they're the kids,
8 might make it less certain that the judge would be
9 as precise as he might otherwise be in deciding
10 exactly who should win.

11 I thought that in light of the fact that
12 if we lost, the estate would have no money from the
13 trust and I thought the estate probably would want
14 to have some money, that a compromise of this nature
15 was reasonable.

16 MS. CRISPIN: Nothing further.

17 THE COURT: Questions?

18 MR. ROSE: I'll reserve. For now I don't
19 have any questions.

20 THE COURT: Mr. Feaman?

21 CROSS EXAMINATION

22 BY MR. FEAMAN:

23 Q Mr. Stamos, this is Peter Feaman. Do you
24 recall that I represent Bill Stansbury?

25 A I do. I recall that well.

1 Q Do you recall that it was our office that
2 first brought you into the case?

3 MR. ROSE: Objection, relevance.

4 THE COURT: Sustained.

5 BY MR. FEAMAN:

6 Q Mr. Stamos, you determined early on in
7 your representation of the estate that the estate
8 had a very meritorious claim, didn't you?

9 A Yes, I did.

10 Q And there was a telephonic mediation in
11 May. Did you attend?

12 A I did.

13 Q And who attended at that mediation?

14 MR. ROSE: Objection for the same reasons.
15 You limited his questioning since he has no
16 position.

17 THE COURT: Sustained.

18 BY MR. FEAMAN:

19 Q And did that get the ball rolling in
20 earnest towards settlement?

21 MR. ROSE: Same objection.

22 MS. CRISPIN: And to the extent it calls
23 for confidential mediation.

24 THE COURT: Sustained.

25

1 BY MR. FEAMAN:

2 Q Did the most serious settlement
3 discussions take place in June of this year?

4 MR. ROSE: Same objection.

5 THE COURT: Sustained. I don't see the
6 relevance to this hearing.

7 BY MR. FEAMAN:

8 Q Do you recall whether I was involved at
9 all in those settlement discussions?

10 MR. ROSE: Same objection.

11 THE COURT: What is the relevance for this
12 hearing, Mr. Feaman?

13 MR. FEAMAN: For this hearing?

14 THE COURT: For this hearing.

15 MR. FEAMAN: As to whether -- while we're
16 taking no position, I want to set the record
17 that we were not involved.

18 THE COURT: Okay. You've already done
19 that. Thank you. Any other questions?

20 BY MR. FEAMAN:

21 Q Was Ted Bernstein involved in the
22 settlement discussions as the plaintiff in the
23 Chicago litigation or as the trustee for the trust
24 as the only monetary beneficiary of this estate?

25 MR. ROSE: Same objection. It sounds like

1 it's a question leading toward a position.

2 THE COURT: Could you ask the question
3 again, Mr. Feaman?

4 BY MR. FEAMAN:

5 Q Was Ted Bernstein involved in settlement
6 negotiations as a plaintiff in the Chicago
7 litigation that you're counsel involved in or as
8 trustee for the trust that's the only monetary
9 beneficiary of this estate?

10 THE COURT: I am sustaining the objection
11 because, again, you've taken no position in
12 approving the settlement and I know this goes
13 to another issue you have that's not in front
14 of the Court today.

15 MR. BERNSTEIN: Can I ask that same
16 question?

17 THE COURT: No, you can't. It's not in
18 front of the Court today.

19 BY MR. FEAMAN:

20 Q My last question, Mr. Stamos, is do you
21 have an opinion as to what the probability of
22 success by the estate would have been if you had
23 gone to trial?

24 A Well, my judgment was that we were likely
25 to win the case. I felt that we were likely to win

1 the case with the caveat that I described earlier.

2 MR. FEAMAN: Thank you. No further
3 questions.

4 THE COURT: Mr. Elliot?

5 CROSS EXAMINATION

6 BY MR. BERNSTEIN:

7 Q Hi, Mr. Stamos. Has Judge Blakey
8 adjudicated this settlement yet?

9 A Not -- candidly, I don't recall the exact
10 procedural posture at this moment. I know it's been
11 brought before him, I know he's aware that this
12 hearing has to take place. As to what he has ruled
13 on it, I don't recall where it stands with him.

14 Q Okay. Was I, Elliot Bernstein, at any
15 settlement negotiations you're aware of?

16 A I don't know the answer to that.

17 Q Okay. Is it claimed that I'm a
18 beneficiary of the insurance policy?

19 A I'm sorry, state that again. I couldn't
20 hear you.

21 Q Is it claimed by the plaintiffs that I'm a
22 beneficiary of the insurance policy?

23 A That wasn't how I understood the claim. I
24 understood that they were attempting to prove that a
25 particular trust was the beneficiary of the

1 insurance policy.

2 Q Okay. Have you ever seen that particular
3 trust, an executed copy of the 1995 trust that's at
4 the heart of this?

5 A No.

6 Q Okay. So then would you be able to
7 determine in this settlement that Ted Bernstein is
8 the trustee of the '95 trust?

9 A I don't know the answer to that question.

10 Q Did you depose Ted Bernstein on these very
11 questions in the Illinois litigation?

12 A Yeah. The position, as I understand it,
13 was that the trust -- there was no evidence that the
14 trust was ever executed and there was no clarity
15 because there were a couple of drafts that were
16 being presented as being exemplars of what the trust
17 was supposed to accomplish. But my recollection is
18 there's an inconsistency as to who the trustee would
19 be. I never saw any document that assigned anyone
20 as the trustee because I never saw an executed
21 document.

22 Q So then it couldn't be certain that Ted
23 Bernstein is the trustee of the trust that nobody
24 knows exists?

25 MR. ROSE: Objection, relevancy, not

1 before the Court today.

2 A Our position was that there was no trust.

3 BY MR. BERNSTEIN:

4 Q Okay. And you understand that this
5 settlement is being entered into between the estate
6 and Ted Bernstein as trustee in fact of the 1995
7 trust?

8 A My understanding is that is a function of
9 the fact that we are compromising and one of the
10 compromises is to make that recognition, so it's a
11 compromise of a factual issue.

12 THE COURT: All right. We need to wrap
13 this up. One last question.

14 BY MR. BERNSTEIN:

15 Q Mr. Stamos, are you aware of the 2000
16 insurance trust that this policy was assigned to?

17 A I recall there being a trust that was
18 entitled a 2000 trust. I have to tell you I'm a
19 little hazy as I'm sitting here as to what exactly
20 the function it had in the case. I know that it was
21 never promoted by anyone as a trust that was
22 entitled to the funds from the policy.

23 THE COURT: Last question. That was it.

24 MR. ROSE: May I have my one question?

25 THE COURT: Yes.

1 CROSS EXAMINATION

2 BY MR. ROSE:

3 Q Mr. Stamos, are you aware that the
4 documents that existed in the office of the
5 insurance company that issued this policy
6 continuously reflected the sole contingent
7 beneficiary being this 1995 life insurance trust?

8 A I'm sorry, who's asking the question just
9 so I know?

10 Q Alan Rose.

11 A Mr. Rose, if you're asking what was in the
12 records of the issuing company, candidly I don't
13 recall. I remember there was some changes, a
14 beneficiary change form as to who it was ultimately.
15 I just don't remember. I'm just blanking as to what
16 actually was contained in the file.

17 MR. ROSE: Nothing further, Your Honor.

18 THE COURT: All right. Did you all give
19 me the original -- I don't think so -- of the
20 verified motion for approval of settlement?
21 I'm just making sure I don't have an original
22 here. It's double sided pages so I don't think
23 so.

24 MS. CRISPIN: I don't believe so, Your
25 Honor.

1 THE COURT: I don't believe so either.

2 I'm just making sure. All right. Any other
3 witnesses, Ms. Crispin?

4 MR. STAMOS: Am I excused, Your Honor?

5 THE COURT: Yes, you are excused. Thank
6 you very much, Mr. Stamos. I'm disconnecting
7 you.

8 MR. BERNSTEIN: Can I call him as a
9 witness?

10 THE COURT: No. The hearing is ending.

11 MR. BERNSTEIN: I didn't get a chance --
12 it's ending now?

13 THE COURT: It is.

14 MR. BERNSTEIN: Okey dokey.

15 THE COURT: Do you have a proposed order?

16 MS. CRISPIN: Your Honor, I have a blank
17 order here. I can fill it out here or I can
18 hand Your Honor the blank one.

19 THE COURT: Okay. Thank you. I'll take
20 the blank one. Thank you very much.

21 MS. CRISPIN: Your Honor, I'm just going
22 to hand one copy because I know Your Honor will
23 furnish it via email.

24 THE COURT: Absolutely. All right,
25 everyone. I have as our next hearing

1 November 15th. I'm just saying just for the
2 record.

3 MR. FEAMAN: My office gave me an order
4 setting a hearing for November 9th at 1:30.

5 THE COURT: Which hearing is that? Isn't
6 that the hearing I denied already?

7 MR. FEAMAN: No. It's on Mr. Stansbury's
8 request for court intervention under Florida
9 Statute 736.0706 filed back on February 15th of
10 2017, and in communications of my paralegal
11 with your assistant, apparently it gave rise to
12 her preparing an order setting that hearing for
13 November 9th. She created it and gave it to me
14 to confirm that there's a hearing on that date.

15 THE COURT: No, and you know what?

16 MR. FEAMAN: I didn't have any
17 conversation with your office.

18 THE COURT: I understand that and actually
19 it's not a complete shock to me. That's why I
20 asked that. I need to look at that. My
21 assistant is out for six weeks. So if you will
22 hand me that, I need to look at that because in
23 my world, I didn't think that was an issue.

24 MR. ROSE: Just for the record, Your
25 Honor, this is the motion where he's asking

1 you --

2 THE COURT: I thought I denied it. I
3 thought I entered an order denying it.

4 MR. ROSE: If you haven't, we ask you to.

5 THE COURT: Let me look at it and,
6 Mr. Feaman, I'm sure at some point my assistant
7 did a request for this, but like I said, she
8 just had surgery. So let me take this, let me
9 take the other blank order. I have a phone
10 conference. Thank you very much.

11 MR. BERNSTEIN: Your Honor, I just want
12 the record to reflect that I wasn't given a
13 fair opportunity to be heard. I made no
14 opening statement, was not allowed to call
15 witnesses and there were no pretrial hearing
16 procedures ordered by the Court or even
17 followed by the Court.

18 THE COURT: So noted. Thank you so much.
19 Feel better.

20 MR. ROSE: Thank you, Your Honor.

21 (The hearing was concluded.)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, DEBORAH MEEK, Registered Professional Reporter, Florida Registered Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that such transcription, Pages 1 through 65, is a true and accurate record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested, directly or indirectly, in the action.

This certification does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the reporter.

Dated this 27th day of October, 2017.



DEBORAH MEEK, RPR, CRR, FPR

	5th 19:22	aided 31:22	assertion 29:5,25 33:9,11
\$		Alan 4:11 46:11,12 62:10	assessed 16:20
\$680,000 37:1	6	all-or-nothing 14:5 15:9	assessment 54:11
\$700,000 15:7 37:3	680 37:3	allegations 45:9	assigned 41:15 60:19 61:16
\$708,000 15:22 16:5		alleged 11:3 12:20	assistant 64:11,21 65:6
\$75,000 16:13 17:10	7	allowed 12:1 20:22 44:11 65:14	assume 37:4
	736.0706 64:9	amended 6:10	attachments 12:25
1		amount 15:7 18:6,7	attempting 59:24
1 9:14 12:14 17:24 38:14, 15 43:18,19 44:19	9	analysis 14:1 23:16 53:21	attend 17:12 56:11
15th 64:1,9	95 28:3 32:13 43:10,11 60:8	announce 5:23	attended 48:14 56:13
1995 24:19 28:2 32:17 33:9,16 36:10 41:23 45:2 60:3 61:6 62:7	9th 64:4,13	apparently 64:11	attending 21:11
1:30 64:4	A	appearance 4:2 8:4 10:13	attorney 25:22,24 46:9
	absolutely 11:10 24:13 63:24	Appearances 4:5	attorney's 14:13
2	accomplish 60:17	appeared 11:24	attorney-client 13:22 23:11 53:20 54:11
2000 41:13,15,19 43:9,17 45:1 47:9,13 61:15,18	account 37:17	appearing 4:24	attorneys 42:23
2014 9:25 10:11	action 9:7 27:6 45:1 49:22	applicable 28:25	Authenticity 44:1
2015 52:23,24	actual 13:1	appointment 10:10	aware 10:3 25:9 27:4 34:24 41:13 43:8 45:10 47:12 53:4 59:11,15 61:15 62:3
2017 19:9,20 64:10	Adam 38:22	approval 9:5 12:16 13:6,11 17:23 22:18 53:16 62:20	
2021 50:24	adjudicated 59:8	approve 13:9 22:11	B
24 5:8	admission 18:3	approved 13:15,23	back 20:4 37:13,23 41:3 49:1 64:9
2:30 30:14	admit 17:22	approving 21:3 58:12	BAILIFF 26:8
	admitted 17:25 18:12 48:13	area 52:25	balance 17:1
3	adult 6:24 7:9,17	argue 29:16,18	ball 56:19
3-15-16 27:19	advised 8:18	argued 43:1,8 44:25	base 54:9,11
31st 50:24	affidavit 36:5,13,19	arguing 31:6	based 14:14 27:7 48:12
	affirm 51:17,19	argument 28:7,22 54:24	basically 55:5
4	agree 18:7	argumentative 29:12 45:19,24 48:19	basis 13:20
4 27:21	agreement 9:6 12:17 13:1, 3,10,13,15,23,25 14:2 16:19 17:23 18:4 19:5,7,23 53:5,8	arguments 43:16	Bates 42:22 43:3 44:3
40 16:1,3,23 36:24	ahead 13:9 24:22 26:17 35:5 39:16 41:2,10	arrange 39:19,24	Beach 53:16
		arrangement 15:13 17:18 37:6	began 19:16
50 14:9		Ashley 4:6 46:22 52:6	begin 6:4 50:11 51:25

beginnings 12:9	Blakey's 30:5,6 32:2	changed 16:18	computed 15:24
behalf 4:7,12 5:1 6:8 7:17 8:25 11:25 45:1	blank 63:16,18,20 65:9	charged 16:22 45:15,23 46:1	concluded 65:21
behest 20:24	blanking 62:15	checking 4:17	conclusion 33:24 47:22
believable 36:23	bottom 43:3	Chicago 37:9 57:23 58:6	concrete 12:12
believed 36:9,19	breach 45:15	children 6:24 7:9	condition 5:9,14
Ben 12:1 20:21 43:1	breached 46:4,22	circulation 19:24	conference 65:10
beneficiaries 7:2 14:3	breaching 53:23	claim 16:2 25:7 31:19 36:5 56:8 59:23	confidential 46:8 56:23
beneficiary 4:14,22 11:2,4, 6 27:8 33:21 34:4,7,11,13 35:1 48:10,12,16,17 49:18 57:24 58:9 59:18,22,25 62:7,14	Brian 4:7 8:24 9:22 25:22, 23 33:15 40:21 52:7	Claimant 5:2	confidentiality 53:24
benefit 15:3	bring 16:23 26:4	claimed 59:17,21	confirm 64:14
benefits 16:7	brought 56:2 59:11	claiming 11:15,16 34:25 48:11	conflict 22:15
Bernstein 4:9,12 5:5,12,19 6:22 7:11,13,18 8:6,20 9:8, 10,23 10:4 11:4,22 18:9 24:11,14,16,18,24 25:5,17, 20 26:2,6,9,15,19,23 27:1, 11,13,18 29:4,8,15 30:10, 17,22,24 31:3,7,10,12,22 32:7,12,16,24 33:3,8,16,25 34:6,10,16,19,21,23 35:6, 10 36:9,11 37:22,25 38:10, 13,16 39:11,17,21 40:1,5, 17,21 41:12,19,22 42:15 43:23 44:3,5,8,11,16,17, 23,24 45:7,14 46:2,20 47:2,8 48:1,8 49:3,9,12,16 52:13 57:21 58:5,15 59:6, 14 60:7,10,23 61:3,6,14 63:8,11,14 65:11	Brown 12:1 20:21 43:1	claims 29:2 32:16 46:3	connection 32:9,11
	C	clarity 60:14	construction 6:19
	call 4:1,3,15,17,19,22 5:25 19:2 22:1 38:20 39:4,14, 20,23 40:15,20,22 41:1,2 63:8 65:14	clear 18:4 28:4	contained 62:16
	called 4:15 8:25	client 8:17 18:5 52:7	contemplates 18:5
	calling 39:5 40:24	client's 8:13	contingency 13:13 15:1 16:17,19 17:18 36:25 37:6
	calls 23:10 33:23 47:21 56:22	close 19:21	contingent 13:5 53:15 62:6
	candidly 59:9 62:12	combination 14:16 15:5	continue 5:24
	capacity 33:17	comment 22:24	continuously 62:6
	case 7:23 12:5 17:5 21:7, 18 23:8,24 24:5,7 25:10 29:20 37:4 39:9 42:20 45:8,9,10 46:7,15 47:24 54:13,21 56:2 58:25 59:1 61:20	commercial 53:2	contrary 36:5
Bernstein's 6:14	cases 33:6	commission 50:22 51:1	conversation 21:19 64:17
Berstein 5:5	casting 28:7	committed 42:24 46:22	copies 26:8
best-day 17:2	causing 23:1	communications 53:20 64:10	copy 9:7,11,16 25:2,22,25 30:3 31:20 32:8 38:6 60:3 63:22
bias 45:21	cautious 22:5	company 10:6 52:15 62:5, 12	correct 10:6 12:6 13:2,3 17:19,20 18:25 19:10,11, 14,18,24 20:12,15,18,24 28:23 29:8 30:3,5 32:4,6,8, 15 34:12 35:22,23,25 36:2, 7,12 37:2,12 38:7 43:5,12 46:23 52:19,23 53:6,9,13, 17
bigger 35:6	caveat 59:1	competing 11:8	cost 13:18 14:12 16:14
Bill 55:24	challenging 54:16	complaint 27:7	costs 14:13 17:11 37:4
Bivens 45:9,10	chance 36:15,17 63:11	complete 42:6 64:19	cough 5:7
Blakey 25:9 27:14 34:25 35:17 48:10 59:7	change 62:14	composite 38:12,15	counsel 7:22,25 10:16,21
		compound 48:22	
		compromise 55:14 61:11	
		compromises 61:10	
		compromising 61:9	

16:14 23:15 38:25 39:8 40:1 47:4 58:7	CROSS 18:21 24:15 35:14 55:21 59:5 62:1	discussions 12:9 18:24 19:2,17 21:6 57:3,9,22	efficiency 40:20
County's 53:16	curator 12:1	dismissed 27:7 34:25 35:3 46:7 49:20	electronic 31:20
couple 60:15	D	dispositive 7:25 28:5	eliminated 16:11
court 4:1,3,10,15,17,18,21 5:3,11,13,22 6:2,5,16,21 7:2,9,12,15 8:2,3,8,15,21 9:1,4,15,16 13:9,15,24 15:21 17:25 18:4,12,15,17, 20 20:2,6,23 21:2 22:2,10, 16,21 23:3,21 24:10,13,22 25:11,24 26:4,11,16,22,24, 25 27:16 29:10,14 30:8,13, 19,23 31:1,5,6,9 32:19 33:18 34:2,9,15,17,20,22 35:9,12 37:23 38:2,5,11, 15,17,20,23 39:1,3,4,7,15, 22 40:2,7,11,13,15,19,20, 22 41:1,2,9,17,21 42:2,4,9, 13 43:9,22,25 44:2,4,7,9, 13,22 45:6,13,17,20,25 46:19 47:1,5 48:6,7,13,14, 16,23 49:8,10,15,19,24,25 50:3,9,12,16,19,22,25 51:3,8,11,14,17,22,23 53:15,16,21 54:5,16,18 55:17,20 56:4,17,24 57:5, 11,14,18 58:2,10,14,17,18 59:4 61:1,12,23,25 62:18 63:1,5,10,13,15,19,24 64:5,8,15,18 65:2,5,16,17, 18	dad's 48:17	dispute 8:10 11:1 29:24	Elliot 5:4,5 7:15 8:20 24:10 26:11 33:12 34:18 38:8 40:16 59:4,14
date 27:19 64:14	David 31:19,21	disputing 27:16	Elliot's 38:15
day 5:8 17:3 30:20	deals 47:10	distinguish 21:10	email 63:23
decided 48:20	deciding 55:9	District 33:18	en 22:3
decision 12:5	decision 12:5	document 27:2 41:24 43:20 44:12,19,21 45:2 60:19,21	end 14:20 36:15,16
decisions 55:1	default 11:5	documentation 45:4	ending 63:10,12
defendant 32:23	defendant 32:23	documents 8:1 42:19,25 43:13 47:16 62:4	enter 7:23 25:17 44:8 47:14 48:4
defense 53:2	definitively 42:21	dokey 63:14	entered 9:6 10:13 18:10 19:7 24:18 29:4 32:18 33:7,14 61:5 65:3
denied 6:9,17 14:18,19 22:16 24:3 25:13 35:17,24 36:3 64:6 65:2	Denise 50:18	dollar 15:7 16:3	entering 13:9 32:13,25 43:11
denying 32:2 65:3	depose 60:10	dollars 14:7 17:15 37:3	entertain 44:14
desk 42:11	determine 15:17 60:7	double 62:22	entire 32:21
determined 6:15 25:11 32:6,12 56:6	direct 9:18 18:14 41:11 52:2	doubt 28:7 33:4	entitled 10:4 11:17 18:8 55:4 61:18,22
directly 23:1	disconnect 4:19	doubts 31:18	equal 30:15
disconnecting 63:6	discontinue 22:21	drafts 60:15	ergo 24:7 29:23
discussed 36:9 48:5	discussing 21:14	draw 13:21 23:13	ESQ 8:24
		drawing 15:5 23:22 53:19	estate 4:8 9:23 10:13,22 11:5,6,9,16,17,25 13:17 14:3,6 15:18 16:6 17:5,6, 17 23:8,25 27:9 28:16,17, 21 29:18 30:4 33:15,21,25 34:5,7 35:1 36:1 45:1 46:5 48:10,17 49:19 52:16,22 55:12,13 56:7 57:24 58:9, 22 61:5
		drive 19:11	estate's 35:17
		driver 15:9	estimate 17:9
		duly 9:1	estimated 16:14
		duties 45:16 46:4	et al 10:5 52:14,15
		E	evaluated 16:17
		earlier 59:1	
		early 56:6	
		earnest 19:1 21:21 56:20	
		easily 17:14	
		eaten 15:2	
		edification 35:7	

events 31:19	22 20:14 27:7 28:6,21 32:3	firm's 21:6	guess 16:10 48:25
evidence 17:22 25:18 28:1,5,7 36:4,20 38:9 43:21,24 44:21 47:15 48:4 60:13	55:5,11 61:6,9	Florida 51:3 64:8	guilty 45:17
evidentiary 44:10	factors 14:17 15:5 54:12	fly 37:9	H
evolving 21:7	facts 12:19 47:22 54:19,20	Follow 50:1	half 10:1
exact 15:6 59:9	factual 29:5 33:9,11 61:11	forgery 42:24	hand 51:15,16 63:18,22 64:22
EXAMINATION 9:18 18:21 24:15 35:14 41:11 52:2 55:21 59:5 62:1	faint 5:7	form 62:14	handling 46:5
examined 9:2	fair 6:21 19:20 35:16 65:13	formal 19:9	hang 42:5 46:19
Excellent 51:22	fall 5:7 24:12	forward 6:13 16:15	happen 23:2
Excuse 24:25 47:5	familiar 10:7,8	found 31:20 45:16 47:18 48:9,13 49:18	happened 35:11
excused 63:4,5	family 11:5	frame 20:11	happening 7:5
executed 25:2 41:14 53:9, 13 60:3,14,20	father's 27:8 33:21 35:1 48:10	frankly 14:20 55:3	hard 31:20
exemplars 60:16	favor 8:13 14:18 23:25	fraud 42:24 45:9	hazy 61:19
exhibit 9:14 12:14 17:23 38:12,15	Feaman 5:1 6:2,7 8:14,17 18:2,17,18,22 20:3,8 21:4, 13 22:10,14,20,23 23:5,6 24:9 40:13,14 55:20,22,23 56:5,18 57:1,7,12,13,15,20 58:3,4,19 59:2 64:3,7,16 65:6	free-standing 11:3	He'll 41:1
exist 28:22	February 64:9	front 25:14 40:3 51:6,12 54:6 58:13,18	heading 33:13
existed 33:5 47:19 55:4 62:4	federal 9:7 25:11 43:9 44:25 45:17 48:16,20 49:24	full 8:7 52:10	hear 5:20,23 29:11 52:4 59:20
exists 47:12,13,14 60:24	fee 15:1,13,16 16:19 17:18 37:1,3	function 61:8,20	heard 65:13
expended 14:14	Feel 65:19	fund 14:16	hearing 5:20,21 6:11,13,25 7:14,19 8:9 25:10 48:14 57:6,12,13,14 59:12 63:10, 25 64:4,5,6,12,14 65:15,21
expending 15:4	fees 14:14 15:4 16:8,9,10 17:1,11,16 20:4	funds 61:22	hearsay 43:21 44:20
expense 17:13	felt 58:25	furnish 63:23	heart 60:4
expire 50:23	fiduciary 11:24 45:16 46:4 52:17	G	held 52:18
explain 11:8 13:24	file 8:3 9:15 62:16	garnered 16:6	Heritage 10:5 52:14
explained 28:9 30:1	filed 35:21 64:9	gave 25:22 64:3,11,13	hiding 48:6
explore 12:5	fill 63:17	general 19:2	hire 36:24
extended 31:8	final 53:12	generalities 21:8	Hold 29:10
extent 13:17 21:23 23:10 56:22	fine 5:11,12,14 7:16 22:6	generally 4:20 10:24	Honor 4:6,11 5:6,17,25 6:8,17,22 9:3,13 17:21 18:2,18,19 20:5 22:15 23:14 24:11 30:11 35:7,10 40:9,14,25 45:22 47:2 48:1 49:13 50:8 62:17,25 63:4, 16,18,21,22 64:25 65:11, 20
F	finish 19:12 32:19 34:16	gentleman 51:5,12	
fact 14:12,15,24 17:5 19:8,	firm 46:13,14	give 7:25 10:24 21:9 25:21 26:2 36:11 53:21 62:18	
		giving 30:14	
		good 23:24 32:1 42:13	
		granted 24:5 54:17	
		ground 14:8	

horse 24:4	15,18,20 21:14,22 22:5,25	kids 55:7	65:13
hour 30:14,18,21	57:8,17,21 58:5,7	kind 24:5	make 18:4 47:16 54:15,25 55:8 61:10
hourly 15:13,16 17:4,18	involvement 21:6	knowledge 10:23 11:12,19 12:23 20:13,14,17	makes 24:3
hours 5:8 30:25	irrelevant 47:24	L	making 25:8 62:21 63:2
hundred 11:15,17 14:7 16:4,24,25 21:9 24:1	irrevocable 10:4 11:20 52:13		mark 38:11
hypothetical 49:24	isolated 12:11	late 4:16	marked 9:14 12:14
I	issue 22:15 28:6 58:13 61:11 64:23	law 46:13	masse 22:3
	issued 62:5	lawyer 39:21	material 28:7
identification 51:9	issues 21:1 32:3 48:19 54:15	laying 20:3	materiality 45:12
Illinois 9:6 25:10 26:24 35:21 39:9 43:9 44:25 47:24 48:21 49:19,23 50:20,25 60:11	issuing 62:12	leading 58:1	math 15:17 36:25 37:7
imagine 19:24	J	left 47:7	mathematically 15:25
		legal 29:23 33:23 47:21	matter 9:21 13:19 14:19 25:10 42:24 44:4 46:6 53:6
impression 49:20	James 10:20 51:13 52:11	liability 53:2	meaning 14:13 53:15
in-person 21:11	John 52:11	life 10:5 52:14 62:7	meantime 41:2
inception 46:15	Join 29:13	light 24:1 55:11	mediation 19:9,13 21:11, 25 22:3 56:10,13,23
including 37:18	journey 33:6	limited 56:15	mediator 22:1
inconsistency 60:18	judge 25:9 26:3,10 27:14 30:5,6 32:2 34:24 35:17 36:20 39:13 42:4 48:10,15, 20 50:16 54:24 55:8 59:7	listed 4:21	medical 5:9
incurred 17:17 37:14	judgment 14:17,18 24:3,5 25:13,14,18 26:20,23 27:5 29:20 32:3,10 34:25 35:7, 18,20 36:2 43:16 48:11 54:17 58:24	listening 39:10	members 11:5
individually 28:19	judicata 48:12	literally 21:25	mentioned 20:21 24:2
information 23:14	July 19:22	litigant 11:13	meritorious 24:7 56:8
insinuate 5:14	June 9:25 10:11 19:20,23 20:10 21:21 57:3	litigation 10:4,7,9,14,25 11:7,21 12:2 13:17,18,19 14:4,13,16 23:1 32:21 36:14 52:13,22 53:3 57:23 58:7 60:11	merits 22:20,24
instruct 23:12	jurisdiction 5:20,22,23	litigator 53:1	met 52:6
insurance 10:5,6 11:2,9, 12,20 35:21 36:10 41:13, 19 47:11 52:14,15 59:18, 22 60:1 61:16 62:5,7	jury 45:17 46:21	long 9:24 10:8 12:3 26:12 30:11 37:10 42:7,8 52:21	middle 14:8 52:11
intended 36:11	K	longer 14:16	midpoint 15:6
interact 37:10		keeping 26:12	million 14:7 16:25 36:25 37:3,5
interest 13:16 14:2 37:17	key 36:23	looked 17:6	mind 6:6
intervene 12:2	M	lose 36:15	mindful 6:16 26:11
intervened 20:22 47:23		lost 17:5,18 55:12	losing 22:12
intervenor 28:6,13 29:21			minutes 26:14,17 30:9 40:23 41:4 42:9,11
intervention 49:1 64:8		made 12:5,10 28:21 54:18	missing 32:1
involved 7:7 17:13 20:11,			mode 14:20

<p>moment 59:10</p> <p>monetarily 13:24 15:14,15 17:7</p> <p>monetary 16:7 57:24 58:8</p> <p>money 18:6,8 36:11 55:4, 12,14</p> <p>months 5:9 12:9 18:24 19:4</p> <p>moot 43:10</p> <p>morning 4:16</p> <p>motion 5:16 6:10 9:5,11 12:16,20 13:1,8 17:22 20:24 35:17,20 38:7 62:20 64:25</p> <p>moved 14:18 36:2</p> <p>moving 30:15</p>	<p style="text-align: center;">O</p> <p>O'connell 4:7 6:1,5 8:24 9:20,22 18:14,23 24:17 26:1 33:15 34:24 35:16 40:21,24 41:8 42:16 50:4 52:7,18 53:9,13,20</p> <p>O'connell's 5:16 9:5 37:9 47:4</p> <p>oath 41:9</p> <p>object 18:9 23:12 35:8</p> <p>objecting 8:20 18:3</p> <p>objection 19:25 20:1,25 22:9 24:21 27:10 29:9,11, 12 33:23 35:12 43:20 44:10,14,20 45:11,18 46:24 47:21 48:18,22 56:3, 14,21 57:4,10,25 58:10 60:25</p> <p>objections 43:25 45:21</p> <p>occasions 8:18</p> <p>occurred 47:3</p> <p>October 50:24</p> <p>offered 31:21</p> <p>office 20:18,19 31:21 56:1 62:4 64:3,17</p> <p>Okey 63:14</p> <p>Oliver 45:10</p> <p>opening 65:14</p> <p>operating 15:13</p> <p>opinion 23:7 58:21</p> <p>opportunity 65:13</p> <p>order 22:16 27:15 30:5 32:5 49:2,4 63:15,17 64:3, 12 65:3,9</p> <p>ordered 65:16</p> <p>orders 38:8</p> <p>original 24:23 25:1 62:19, 21</p>	<p>out-of-pocket 14:13</p> <p>overrule 45:20</p> <p>overruled 24:22 34:2 41:21</p> <p style="text-align: center;">P</p> <p>pages 62:22</p> <p>Palm 53:16</p> <p>Pam 48:3</p> <p>paragraph 43:19 44:18</p> <p>paragraphs 27:22</p> <p>paralegal 64:10</p> <p>parents 55:7</p> <p>part 11:21 13:8 14:1 36:4 43:4 47:19</p> <p>participating 4:14</p> <p>parties 6:25 7:4,14 18:10 37:19 53:5</p> <p>party 27:6 47:10 49:21,22</p> <p>past 27:3</p> <p>pay 37:8,13</p> <p>payment 16:8,10 18:5</p> <p>peers 45:17</p> <p>pending 10:3 52:13</p> <p>people 26:7 55:6</p> <p>percent 11:15,18 14:9 16:1,3,4,23,25 21:9 24:1 36:24</p> <p>period 12:2</p> <p>person 8:20</p> <p>personal 4:7 9:22 10:17 28:18 34:5,9,14 52:18</p> <p>personally 51:8,10</p> <p>Peter 5:1 55:23</p> <p>phone 21:11 30:20 39:6,13 40:8 41:5 65:9</p> <p>physically 21:10</p>	<p>pick 42:11</p> <p>piece 48:4</p> <p>place 57:3 59:12</p> <p>plaintiff 32:23 35:21 55:2 57:22 58:6</p> <p>plaintiff's 31:16,17</p> <p>plaintiffs 28:10 30:2 31:19 59:21</p> <p>pleading 24:17 29:3 33:7, 13</p> <p>pocket 17:9</p> <p>point 7:21,22 9:25 19:16 23:4 65:6</p> <p>points 36:23</p> <p>policy 11:2,15,18 14:6 41:14,20 47:11 59:18,22 60:1 61:16,22 62:5</p> <p>portion 16:4</p> <p>posited 14:4</p> <p>position 6:12,15 8:13,16, 19 9:21 11:11 22:12,18,24 29:23 30:4 36:21 43:15 52:17 56:16 57:16 58:1,11 60:12 61:2</p> <p>positions 11:8</p> <p>possession 24:19</p> <p>posture 14:23 59:10</p> <p>PR 33:15,25</p> <p>practice 52:25</p> <p>precise 55:9</p> <p>predicate 20:4</p> <p>prejudice 46:8</p> <p>prepared 19:23</p> <p>preparing 64:12</p> <p>present 22:4 50:10</p> <p>presented 28:6 60:16</p> <p>pretrial 65:15</p> <p>Pretty 10:10</p>
<p style="text-align: center;">N</p>	<p>named 18:11</p> <p>nature 10:25 13:17 14:10 16:18 17:12 55:14</p> <p>needed 45:4</p> <p>negligence 45:16 46:4,22</p> <p>negotiations 20:10,11 21:20 58:6 59:15</p> <p>net 16:24</p> <p>nonetheless 54:24</p> <p>notary 39:18,19,24 40:3 50:6,12,19</p> <p>noted 8:2 18:12 65:18</p> <p>notice 8:4 42:22</p> <p>notification 4:18,23</p> <p>notified 6:24 7:1</p> <p>notify 7:3 48:16</p> <p>November 64:1,4,13</p> <p>number 43:19 44:19 51:1 54:12,15</p> <p>numbers 21:15,16</p>		

previously 22:14	put 6:3,18,22 14:19,22	recently 45:16	represented 10:22 46:14
primary 52:25	Q	recognition 61:10	representing 7:11 22:7 28:17 52:21
principally 53:1		recollection 60:17	request 6:17 64:8 65:7
prior 5:20 11:24 12:10 19:1	question 26:18 28:13 30:16 31:2,9,11 34:3,15, 17,22 41:14 43:2 44:13 47:6,7,25 48:7,24,25 49:7, 9,17 54:23 58:1,2,16,20 60:9 61:13,23,24 62:8	record 4:5 6:3,18,23 8:10 39:8 43:4,7 44:6 57:16 64:2,24 65:12	required 17:10
privilege 13:22 23:11,22	R	records 8:7 62:12	res 48:12
privileged 23:14		questioning 51:25 56:15	recovered 16:2,23
pro 5:5	questions 9:1 18:16 21:5 22:22 33:20 37:18 39:12, 16 44:12 52:10 55:17,19 57:19 59:3 60:11	recovery 15:23	reserved 30:21
probabilities 23:25	quick 28:12 33:21	Redirect 35:9	resolutions 12:10
probability 23:8 58:21	R	reflect 65:12	resolves 32:20
probate 11:6 53:16		race 24:4	reflected 62:6
problem 23:19 33:12 45:23	raise 51:15,16	refusing 7:24	results 31:15,17
procedural 59:10	raised 22:14	regard 8:19 20:9 21:5 45:25	resumed 41:8
procedures 65:16	raises 31:18	reinstated 49:21	review 35:4 47:16 49:1,17
proceed 5:15,18 8:9,22 18:1 44:15 50:5	ramifications 17:6	reiterate 6:12	reviewed 47:18 53:8,12
proceeding 11:24 32:9,11	ramp 19:17	relevance 19:25 20:1,3,25 22:9 24:21 27:10 35:8 45:11,18 46:24 48:18 56:3 57:6,11	reviewing 25:25
proceeds 11:15,18 14:6,8 15:2 32:22	reached 33:3 53:5	relevancy 60:25	rise 64:11
produced 51:9	read 12:19 27:22 30:6 31:13 43:18 44:18	relevant 20:6 27:12 48:2	role 10:16
product 13:22 23:11 54:11	ready 4:3 5:15,17 8:9 41:6 50:5	relief 33:18	rolling 56:19
professional 53:2	real 12:12 28:12 33:21	rely 43:17	Rose 4:11 6:25 7:24 8:10, 17 18:15,16,19 19:25 20:25 21:22 22:6,9 24:21 27:10 29:9,11,12 30:20 33:23 34:1 35:8,13,15 37:21 38:24 39:8 40:11,12 43:20 44:1,20 45:11,18 46:11,12,24 47:3,21 48:18 55:18 56:3,14,21 57:4,10, 25 60:25 61:24 62:2,10,11, 17 64:24 65:4,20
promoted 61:21	realize 55:6	remember 62:13,15	Rosemarie 50:17
properly 25:11	reason 48:2 51:4	reminding 30:8	rough 15:17
property 34:5,9,11,14	reasonable 54:4,5,7,9 55:15	removed 48:11	Roughly 15:19
proposed 13:1 38:6 63:15	reasons 25:13 32:2 56:14	rendering 43:10	ruled 59:12
propounded 9:2	recall 20:19,23 21:16 35:3 42:18 55:24,25 56:1 57:8 59:9,13 61:17 62:13	repetitive 46:25	rules 29:10
propriety 6:14	receive 4:21	replaced 42:25	rulings 14:15
prove 59:24	recent 14:15 45:8	reporter 9:4	rushing 34:21
proven 25:12,15		represent 7:10 16:3 46:13 52:7,12,16 55:24	
provide 27:25		representation 16:18 56:7	
public 8:3 39:18,19,24 40:3 50:6,19		representative 4:8 9:23 10:17 28:18 52:18	
purposes 23:3			
pursuant 46:8			
pursuing 24:7			

	similar 45:8	Stamos' 17:9	summer 14:21 52:24
S	Simon 4:8 9:23 10:4 31:20, 21,22 36:9,10 38:22 39:5, 6,10 52:13	stamped 42:22 44:3	summoned 7:7
Savings 16:9	sir 20:16	stamps 43:3	supercedes 43:10
scenario 14:11 15:9 17:2	sister 48:3	stand 6:1 8:12 41:3,8	superseded 45:2
Scher 48:15 50:17	sit 5:6 37:9	standing 27:8 33:22 34:8 35:2 48:17 49:18	supersedes 41:23
Scott 48:3	sits 6:6	standpoint 15:8	superseding 43:17
search 31:16,18	sitting 42:18 61:19	stands 59:13	supposed 26:4 60:17
seeking 13:11 33:18	situation 14:5 15:1,16 16:17 17:4	Stansbury 5:2 6:8 14:15 18:6,7 20:10 21:19 37:14 55:24	suppressed 48:3
sentence 31:13	sketch 22:2 24:6	Stansbury's 20:24 64:7	suppressing 48:5
sequence 6:11	slightly 54:19	start 27:23 33:14	surgery 65:8
served 7:8	slow 35:11	started 12:8 18:24	sustained 20:2 21:2 29:14 35:9,12 41:17 43:22 44:2, 4,7,9,22 45:6,13 46:1 47:1 48:7 56:4,17,24 57:5
servicing 9:24 51:23	Smith 46:10,14	state 9:20 43:8 50:20 59:19	sustaining 58:10
set 9:12 30:5,14,18 57:16	sole 62:6	stated 18:23	swear 40:4 51:17,19
setting 64:4,12	sort 15:4,9,17,24 19:11	statement 6:3 30:7 65:14	switch 14:25
settle 17:5 19:13 21:17 33:6	sought 47:23	states 24:17	sworn 9:1 39:25
settled 13:19 33:8 36:18 46:7	sounds 42:13 57:25	stating 29:6,22 33:10	syncope 5:7
settlement 7:5 8:14,19 9:6 12:5,17 13:1,10,14 14:2, 22,24 15:6,10,14,18,23 16:7 17:23 18:10,23 19:5, 6,17 20:9 21:3,8,20 22:19 24:18 27:12,16 29:4 31:4 32:14,18,20 33:1,4,14 37:16 38:7 43:11 46:8,9 47:10,20 49:22 53:4,8,22 54:8 56:20 57:2,9,22 58:5, 12 59:8,15 60:7 61:5 62:20	sources 27:23,25	Statute 64:9	T
settling 19:21	Spallina 36:6 42:23	stay 23:4 24:11	takes 37:10
share 15:20 52:7	Spallina's 36:8,19	step 38:5 42:10 50:3	taking 8:18 22:12,18 37:17 43:15 57:16
shock 64:19	speak 7:16,19 50:12	stood 46:16	talk 12:11 15:12,14 27:17 54:2,3
shot 37:25	speaking 4:20	strange 47:3	talked 16:16
show 41:24	speaks 32:5	strength 36:1	talking 22:13 43:14 54:7
side 22:1,2	specially 6:10	strong 36:20	tangible 34:4,9,13
sided 62:22	specific 21:16 24:23	submit 43:23	Ted 4:12 6:14 11:22 24:18 25:5 29:1,2,4,8 32:6,11,16, 24 33:2,8,15 57:21 58:5 60:7,10,22 61:6
sides 55:6	split 32:23	submitted 36:5 43:15 44:5	Ted's 32:4
signed 12:19 13:3 19:5,22	spoken 26:13	success 23:8 58:22	telephone 19:9 21:24 39:23
	spring 16:15	successful 15:3	telephonic 56:10
	Stamos 4:2 10:20 16:20 21:19 36:24 37:11 38:19, 21 39:2,3 40:10,18 41:4,5 42:1,2,3,7,10,14 46:18,19 50:6,7,10,14 51:13,21,24 52:1,4,11 55:23 56:6 58:20 59:7 61:15 62:3 63:4,6	successor 6:15	
		suggested 53:10	
		summary 14:17,18 24:3,4 25:13,14,18 26:20,23 27:5 29:20 32:3,10 34:25 35:18, 20 36:2 43:16 48:11 54:17	

telling 30:23	32:1,4,7,13,14,17 33:3,5,9,16 35:22 36:10,11 39:9	victorious 15:2
ten 17:14 41:6	41:13,23 42:16 43:9,10,11,17,18 45:2 47:9,12,13,22	victory 16:4
terms 19:17 28:9,24 29:7,8,25 30:3 36:10 54:4,6 55:2	48:2 52:14 55:3,4,13 57:23 58:8 59:25 60:3,8,13,14,16,23 61:2,7,16,17,18,21 62:7	view 37:16 54:19,20
Tescher 42:23		virtue 16:7
testified 9:2	trustee 4:12 6:15 11:14,20 24:19 25:5 29:1,2,5 32:4,7,12,17,25 33:3,5,8,16 47:23 57:23 58:8 60:8,18,20,23 61:6	volume 42:19
testify 4:4		W
testimony 6:4 31:22 36:8,13 42:6	trusts 8:1	waiting 40:17,19
thicker 35:6	truth 51:18,20	waiver 6:19
thing 4:13 8:11	twelve 17:14	wanted 6:18 21:9
things 17:8,12 19:3,16	U	weeks 64:21
thinking 15:10	ultimately 62:14	Wicker 46:10,14
thought 22:11 28:19 30:18 54:14,17,21,23 55:3,5,11,13 65:2,3	uncertain 25:16	wife 5:6
thousand 14:7 16:25 17:14	uncertainties 13:18	William 5:2
till 30:13	understand 60:12 61:4 64:18	win 54:14 55:10 58:25
time 6:13 12:3,4 15:11 20:10 22:4 26:12 30:11,12,15 31:5 37:9 49:5	understanding 52:20 53:18 61:8	winning 54:21
timing 31:15,17	understood 59:23,24	witnesses 4:21 40:11,13 54:25 55:2 63:3 65:15
today 9:12 19:4 20:6 21:1 22:17 23:4 24:17 27:10 33:10 42:18 58:14,18 61:1	unexecuted 31:24	won 16:24 17:17
today's 27:12	Union 10:5 52:14	word 45:22,25
told 6:23 30:22 41:3	V	work 13:22 23:11 54:11
top 16:2 17:13 27:19	valid 30:3	works 14:1 15:15
track 26:12	Vasquez 50:15,18,21,24 51:2,7,10,13,16,19,22	world 64:23
transferred 42:25	verdict 46:3,6,12,16,21	worth 15:18 24:7
transpiring 21:18	verified 9:5 17:22 32:24 62:20	wrap 61:12
trial 14:19 16:15,21,22 17:12 23:9 37:10 58:23	verify 33:2	writing 43:15 45:5
true 12:22 19:19 33:17	version 31:19,20 53:12	Y
trust 10:5 11:3,9,12,14,20 24:19,20 25:1,4,5,12 28:1,2,3,8,9,22 29:6,7,16,22 30:1,2 31:16,18,21,23,24	versions 31:23	year 7:24 19:10 41:15 57:3
		years 10:1,2

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

CASE NO.: 50-2014-CP-003698-XXXX-NB
PROBATE DIVISION: IH

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Plaintiff / Petitioner,

and

ALEXANDRA BERNSTEIN; et. al,
Defendants / Respondent.

_____/

**ORDER TO SHOW CAUSE WHY ELIOT BERNSTEIN SHOULD NOT BE HELD IN
CONTEMPT OF COURT AND ORDER SETTING HEARING**

THIS CAUSE came before the Court on Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust Motion to Hold Eliot Bernstein in Contempt of Court or Issue Order to Show Cause Against Eliot Bernstein, and for Sanctions (“Motion”) for Eliot’s Bernstein’s violation of Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

The Court, having reviewed the Motion, the court file, and having been otherwise fully advised in the premises, finds as follows:

1. On March 1, 2017, this Court entered an Order on Successor Trustee’s Motion to Appoint a Guardian ad Litem; for a Gag Order to Protect the Guardian and Others; and to Strike Eliot Bernstein’s Filings dated March 1, 2016 (the “Order” D.E. 161).

2. The Court's Order stated as follows:

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein, on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

3. Plaintiff / Petitioner's Motion proffers emails sent directly to Diana Lewis, the guardian ad litem, in direct violation of the Order. The Court concludes the Petitioner's / Plaintiff's Motion for Contempt for refusal to obey this Court's Order is well taken. It is therefore

ORDERED AND ADJUDGED, as follows:

1. ELIOT BERNSTEIN is ordered to personally appear before this Court on **Thursday, March 22, 2018 at 1:30 p.m.** in Courtroom 4 of the North County Courthouse, 3188 PGA Blvd., Palm Beach Gardens, Florida 33410, and show cause why she should not be held in contempt of this Court for willful refusal to obey its Order, attached hereto. One hour shall be reserved.

2. FAILURE OF ELIOT BERNSTEIN TO PERSONALLY APPEAR MAY RESULT IN A FINDING OF CONTEMPT OF COURT, AN AWARD OF ATTORNEY'S FEES AND COSTS AGAINST ELIOT BERNSTEIN, THE ISSUANCE OF AN ORDER STRIKING ANY AND ALL FUTURE PARTICIPATION IN THIS CASE AND/OR ANY OTHER SANCTIONS THE COURT DEEMS FIT.

3. Petitioner/Plaintiff's counsel, at his own cost, shall cause a copy of this Order to Show Cause and Order Setting Hearing to be personally served VIA SHERIFF OR PRIVATE PROCESS SERVER upon ELIOT BERNSTEIN and file proof of personal service upon receipt. The Court will reserve to award these fees against ELIOT BERNSTEIN.

4. This Court reserves jurisdiction to award such fees and costs as may be proper to Petitioner/Plaintiff.

DONE AND ORDERED in Chambers at Palm Beach Gardens, Palm Beach County, Florida, this 15th day of September, 2017.


ROSEMARIE SCHER
Circuit Judge

Copies furnished to:

SEE ATTACHED SERVICE LIST

This notice is provided pursuant to Administrative Order No. 2.207-1/15

“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”

“Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacidad del oído o de la voz, llame al 711.”

“Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye san ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Tammy Anton, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711.”

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Diana Lewis, Esq.
ADA & Mediations Services, LLC
2765 Tecumseh Drive
West Palm Beach, FL 33409
(561) 758-3017 - Telephone
Email: dzlewis@aol.com
Guardian *Ad Litem* for
Eliot Bernstein's minor children,
Jo.B., Ja.B., and D.B.

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com;
mchandler@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](http://iviewit.tv))

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**

THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises hereby

ORDERS AND ADJUDGES:

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
2016 MAR -2 PM 1:08

FILED


SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
NORTH COUNTY BRANCH

MAR 2 PM 1:09

FILED

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ ^{The} Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued^d advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." ¹ Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse + destructive to the children's interest.} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB}

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to agree on a guardian ad litem, upon notice from the Trustee's counsel the Court shall randomly

*each of the parties shall submit a list of three names of potential Guardian Ad Litem's, each of whom has agreed to accept the appointment if selected. These lists shall be filed with the Clerk with courtesy copy to the undersigned, no later than 10 days from this date.**

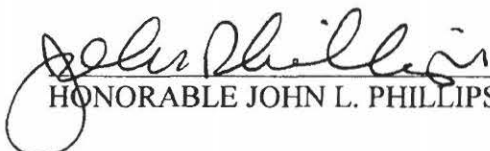
9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall ~~make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, and ~~all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

** Parties shall furnish a ^{proposed} Order appointing GAL with the lists. The Court will act without further hearing on the appointment, if possible.*

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

EBW

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.,

Defendants.

CONSENT OF DEFENDANT ROBERT L. SPALLINA

1. Defendant Robert L. Spallina ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.
2. Defendant has agreed to plead guilty to criminal conduct relating to certain matters alleged in the complaint in this action and acknowledges that his conduct violated the federal securities laws. Specifically, Defendant has agreed to plead guilty to a one count information which charges him with committing securities fraud involving insider trading in the securities of Pharmasset, Inc. in a matter to be filed in the United States District Court for the District of New Jersey (the "Criminal Action").
3. Defendant hereby consents to the entry of the Final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:
 - (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act")

[15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];

- (b) orders Defendant to pay disgorgement in the amount of \$39,156, plus prejudgment interest thereon in the amount of \$1,794; provided, however, that \$39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of \$39,156 in connection with the Criminal Action; and
- (c) orders Defendant to pay a civil penalty in the amount of \$39,156 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

4. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and

other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges that he has agreed to plead guilty for related conduct as described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this

proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

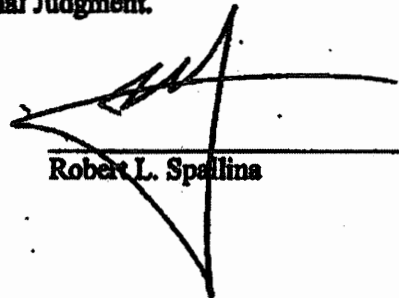
14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local

rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.


16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 9/16/15



Robert L. Spallina

On Sept 16, 2015, Robert Spallina, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.



Notary Public
Commission expires:

Approved as to form:



Lawrence S. Lustberg, Esquire
Gibbons P.C.
One Gateway Center
Newark, NJ 07102-5310
Counsel for Robert L. Spallina



Alexa Colivechio
COMMISSION # FP180462
EXPIRES: December 28, 2018
WWW.AARONNOTARY.COM

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person of such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,794; provided, however, that \$39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of \$39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of \$39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:

Sept 29, 2015

Anne E. Thompson
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ROBERT L. SPALLINA, et al.,

Defendants.

FINAL JUDGMENT AS TO DEFENDANT ROBERT L. SPALLINA

The Securities and Exchange Commission having filed a Complaint and Defendant Robert L. Spallina having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Robert L. Spallina and acknowledged that his conduct violated the federal securities laws:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$39,156, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$1,794; provided, however, that \$39,156 shall be deemed satisfied in light of Defendant's consent to the entry of a forfeiture money judgment in the amount of \$39,156 in connection with the resolution of a parallel criminal action instituted in this Court; and a civil penalty in the amount of \$39,156 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$40,950 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Robert L. Spallina as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this

Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

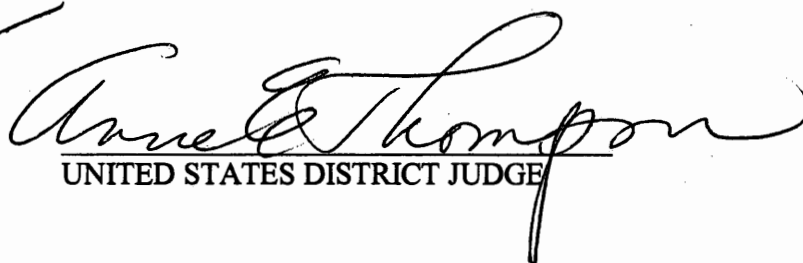
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated:

Sept 29 2015


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. ____-____

CONSENT OF DEFENDANT DONALD R. TESCHER

1. Defendant Donald R. Tescher ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 12 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78n(e)] and Rules 10b-5 and 14e-3 thereunder [17 C.F.R. §§ 240.10b-5 and 240.14e-3];
- (b) orders Defendant to pay disgorgement in the amount of \$9,937, plus prejudgment interest thereon in the amount of \$690; and

(c) orders Defendant to pay a civil penalty in the amount of \$9,937 under Section 21A of the Exchange Act [15 U.S.C. § 78u-1].

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant acknowledges that the Court is not imposing a civil penalty in excess of \$9,937 based on Defendant's cooperation in a Commission investigation and/or related enforcement action. Defendant consents that if at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement

denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

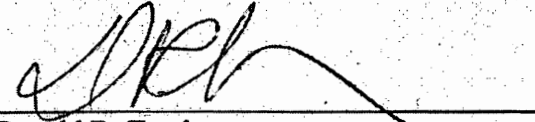
13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

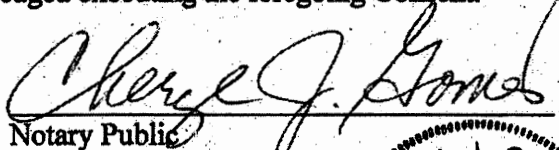
14. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

15. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

16. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

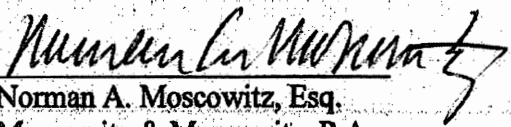
Dated: 6/5/14 
Donald R. Tescher

On June 5, 2014, Donald R. Tescher a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.


Notary Public
Commission expires:



Approved as to form:


Norman A. Moscovitz, Esq.
Moscovitz & Moscovitz, P.A.
Sabadell Financial Center
1111 Brickell Ave., Suite 2050
Miami, FL 33131

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. ___-___

FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

(i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;

(ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$690, and a civil penalty in the amount of \$9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's cooperation in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty in excess of \$9,937. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

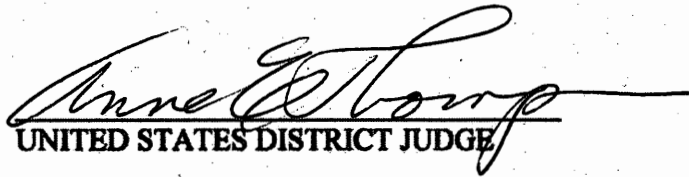
VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Oct 1, 2015


UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DONALD R. TESCHER et al.,

Defendants.

C.A. No. ___-___

FINAL JUDGMENT AS TO DEFENDANT DONALD R. TESCHER

The Securities and Exchange Commission having filed a Complaint and Defendant Donald R. Tescher ("Defendant") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein in paragraph VI); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or

instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 14(e) of the Exchange Act [15 U.S.C. § 78n(e)] and Rule 14e-3 [17 C.F.R. § 240.14e-3] promulgated thereunder, in connection with any tender offer or request or invitation for tenders, from engaging in any fraudulent, deceptive, or manipulative act or practice, by:

- (a) purchasing or selling or causing to be purchased or sold the securities sought or to be sought in such tender offer, securities convertible into or exchangeable for any such securities or any option or right to obtain or dispose of any of the foregoing securities while in possession of material information relating to such tender offer that Defendant knows or has reason to know is nonpublic and knows or has reason to know has been

acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee or other person acting on behalf of the offering person or such issuer, unless within a reasonable time prior to any such purchase or sale such information and its source are publicly disclosed by press release or otherwise; or

(b) communicating material, nonpublic information relating to a tender offer, which Defendant knows or has reason to know is nonpublic and knows or has reason to know has been acquired directly or indirectly from the offering person; the issuer of the securities sought or to be sought by such tender offer; or any officer, director, partner, employee, advisor, or other person acting on behalf of the offering person or such issuer, to any person under circumstances in which it is reasonably foreseeable that such communication is likely to result in the purchase or sale of securities in the manner described in subparagraph (a) above, except that this paragraph shall not apply to a communication made in good faith

- (i) to the officers, directors, partners or employees of the offering person, to its advisors or to other persons, involved in the planning, financing, preparation or execution of such tender offer;
- (ii) to the issuer whose securities are sought or to be sought by such tender offer, to its officers, directors, partners, employees or advisors or to other persons involved in the

- planning, financing, preparation or execution of the activities of the issuer with respect to such tender offer; or
- (iii) to any person pursuant to a requirement of any statute or rule or regulation promulgated thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$9,937, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$690, and a civil penalty in the amount of \$9,937 pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]. Defendant shall satisfy this obligation by paying \$20,564 to the Securities and Exchange Commission within 14 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Donald R. Tescher as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that based on Defendant's cooperation in a Commission investigation and/or related enforcement action, the Court is not ordering Defendant to pay a civil penalty in excess of \$9,937. If at any time following the entry of the Final Judgment the Commission obtains information indicating that Defendant knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Commission may, at its sole discretion and without prior notice to the Defendant, petition the Court for an order requiring Defendant to pay an additional civil penalty. In connection with any such petition and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or any related Undertakings; (c) the allegations of the Complaint, solely for the purposes of such motion, shall be accepted as and deemed true by the Court; and (d) the

Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. Under these circumstances, the parties may take discovery, including discovery from appropriate non-parties.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant shall comply with all of the undertakings and agreements set forth therein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the Complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

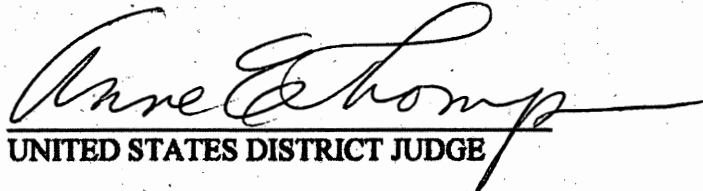
VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: Oct 1 2015


UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

Case No.: _____
District Judge: _____
Magistrate Judge: _____

JULIAN BIVINS, as Personal Representative
of the ancillary Estate of Oliver Wilson Bivins,

Plaintiff,

vs.

CURTIS CAHALLONER ROGERS, JR.,
as former guardian, STEPHEN M. KELLY,
as successor guardian, BRIAN M. O'CONNELL,
ASHLEY N. CRISPIN, CIKLIN LUBITZ &
O'CONNELL, KEITH B. STEIN,
BEYS LISTON MOBARGHA & BERLAND, LLP
f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP,
and LAW OFFICES OF KEITH B. STEIN, PLLC,
n/k/a STEIN LAW, PLLC,
Defendants.

_____ /

COMPLAINT

COMES NOW the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, by and through his undersigned counsel, and sues CURTIS CAHALLONER ROGERS, JR., the former guardian of Oliver Bivins (the "Ward"), STEPHEN M. KELLY, as successor guardian of the Ward, BRIAN M. O'CONNELL, ASHLEY N. CRISPIN, CIKLIN LUBITZ & O'CONNELL, KEITH B. STEIN, BEYS LISTON MOBARGHA & BERLAND, LLP f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP, and LAW OFFICES OF KEITH B. STEIN, PLLC, n/k/a STEIN LAW, PLLC, and says:

JURISDICTION AND VENUE

1. The Ward, Oliver Wilson Bivins, died on March 2, 2015. The Ward was a citizen of, and domiciled in, Amarillo, Potter County, Texas on the date of his death.
2. Julian Bivins (hereinafter, "Julian") is the Personal Representative of the ancillary Estate of the deceased Ward in Palm Beach County, Florida (the "Deceased Ward").
3. Curtis Rogers (hereinafter, "Rogers") is the former guardian of the Deceased Ward. Rogers resides in Palm Beach County, Florida.
4. Stephen M. Kelly (hereinafter, "Kelly") is the successor guardian of the Deceased Ward. Kelly resides in Boynton Beach, Palm Beach County, Florida.
5. Brian M. O'Connell (hereinafter, "O'Connell") resides and does business in Palm Beach County, Florida.
6. Ashley N. Crispin (hereinafter, "Crispin") resides and does business in Palm Beach County, Florida.
7. Ciklin Lubitz & O'Connell (hereinafter, "Ciklin") is a law firm with its principal place of business in Palm Beach County, Florida.
8. Keith B. Stein (hereinafter, "Stein") resides in New York, but does business in Palm Beach County, Florida.
9. Beys Liston Mobargha & Berland, LLP f/k/a Beys Stein Mobargha & Berland, LLP (hereinafter, "Beys") is a limited liability partnership doing business in Palm Beach County, Florida with its principal place of business in New York.
10. The Law Offices of Keith B. Stein, PLLC n/k/a Stein Law, PLLC (hereinafter, "Stein Law Firm") is a limited liability partnership doing business in Palm Beach County, Florida with its principal place of business in New York.

11. Stein, Beys, and Stein Law Firm committed tortious acts in Palm Beach County, Florida which resulted in the causes of actions under this complaint causing injury to the Estate of the Deceased Ward in Palm Beach County, Florida. Stein, Beys, and the Stein Law Firm expected or should reasonably have expected to have consequences in Palm Beach County, Florida because they each derived substantial revenue from the legal services they provided Rogers and Kelly from New York to Florida.

12. Plaintiff is a deemed a citizen of the State of Texas, the same state as the decedent under 28 U.S.C. § 1332 (c)(2).

13. Defendants are all citizens of states other than Texas for purposes of 28 U.S.C. §1332.

14. This is an action for money damages that exceed \$75,000.00, exclusive of interest, attorney's fees and costs.

15. Accordingly, this is a civil action which falls within the Court's original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship).

GENERAL ALLEGATIONS

16. Oliver Bivins' (hereinafter, "Oliver Sr.") first marriage was to Dorothy Bivins and they had a child, Julian Bivins.

17. In 1961, Oliver Sr. married Lorna Bivins (hereinafter, "Lorna"), a woman 25 years younger from New York.

18. In approximately 1990, when Oliver Sr. was approximately 70 years old, he and Lorna adopted a child together, Oliver Bivins, Jr. (hereinafter "Oliver Jr.").

19. At all material times during the marriage, Oliver Sr. lived in Amarillo, Texas and Lorna and Oliver Jr. lived in New York, New York at 67th Street, although for intermittent periods

of time, Lorna and Oliver Jr. resided in Palm Beach, Florida at Lorna and Oliver Sr.'s condominium.

20. On March 5, 1992, Oliver Sr. created a joint trust with Lorna to which he transferred family owned oil and mineral rights in Amarillo, Texas (hereinafter the "Joint Trust").

21. In addition to the oil and mineral rights in Amarillo, Texas, the couple owned the following four properties as follows. Lorna owned a property at 82 Portland Place in London, England (hereinafter "London Property") and a property at 67th Street in New York, New York (hereinafter "67th Street") and Lorna and Oliver Sr. owned together, as tenants by the entirety, properties at 808 Lexington Avenue, New York, New York (hereinafter "808 Lexington") and 330 South Ocean Blvd., Palm Beach, Florida (hereinafter "Ocean Blvd"). (The properties identified in this paragraph will be collectively referred to herein as "The Properties".)

22. On April 12, 2010, Oliver Sr. filed for divorce from Lorna in Amarillo, Texas seeking to dissolve the marriage and terminate the Joint Trust.

23. On July 28, 2010, the Court entered a Final Decree of Divorce and an Order Terminating the Joint Trust.

24. In the divorce, Oliver Sr. received everything, including the oil and mineral rights in Amarillo, Texas.

25. The Texas Court made no provision in its order, however, with respect to The Properties and no Guardian or other Defendant made any effort to re-open the Texas divorce proceeding to address the property rights of the parties pertaining to the Properties.

26. Lorna continued to hold the London and 67th Street properties in her name alone, although Oliver Sr. funded these properties to the extent not covered by tenants renting the properties, and the properties at 808 Lexington Avenue and 330 Ocean Boulevard, which were

held as tenants by the entirety prior to the divorce, became held by Lorna and Oliver Sr. as tenants in common.

27. Following the divorce, Oliver Sr. transferred to Julian interests owned by Oliver Sr. in several parcels of real property, including the oil and mineral rights in Amarillo, Texas and a condominium in Amarillo, Texas.

28. On or about January 5, 2011, petitions to determine incapacity for both Oliver Sr. and Lorna were filed and an emergency temporary guardian, Stephen Kelly, was appointed over their person and property.

29. Lorna passed away in February 2011, shortly after the temporary guardianship was established.

30. Oliver Jr. was appointed the personal representative of the estate of Lorna Bivins.

31. On or about May 10, 2011, the Court appointed Rogers as the limited guardian of the person and property of Oliver Sr.

Texas Settlement

32. Rogers investigated the transfers of real property from Oliver Sr. to Julian and sought approval from the Florida guardianship court to bring an action against Julian and Julian simultaneously filed an action in Texas to validate the transfers.

33. The Florida guardianship court entered an order permitting Rogers to retain counsel on a contingency basis to prosecute and defend the actions involving the transfers.

34. Rogers, with a Texas supervising guardian, was appointed in Texas as guardian of Oliver Sr.'s property in Texas.

35. On or about February 27, 2013, Julian and Rogers entered into a settlement agreement as to the Texas proceedings (hereinafter "Texas Settlement").

36. The Properties were not the subject of the Texas lawsuit and the Texas Settlement made no provision for them.

37. As part of the Texas Settlement, Julian was required to transfer back to Oliver Sr. all of the Texas real property previously transferred to Julian, except that Julian was permitted to keep the Ranch and all interim distributions and other proceeds Julian had already received from the real property.

38. The Texas properties were transferred to a trust for the benefit of Julian and Oliver Sr. (hereinafter the "Texas Trust") with Julian having a 37% interest in the Texas Trust and Oliver Sr. having a 63% interest in the Texas Trust.

39. As a major consideration for Julian entering into the Texas Settlement, Rogers was to resign as guardian of Oliver Sr. in Texas and Florida within thirty (30) days of court approval of the Texas settlement, and Steve Kelly was to serve as successor guardian.

40. Rogers was required to submit a final accounting and documents necessary to obtain an order of discharge from the Texas and Florida guardianships within 30 days of the approval of the Texas settlement by the Texas and Florida guardianship courts.

41. As part of the Texas Settlement, Rogers was released from liabilities for his errors and omissions and other breaches of his fiduciary obligation, only through the date of the Texas Settlement.

42. The Florida guardianship court approved the settlement on April 1, 2013.

New York Settlement

43. In November 2012, Rogers entered into a contingency fee/hybrid agreement with Ciklin to initiate an action in Florida requesting that the Court presiding over the Lorna estate (the "Lorna Court") give no full faith and credit to the Texas Divorce Decree, so that the Lorna Court

would deem the Properties to pass to Oliver Sr. as though he were still married to Lorna at the time of her death. (“Florida Beneficiary Petition”).

44. In or about October 2012, Rogers also engaged Keith Stein of Beys to partition the 808 Lexington property (“New York litigation”).

45. Prior to initiating the partition action of 808 Lexington, Stein had only prepared, at best, one prior partition action in the course of his more than two decades of practice.

46. At the time of the partition action, and for several years prior, 808 Lexington was encumbered by a mortgage in the original principal sum of \$850,000.00 (“808 Mortgage”).

47. By the time of the partition action, the balance of the mortgage was approximately \$387,000.00.

48. Prior to, and following the date of the Texas Settlement, Rogers failed to take any action to pay, monitor, negotiate, or prevent default, acceleration, or negative consequences to the Ward in connection with the 808 Mortgage.

49. On or about October 5, 2012, unbeknownst to Julian, and presumably because Rogers had not taken any action to manage the 808 Lexington asset or liabilities and the 808 Mortgage was in default, the son of the paralegal of Oliver Jr.’s attorney (who was also a close friend of Oliver Jr.) surreptitiously formed a corporation known as Beachton Tuxedo, LLC (“Beachton”) and acquired the 808 Mortgage via an Assignment of Mortgage (“Assignment”) for the outstanding balance owed on the mortgage.

50. As of the date of the Assignment, the notes secured by the Mortgage were in default, had been accelerated by Beachton and gave Beachton the right to foreclose on 808 Lexington. The default interest rate on the Beachton mortgage was 17%.

51. As further consideration for Beachton to acquire the 808 Mortgage and not foreclose on it, Oliver Jr., individually, and as personal representative of the Estate of Lorna, assigned to Beachton, 40% of the equity interest in 808 Lexington, which, at a bare minimum, provided Beachton with an interest of far more than a million dollars, (on a \$387,000 mortgage) yet Beachton continued to charge interest at the maximum rate allowable under the 808 Mortgage.

52. Accordingly, the assignment by Oliver Jr. resulted in a potentially usurious interest being charged by Beachton on the 808 Mortgage, or alternatively, a satisfaction of the 808 Mortgage.

53. In July 2013, Roger, as guardian for Oliver Sr., Oliver Jr., individually and as personal representative of the Estate of Lorna, and Beachton entered into a settlement agreement to settle the Florida Beneficiary Petition and the New York Litigation (hereinafter referred to as the “New York Settlement.” A true and correct copy of the New York Settlement Agreement is attached hereto as Exhibit “A” and incorporated herein by reference.

54. Pursuant to the New York Settlement, Oliver Jr. agreed to transfer to Oliver Sr. the 50% interest of the Estate of Lorna in 808 Lexington and Ocean Boulevard, such that as a result of such transfers, Oliver Sr. would own 100% fee simple interest in 808 Lexington and Ocean Boulevard.

55. The Estate of Lorna was required to satisfy all real estate taxes and related charges through May 8, 2013, and one-half of the real estate taxes and related charges from May 9, 2013, through the date immediately prior to the closing date.

56. Additionally, in connection with the New York Settlement, Oliver Jr. and Beachton agreed that the 40% interest in the 808 Lexington that Oliver Jr. had assigned to Beachton when it took over the 808 Mortgage, would be transferred to a 20% interest in the 67th Street property,

which amounted to an interest by Beachton of well over a million dollars. (The percentage change in the transfer was due to the fact that the value of the 67th Street property was significantly higher than the value of 808 Lexington.

57. Notwithstanding Beachton's acceptance of the 20% interest in 67th Street, Beachton continued to charge the maximum interest rate allowable under the 808 Mortgage, plus late fees, which combined with the 20% interest in 67th Street, constituted a usurious rate of interest, or alternatively, a satisfaction of the 808 Mortgage.

58. The closing date under the New York Settlement was to occur within ten (10) business days of the date upon which all approvals have been received from the Florida court, and each such other court. No other such court approval was required to approve the New York Settlement besides the Florida Court, which did so on September 17, 2013. Accordingly, the closing date was October 1, 2013 ("Closing Date").

59. Under the terms of the New York Settlement, Rogers, acting as guardian for Oliver Sr., agreed to waive and/or relinquish in favor of the Estate of Lorna any and all right, title, and interest in and to 67th Street and the London Property.

60. The New York Settlement required Rogers, as guardian of Oliver Sr., to pay the Beachton mortgage debt in full on or before August 31, 2013, and in exchange, Beachton agreed to continue to forebear from taking action based on the purported failure to make payments under the 808 Mortgage that Beachton purchased, including foreclosure.

61. On or about November 2014, 67th Street sold for \$22.5 million. Accordingly, Beachton's 20% interest in the 67th Street property was worth \$4.5 million.

62. Any claim by Beachton that an outstanding balance was due on the Beachton mortgage was usurious as Beachton became entitled to receive, via its 20% equity interest in 67th Street, more than five (5) times the outstanding balance owed on the 808 Mortgage.

63. Neither Rogers nor his counsel took any action to have a Court declare the 808 Mortgage acquired by Beachton as having been satisfied or otherwise usurious.

64. Moreover, despite representations to the Florida guardianship Court that they would do so, Rogers neither made any genuine efforts to procure substitute financing for the Beachton mortgage at a lower interest rate than the default rate Beachton mortgage was charging, nor undertook any action to remove the Beachton lien from the 808 property due to it being usurious or satisfied.

65. The terms of the New York Settlement, to which Julian persistently objected, provided that all interest on the mortgage debt accruing after June 30, 2013, but on or before the date the Beachton mortgage debt is paid in full, was to be payable 50% by the Estate of Lorna and 50% by Rogers, as guardian of Oliver Sr.

66. Moreover, the New York Settlement agreement provides that if “any party fails to comply with any of the party’s obligations set forth in Section 2 or 3 of this Agreement, the party to whom the obligation is owed shall have the right to enforce the terms set forth therein and the legal fees and costs incurred by the aggrieved party in enforcing such terms shall be paid by the Party found to be in breach of such terms.”

808 Lexington Management

67. Rogers remained in office as guardian for Oliver Sr. until April 23, 2014, when Kelly was appointed by the Court as successor guardian of Oliver Sr.

68. From April 1, 2013 (the date of the Florida Court's approval of the Texas Settlement) until Rogers was discharged by the Court in April 2014, as Florida guardian for Oliver Sr. (the "Interim Guardianship"), Rogers had a duty to manage 808 Lexington as a rental property.

69. From April 23, 2014 (the date Kelly was appointed by the Court as successor guardian of Oliver Sr.) until the closing of the sale of 808 Lexington by Kelly, as guardian of Oliver Sr., Kelly had a duty to manage 808 Lexington as a rental property.

70. The 808 Lexington Property consisted of four floors. The first floor was rented out by a restaurant, Fig and Olive, which generated approximately \$23,500 per month in rent. The lease for Fig and Olive was set to expire in November 2014.

71. The second floor of 808 Lexington was leased out to Pinafore Nursery and generated approximately \$3,500 per month in rent. The lease for Pinafore Nursery expired on December 31, 2010, and there was no new written lease entered into by Pinafore Nursery. Following the expiration of the lease with Pinafore Nursery, it continued to pay a monthly rent of \$3,500, notwithstanding that it was a holdover tenant without a lease.

72. The fourth floor apartment had been rented out to Kimberly Beamis for \$2,300 per month, but she vacated the premises prior to January 1, 2013 due to the failure of Rogers to maintain the unit. Thereafter, fourth floor apartment became occupied by a person related to one of the owners of Beachton for \$1,500 per month, which amount was paid to Oliver Jr. and nothing to the Rogers or Kelly on behalf of the Ward. The \$1500, to the extent it was paid, was well below market value, no lease was in place, and Rogers or Kelly failed to investigate, participate, or take any action for the benefit of the Ward pertaining to this unit.

73. The third floor tenant was evicted in either 2012 or 2013. Neither Rogers nor Kelly undertook any efforts to re-rent this unit, which had a monthly rental value of several thousand dollars.

74. Prior to the New York Settlement, Rogers should have been collecting 50% of the rental income from 808 Lexington, and should have made efforts to obtain full market rent on the second, third, and fourth floor units.

75. Following the Court's approval of the New York Settlement, Rogers should have been collecting all of the rental income from 808 Lexington. Yet, during the period of Interim Guardianship, Rogers only passively collected 50% of the rental income from Fig and Olive. Rogers and Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

76. Following his appointment as successor guardian, Kelly should have been collecting all of the rental income from 808 Lexington. Yet, until the sale of 808 Lexington, he only passively collected 50% of the rental income from Fig and Olive. Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

77. Oliver Jr. has also not paid any money to the State of New York or to Rogers or Kelly for any past due property taxes pursuant to the New York Settlement, or for the amount of property taxes on 808 Lexington from May 9, 2013, to the date immediately prior to the Closing Date.

78. Oliver Jr. has not paid any of the interest that accrued on the 808 Mortgage from June 30, 2013, until it was paid in full.

79. During the period of Interim Guardianship, Rogers also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

- a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;
- b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;
- c. Take any action to market the third or fourth floor apartments;
- d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;
- e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;
- f. Bring an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;
- g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and
- h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

80. After his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

- a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;
- b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;
- c. Take any action to market the third or fourth floor apartments;
- d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;
- e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;
- f. Bring an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;
- g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and
- h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

Due Diligence as to New York Settlement

81. Prior to entering into the New York Settlement, Rogers failed to do any type of due diligence as to the true fair market value of 808 Lexington and 67th Street, including, but not limited to, obtaining appraisals of the properties. Yet, Rogers and his counsel represented to the Florida Court that the New York Settlement was in the best interests of Oliver Sr. and that the properties were approximately equal in value.

82. On or about the Closing Date, the fair market value of 808 Lexington was approximately \$5 million and the true fair market value of 67th Street was more than \$22.5 million.

83. The fair market value of the London property has never been addressed other than in a cursory fashion by Rogers or the attorneys he hired to protect the Ward's interest, despite the property being located in the most exclusive and high priced rental district in London.

84. As a result, the estate of Oliver Sr. received assets from the New York Settlement with a value substantially less than those received by the Estate of Lorna.

COUNT I
Breach of Fiduciary Duty Against Defendants Rogers,
O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm)

85. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 84, *supra*, as if fully set forth herein.

86. During the period of the Interim Guardianship, Rogers had a fiduciary duty to Oliver Sr. to act in his best interest until Rogers was discharged as guardian, including, among other things, a duty of loyalty.

87. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm ("Counsel for Rogers") represented Rogers, in his capacity as guardian for Oliver Sr., in connection with the New York Settlement and thereafter.

88. Counsel for Rogers, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Rogers, as guardian of Oliver Sr., was for the benefit of Oliver Sr.

89. Rogers, as guardian of Oliver Sr., and Counsel for Rogers were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

90. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to, (a) properly manage 808 Lexington, (b) perform proper due diligence of the value of 808 Lexington and 67th Street to properly evaluate the fairness of the New York Settlement, (c) take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (d) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (e) seek substitute financing for the Beachton mortgage, and (f) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Rogers damaged the Estate of Oliver Sr. in contravention of Defendants' fiduciary duties.

91. At all material times, Counsel for Rogers, as guardian of Oliver Sr., owed duties to Oliver Sr. and were involved and participated in Rogers' actions or inactions, resulting in the above described damage.

92. Plaintiff was required to retain the Bleakley Bovol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Rogers, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT II

Breach of Fiduciary Duty Against Defendants Kelly, O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm

93. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 84, supra, as if fully set forth herein.

94. Following his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly had a fiduciary duty to Oliver Sr. to act in his best interest until Kelly was discharged as guardian, including, among other things, a duty of loyalty.

95. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm represented Kelly ("Counsel for Kelly"), in his capacity as successor guardian for Oliver Sr.

96. Counsel for Kelly, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Kelly, as successor guardian of Oliver Sr., was for the benefit of Oliver Sr.

97. Kelly, as guardian of Oliver Sr., and Counsel for Kelly were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

98. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to (a) properly manage 808 Lexington, (b) take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (c) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (d) seek substitute financing for the Beachton mortgage, and (e) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Kelly damaged the Estate of Oliver Sr. in contravention of Defendants' fiduciary duties.

99. At all material times, Counsel for Kelly, as successor guardian of Oliver Sr., owed duties to Oliver Sr. and were involved and participated in Kelly's actions or inactions, resulting in the above described damage.

100. Plaintiff was required to retain the Bleakley Bovol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Kelly, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

Jury Demand

Plaintiff demands a trial by jury on all issues so triable.

Dated: September 17, 2015.

Respectfully Submitted,

THE BLEAKLEY BAVOL LAW FIRM

/s/ J. Ronald Denman

J. Ronald Denman

Florida Bar Number 0863475

15170 North Florida Avenue

Tampa, FL 33613

(813) 221-3759 [Telephone]

(813) 221-3198 [Facsimile]

rdenman@bleakleybavol.com

Attorneys for JULIAN BIVINS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-81298-CIV-MARRA/MATTHEWMAN

JULIAN BIVINS, as personal representative
of the ancillary estate of Oliver Wilson Bivins,

Plaintiff,

vs.

BRIAN M. O'CONNELL, ASHLEY N. CRISPIN,
CIKLIN LUBITZ & O'CONNELL, KEITH
B. STEIN, BEYS LISTON MOBARGHA &
BERLAND, LLP and LAW OFFICES OF
KEITH B. STEIN, PLLC, n/k/a STEIN LAW PLLC,

Defendants.

_____ /

VERDICT

WE THE JURY RETURN THE FOLLOWING VERDICT:

1. Did any of the following Defendants breach a fiduciary duty owed to JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr. which was a legal cause of loss or damage to him?

- a. BRIAN O'CONNELL Yes No
- b. ASHLEY N. CRISPIN Yes No
- c. KEITH B. STEIN Yes No

2. Was there professional negligence on the part of any of the following Defendants which was a legal cause of loss or damage to JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr.?

- a. BRIAN O'CONNELL Yes No
- b. ASHLEY N. CRISPIN Yes No
- c. KEITH B. STEIN Yes No

If you answered "No" to all parts of Questions 1 and 2, your verdict is for the Defendants, and you need not proceed further, other than to sign the verdict form and return it to the court. If you answered "Yes" to any parts of Questions 1 or 2, please continue:

3. What is the amount of damages sustained by Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, Sr.?

\$16,400,000.00

4. If you awarded Plaintiff damages, did Defendants prove that they are entitled to a set-off against the amount of damages you awarded Plaintiff?

Yes No

If your answer to Question 4 is "Yes", what is the amount of the set-off?

\$ _____

If you determined an amount of a set-off, do not reduce the amount of damages you awarded in Question 3 by the amount of the set-off. The Court will make that adjustment when entering judgment in this case.

SO SAY WE ALL.

Signed and dated at the United States Courthouse, West Palm Beach, Florida, this _____

day of 28 JULY, 2017.

[Signature]
Foreperson's Signature

—

Foreperson's Printed Name _____

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 9:15-cv-81298-KAM/Matthewman

JULIAN BIVINS, as Personal
Representative of the ancillary Estate
of Oliver Wilson Bivins,

Plaintiff,

v.

BRIAN M. O'CONNELL, ASHLEY
N. CRISPIN, CIKLIN LUBITZ &
O'CONNELL, KEITH B. STEIN,
BEYS LISTON MOBARGHA &
BERLAND, LLP and LAW
OFFICES OF KEITH B. STEIN,
PLLC, n/k/a STEIN LAW, PLLC,

Defendants.

_____ /

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that L. Louis Mrachek, Esquire and Alan B. Rose, Esquire of the firm Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., enter their appearance as counsel of record for Defendant, Ciklin Lubitz & O'Connell, in the above-styled cause and request that all notices, pleadings and other papers filed in this matter be served on the undersigned counsel at the address below.

Additionally, pursuant to Florida Rule of Judicial Administration 2.516, the undersigned designates the following email addresses for the purpose of receiving pleadings, orders, and other papers filed or served in this matter:

L. Louis Mrachek, Esquire

Alan B. Rose, Esquire
MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
Phone: (561) 655-2250/Fax: (561) 655-5537
Email: lmrachek@mrachek-law.com
mchandler@mrachek-law.com
Email: arose@mrachek-law.com
mchandler@mrachek-law.com

Dated: August 24, 2017

Respectfully submitted,

s/ Alan B. Rose

L. Louis Mrachek (Florida Bar No. 182880)
Alan B. Rose (Florida Bar No. 961825)
email: lmrachek@mrachek-law.com
email: mchandler@mrachek-law.com
email: arose@mrachek-law.com
email: mchandler@mrachek-law.com
Mrachek, Fitzgerald, Rose,
Konopka, Thomas & Weiss, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
Telephone: (561) 355-6990 | Fax: (561) 655-5537
Attorneys for Ciklin Lubitz & O'Connell

CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List via transmission of Notices of Electronic Filing generated by CM/ECF.

s/ Alan B. Rose

Alan B. Rose (Florida Bar No. 961825)

SERVICE LIST

**Case No. 9:15-cv-81298-KAM/Matthewman
United States District Court, Southern District of Florida**

J. Ronald Denman, Esquire
Email: rdenman@bleakleybavol.com
The Bleakley Bavol Law Firm
15170 North Florida Avenue
Tampa, FL 33613
(813) 221-3759 - Telephone
(813) 221-3198 - Facsimile

Jeffrey A. Blaker, Esquire
Email: jblaker@conroysimberg.com
aschultz@conroysimberg.com;
earanda@conroysimberg.com
Conroy, Simberg, Ganon, Krevans, Abel,
Lurvey, Morrow & Schefer, P.A.
1801 Centrepark Drive East, #200
West Palm Beach, FL 33401
(561) 697-8088 - Telephone
(561) 697-8664 - Facsimile

Rachel Studley, Esquire
Email: rstudley@wickersmith.com
Brandon J. Hechtman, Esquire
Email: bhechtman@wickersmith.com
Wicker Smith O'Hara McCoy &
Ford, P.A.
2800 Ponce de Leon Blvd., Suite 800
Coral Gables, FL 33135
(305) 448-3939 - Telephone
(305) 441-1745 - Facsimile

Wendy J. Stein, Esquire
Email: wstein@bonnerkiernan.com
Bonner Kiernan Trebach & Crociata, LLP
1233 20th Street NW, 8th Floor
Washington, DC 20036
(202) 712-7000 - Telephone
(202) 712-7100 - Facsimile