

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.

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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:

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6 APPEARING ON BEHALF OF TRUSTEE TED BERNSTEIN:

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

13

14 Brian M. O'Connell, Esq.  
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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:

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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	
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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           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 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.)  
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STATE OF FLORIDA  
COUNTY OF PALM BEACH

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Dated this 27th day of October, 2017.



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