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## IN THE FIFTEENTH J UDICIA L CIRCU IT COURT

1. IN AND FOR PALM BEACH COUNTY , FLORIDA
2. CASE NO: 502012CP004391 XXXXN BIH

4

## IN RE:

1. ESTATE OF SIM ON L. BERNSTEI N ,

7 *I*

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## 10 Proceed i ng s befor e th e Honora bl e

11 ROSEMARI E SCHER

12

13 [EXCERPT - OPENI NG STATEM ENTS]

14

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16 Thu rsd ay , Febr uary 1 6, 201 7 17 31 88 PGA Bou l evard

1. Nort h County Cou rthouse
2. Pal m Beac h Gard ens , Fl ori d a 3341 0 20 2:38 p. m . - 4:46 p. m .

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1. Report ed by:

Li sa M ud ri ck , RPR , FPR

1. Notary Publ i c , State of Fl ori da

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## APP EARANCES:

* 1. On behal f of Wi l l i am E. Stansb u ry: PETER M. FEAMAN , P.A.
  2. 3695 West Boy nton Beac h Bou l evard Sui te 9
  3. Boy nton Beac h , Fl ori d a 33436 BY: PETER M . FEAMAN , ESQU IRE
  4. (Mkoskey@feam anl aw.com)

J EFFR EY T. ROYER , ESQU IRE

* 1. (J royer@feam an l aw.com) NANCY E. GU FFEY, ESQU IRE
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## On beh al f of Ted Bernstei n:

1. M RACH EK FITZG ERA LD ROSE KONOPKA THOMAS & WEISS, P.A.
2. 505 South Fl ag l er Dri v e , Sui te 600 West Pal m Beach , Fl ori da 33401

1 1 BY: A LAN B. ROSE , ESQU IRE

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12 M ICHAEL W. KRANZ, ESQU IRE

(Mkranz@m rachek - l aw. com)

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1. On behal f of th e Personal Repr esentat i ve of the Estate of Si m on Bernstei n:
2. CIKLIN LUBITZ MARTENS & O'CON N ELL

515 Nort h Fl ag l er Dri v e , 1 9th Fl oor 1 6 West Pal m Beach , Fl ori da 33401

BY: BRIAN M . O'CON N ELL , ESQUI RE

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18

On behal f of El i ot Bernstei n' s m i nor ch i l d ren:

1. ADR & M EDIATI ON SERVICES, LLC 2765 Tecumseh Dri ve
2. West Pal m Beach , Fl ori da 33409 BY: THE HONORAB LE DIANA LEWIS
3. (Dzl ewi s@aol .com)

22

## On behal f of El i ot Bernstei n:

23 ELIOT I. BERNSTEI N , p ro se (Iv i ewi t@i v i ewi t. tv)

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1 P R 0 C E E D I N G S

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3 \* \* \* \* \* \* \*

4 OPEN ING STATEM ENTS

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6 M R. FEAMAN: Thank you , You r Honor. M ay

1. i t pl ease th e Cou rt. Peter Feaman on beh al f of
2. Wi l l i am Stansbu ry. M y remarks are by way of an
3. open i ng statement at th i s ti me , You r Honor , i n
4. connect i on wi th You r Hon or's ord er , case 1 1 man agement conference and ord er speci al l y 12 setti ng h eari ng s.
5. As You r Honor noted , we are d eal i ng wi th
6. Stansbu ry's mot i on , docket ent ry 496 , and

1 5 Stansbu ry' s rel ated moti on to d i sq u al i fy Al an

16 Rose and h i s l aw fi rm , d ocket entry 508.

1 7 The story and p rem i se , You r Honor , for

18 th i s i s th at th e person al representat i ve of the

1. Si mon Ber nstei n estate , Bri an O'Connel l , h as a
2. fi d uci ary d u ty to al l i nterested persons of th e
3. estat e. And that' s fou nd i n Fl ori da Statut e
4. 733.602(1 ) where i t states a person al
5. rep resentati v e i s a fi d u ci ary , and i n the l ast
6. sentence , a person al rep resen tati ve shal l use
7. the authori ty conferred by th i s code , the

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1. aut hor i ty i n th e wi 1 1 , i f any , and th e
2. au thori ty of any ord er of th e Cou rt , q u ote , for
3. the best i nterests of i nterest ed persons ,
4. i ncl ud i ng cred i tors , cl ose q uote.
5. M r. Stansbu ry i s an i nteresti ng
6. i nterested person to th e Est ate of Si mon
7. Ber nstei n as wel l as a cl ai m ant i n th i s case.
8. Interest i ng - - i n terested persons - - yes ,
9. h e i s an i nteresti ng p erson. But i nterested
10. persons i s d efi ned , You r Honor , i n Fl ori da
11. Statute 731 .201 (23) wh i ch states that an
12. i nterested person m eans , q uote , any person who
13. may reasonabl y be expected to be affect ed by
14. th e outcom e of the part i cu l ar proceed i ng
15. i nvol ved .
16. The ev i d ence wi l l show that M r. Stansbu ry



1. cl earl y fal l s i nto th at category.
2. The second part of ou r p resentat i on , You r
3. Hon or , wi l l th en i nvol ve th e presentat i on of
4. ev i d ence to show th at i n fact th ere i s a
5. confl i ct of i nterest. And th en part th ree
6. of confl i ct of i nterest of M r. Rose and h i s l aw
7. fi rm represen ti ng the estate i n th i s case.
8. And th i rd l y , th at the confl i ct of
9. i nterest , th e ev i d ence wi l l show , i s not

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1. wai v abl e.
2. The part i es' ch art , wh i ch we d i d and
3. subm i tted to You r Honor wi th ou r packag e l ast
4. week , i s the col or ch art , I have an ext ra copy
5. i f You r Honor does not h av e i t.
6. THE COURT: I bel i eve i t i s
7. M R. FEAMAN: For th e Cou rt's conv en i ence.
8. TH E COURT: I bel i eve i t i s i n - - I know I

9 h ave i t. An d I know I h ad i t. Oh , got i t. I 10 knew i t was i n one of my notebooks. Thank you .

11 M R. FEAMAN : Thank you.

12 Now, th e sum m at i on of th e posi ti on of the 13 part i es i n connect i on wi th what the ev i d ence

14 wi l l show, You r Honor , sh ows th at we are h ere

15 obv i ousl y on th e Estate of Si mon Bernstei n , and 1 6 the pro posed attor ney i s Al an Rose. That's th e 1 7 box at th e top. The two proceed i ngs th at are

1. eng aged wi th regard to th e estate ri gh t now i s
2. th e Stansb u ry l i ti gati on agai nst th e estate
3. wh i ch i s wh erei n i t i s p roposed th at M r. Rose
4. and h i s l aw fi rm d efend the estate i n that
5. case.
6. And more si g n i fi cantl y , You r Honor ,
7. beca use i t real l y wou l d n' t m atter wh at th e
8. oth er l i ti gati on i s th at M r. Rose i s bei ng

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1. asked to d efend , beca use mor e si gn i fi cantl y i s
2. th e orange box on th e ri g ht , wh i ch I wi l l cal l
3. for the pu rposes of th i s l i ti g ati on the Ch i cago
4. l i ti g ati on . And i n that act i on th ere are a
5. num ber of pl ai nt i ffs , one of wh om i s Ted
6. Ber nstei n i nd i v i d u al l y. And th e ev i d ence wi l l
7. show i n th i s case th at Al an Rose repr esents Ted
8. Ber nstei n i nd i v i d u al l y , not on l y i n oth er
9. m atters , b ut he actu al l y appea red i n a
10. d eposi ti on on behal f of M r. Ber nstei n
11. 1 i nd i v i d ual l y i n th at Ch i cago l i ti gati on , m ade 12 object i ons to q u est i ons. And the ev i dence wi l l 13 show th at he actual l y on a num ber of occasi ons
12. i nst ructed M r. Ber nstei n not to answer certai n
13. q uest i ons th at were d i rected to M r. Ber nstei n



1. by counsel for the Est ate of Si mon Bernstei n.
2. In th at Ch i cago l i ti gati on we wi l l p resent
3. to You r Honor cert i fi ed copi es of pl ead i ngs
4. from the Ch i cago l i ti gati on th at shows the
5. fol l owi ng : That Ted Bernstei n , amon g oth ers ,
6. sued an i nsu rance com pany to recover
7. ap proxi mat el y $1 .7 mi l l i on dol l ars of l i fe
8. i nsu rance proceed s. M r. Stansbu ry beca m e aware
9. th at th at l i ti gati on was goi ng on , and moved to
10. i ntervene i n that l awsui t. M r. Stansbu ry was

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1. d en i ed .
2. So th e ev i d ence wi l l show that h e was abl e
3. to prevai l u pon Ben Brown , and Ben Brown moved
4. on beh al f of th e estate when h e was curator to
5. i nterv ene. And i n fact th e Estat e of Si mon
6. Ber nstei n - -

7 M R. ROSE: M ay I object for a second?

1. THE COURT: Leg al object i on?
2. M R. ROSE: That h e i s com pl etel y

10 m i sstati ng th e record of th i s Cou rt and the 1 1 proceed i ng s before J ud ge Col i n.

12 THE COURT: You wi l l hav e an opport u ni ty 13 to respon d and expl ai n i t to me.

14 M R. FEAMAN : Than k you , You r Honor.

1. An d th e ev i d ence wi l l sh ow th at th e Estate
2. of Si mon Bernst ei n i s now an i nterven or
3. defend ant , and th ey fi l ed th ei r own i ntervenor
4. com pl ai nt seeki ng to recover that sam e $1 .7
5. mi l l i on dol l ars th at Ted Ber nstei n i s seeki ng
6. to recover as a pl ai nti ff i n that sam e act i on .
7. So th e ev i dence wi l l sh ow th at M r. Rose
8. represents Ted Bernst ei n. Ted Ber nstei n i s
9. adverse to the estate. And now M r. Rose seeks
10. to rep resent th e estate to wh i ch h i s pr esen t
11. cl i ent , Ted Ber nstei n , i s adverse i n th e

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1 Stansbu ry l i ti gati on , wh i ch i s why we are

2 th ere. N ow - -

1. THE COURT: Wai t. Sl ow down one second .
2. M R. FEAMA N: Sure.
3. THE COURT: That i s som eth i ng you repeated
4. several ti mes i n you r mot i on , but I wan t you to
5. state i t one mor e ti m e for m e sl owl y.
6. M R. FEAMA N: Yes. The Ch i cago l i ti gat i on
7. one of th e pl ai nti ffs i s Ted Bernst ei n
8. i nd i v i d u al l y. The Estate of Si mo n Bernstei n

11 has now i nterven ed i n that act i on. And Ted 12 Bernstei n as pl ai nti ff i s seeki ng to recover 13 $1 . 7 m i l l i on d ol l ars.

1. Ad v ersel y , the Estate of Si mon Bernst ei n
2. seeks to recover th at same $1 .7 m i l l i on dol l ars
3. and i s arg ui ng u p there that i t shoul d not go 1 7 to the pl ai nti ffs but shoul d go to the estate. 18 So th ey are one h und red percen t adv erse ,
4. th at wou l d be Ted Ber nstei n and the Estate of
5. Si mon Bernstei n .
6. And M r. Rose repr esents Ted Bernstei n , and
7. now seeks to rep resent th e estate i n a
8. si mi l ar - - i n an act i on agai nst th e estate , and
9. th ey are bot h goi ng on at th e sam e ti me. Thus ,
10. the confl i ct i s an attor ney cannot repr esen t a

9

* 1. pl ai nt i ff i n an act i on , wh ether h e i s counsel
  2. of record i n th at act i on or not , that 's adv erse
  3. to the Estate of Si mon Bernstei n , and at th e
  4. sam e ti m e d efen d th e Estate of Si mon Bernst ei n
  5. wh en h e h as a cl i ent that i s seeki ng to d ep ri ve
  6. the estate of $1 .7 mi l l i on dol l ars.
  7. Now, i f Ted Bernstei n and the oth er
  8. pl ai nt i ffs i n th at case wer e monetary
  9. ben efi ci ari es of th e estate , I suppose i t coul d 10 be a wai v abl e confl i ct. However , th at' s not

1. the case.
2. That d rops us to the th i rd box on th e - -
3. the fou rth box on the cha rt , wh i ch i s the g reen
4. one , wh i ch d eal s wi th th e Si mon Bern stei n 15 Trust. The Si m on Ber nstei n Trust i s th e



16 resi d ual ben efi ci ary of th e Si mon Ber nstei n 1 7 estate. An d once the estate capt u res th at

1. money as a resu l t of the Ch i cago l i ti gati on , i f
2. i t does , th en th e t rust wi l l event u al l y acced e
3. to that money after pay m ent of cred i tors , one
4. of wh i ch wou l d be or coul d be my cl i ent.
5. An d who are th e benefi ci ari es of th e
6. trust? So we h ave th e one ben efi ci ary of the
7. Si mon Bernstei n estate , th e Si mon Bernstei n
8. Trust , and who are th e benefi ci ari es of th e

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1 trust? N ot the ch i l d ren of Si m on Ber nstei n .

1. N ot Ted Bernstei n. But th e g rand ch i l d ren of
2. Si mon Bernstei n , some of wh om are ad u l ts and
3. some of wh om are m i nors i n th i s case. Such
4. that i f th e estate prev ai l s i n th e Ch i cago
5. l i ti gati on , even assum i ng M r. Stansbu ry wasn' t
6. around m aki ng h i s cl ai m agai nst the estate , i f
7. al l of th e d i stri but i ons were fi nal l y m ade wh en
8. the estate wi ns th at Ch i cago l i ti gati on , none 10 of i t wi l l ever end u p i n th e h and s of Ted

11 Ber nstei n as pl ai nti ff. The onl y way

12 M r. Bernstei n can get th at m oney i s to prev ai l 13 as a pl ai nti ff i n th e Ch i cago l i t i gati on.

1. M r. Rose rep resents M r. Bernstei n , and
2. th erefore there' s a confl i ct , and i t' s a 1 6 non - wai va bl e confl i ct.

17 An d i n my fi nal argum ent wh en I d i scuss 1 8 the l aw, I wi l l suggest to th e Cou rt th at the

1. con fl i ct th at's presented befor e the Cou rt i s
2. i n fact com pl etel y non - wai v abl e.
3. TH E COURT: Befor e you si t down , I wan t
4. you to add ress one th i ng that' s been rai sed i n
5. thei r responses. An d that i s why d i d i t take
6. you so l ong to fi l e i t?

25 M R. FEAMA N: I fi l ed i t as soon as I

11

1 beca m e aware th at th ere was a con fl i ct. For

1. exam pl e , when th e ord er that we are seeki ng to
2. set asi de was entered , I was not aware th at the
3. Rose l aw fi rm represented Ted Ber nstei n i n th at
4. Ch i cago act i on. M y cl i ent then b roug ht i t to
5. my attent i on. And as soon as we d i d th at , I
6. mov ed to set asi d e the ord er beca use i t becam e
7. appa rent that th ere was a cl ear confl i ct.
8. Beca use i n i ti al l y , as I tol d Bri an
9. O'Connel l , M r. Stansb u ry can't d i ctate wh o th e 1 1 estate wi shes to h i re as i ts attorneys unl ess , 12 as i t tu rns out , th at attor ney represen ts
10. i nterests that are adverse to the estate. And
11. th at's wh en we fi l ed our moti on to set asi d e. 15 I got possessi on of the deposi ti on that

16 wi l l be offered tod ay. The deposi ti on reveal ed 1 7 to m e what I hav e sum mari zed h ere tod ay , th i s 18 after noon , and then we moved to set asi de the

1. ord er. An d th en we th oug ht th at wasn' t enough ,
2. we shoul d do a form al mot i on to d i sq u al i fy ,
3. wh i ch we d i d .
4. The ch ronol ogy of th e fi l i ngs, th e mot i on
5. to v acate , I am not su re exact l y wh en that was
6. fi l ed , bu t i t wasn' t too l ong after the ent ry
7. of the Septem ber 7th ord er , and th en the mot i on

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1 to d i sq ual i fy cam e after th at. An d - -

2 THE COURT: It was fi l ed October 7th .

1. M R. FEAMAN: Pardon me?
2. THE COURT: It was fi l ed Octo ber 7th.

5 M R. FEAMAN: Okay. The mot i on to vacat e?

1. THE COURT: Yes.
2. M R. FEAMAN: Correct. We h ad to do ou r
3. d ue d i l i gence. We got th e copy of th e
4. deposi ti on , and moved . Beca use we don't get 10 copi es of th i ngs th at go on up there on a
5. routi ne basi s.
6. THE COURT: Okay. I just wan ted to ask 13 what your posi ti on was. Okay. Al l ri g h t.
7. Than k you.
8. Open i ng?
9. M R. ROSE: As a th reshol d m atter , I th i nk 1 7 even thoug h th i s i s an ev i denti ary h eari ng , you 18 are goi ng to recei v e some docum entary evi d ence ,
10. I don't th i nk th ere' s a real need for l i ve
11. testi mony , i n other word s , from wi tnesses. N o ,
12. no.

22 THE COURT: Okay.

1. M R. ROSE: I am adv i si ng you. I am not
2. aski ng you r opi n i on of i t.
3. THE COURT: Thank you .

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## 1 M R. ROSE: I am advi si ng you. I have

2 spoken to M r. Feam an.

1. THE COURT: Okay.
2. M R. ROSE: So I don't know th ere' s goi ng

5 to be l i v e wi tnesses.

1. THE COURT: Okay.
2. M R. ROSE: He h as seven docum ents or ei g h t
3. documen ts h e wou l d l i ke to put i n ev i dence , and
4. I wou l d be h appy i f th ey just wen t i nto

10 ev i d ence ri gh t now.

11 THE COURT: He can d eci d e h ow h e wants to

1. do h i s case.
2. M R. ROSE: Okay.
3. THE COURT: You can do you r open i ng .
4. M R. ROSE: I th i nk we are goi ng to be
5. m aki ng one l ong l eg al arg ument wi th documen ts ,
6. so.
7. THE COURT: Okay. Well , l et' s d o an

19 open i ng and then.

1. M R. ROSE: Let m e start from th e beg i n n i ng
2. then .

22 THE COURT: Okay.

23 M R. ROSE: So we are h ere tod ay , and th ere

1. are th ree mot i ons that you sai d you woul d t ry
2. to d o tod ay. An d I don' t have any doubt you

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1. wi l l get to do al l th ree tod ay g i ven how m uch
2. ti m e we h ave and p rog ress we are m aki ng and the
3. amo u nt of ti m e M r. Feaman and I th i n k th i s wi l l
4. take.
5. THE COU RT: Okay.
6. M R. ROSE: The th ree are com pl etel y
7. rel ated . They are al l th e sam e. They are
8. th ree si des of th e sam e coi n.
9. Am I bl ocki ng you?

10 M R. O'CON N ELL: You r Honor , cou l d I step 11 to the si d e?

12 THE COURT: Yes , absol utel y.

13 M R. ROSE: You can h ave th e chart.

14 M R. O'CON N ELL: Okay.

1. TH E COURT: M r. Rose , I hav e to ask you.
2. I recei ved a , I th i nk i t was a fl ash d ri ve , and 17 i t h ad pro posed ord ers on m atters that were not 18 necessa ri l y goi ng to be h eard tod ay. I d on 't
3. th i n k I got a fl ash d i ve wi th a proposed ord er.
4. I d i d recei ve M r. Feam an' s on th ese part i cul ar
5. ord ers.
6. M R. ROSE: I don't th i n k I sent you a
7. fl ash d ri v e that I recal l .

24 TH E COURT: Okay. Bu t I d i d on the oth er

25 ones. That' s wh at seemed odd to m e.

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1 M R. ROSE: I am not aware , I am sorry.

2 TH E COU RT: Okay. That's okay. You m ay

3 p roceed .

4 M R. ROSE: There' s th ree m atters tod ay and

1. they are sort of rel ated , and they i nvol ve how
2. are we goi ng to deal wi th th e cl ai m by
3. M r. Stansbu ry agai nst th e Estat e of Si mon
4. Ber nstei n.
5. An d th ere are cu rrentl y th ree separate
6. p roceed i ng s. There' s a p roceed i ng i n Il l i noi s.

11 It' s al l taki ng pl ace i n Il l i noi s. There' s th e 12 p robate p roceed i ng wh i ch we are here on wh i ch

13 i s the Estate of Si mon Bernstei n. And there' s 14 the Stansbu ry l i ti gati on that i s pen d i ng i n

1. ci rcu i t court. It 's just been reassi gned to
2. J ud ge M arx , so we now have a judge , and th at
3. case i s goi ng to p roceed forward . It's set for 18 tri al , I bel i eve , i n J u l y to Septem ber
4. ti m eframe.
5. So the fi rst th i ng you are asked to d o
6. tod ay i s to reconsi der a val i d court ord er
7. entered by J ud ge Ph i l l i ps on Septem ber the 7th .
8. We fi l ed our mot i on i n August , and they had 30
9. d ays , more than 30 days befor e th e heari ng to
10. obj ect or contest th e mot i on to appoi nt us.

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1 The genesi s of the moti on to appoi nt us

1. was wh at happened at med i at i on . We had a
2. med i at i on i n th e summ er. The part i es si g ned a
3. wri tten med i ati on settl em ent ag reement. We
4. h av e asked You r Hon or at next week' s heari ng to
5. app rove th e m ed i at i on settl ement ag reement. It
6. i s si g ned by every si ng l e one of the ten
7. g rand ch i l d ren or th ei r cou rt - appoi nted g ua rd i an
8. ad l i tem , Di ana Lewi s , wh o h as now been
9. approv ed by th i s Court , u phel d by th e 4th
10. Di stri ct , and u ph el d by the Suprem e Cou rt th i s 12 week. So I th i nk i t' s safe to say that she' s 13 goi ng to be h ere.

14 So th e settl emen t ag reem ent i s si gned by 15 al l of those peo pl e. It's si g ned by my cl i ent

16 as the trustee. It's al so si g ned by fou r of 17 th e fi ve ch i l d ren , excl ud i ng El i ot Bernstei n .

1. And as part of th i s , once we h ad a
2. settl em ent , there was a d i scussi on of how do we
3. get th i s rel ati vel y mod est estate to th e fi n i sh
4. l i ne. An d th e bi g gest i m ped i m ent g etti ng to
5. th e fi n i sh l i ne i s th i s l awsu i t. U nti l th i s
6. l awsui t i s resol ved , h i s cl i ent i s someth i ng .
7. We can debate what he i s. He cl ai ms to be an
8. i nterested person. I th i nk tech n i cal l y u nd er

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1. l aw he i s a cl ai man t. J u d ge , I th i nk even
2. J udge Col i n ru l ed h e was not a cred i tor and
3. d eni ed h i s moti on to remov e and d i squ al i fy Ted
4. Ber nstei n as trustee. That was pen d i ng and
5. there' s an ord er th at does that a l ong ti m e
6. ago. If I coul d approac h?
7. TH E COURT: Sure.
8. M R. ROSE: I d on't h ave the d ocket ent ry
9. n um ber. Th i s i s i n th e court fi l e. Th i s was
10. J udge Col i n on Aug ust 22nd of 2014.

11 THE COURT: I saw i t.

12 M R. ROSE: H e has been tryi ng to remov e m e 13 and M r. Ber nstei n for l i ke al most th ree or fou r

14 years now. But th at's on l y si gn i fi cant because 15 h e i s not a cred i tor. He i s a cl ai m ant. So

16 wh at we want to do i s we want to get h i s cl ai m 1 7 to the fi n i sh l i ne.

1. So I am not tal ki ng about anyth i ng that
2. h ap pen ed at m ed i ati on. M ed i at i on i s now over.
3. We h ave a si g ned settl ement ag reement.
4. M r. Stansbu ry part i ci pat ed i n the med i ati on ,
5. but we d i d not make a settl ement wi th h i m.
6. Okay.
7. So as a resu l t of th e m ed i ati on , al l the
8. oth er peo pl e , everybod y that' s a ben efi ci ary of

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1 th i s estat e com i ng togeth er and si gn i ng a

1. wri tten ag reement , th ose sam e peo pl e as pa rt of
2. th e wri tten ag reem ent sai d we wan t th i s case to
3. fi n i sh , and how are we goi ng to do th at.

5 Wel l , l et's see. M r. Stansbu ry i s the

1. pl ai nti ff repr esented by M r. Feam an. The
2. estat e was represen ted by - - do you?
3. TH E COURT: No.
4. M R. ROSE: I can g i v e you one to hav e i f 10 you want to m ake notes on .

11 THE COURT: I woul d l i ke th at. I woul d 12 l i ke that very m uch.

13 M R. ROSE: That' s fi ne. I h av e two i f you

1. wan t to h ave one cl ean and one wi th notes.
2. THE COURT: Thank you.
3. M R. ROSE: You wil l recal l - - I d on't wan t
4. to tal k out of school because we deci ded we
5. weren' t g oi ng to tal k out of school . But I got
6. M r. Feaman' s - - l i ke I d i d n't have a ch ance to
7. even get thi s to you beca use I had n' t seen h i s
8. u nt i l after you r dead l i ne , b ut.
9. TH E COURT: Th i s i s d emonst rat i ve.
10. M R. ROSE: Okay.

24 TH E COU RT: He can p u l l up som eth i ng new

25 d emonst rati v e as wel l .

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1 M R. ROSE: M r. - - ori g i nal l y the d efen d ant

1. here ori g i nal l y was assi g ned wh en he was al i v e.
2. Wh en h e d i ed h i s estate was su bst i tu ted i n. He
3. h i red counsel . H i s cou nsel d i d n' t do m uch i n
4. the case beca use I d i d al l th e work beca use I
5. was rep resent i ng th e compan i es , Ted Bernstei n
6. and anoth er t rust. An d i n J an uary of 201 4 th e
7. PRs of th e estat e resi g ned total l y un rel ated to
8. th i s.
9. So i n th e i nteri m between the ori g i nal PRs 1 1 and th e appoi ntm ent of M r. O'Con nel l , we h ad a 12 cu rator. The cu rator fi l ed pa pers , wh i ch I
10. fi l ed , i t's i n the fi l e , bu t I hav e sent i t to
11. You r Honor , wh ere h e admi ts , h e states th at h e

1 5 wanted to stay th e l i ti gati on but he states

16 that I have been doi ng a g reat job represen ti ng 1 7 h i m and h e h asn 't even had to h i re a l awyer yet 18 beca use h e i s just pi ggybacki ng on th e work I

1. am doi ng .
2. I represen ted i n th i s l awsui t th e v ery one
3. that M r. O'Connel l wants to retai n my fi rm to
4. h and l e. And he wants i t wi th th e consent - -
5. and one th i ng h e sai d was th at th ere' s some
6. peo pl e th at aren' t here. Ev ery si ng l e person
7. who i s a ben efi ci ary of th i s estate wan ts my

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1 fi rm to hand l e th i s for the reasons I am about

1. to tel l you. And I don't th i n k th ere's any
2. d i spu te about i t.
3. I was th e l awyer that represen ted th e mai n
4. com pany LIC and AI M . Those are th e shorth and s
5. for th e two com pan i es. M r. Stansb u ry was at
6. one poi nt a ten percen t stockhol der i n these
7. com pan i es. He gav e h i s stock back. Ted
8. Ber nstei n wh o i s my cl i ent , and th e Sh i rl ey
9. Ber nstei n trust , I rep resented al l th ese peopl e 1 1 i n the case for abo ut 1 5 or 1 8 mon th s before we 12 settl ed . I coul d be off on th e ti mi ng . Bu t I 13 d i d al l th e d ocumen ts , th e prod uct i on ,
10. i nterv i ewed wi tnesses , i ntervi ewed every bod y
11. you coul d i nterv i ew. Was pretty m uch read y to
12. go to tri al oth er th an we had to take th e
13. d eposi ti on of M r. Stansb u ry , and th en he h ad 18 some d i scovery to do.

19 We wen t and we settl ed ou r case. Beca use

1. we h ad a g ap , beca use we d i d n' t have a PR at
2. the ti me , we were i n the cu rator peri od ,
3. M r. Brown was u nwi l l i ng to do anyt h i ng , so we
4. d i d n't settl e th e case.
5. So M r. O'Con nel l was appoi nted , so he i s
6. now th e personal represen tat i v e. He doesn' t

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1 know the fi rst th i ng abou t the case. No

1. offense. I m ean , h e cou l d n' t. You know , i t's
2. not expected for h i m to know the fi rst thi ng
3. abo ut i t. I don't m ean the fi rst th i ng . But
4. h e doesn't know m uch abo u t th e case or the
5. facts.
6. We h ad d i scussi ons abou t h i ri ng someone
7. from h i s l aw fi rm to d o i t. I met som eone from
8. h i s l aw fi rm and p rov i ded som e basi c
9. i nform ati on , but noth i ng real l y happen ed . We 1 1 wer e hopef ul we' d settl e i n J u l y. We d i d n' t 12 settl e.
10. So th ey sai d th e ben efi ci ari es wi th
11. M r. 0'Con nel 1 's consent we wan t M r. Rose to
12. beco me the l awyer and we wan t M r. Ted Bernstei n

16 to become the admi n i strator ad l i tem.

17 Now, why i s th at i m port ant? That's th e

18 second mot i on you are goi ng to hear , but i t 's

19 ki nd of i m portant.

1. TH E COURT: That' s the one Ph i l l i ps
2. d eferred?
3. M R. ROSE: Wel l , wh at h appen ed was
4. M r. Feam an fi l ed an objecti on to i t t i mel y.
5. A nd i n an abu nd ance of caut i on because i t m i g ht
6. req u i re an ev i dent i ary or more ti me th an we

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1. h ad , J ud ge Ph i l l i ps d efer red . That was my
2. ord er. An d my m ai n goal was I wan ted to get
3. i nto th e case and so we coul d start goi ng to
4. the status conferen ces and get th i s case
5. m ov i ng . And wh at h appen ed was as soon as we
6. h ad the fi rst status conference and we started
7. the case mov i ng , u nti l we got th e moti on to
8. d i squ al i fy , and stopped and pu t th e brakes on .
9. An d th i s i s a benc h tri al , so th ere' s

10 not th i s i s l i ke m aybe arg u ment , bu t i t' s a 11 l i ttl e bi t rel ated . I bel i eve that M r. th i s

1. i s th e case they wa nt to h ap pen fi rst and
2. they' re pu tti ng th e b rakes on th i s case beca use 14 they wan t th i s case to move very sl owl y.
3. Beca use th e on l y way there's any mon ey to
4. pay

17 M R. FEAMAN: Objecti on.

18 THE COURT: Leg al objecti on?

19 M R. FEAMAN: Wh at counsel bel i eves i s not

1. appro pri ate for
2. TH E COURT: Sustai ned .
3. M R. ROSE: Okay. So th i s case - - so
4. anyway. M r. Bernstei n , Ted Be rnst ei n , Ted ,
5. Si m on and Bi l l , th at' s Ted , th e dead g uy Si mon
6. and h i s cl i ent Bi 1 1 , were th e th ree mai n

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1 sharehol d ers of a company.

2 TH E COURT: I got i t .

3 M R. ROSE: Ted and Si mon started i t. They

1. brou g h t Bi l l i n and gave h i m some stock for a
2. wh i l e. Bi l l i s su i ng for two and a hal f
3. mi l l i on d ol l ars. The onl y person al i ve on th i s
4. pl anet who knows anyth i ng abou t th i s case i s
5. Ted . He has got to be th e representat i v e of
6. the estate to d efend th e case. He h as got to 10 be si tti ng at counsel tabl e. If h e i s not at

11 counsel tabl e , h e i s goi ng to be excl ud ed u nd er 12 th e excl usi onary ru l e and h e wi l l be out i n th e 13 h al l way the wh ol e tri al . And whoever i s

1. d efend i ng th e estate won' t be abl e to do i t .
2. Th i s g uy wan ts Ted out and m e out beca use we
3. are th e onl y peo pl e th at know anyt h i ng abo ut 1 7 th i s case.

18 So why i s th at i m portan t? Wel l , i t m akes

1. i t more ex pensi ve. It m akes h i m h ave a bet ter
2. chance of wi nn i ng . That's what th i s i s about.
3. And at th e same t i m e the Il l i noi s case i s
4. real l y cri ti cal here because u n l ess th e estat e
5. wi ns the mon ey i n Il l i noi s , th ere' s noth i ng i n
6. th i s estate to pay h i m .
7. THE COU RT: I u nd erstan d .

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1. M R. ROSE: M r. O'Con nel l , I p roffer , h e
2. adv i sed m e tod ay th ere' s abo ut $285 , 000 of
3. l i q ui d asset s i n th e estate. And we are goi ng
4. to get som e mon ey from a sett l ement i f you
5. app rove i t.

6 Now, El i ot and M r. Stansbu ry wi l l p robabl y

1. object to th at. It's not for tod ay. So we
2. h ave a settl em ent wi th th e l awyers , the ones
3. that wi thd rew. So we got a l i ttl e bi t of m oney 10 from th at. But th ere' s real l y not goi ng to be 11 enoug h money i n th e estate to defend h i s case , 12 pay al l , do al l th e other th i ngs you got to do. 13 So th i s i s cri ti cal for M r. Stansbu ry.

14 So th e ori g i nal PR , the g uys that

1. wi thd rew, th ey refused to pa rti ci pate i n th i s
2. l awsu i t beca use th ey knew the facts. They knew 17 the tru th . They m et wi th Si mon. They d rafted 18 h i s d ocum ents. So th ey were not part i ci pat i ng
3. i n th i s l awsu i t .
4. M r. Feam an stated i n h i s open i ng th at h i s
5. cl i ent tri ed to i nterv ene. So Bi l l tri ed to
6. i ntervene d i rectl y i nto Il l i noi s , and th e
7. Il l i noi s jud ge sai d , no thank you , l eave.
8. So wh en these guys wi thd rew we got a
9. cu rator. The curator I object ed

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1 TH E COURT: M r . Brown?

2 M R. ROSE: Ben Brown. He was a 1 awyer i n

1. Pal m Beac h , a v ery ni ce m an. H e passed away i n
2. th e m i dd l e of th e l awsu i t at a very young age.
3. But he - - th e i m porta nt th i ng - - I i nter ru pt ed ,
4. and I apol og i ze for object i ng . I d i d n' t know
5. wh at to do. Bu t M r. Brown d i d n't say , h ey , I
6. want to get i n th i s l awsu i t i n Il l i noi s ; l et me
7. jum p i n h ere. M r. Feaman and M r. Stansb u ry
8. fi l ed a moti on to req u i re M r. Brown to 1 1 i nterv ene i n th e case.

12 THE COURT: In th e federal case?

13 M R. ROSE: In the federal case i n

14 Il l i noi s. Beca use i t 's cri ti cal for

1. M r. Stansb u ry , i t's cri ti cal for M r. Stansb u ry
2. to g et th i s mon ey i nto th e estate.

17 THE COURT: Into th e estate , I und erst and .

1. M R. ROSE: Okay. So we had a h eari ng
2. before J ud ge Col i n , a rat her contested h eari ng
3. i n front of J ud ge Col i n. Ou r posi ti on was very
4. si m pl e - - one of the th i ngs you wi l l see , my
5. cl i ent' s goal s on every one of th ese cases are
6. exactl y th e same. M i n i m i ze ti m e , mi n i mi ze
7. expense , m axi mi ze d i stri b ut i on . So we have the
8. sam e goal i n every case.

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* 1. Al l th e confl i ct cases you are g oi ng to
  2. see al l d eal wi th si tu ati ons wh ere th e l awyers
  3. h ave antagoni sti c app roach es and they want - -
  4. l i ke i n one case h e h as , i t' s one l awsui t the
  5. l awyer wa nts two opposi te resu l ts i nsi de th e
  6. same l awsu i t for two d i fferent cl i ents. That's
  7. compl etel y d i fferent. An d even th at case ,
  8. wh i ch i s th e Stapl es case , i t was two to one.
  9. There was a judg e that d i ssented and sai d , 10 l ook , I u nd erstand wh at you are sayi ng , bu t 11 there's sti l l not real l y a confl i ct th ere. 12 Bu t ou r g oal s are th ose goal s.

13 So wh at we sai d to J ud ge Col i n i s we th i nk 14 the Il l i noi s case i s a l oser for the estate.

1. We bel i eve th e estate i s goi ng to l ose. The
2. l awyer wh o d rafted th e testamentary documen ts 17 h as g i v en an affi d av i t i n th e Il l i noi s case

18 sayi ng al l h i s d i scussi ons were wi th Si mon.

1. The jud ge i n Il l i noi s who d i d n't h ave th at wh en
2. h e fi rst ru l ed h ad th at recent l y , and h e d eni ed
3. thei r sum mary ju dgmen t i n Il l i noi s. So i t' s
4. goi ng to tri al . But that l awyer was th e
5. ori g i nal PR , so h e wasn' t br i ng i ng the su i t.
6. M r. Brown says , I am not touch i ng th i s.
7. So we h ad a h eari ng , and th ey forced M r. Brown

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1. to i nterv ene wi th certai n cond i ti ons. And one
2. of the cond i ti ons was very l og i cal . If our
3. g oal i s to save mon ey and M r. Stansbu ry ,
4. M r. Feaman 's cl i ent , i s goi ng to pay th e cost
5. of th i s , he wi l l get i t back i f h e wi ns , th en
6. we got no object i on anymore , as l ong as h e i s
7. fund i ng the l i t i gati on . He i s th e on l y guy wh o
8. ben efi ts from th i s l i t i gati on. No ne of the
9. the ch i l d ren and th e g rand ch i l d ren th ey don't 10 real l y care.

1 1 J ud ge Lewi s represen ts El i ot's th ree ki d s 12 versus El i ot. The mon ey ei ther goes to El i ot 13 or h i s th ree ki d s. She' s on board wi th , you

1. know, we don't wan t to waste estate fu nd s on
2. th i s. Ou r goal i s to keep the money i n the
3. fam i l y. He wants the mon ey.

17 Th i s i s Amer i ca. He can fi l e th e l awsu i t.

18 That's g reat. But th ese peo pl e shoul d be abl e

1. to d efend th emsel ves h owever th ey choose to see
2. fi t. Bu t th e cri ti cal th i ng abou t th i s i s
3. M r. Brown d i d n' t do anyt h i ng i n h ere. J ud g e
4. Col i n sai d , you can i nterven e as l ong as he i s
5. pay i ng th e bi l l s. And th at's an ord er. Wel l ,
6. th at ord er was entered a l ong ti m e ago. It was
7. not ap peal ed .

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* 1. So one of th e th i ngs , the th i rd th i ng you
  2. are bei ng asked to do tod ay i s v acat e that
  3. ord er , you know. And I d i d put i n my mot i on ,
  4. and I d on't know i f i t was ad homi nem toward
  5. M r. Feaman , i t real l y was h i s cl i ent , h i s
  6. cl i ent i s d ri v i ng th i s pace. H e i s d ri v i ng us
  7. to zero. I mean , we started th i s estate wi th
  8. over a mi l l i on dol l ars. He has foug h t
  9. everyt h i ng we d o every d ay. It's not just
  10. El i ot. El i ot i s a l ot of th i s. M r. Stansb u ry 11 i s d ri v i ng us to zero as q u i ckl y as possi bl e. 12 So i n the Il l i noi s case the estate i s

1. rep resented by Stamos and Trucco. They are
2. h i red by , I th i n k , Ben Brown b ut was i n 15 consul tati on wi th M r. Feam an. They
3. com m u n i cated th e d ocum ents wi l l come i nto
4. ev i d ence. I am assum i ng he i s goi ng to pu t th e 18 docu men ts on h i s l i st i n ev i dence.
5. You wi l l see e - m ai l s from M r. Stamos from
6. th e Stamos Trucco fi rm , th ey e- mai l ed to
7. M r. O'Connel l , and th ey copi ed Bi l l Stansbu ry
8. and Peter Feam an beca use th ey are d ri v i ng the
9. Il l i noi s l i ti gati on . I d on't care. They can
10. d ri v e i t. I th i nk i t 's a l oser. They th i n k
11. i t' s a wi n ner. We' l l fi nd out i n a tri al .

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* 1. They are su pposed to be pay i ng th e bi l l s.
  2. I th i n k th e ev i dence wou l d show h i s cl i ent' s i n
  3. v i ol at i on of J u d ge Col i n' s ord ers beca use h i s
  4. cl i ent h asn' t pai d th e l awy er al l th e money
  5. that' s d u e. An d M r. O'Connel l , I th i n k , can
  6. test i fy to th at . I d on't th i nk i t 's a d i sp uted
  7. i ssue. Bu t the l awyer' s been pai d 70 and h e i s
  8. owed 40, wh i ch m eans M r. Feaman' s cl i ent i s
  9. ri g h t now tech n i cal l y i n v i ol ati on of a cou rt 10 ord er.

1 1 I h ave asked n umerous ti mes for them to 12 g i v e m e th e i nform ati on. I just got i t th i s 13 mor ni ng . Bu t I guess I can fi l e a m oti on to

14 hol d h i m i n contem pt for v i ol ati ng a cou rt 15 ord er.

16 But i n th e Ch i cago case the pl ai nti ff i s 17 real l y not Ted Bernstei n , al though h e proba bl y 18 nom i nal l y at some poi nt was l i sted as a

1. pl ai nt i ff i n th e case. Th e pl ai nt i ff i s th e
2. Si mon Bernstei n 1 995 i rrevocabl e l i fe i nsu rance
3. trust. Accord i ng to the record s of the
4. i nsu rance company , th e on l y person nam ed as a
5. ben efi ci ary i s a d efu nct pensi on pl an that wen t
6. away.

25 **TH E** COURT: N et somet h i ng net someth i ng ,

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30

1. ri g h t?
2. M R. ROSE: Ri g ht. And th en th e resi d ual
3. ben efi ci ary i s th i s trust. An d th ese are
4. th i ngs Si m on - - he fi l l ed out one desi g nat i on
5. form i n '95 and h e named th e 95 trust.

6 THE COURT: Bu t th ere's no paperwork ,

7 ri g h t?

8 M R. ROSE: We can't fi nd th e pa perwork.

9 Not me. It was not m e. I h ave noth i ng to do 10 wi th i t. I sai d we. I wan ted to correct the

11 record beca use i t wi l l be fl own u p to Il l i noi s. 12 Whoever i t i s can't fi nd th e paperwork.

1. So there' s a proceed i ng , and i t h appens i n
2. every cou rt , and th ere' s Il l i noi s proceed i ngs
3. to d eterm i ne how d o you prov e a l ost trust.
4. Th i s l awsu i t i s goi ng to g et resol ved one 17 way or the oth er. Bu t i n th i s l awsu i t the 95 18 t rust Ted Ber nst ei n i s th e t rustee , so h e
5. al l owed , thoug h under th e terms of the trust i n
6. th i s case , and we ci ted i t to you twi ce or
7. th ree ti m es , u nd er Secti on 4J of the trust on
8. pag e 1 8 of the Si mon Ber nstei n Trust , i t says
9. that you can be th e trust ee of my trust , Si mon
10. sai d you can be th e trust ee of my trust even i f
11. you have a d i fferent i nterest as a trustee of a

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1 d i fferent trust. So th at's not real l y an

1. i ssue. An d u p i n Ch i cago Ted Bernstei n i s th e
2. t rustee of the 95 t rust. H e i s represen ted by
3. the Si mon l aw fi rm i n Ch i cago.
4. I h ave never appeared i n court. He i s
5. g oi ng to put i n al l ki nd s of record s. M y nam e
6. never appears - - I hav e th e docket wh i ch h e
7. sai d can come i nto ev i d ence. I d on't appea r on
8. the d ocket.

10 Now, I have to know abo ut th i s case th ough

11 beca use I rep resent th e trustee of th e

12 ben efi ci ary of th i s estate. I'v e got to be 13 abl e to ad v i se h i m. So I know al l abou t h i s 14 case. And h e was goi ng to be d eposed .

1. Guess who was at h i s deposi ti on? Bi l l
2. Stansb u ry. Bi l l Stansbu ry was at h i s
3. deposi ti on , sat ri g ht across from me. El i ot , 18 who i s not h ere tod ay , was at th at d eposi ti on ,
4. and El i ot got to ask q uest i ons of h i m at th at
5. d eposi ti on . He wan ted m e at th e d eposi ti on .
6. He i s putt i ng th e deposi ti on i n ev i d ence. If
7. you stud y the d eposi t i on , al l you wi l l see i s
8. on four occasi ons I obj ected on wh at g round s?
9. Pri v i l ege. Be carefu l what you tal k abo ut ; you
10. are reveal i ng attorney / cl i ent pri v i l ege.

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1 That' s al l I d i d . I d i d n' t say , gee , don't

1. g i v e th em th i s i nform ati on or th at i nform at i on .
2. And i f I object ed i ncorrect l y , th ey shoul d have
3. gone to th e jud ge i n Il l i noi s. And I gu arantee
4. you th ere' s a federal jud ge i n Il l i noi s that i f
5. I h ad objected i m p roperl y woul d h ave overru l ed
6. my object i ons. I i nst ructed h i m to protect h i s
7. attor ney / cl i ent pr i v i l ege. That 's wh at I was
8. th ere for , to adv i se h i m and to defend h i m at 10 d eposi ti on and to protect h i m. That' s al l I

11 d i d i n th e Il l i noi s case. And th at i s over. 12 Now, I am root i ng l i ke crazy th at th e 13 estate l oses th i s case i n one sense beca use

14 that' s wh at every bod y th at i s a ben efi ci ary of

1. my t rust wan ts. But I cou l d care l ess how th at
2. tu rns out , you know, from a l egal stand poi n t. 17 I don't have an appearance i n th i s case. And

18 everyon e u p there i s represented by l awyers.

1. So wh at we hav e now i s we h ave th i s moti on
2. wh i ch seeks to d i sq ual i fy my l aw fi rm. We
3. sti l l h ave th e object i on to Ted serv i ng as th e
4. admi n i strator ad l i tem. And I th i nk those two
5. ki nd of go h and i n hand .
6. There' s anot h er com pon ent you shou l d know
7. abou t th at mot i on. But as I tol d you , ou r

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1 g oal s are to red uce expense.

1. The reason that every bod y wanted Ted to
2. serv e as the adm i n i strator ad l i tem , so he
3. wou l d sort of be th e represent ati v e of th e
4. estate , beca use he sai d h e wou l d d o th at for
5. free.
6. TH E COU RT: I rem em ber.
7. M R. ROSE: M r. O'Con nel l i s a

9 professi onal . He i s not goi ng to si t th ere for 10 free for a one - week , two - week ju ry tri al and

11 prepare and si t for d eposi ti on . That's enoug h 12 m oney - - just h i s fees al one si tti ng at tri al 13 are enoug h to just i fy everyt h i ng - - you know, 14 i t's a si g n i fi cant amou nt of mon ey.

1. So that' s wh at 's at i ssu e tod ay.
2. But th ei r mot i on for open i ng statem ent , 17 and I real i ze th i s i s goi ng to overl ap , my

18 oth er wi l l be

19 TH E COURT: Wh i ch mot i on?

20 M R. ROSE: The d i squal i fi cati on .

1. THE COU RT: I wasn' t sure.
2. M R. ROSE: I got you. That was sort of
3. fi rst u p. Al l ri g ht. So I am back. That' s
4. the backg round . You g ot the backg round for the
5. d i sq ual i fi cati on mot i on. Th i s i s an adv ersary

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1. i n l i ti g ati on tryi ng to d i squal i fy m e.
2. I th i nk i t i s a m ean - spi ri ted mot i on by
3. M r. Stansb u ry d esi g ned to creat e chaos and
4. d i sord er and rai se th e expense , m aybe force th e
5. estate i nto a posi t i on wh ere th ey h ave to
6. settl e , beca use now th ey don't have a
7. represen tat i ve or an attor ney that knows
8. anyt h i ng abo u t th e case.
9. M R. FEAMAN : Object i on.
10. TH E COURT: Leg al obj ect i on?

1 1 M R. FEAMAN : Comm ents on the mot i vat i on or

12 i ntent i on of opposi ng counsel i n open i ng 13 statement i s not p roper.

14 TH E COURT: I wi l l al l ow i t on l y - - m ean 15 spi ri ted I wi l l stri ke. The other comm ents I

16 wil l al l ow beca use und er Rul e 4- 1 .7, and I may 1 7 be m i sq uot i ng , but i t i s one of th e two ru l es 18 we h ave been l ooki ng at und er the Fl ori d a Bar ,

1. th e com m entary speci fi cal l y tal ks about an
2. adv erse party mov i ng to d i squal i fy and th e
3. strateg y m ay be em pl oyed . So I wi l l al l ow th at
4. port i on of h i s arg ument , stri ki ng mean
5. spi ri ted .

24

25 the

M R. ROSE: Okay. If you tu rn to tab 2 of we , I th i nk , sent you a very th i n

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1. bi nd er.
2. THE COURT: Yes , you d i d .

3 M R. ROSE: We h ad al ready sent you th e

4 m assi v e book a l ong ti m e ago.

1. THE COURT: Yes.
2. M R. ROSE: And I th i n k al l I sent you was

7 the very th i n bi nd er. If you tu rn to Tab 2.

8 THE COURT: In any other worl d th i s wou l d

1. hav e been a n i ce si zed bi nd er. In th i s
2. part i cul ar case you are i nd eed correct , th i s i s 11 a very th i n bi nd er.

12

13 2240

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15

M R. ROSE: Okay. If you fl i p to pag e

THE COURT: I am just teasi ng you , sorry. M R. ROSE: wh i ch i s abo u t fi v e or si x



16 pag es i n.

17 THE COURT: Yes.

18 M R. ROSE: Th i s i s wh ere a confl i ct i s

1. ch arged by op posi ng party.
2. THE COURT: Yes.

21 M R. ROSE: It's pa rt of Ru l e 4 - 1 . 7 . These

1. two ru l es h ave a l ot of overl ap.
2. And I wou l d poi nt for th e record I d i d not
3. say th at M r. Feam an was mean spi ri ted . I
4. speci fi cal l y sai d m ean spi ri ted by h i s cl i ent.

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* 1. THE COURT: Thank you .
  2. M R. ROSE: So confl i cts ch arg ed by the
  3. opponen t , and th i s i s just war n i ng you that
  4. th i s can be used as a techn i q ue of h arassm ent ,
  5. and th at' s wh y I am tyi ng th at i n .
  6. But th e i m porta nt th i ng s are I h ave never
  7. rep resented M r. Stansbu ry i n any m atter.
  8. General l y i n a confl i ct of i nterest si tuati on
  9. you wi l l see I represen ted h i m. I d on't have 10 any confi d ent i al i nformat i on from

1 1 M r. Stansbu ry. I hav e onl y tal ked to h i m 12 d u ri ng h i s d eposi ti on . It wasn' t very

13 pl easan t. And i f you d i squal i fy m e to some 14 d eg ree my l i fe wi l l be fi ne , beca use th i s i s

1. not th e most fu n case to be i nvol v ed i n . I am
2. doi ng i t beca use I rep resent Ted and we are 1 7 tryi ng to do wh at' s ri ght for th e

18 ben efi ci ari es.

19 THE COURT: Appearance for the record .

1. Someone just came i n.
2. M R. ELIOT BERNSTEI N: H i . El i ot Iv an
3. Ber nstei n.

23 TH E COURT: Thank you.

24 M R. ELIOT BERNSTEI N: I am pro se , m a' am.

25 THE COURT: Thank you. You may p roceed .

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1. I just wanted the cou rt report er to know.
2. M R. ELIOT BERNSTEI N: Thank you , You r
3. Honor.

4 M R. ROSE: I don't have any confi d enti al

1. i nformati on of M r. O'Con nel l . He i s th e PR of
2. th e estate. I don't know anyt h i ng abou t
3. M r. O'Connel l th at wou l d com promi se my abi l i ty
4. to h and l e th i s case. I am not su re h e and I
5. h ave ever spoken abou t th i s case. But i n
6. ei th er case , I don't h ave any i nformati on .

1 1 So I can' t even u nd erstand why they are

12 sayi ng th i s i s a confl i ct of i nterest. But th e 13 ev i d ence wi l l show, i f you l ook at th e way

1. th ese are set up , these are th ree separate
2. cases , not one case. An d not h i ng I am doi ng i n
3. th i s case cri ti ci zes wh at I am d oi ng i n thi s 17 case. Not h i ng I am d oi ng - - th e outcom e of

18 th i s case i s whol l y i nd epen d ent of th e outcom e

1. of th i s case. He cou l d l ose th i s case and wi n
2. th i s case. He coul d l ose th i s case and l ose
3. th i s case. I m ean , th e cases h ave noth i ng to
4. d o wi th th e i ssues.

23 Wh o g ets th e i nsu rance proceed s? Bi l l

1. Stansb u ry i s not even a wi tn ess i n th at case.
2. It h as not h i ng to d o wi th th e i ssue over h ere ,

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1. h ow m uch m oney d oes Bi l l Stan sb u ry g et? So
2. you 'v e got whol l y u n rel ated , an d th at's th e
3. oth er part of th e Ru l e 4 - 1 . 9 and 4 - 1 . 7 , i t
4. tal ks abou t wh eth er th e m atters are u n rel ated .
5. And I g u ess when I arg ue th e statu te I wi l l
6. arg u e th e statu te for you .
7. At best what th e ev i d ence i s goi ng to show
8. you - - and I am not tryi ng to wi n th i s on a
9. tech n i cal i ty. I want to wi n th i s l i ke u p or 10 d own and mov e on. Because th i s estat e can't 1 1 th i s d el ay was tort u re to wai t th i s l ong for 12 th i s h eari ng .

13 Bu t i f I showed u p at Ted 's d eposi t i on ,

14 and I p rom i se you I wi l l never show u p agai n , I 15 am out of th at case , th i s i s a confl i ct of

16 i nterest wi th a former cl i ent. I h ave ceased

17 represen ti ng h i m at h i s d eposi ti on . He i s 18 n ever goi n g to be d eposed ag ai n . If i t's a

19 confl i ct of i n terest wi th a former cl i ent , al l

1. th ese th i ngs are th e p rerogati ve of th e former
2. cl i ent. They are not th e prerog ati v e of th e
3. new cl i ent. The n ew cl i ent i t 's not th e i ssue.
4. So i f I repr esen ted Ted i n h i s d eposi ti on , I
5. cannot rep resent anot h er perso n i n th e same or
6. a subst ant i al l y rel ated m atter .

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* 1. So I can't represent th e estate i n thi s
  2. case beca use I sat at Ted 's d eposi ti on , u n l ess
  3. th e former cl i ent g i v es i nformed consen t. He
  4. coul d sti l l say , h ey , I don't care , you do the
  5. Il l i noi s case for the estat e. I wou l d n't do
  6. that , bu t th at' s wh at the ru l e says. Use
  7. i nform ati on. There's no i nform at i on. I am not
  8. even g oi ng to waste you r ti m e. Reveal
  9. i nform ati on. So th ere' s no i nform at i on . If
  10. th i s i s th e ru l e we are travel i ng u nd er , you

1 1 d eny th e m oti on and we go h om e and move on and 12 g et back to l i ti gati on . If we are travel i ng

1. u nd er th i s ru l e , I can not u nder 4 - 1 . 7 - -
2. M R. FEAMA N: Excuse m e , You r Honor , th i s
3. sounds mor e l i ke fi nal argum ent than i t does
4. open i ng statement wh at th e ev i d ence i s goi ng to

17 show.

18 TH E COU RT: Ov erru l ed .

19 M R. ROSE: So u nd er 4 - 1 . 7, except as i n b ,

1. and I am tal ki ng abou t b because that' s may be
2. th e onl y pi ece of ev i d ence we m ay need i s the
3. wai v er. I h ave a wri tten wai v er. I th i nk i t
4. has i nd epend ent l egal si g n i fi cance. Because i f
5. I obtai ned h i s wri t i ng i n wr i ti ng , I th i nk i t's
6. adm i ssi bl e just beca use M r. O'Con nel l si gned

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1 i t. But they object , they m ay object to th e

1. admi ssi on of th e wai v er , so I m ay have to p ut
2. M r. O' Con nel l on th e stand for two second s and
3. hav e h i m confi rm th at he si g ned th e wai v er
4. documen t.
5. But except i f i t's wai v ed , now l et' s p u t
6. that asi d e. We nev er even get to th e wai ver.
7. The rep resentati on of one cl i ent h as to be
8. d i rect l y adv erse to anoth er cl i ent . So
9. repr esent i ng Ted i n h i s d eposi ti on i s not 1 1 has not h i ng to do - - fi rst of al l , Ted h ad

12 counsel rep resenti ng h i m d i rectl y adverse. I 13 was th ere protect i ng h i m as trustee , protecti ng 14 h i s pr i v i l eg es , getti ng read y for a tri al that 15 we h ad before J ud ge Phi l l i ps wh ere h e u phel d

16 the val i d i ty of the d ocum ents , d eterm i ned that 17 Ted d i d n' t com m i t any eg reg i ous wrong doi ng.

1. That's th e Decem ber 1 5th tri al . It's on appeal
2. to the 4t h Di stri ct. That' s wh at l ed to havi ng
3. El i ot d etermi ned to h ave no stand i ng , to J u dg e
4. Lewi s bei ng appoi nted as g u ard i an for h i s
5. ch i l d ren. That was the key. That was the onl y
6. th i ng we have accom pl i shed to mov e th e th i ng
7. forward was th at , but we had th at.
8. But th at's why I was at th e d eposi ti on ,

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* 1. but i t was not d i rectl y adv erse to th e estate.
  2. N um ber two , th ere' s a su bstant i al ri sk
  3. that the represen tat i on of one or mor e cl i ents
  4. wi l l be m ater i al l y l i m i ted by my
  5. responsi bi l i ti es to anoth er. I h ave asked th em
  6. to expl ai n to m e how m i g ht - - how wh at I want
  7. to d o h ere , whi ch i s to d efend th ese peo pl e
  8. that I hav e been d oi ng - - I hav e asked
  9. M r. Feaman to expl ai n to m e how what I am d oi ng 10 to d efend the estate , l i ke I defend ed al l these 1 1 peo pl e agai nst h i s cl i ent , coul d possi bl y be

1. l i m i ted by my responsi bi l i t i es to Ted . My
2. responsi bi l i ti es to Ted i s to wi n th i s l awsu i t , 14 save the money for h i s fam i l y , determ i ne h i s
3. fath er d i d not def rau d Bi l l Stansbu ry. So I am
4. not l i mi ted i n any way.
5. So i f you don't fi nd one or two, you d on't 18 even get to wai ver. But i f you g et to wai v er ,
6. and th i s i s ev i d en ce , i t' s one of th e - - I onl y
7. gave you th ree new th i ngs i n th e bi nd er. One
8. was th e wai ver. One was th e 57.1 05 amend ed
9. mot i on.
10. I th i nk th e si gn i fi cance of that i s after
11. I g ot th e wai ver , after I g ot a wri tten wai ver ,
12. I th oug ht th at ch anged th e g ame a l i ttl e bi t.

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## 42

1. You know, i f you are a l awyer and you fi l e a
2. mot i on to d i squal i fy - - so wh en I got th e
3. wri tten wai v er - -

4 M R. FEAMAN: You r Honor - -

1. THE COURT: Leg al object i on.
2. M R. FEAMAN: N ot part of open i ng statement
3. when you are com m enti ng on a 57 . 10 5 mot i on - -

## THE COURT: Sustai ned .

1. M R. FEAMAN: - - th at you h aven' t even seen
2. yet.

11 THE COURT: Sustai ned .

12 M R. FEAMAN: Thank you.

13 THE COURT: Sustai ned .

1. M R. ROSE: I got a wai v er si g ned by
2. M r. O'Connel l . I h ad h i s permi ssi on , but I got
3. a formal wri tten wai v er. An d i t was after ou r 17 fi rst h eari ng , and i t was after - - so I sent i t 18 to M r. Feaman .
4. But i f you l ook u nder th e ru l e , i t's a
5. cl earl y wai v abl e confl i ct. Because I am not
6. taki ng an antag oni sti c posi ti on sayi ng l i ke th e
7. work I d i d i n th e oth er case was wrong or th i s
8. or that.
9. An d i f you l ook at th e rul es of
10. professi onal cond uct agai n , and we' l l do i t i n

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1. cl osi ng , b ut I am th e one wh o i s sup posed to
2. d eci d e i f I h ave a mater i al l i m i tati on i n th e
3. fi rst i nstan ce. That's wh at th e ru l es d i rect.
4. You r Honor rev i ews th at. Bu t i n th e fi rst
5. i nstance I d o not h ave any m ateri al l i m i tat i on
6. on my abi l i ty to represent th e estate
7. v i gorousl y , wi th al l m y h eart , wi th everyt h i ng
8. my l aw fi rm' s resou rces , and wi th Ted 's
9. knowl ed ge of th e case and th e facts to d efend
10. h i s case , th ere i s no l i m i tati on and th ere' s no 1 1 substan ti al ri sk th at I am not goi ng to do th e 12 best job possi bl e to t ry to protect the estate 13 from th i s cl ai m .

14 An d I th i nk we wou l d ask th at you d eny th e 15 mot i on to d i squ al i fy on th e ground s that

16 th ere' s no confl i ct , and th e wai v er for 17 M r. O'Con nel l wou l d resol v e i t.

1. An d we al so wou l d l i ke you to ap poi n t Ted
2. Bernstei n. There's no confl i ct of i n terest i n
3. h i m d efend i ng th e estate as i ts repr esentat i v e
4. th roug h t ri al to try to protect th e estate' s
5. mon ey from M r. Stansbu ry. It's not l i ke Ted or
6. I are goi ng to rol l over and h el p M r . Stan sbu ry
7. or sel l out th e estate for h i s ben efi t. That 's
8. wh at a confl i ct wou l d be wor ri ed abo ut. We are

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1 not taki ng a posi ti on i n - - we are not i n th e

1. case yet , obv i ousl y. If you al l ow us to
2. conti n u e i n th i s case , we are not goi ng to take
3. a posi ti on i n th i s case wh i ch i s d i fferent from
4. any posi ti on we h ave ever taken i n any case
5. beca use al l - -

7 THE COURT: J ust for th e record , for th e

8 record , I see you poi nt i ng. So you are not

1. taki ng a posi ti on i n th e Pal m Beac h ci rcui t
2. cou rt - -
3. M R. ROSE: Case.

12 TH E COURT: - - ci v i l case

13 M R. ROSE: Di fferent th an we' ve

14 TH E COU RT: that' s d i fferent than

1. p robate or even th e i nsu rance proceeds?
2. M R. ROSE: Cor rect. Di fferent from wh at 17 we d i d i n th e federal case i n Il l i noi s ,

18 d i fferent from we are taki ng i n th e pro bat e

1. case. Or mor e i m port antl y , i n fact most
2. i m porta ntl y , we are not taki ng a posi ti on
3. d i fferentl y than we took wh en I repr esented
4. oth er peo pl e i n th e same l awsu i t.
5. You h ave been i nvol v ed i n l awsu i ts wh ere
6. th ere are ei ght defend ants and seven settl ed
7. and th e l ast g uy says , wel l , gee , l et m e h i re

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* 1. th i s g uy' s l awyer , ei ther h e i s better or my
  2. l awyer just q u i t or I d on't have a l awy er. So
  3. bu t I am not taki ng a posi ti on l i ke here we
  4. were sayi ng , yeah , he was a ter ri bl e guy , h e
  5. d efraud ed you , and now we are sayi ng , oh , no ,
  6. i t' s not , he d i d n' t d efraud you. That wou l d be
  7. a confl i ct. We have d efend ed th e case by
  8. sayi ng that M r. Stansb u ry's cl ai m has no m eri t
  9. and we are goi ng to d efend i t the same way.
  10. And th en th at' s wh at we' d l i ke to do wi th 11 the Fl ori d a l i ti g ati on , and then ti me

12 perm i tti ng we'd l i ke to d i scuss th e Il l i noi s 13 l i ti gati on , because we despe ratel y need a

14 rul i ng from You r Honor on th e th i rd i ssu e you 15 set for tod ay wh i ch i s are you goi ng to vacate

16 J udge Col i n' s ord er and free M r. Stansbu ry of 1 7 the d u ty to fu nd the Il l i noi s l i ti gati on.

1. J u d ge Col i n entered the ord er. The i ssue
2. was rai sed m ul t i pl e t i mes b efore J ud g e
3. Ph i l l i ps. He wan ted to g i v e us h i s ru l i ng one
4. day , and we - - you know, h e d i d n' t. We wer e
5. supposed to set i t for hear i ng . We had
6. numero us hear i ngs set on th at mot i on , th e
7. record wi l l refl ect , and those wer e al l
8. wi th d rawn. And now that th ey h av e a new ju dge ,

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* 1. I th i nk they are comi ng back wi th th e same
  2. m oti on to be excused from th at , and th at 's th e
  3. th i rd th i ng you need to d eci de tod ay.

4 TH E COURT: Al l ri g h t.

5 M R. ROSE: U n l ess you h ave any q uest i ons.

6

7 (Open i ng statemen ts excerpt concl ud ed .)

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## 1 C E R T I F I C A T E

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## The State of Fl ori d a

1. County of Pal m Beach

6

## I , Li sa M ud ri ck , RPR , FPR , cert i fy that I

1. was aut hori zed to and d i d stenog raph i cal l y report
2. the foregoi ng p roceed i ngs , and that th e excerpted

10 transcri pt i s a true record .

11

12 Dated February 21 , 201 7.

## 13

14

15

16

17 */",'/Y*

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19 *t ; /// /V - -*

18 ( / / < */*

*/ / /7 11: I I 1·*

*:* - */ / f* .

## LISA M U DRICK, RPR , FPR

M ud ri ck Cou rt Report i ng , Inc.

1. 1 615 Forum Pl ace , Sui te 500

## West Pal m Beac h , Fl ori d a 33401

22 561 - 615- 81 81

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## IN THE FIFTEENTH J UDICIAL CIRCUIT COURT

* 1. IN AN D FOR PALM BEACH COUNTY, FLORIDA
  2. CASE NO: 502012CP004391XXXXN BIH 4

5 IN RE:

6 ESTATE OF SIM ON L. BERNSTEI N ,

7 

8

9

10 Proceed i ngs before the Honorabl e

1 1 ROSEMARI E SCHER

12

13 [EXCERPT - BRIAN O'CON N ELL TESTIM ONY]

14

15

16 Thu rsday , February 1 6, 201 7 17 31 88 PGA Bou l evard

1. Nort h County Courthouse
2. Pal m Beach Gard ens , Fl ori d a 3341 0 20 2:38 p. m. - 4:46 p. m.

21

22

1. Reported by:

Li sa M ud ri ck , RPR , FPR

1. Notary Pu bl i c , State of Fl ori d a

25

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2



## APP EARANCES:

1. On beh al f of Wi l l i am E. Stansbu ry: PETER M. FEAMAN , P.A.
2. 3695 West Boy nton Beac h Bou l evard Sui te 9
3. Boy nton Beac h , Fl ori d a 33436 BY: PETER M . FEAMAN , ESQU IRE
4. (Mkoskey@feam anl aw. com)

J EFFR EY T. ROYER , ESQU IRE

1. (J royer@fea ma n l aw.com) NANCY E. GU FFEY, ESQUI RE
2. (Ng uffeya ppeal s@bel l south . net)

8

## On behal f of Ted Ber nstei n:

1. M RACH EK FITZG ERA LD ROSE KON OPKA THOMAS & W EISS, P.A.
2. 505 South Fl ag l er Dri ve , Sui te 600 West Pal m Beac h , Fl ori da 33401

1 1 BY: ALAN B. ROSE , ESQU IRE

(Arose@m rachek - l aw.com)

12 M ICHAEL W. KRANZ, ESQU IRE

(Mkranz@m rachek - l aw. com)

13

14 On beh al f of th e Person al Representati v e of the Estate of Si mon Bernstei n:

1 5 CIKLIN LU BITZ MARTENS & O'CON N ELL

515 Nort h Fl ag l er Dri ve, 1 9th Fl oor

1. West Pal m Beach , Fl ori da 33401 BY: BRIAN M. O'CON N ELL , ESQUI RE
2. (Boconnel l @ci kl i n l ubi tz.com)

18

On beh al f of El i ot Bernstei n' s m i nor ch i l d ren :

1. ADR & M EDIATION SERVICES, LLC 2765 Tecumse h Dri v e
2. West Pal m Beach , Fl ori da 33409 BY: THE HONORABLE DIANA LEWIS
3. (Dzlewi s@aol .com)

22

## On beh al f of El i ot Bernstei n:

23 ELIOT I. BERNSTEI N , p ro se (Iv i ewi t@i vi ewi t.tv)

24

25

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3

## 1 P R 0 C E E D I N G S

2

3 \* \* \* \* \* \* \*

## 4 BRIAN O'CON N ELL TESTIM ONY

5

## 6 M R. FEAMAN: N ext I wou l d cal l Br i an

7 0'Connel 1 to th e stand .

8 THE COURT: Okay.

9

## 10 Thereupon ,

1 1 BRIAN O'CON N EL L ,

12 a wi tness , b ei ng by th e Cou rt d ul y sworn , was 13 exami ned and testi fi ed as fol l ows:

14

15

## m uch .

THE WITN ESS: I do.

THE COURT: Hav e a seat. Than k you very

1. Before we start I need si x mi n u tes to use
2. the rest room. I wi 1 1 be back i n si x mi n utes.
3. (A recess was taken. )
4. THE COURT: Al l ri ght. Cal l

21 M r. O' Con nel l . I apol og i ze. Let' s p roceed .

22 M R. FEAMAN: Thank you , You r Hon or.

23 DIRECT (BRIA N O'CON N E LL)

24 BY M R. FEAMAN:

25 Q. Pl ease state you r name.

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4

# A.

1. Q.

# A.

## Fl ori da.

5 Q.

## Br i an O'Connel l .

An d you r busi ness add ress?

51 5 N orth Fl ag l er Dri v e , West Pal m Beach ,

An d you are th e personal repr esentat i v e ,

6 th e successor personal representati v e of th e Estate

7 of Si m on Ber nstei n ; i s th at correct?

8 A .

9 Q.

## Yes.

An d I handed you d u ri ng th e break Fl or i d a

10 Statute 733.602. Do you h ave th at i n front of you?

11 A.

12 Q.

I do.

## Wou l d you ag ree wi th me , M r. O'Connell ,

1 3 that as person al representati v e of th e estate th at 14 you h ave a fi d uci ary d uty to al l i nterested persons 15 of th e estate?

16 A.

17 Q.

## To i nterested persons , yes.

Okay. Are you aware th at M r. Stansb ury ,

18 obv i ousl y , h as a l awsu i t ag ai nst the estate ,

1. correct?
2. A .

21 Q.

## Correct.

An d h e i s seeki ng d amag es as far as you

1. know i n excess of $2 m i l l i on dol l ars ; i s that
2. correct?

24 A.

25 Q.

## Yes.

Okay. An d the presen t asset v al ue of the

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5

1. estate excl ud i ng a poten ti al expecta ncy i n Ch i cago
2. I h eard on open i ng statemen t was arou nd som ewhere a
3. l i ttl e bi t over $200,000; i s th at correct?

# A.

1. Q.

# A.

1. Q.

Cor rect. And - -

Li ttl e over th at.

Okay. And you are aware that i n Ch i cago

8 the amou nt at stake i s i n excess of $1 .7 m i 1 1i on

9 dol l ars , correct?

10 A.

Yes.

11 Q. And i f the estate i s successf u l i n that

12 l awsui t th en th at money wou l d come to the Estat e of 13 Si mon Bernstei n , correct?

14 A .

Cor rect.

1. Q. And th en obv i ousl y that wou l d q u i ntu pl e ,
2. i f my mat h i s correct , th e assets th at are i n the 17 estate ri ght now; i s th at correct?
3. A. They wou l d g reatl y enhance th e val ue of
4. th e estate , whatever th e mat h i s.
5. Q. Okay. So wou l d you ag ree that
6. M r. Stansbu ry i s reasona bl y affected by the outcome
7. of th e Ch i cago l i ti gati on i f he h as an act i on
8. agai nst the estate i n excess of two m i l l i on?

24 A. Depend s h ow one d efi nes a cl ai ma nt versus

25 a cred i tor. He certai n l y si ts i n a cl ai m ant

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6

1 posi t i on . He h as an i nd epen d ent act i on.

2 Q. Ri g ht.

3 A. So on th at l evel h e wou l d be affected wi th

4 regard to what happens i n th at l i ti gat i on i f h i s

1. cl ai m m atu res i nto an al l owed cl ai m , red uced to a
2. jud gm ent i n you r ci v i l l i t i g ati on .

7 Q. So i f h e i s successf ul i n h i s l i t i gati on ,

8 i t wou l d th e resu l t of th e Ch i cago act i on , i f

9 i t's favorabl e to the estate , wou l d si g n i fi cant l y

10 i n crease th e assets that h e woul d be abl e to l ook

11 to i f he was successf u l ei th er i n the amo u nt of

1. 300,000 or i n an amou nt of two mi l l i on?
2. A. Ri g ht. If he i s a cred i tor or th ere's a

14 recovery th en certai n l y h e woul d ben efi t from th at 15 u nd er th e p robate cod e beca use then he wou l d be

16 pai d und er a certai n pr i ori ty of pay men t before

17 benefi ci ari es.

18 Q. Al 1 ri g h t. And so th en M r. Stansbu ry

1. poten ti al l y cou l d stand to ben efi t from th e resul t
2. of th e outcome of the Ch i cago l i ti gati on d epend i ng

21 u pon th e outcom e of h i s l i ti gati on agai nst the

22 estate?

23 A.

24 Q.

25 A.

Tru e. Correct? Yes.

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1 Q.

## So i n th at respect wou l d you ag ree that

1. M r. Stansb u ry i s an i nterested person i n the
2. outcom e of the est ate i n Ch i cago?

4 A . I th i n k i n a v ery broad sense , yes. But

1. i f we are goi ng to be d ebat i ng cl ai m ants and
2. cred i tors then that cal l s u pon certai n case l aw.
3. Q.

## Okay.

1. A. But I am answeri ng i t i n sort of a general

9 fi nanci al sense , yes.

10 Q. Okay. We entered i nto ev i dence Exh i bi ts 7

11 and 8 wh i ch were e - m ai l s th at were sent to you

12 fi rst by an associ ate i n M r. Stamos' s offi ce and

1. M R. FEAMAN: Coul d I app roach , You r Honor?
2. THE COURT: Yes. Do you h ave an ext ra 15 copy for h i m so I can fol l ow al ong?

16 M R. FEAMAN: I th i nk I d o.

17 THE COURT: Okay. If you d on't , no

18 wor ri es. Let me know.

19 Does anyone object to m e m ai ntai n i ng the

1. ori g i nal s so th at I can fol l ow al ong? If you
2. don't - -
3. M R. FEAMAN: I know we do.

23 M R. ROSE: If you need my copy to speed

24 th i ngs up , h ere.

25 *I l l*

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8

1 BY M R. FEAMAN :

1. Q.

## A.

4 fi rst?

5 Q.

There's ou r copi es of 7 and 8.

Wh i ch one d i d you wan t m e to l ook at

Take a l ook at the one th at cam e fi rst on

1. January 31 st , 2007. Do you see that th at was an
2. e- m ai l d i rected to you from i s i t M r. Kuy per , i s
3. that how you pron ounce h i s nam e?

9 A .

1. Q.

Yes.

Okay. On J anu ary 31 st. Do you recal 1

1. recei v i ng th i s?

## A.

1. Q.

## A.

1. Q.

Let m e take a l ook at i t. Sure.

I do remem ber th i s.

A 1 1 ri gh t. An d d i d you h ave any

1. d i scussi ons wi th M r. Kuy per or M r. Stamos
2. concern i ng you r comm ents regard i ng the Cou rt' s 18 ru l i ng wh i ch was d enyi ng th e estate' s mot i on for
3. sum mary jud gmen t?
4. A. There mi g ht hav e been anoth er e- m ai l
5. comm u n i cati on , bu t no oral com m u n i cati on si nce
6. January.
7. Q.
8. th i s?

## A.

Di d you send an e- mai l back i n response to

That I d on't recal l , and I don't have my

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* 1. record s here.
  2. Q . Okay.
  3. A. I am not sure.
  4. Q. Why d on't we take a l ook at Exh i bi t 8, i f
  5. we coul d . That' s th e e- m ai l from M r. Stamos d ated
  6. February 1 4t h to you and m e and M r. Stansbu ry. Do
  7. you see that?

1. A .
2. Q.

Yes.

And he says , "Wh at's ou r posi ti on on

10 settl ement?, " correct?

11 A.

12 Q.

Correct.

Okay. And that's beca use M r. Stamos h ad

1 3 recei v ed an e- mai l from pl ai nti ff's counsel i n 14 Ch i cago sol i ci ti ng some i np ut on a possi bl e

1. settl emen t , correct?



# A.

17 Q.

Yes.

An d wh en you recei ved th i s d i d you respond

18 to M r. Stamos ei ther oral l y or i n wr i ti ng?

19 A. Not yet. I was i n a med i ati on that l asted

1. u nti l 2:30 i n the mor ni ng yesterd ay , so I h aven' t
2. had a ch ance to speak to h i m.
3. Q. So th en you h aven' t h ad any d i scussi ons
4. wi th M r. Stamos concern i ng settl emen t - -

# A.

1. Q.

No.

si nce th i s?

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10

1 A. Not - - l et' s correct th at. Not i n terms

2 of these com m u n i cati ons.

1. Q.
2. A .

Ri g ht.

I h ave spoken to h i m prev i ousl y about

1. settl ement , bu t obv i ousl y those are pr i v i l eged that
2. he i s my counsel .

7 Q. Okay. And you are aware th at - - wou l d you

1. ag ree wi th m e th at M r. Ted Bernstei n , who i s i n th e
2. cou rtroom tod ay , i s a pl ai nti ff i n that acti on i n
3. Ch i cago?

# A.

Wh i ch act i on?

1. Q. The Ch i cago fi l ed , the acti on fi l ed by
2. M r. Bernstei n?

14 A.

15 Q.

16

17

Can you g i v e m e the com pl ai nt? Sure.

M R. FEAMAN: If I can take a l ook? THE COURT: Go ahead .

18 BY M R. FEAMAN :

1. Q. Thi s i s th e - -
2. M R. ROSE: We' l l sti pu l ate. The docum ents

21 are al read y i n ev i dence.

22

23

1. ti m e.

THE COURT: Sam e obj ect i on?

M R. ROSE: I m ean , we are tryi ng to save

1. *I l l*

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## 11

* 1. BY M R. FEAMAN:
  2. Q. Take a l ook at th e th i rd pag e.

1. (Ov erspeaki ng. )
2. THE COURT: Hol d on. Hol d on. Hol d on.

5 I h av e got everybod y tal ki ng at once. It's

6 Feam an' s case. We are goi ng u nti l 4:30. I

1. h ave al ready got one emerg ency i n the , we cal l
2. i t the Cad , that means not h i ng to you , but I am

9 tel l i ng you al l ri ght now I sai d we are goi ng 10 to 4:30.

11 THE WITN ESS: Yes , si r , Ted Bernstei n i s a

12 pl ai nti ff. 13 BY M R. FEAMAN:

1. Q.
2. A.
3. Q.

## Ind i v i d ual l y , correct?

Ind i v i dual l y and as trustee.

An d M r. Stamos i s you r attorney who

1. rep resen ts the estate , correct?
2. A.

19 Q.

## Correct.

An d th e estate i s adv erse to the

1. pl ai nti ffs , i ncl ud i ng M r. Bernst ei n , correct?
2. A. In th i s acti on , cal l i t the Il l i noi s
3. acti on , yes.

23 Q.

24 A.

25

## Correct. Okay.

THE COURT: Hol d on. One more ti me. Go

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12

1. back and say th at agai n . You are represent ed
2. by M r. Stamos?

3 THE WITN ESS: Ri g ht , i n th e Il l i noi s

4 act i on , You r Hon or.

5 THE COURT: Ri g ht.

6 THE WITN ESS: An d Ted Bernstei n

7 i nd i v i d ual l y and as trustee i s a pl ai nt i ff.

8 THE COU RT: Ri g ht , i nd i v i d ual l y and as

9 t rustee , got i t.

10 THE WITN ESS: An d th e estate i s adv erse to 1 1 Ted Bernstei n i n those capaci ti es i n th at

12 l i ti gati on . 13 BY M R. FEAMAN:

14 Q. Al l ri gh t. An d are you aware - ­

1. THE COURT: Thank you .
2. BY M R. FEAMAN:

17 Q. An d are you aware th at M r. Rose rep resents

18 M r. Ted Bernstei n i n vari ous capaci ti es?

1. A.
2. Q.
3. A .
4. Q.

23 A.

## Yes. General l y?

In vari ous capaci ti es general l y , ri g ht. Incl ud i ng i nd i v i d u al l y , correct?

That I am not - - I know as a fi d uci ary ,

1. for exam pl e , as trustee from our vari ous and sund ry
2. acti ons , Shi rl ey Bernstei n , estate and trust and so

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13

1. forth . I am not sure i nd i v i d u al l y.
2. Q. How l ong have you been i nvol v ed wi th th i s
3. Estate of Si mon Bernstei n?

# A.

1. Q.

A few years.

Okay. A nd as far as you know

1. M r. Bernstei n h as been rep resented i n wh atev er
2. capaci ty i n al l of th i s si nce th at ti me ; i s th at
3. correct?

9 A. He i s defi n i tel y - - M r. Rose h as

10 defi n i tel y represented Ted Bernstei n si nce I hav e 1 1 been i nvol v ed . I just wan t to be total l y correct 12 about exactl y wh at capaci ty . Defi n i tel y as a

13 fi d uci ary no d ou bt.

14 Q. Okay. And d i d you ever see th e d eposi ti on

1. th at was taken by you r l awyer i n th e Ch i cago acti on
2. th at was i ntrod uced as Exh i bi t 6 i n th i s act i on?

17 A.

Cou l d I take a l ook at i t?

18 Q. Sure. H ave you seen th at d eposi t i on

19 befor e , M r. O'Cd n nel l ?

1. A . I am not su re. I don't want to g uess.
2. Because I know i t's M ay of 201 5. It's possi bl e.
3. There were a num ber of documen ts i n al l th i s
4. l i ti gati on , and I wou l d be g i v i ng you a guess.

24 Q. On th at fi rst pag e i s there an ap peara nce

25 by M r. Rose on behal f of Ted Bernstei n i n th at

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14

1 d eposi ti on?

2 A.

3 Q.

Yes.

So wou l d you ag ree wi th m e th at Ted

1. Bernstei n i s adverse to th e estate i n the Ch i cago
2. l i ti gati on? You sai d th at earl i er , correct?

## A.

1. Q.

Yes.

Okay. And wou l d you ag ree wi th m e u pon

1. rev i ewi ng th at deposi ti on that M r. Rose i s
2. represen ti ng Ted Ber nstei n th ere?

10 M R. ROSE: Object i on , cal l s for a l egal

11 concl usi on .

12 TH E WITN ESS: There's an appearance by 13 h i m .

1. THE COURT: Sustai ned .
2. BY M R. FEAMAN:
3. Q. There' s an appeara nce by h i m? Wh ere d oes

17 i t show th at?

18 M R. ROSE: The objecti on i s sustai ned .

19 TH E COURT: I sustai ned the object i on.

20 M R. FEAMAN: Oh , okay. Sorry.

21 BY M R. FEAMAN:

1. Q. Now, you have not gotten - - you sai d th at
2. you wan ted to retai n M r. Rose to represent th e
3. estate here i n Fl ori d a , correct?

25 A. Yes. But I want to state my posi ti on

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15

1. preci sel y , wh i ch i s as now h as been pl ed that Ted
2. Ber nstei n shoul d be the adm i n i strator ad l i tem to
3. d efend th at l i ti gati on. And then i f h e chooses ,
4. wh i ch I expect he wou l d , em pl oy M r. Rose , and
5. M r. Rose wou l d operate as h i s cou nsel .

6 Q. Okay. So l et m e get th i s , i f I u nd erstand

1. you r posi ti on correctl y. You th i nk th at Ted
2. Bernstei n , who you h ave al ready tol d m e i s su i ng
3. the estate as a pl ai nt i ff i n Ch i cago , i t wou l d be 10 okay for h i m to come i n to th e estate that h e i s 1 1 su i ng i n Ch i cago to represent th e estate as

12 admi n i strator ad l i tem al ong wi th h i s attor ney 1 3 M r. Rose? Is th at you r posi t i on?

14 A. Here' s why , yes , b ecause of events. You

15 have an appl e and an orang e wi th respect to

16 Il l i noi s. M r. Rose and Ted Bernstei n i s not goi ng 1 7 to hav e any doesn 't h ave any i nvol v ement i n the 18 prosecut i on by the estat e of i ts posi ti on to th ose

1. i nsu rance proceed s. That's not on the tabl e.
2. THE COURT: Say i t agai n , Ted has no
3. i nv ol v em ent?
4. THE WITN ESS: Ted Bernstei n and M r. Rose
5. h ave no i nvol vem ent i n connect i on wi th the
6. estate' s posi ti on i n th e Il l i noi s l i ti g at i on ,
7. You r Honor. I am not seeki ng that. If someone

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16

1. asked m e that , I woul d say absol utel y no.
2. BY M R. FEAMA N:

3 Q. I am confused , thoug h , M r. O'Connel l .

1. Isn't Ted Bernstei n a pl ai nti ff i n th e i nsu rance
2. l i ti gati on?

6 A .

7 Q.

Yes.

Okay. A nd as pl ai nt i ff i n th at i nsu rance

1. l i ti gati on i sn't h e seeki ng to keep those i nsu rance
2. proceed s from goi ng to the estate?

# A.

1. Q.

12 A.

Ri g ht. Okay.

Wh i ch i s wh y the estate has a cont rary

13 posi ti on

14 Q.

15

16

17

So i f th e estate (Ov erspeaki ng .)

TH E COU RT: Let h i m fi n i sh h i s answer.

THE WITN ESS: It's my posi ti on as personal

18 representati v e that those proceed s shoul d come

1. i nto the estate.
2. BY M R. FEAMAN:

21 Q.

22 A.

23 Q.

Cor rect. Cor rect.

And i t's M r. Bernstei n' s posi ti on bot h

1. i nd i v i d ual l y and as trustee i n that sam e act i on
2. th at those p roceed s shoul d not come i nto th e

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17

1 estate?

2 A.

3 Q.

Ri g h t.

Correct? And M r. Ber nstei n i s not a

4 moneta ry ben efi ci ary of the estate , i s he?

5 A. As a trustee h e i s a benefi ci ary ,

1. resi d uary benefi ci ary of th e estate. And then he
2. woul d be a benef i ci ary as to tang i bl e person al
3. property.

9 Q. So on one h and you say i t' s okay for

10 M r. Bernstei n to be su i ng the estate to keep th e 11 estate from getti ng $1 .7 mi l l i on dol l ars , and on 12 th e other h and i t's okay for h i m and h i s attorney 13 to defend th e estate. So l et me ask you th i s - -

# A.

1. Q.

That' s not what I am sayi ng .

Okay. Wel l , go back to Exh i bi t 8, i f we

1. coul d .

# A.

1. Q.

Wh i ch one i s Ex hi bi t 8?

That's th e e- m ai l from M r. Stamos th at you

19 got l ast week aski ng abo ut settl ement.

1. A. The 31 st?
2. Q. Ri g ht.

22 A. Wel l , actu al l y th e Stamos e- mai l i s

1. Febr uary 1 4t h.
2. Q. Sorry , Febru ary 1 4th. And M r. Rose ri g ht
3. now has entered an ap peara nce on behal f of th e

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18

## 1 estate , correct?

2 A.

1. Q.

## A.

1. Q.

## A.

1. Q.

## A.

You h av e to state wh at case. Down here i n Fl ori da.

Wh i ch case?

The Stansbu ry act i on. The ci v i l acti on?

Yes.

Yes. You n eed to be preci se beca use

9 there' s a n um ber of acti ons and v ari ous

1. juri sd i cti ons and va ri ous cou rts.
2. Q. An d M r. Rose' s cl i ent i n Ch i cago doesn' t
3. want any money to go to the estate. So wh en you
4. are d i scussi ng settl em ent wi th M r. Stamos , are you
5. goi ng to tal k to you r other counsel , M r. Rose ,
6. about th at settl ement when he i s rep resen ti ng a
7. cl i ent adverse to you?

17 A.

18 Q.

19 A.

No.

## How do we know th at?

Because I don't do th at and hav e not done

20 th at.

21 Q.

22 A.

23

24

## So you

Ag ai n , can I fi n i sh , You r Hon or? THE COURT: Yes , pl ease.

THE WITN ESS: Thanks. Because th ere' s a

25 d i fferenti at i on you are not maki ng between

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19

1 these pi eces of l i ti gat i on. You hav e an

1. Il l i noi s l i ti gati on pend i ng i n federal cou rt
2. that h as d i screte i ssues as to who gets th e
3. proceed s of a l i fe i nsu rance pol i cy. Then you
4. h av e wh at you wi l l cal l the Stansbu ry
5. l i ti gati on , you represen t h i m , you r ci v i l
6. act i on , pend i ng i n ci rcu i t ci v i l , you r cl i ent
7. seeki ng to recov er d amag es agai nst the estate.
8. BY M R. FEAMAN:

10 Q. So M r. Rose cou l d ad v i se you as to terms

11 of settl ement , assumi ng he i s al l owed to be counsel 12 for the estate i n th e Stansbu ry act i on down h ere , 13 correct?

14 A.

1 5 Q.

Abou t th e Stansbu ry act i on?

Ri g ht , about h ow m uch we shoul d settl e

16 for , bl ah , bl ah , bl ah?

17 A.

1 8 Q.

That's possi bl e.

Okay. And part of those settl ement

1. d i scussi ons wou l d hav e to entai l how m uch money i s
2. actu al l y i n the estate , correct?
3. A . Depend s on wh at the facts and
4. ci rcumstances are. Ri g h t now, as everyon e knows I
5. th i nk at th i s poi nt , there i sn't enoug h mon ey to
6. settl e , u nl ess M r. Stansbu ry wou l d take l ess than
7. wh at i s avai l abl e. There h ave been attem pts mad e

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20

1. to settl e at m ed i ati ons and th rough comm u ni cati ons
2. wh i ch haven' t been successful . So certai nl y I am
3. not as personal representati ve abl e or goi ng to
4. settl e wi th som eone i n excess of wh at's avai l abl e.

5 Q. Correct. But th e outcom e of the Ch i cago

1. l i ti gati on coul d m ake mor e mon ey avai l abl e for
2. settl em ent , correct?

# A.

1. Q.

It i t's successf u l i t coul d .

Okay. M ay be a n u m ber that wou l d be

10 accepta bl e to M r. Stansbu ry , I don't know , th at' s 11 conjectu re , ri gh t?

1. A. Total conject u re.
2. Q. Okay.

14 A. U n l ess we are goi ng to get i nto wh at

1. settl emen t d i scussi ons hav e been.
2. Q. And at th e sam e ti me Mr. Rose , who h as 17 entered an appearance at th at deposi ti on for
3. M r. Bernstei n i n the Ch i cago acti on , h i s cl i ent has
4. an i nterest th ere not to l et that mo ney come i nto
5. th e estate , correct?

21 M R. ROSE: Object i on ag ai n to th e extent

1. i t cal l s for a l eg al concl usi on as to wh at I
2. d i d i n Chi cago. I m ean , the record s speak for
3. themsel v es.

25 TH E COURT: Cou l d you read back the

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21

1. q uesti on for me?
2. (Th e fol l owi ng port i on of the record was
3. read back. )

4 " Q . And at th e same ti m e M r. Rose , wh o

1. h as entered an appearance at th at d eposi ti on
2. for M r. Ber nstei n i n the Ch i cago act i on , h i s
3. cl i ent has an i nterest th ere not to l et th at
4. money com e i nto the estate , correct?"

9 THE COURT: I am goi ng to al l ow i t as the 10 personal repr esentati v e h i s i m pressi ons of

1 1 wh at's goi ng on , not as a l egal concl usi on 12 beca use he i s al so a l awyer.

13 THE WITN ESS: My i m pressi on based on

14 stated posi ti ons i s th at M r. Ted Bernstei n does

1. not wan t the l i fe i nsu rance proceed s to com e
2. i nto th e pro bat e estate of Si m on Bernstei n . 17 That's what h e h as pl ed .

18 BY M R. FEAMAN:

19 Q. Ri ght. And you d i sag ree wi th M r. Ted

1. Ber nstei n on th at , correct?
2. A. Yes.
3. M R. FEAMAN: Than k you.
4. CROSS (BRIAN O'CON N ELL)
5. BY M R. ROSE:

25 Q. An d notwi thstand i ng that d i sag reemen t , you

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## 22

1. sti l l bel i eve that
2. M R. ROSE: I th oug ht h e was done , I am
3. sorry.
4. M R. ELIOT BERNSTEI N: Are you done , Peter?
5. M R. FEAMAN: N o , I am not , You r Honor.
6. M R. ROSE: I am sorry , You r Honor.

7 THE COURT: That' s okay. I d i d n't th i nk

8 that you were tryi ng to.

9 M R. FEAMAN: Okay. We' l l rest .

1. THE COURT: Al l ri ght .
2. M R. FEAMAN: N ot rest . N o mor e q u esti ons.
3. M R. ELIOT BERNSTEI N: Excuse m e , You r
4. Honor.
5. BY M R. ROSE:
6. Q. An d notwi thstand i ng th e fact that i n
7. Il l i noi s Ted as the trustee of th i s i nsurance trust
8. wan ts th e money to g o i nto th i s 1 995 i nsu rance
9. trust , ri g h t?
10. A.

20 Q.

## Ri ght.

An d h e h as got an affi d av i t from Spal l i na

1. th at says th at's what Si mon wan ted , or he's got
2. som e affi d av i t he fi l ed , whatev er i t i s? An d you
3. hav e your own l awyer up th ere Stamos and Trucco ,
4. ri g ht?

25 A. Correct.

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1 Q. And not wi th stand i ng that , you sti l l

2 bel i eve that i t's i n th e best i nterests of the

3 estate as a whol e to hav e Ted to be th e

4 adm i n i strator ad l i tem and me to rep resent th e

5 estate g i ven ou r p ri or knowl edge and i nvol vemen t i n

6 th e case , ri gh t?

1. A . It's based on m aybe th ree th i ngs. It's
2. th e p ri or knowl ed ge and i nvol v ement th at you h ad ,

9 th e amou nt of m oney , l i m i ted amou nt of fu nd s th at

10 are avai l abl e i n the estate to defen d the acti on ,

11 and th en a n um ber of th e benefi ci ari es , or cal l

12 th em conti ng ent ben efi ci ari es beca use th ey are

13 trust ben efi ci ari es , have req u ested th at we consent

14 to wh at we h ave just outl i ned , ad l i tem and you r 15 represen tat i on , th ose i tems.

16 Q. And cl earl y you are adverse to

17 M r. Stansbu ry , ri ght?

18 A.

Yes.

19 Q. But i n th i s settl ement l etter you r l awy er

20 i n Ch i cago i s copyi ng M r. Stansbu ry and M r. Feam an

21 abo ut settl emen t posi ti on , ri g ht?

1. A . Correct.
2. Q. Beca use that' s the d eal we hav e ,
3. M r. Stansbu ry i s fu nd i ng l i t i g ati on i n Il l i noi s and
4. he gets to sort of be i nvol ved i n i t and h ave a say

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* 1. i n i t , how i t tu rns out? Because h e stand s to
  2. i m prov e h i s ch ances of wi n n i ng some money i f the
  3. Il l i noi s case goes the way h e wants , ri ght?

4 A.

5 Q.

Wel l , he i s pay i ng , h e i s fi nanci ng i t. So he hasn' t pai d i n ful l , ri g ht? You

6 know h e i s $40,000 i n arrears wi th the l awyer?

# A.

1. Q.

Approxi m atel y , yes.

An d there' s an ord er th at' s al ready i n

1. ev i dence , and the jud ge can hear th at l ater , but
2. okay. So
3. THE COURT: I don't hav e an order i n 12 ev i d ence.

13 M R. ROSE: You do. If you l ook at Exh i bi t

14 N um ber 2, pag e

1 5 THE COURT: Oh , i n the Il l i noi s?

16 M R. ROSE: Yes , they fi l ed i t i n Il l i noi s.

17 TH E COURT: Oh , i n th e Il l i noi s.

18 M R. ROSE: But i t's i n ev i dence now , You r

1. Honor.
2. THE COURT: Yes , I am sorry , I d i d n 't
3. real i ze i t was i n

22 M R. ROSE: I am sorry.

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

24 M R. ROSE: I was g oi ng to save i t for

25 cl osi ng .

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1 THE COU RT:

1. ord er?
2. M R. ROSE:
3. THE COU RT:
4. m i ssed .
5. M R. ROSE:
6. BY M R. ROSE:

25

In the Il l i noi s i s th e Fl ori d a

Yes.

Okay. That' s the onl y th i ng I

Ri gh t.

1. Q. The ev i d ence i t says for the reasons and
2. subject to the cond i ti ons stated on th e record
3. d u ri ng th e h ear i ng , al l fees and costs i ncu rred , 1 1 i ncl ud i ng for the curator i n connecti on wi th h i s

12 work , and any counsel retai ned by the adm i n i strator 13 ad l i tem wi l l i n i ti al l y be bor ne by Wi l l i am

1. Stansbu ry. You h ave seen that order before , ri ght?
2. A .
3. Q .

I h ave seen the ord er , yes.

And the Cou rt wi l l consi der a peti ti on to

1. pay back M r. Stansbu ry. If th e estate wi ns i n 18 Il l i noi s , we certai n l y h ave to pay back
2. M r. Stansbu ry fi rst beca use h e has fronted al l th e
3. costs , ri ght?
4. A. Absol utel y.
5. Q. Okay. So d espi te that ord er , you have
6. person al knowl edge th at he i s $40,000 i n arrears
7. wi th the Ch i cago counsel ?

25 A . I h ave knowl ed ge from my counsel .

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1. Q. Okay. That you sh ared wi th m e , though?
2. A. Yes. It' s i nform ati on everyon e has.
3. Q. Okay.
4. A. Shoul d h ave.
5. Q. Wou l d you ag ree wi th me th at you have
6. spent al most no mon ey defend i ng th e estate so far
7. i n th e Stansbu ry l i ti g ati on?

8 A . Wel l , th ere' s been some money spent. I

1. woul d n' t say no money. I h ave to l ook at the
2. bi l l i ngs to tel l you .

11 Q.

12 A.

13 Q.

Very m i n i mal . M i n i m al ? N ot a si g n i fi cant amou nt.

Okay. M i n i m al i n com pari son to what i t's

14 goi ng to cost to try th e case?

# A.

1. Q.

Yes.

Have you had th e ti m e to study al l the

1. docum ents , the deposi ti ons , th e exhi bi ts , the tax
2. retu rns , and al l the stuff that i s goi ng to need to
3. be deal t wi th i n thi s l i ti gat i on?

20 A. I hav e rev i ewed some of them. I can't say

1. rev i ewed al l of th em because I woul d h ave to
2. obv i ousl y h ave th e records here to g i v e you a
3. correct answer on that.

24 Q. And you bi l l for you r ti me wh en you do

25 th at?

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1 A .

Sure.

2 Q. And i f Ted i s not th e admi n i strator ad

1. l i tem , you are g oi ng to have to spend m oney to si t
2. th roug h a two- week tri al may be?
3. A .
4. Q.

Yes.

You are not wi l l i ng to do th at for free ,

7 are you?

# A.

1. Q.

No.

Okay. Wo ul d you ag ree wi th me that you

1. know not h i ng abou t th e rel ati onsh i p , personal
2. knowl ed ge , between Ted , Si mon and Bi l l Stansbu ry ,
3. person al knowl ed ge? Were you i n any of th e
4. m eet i ngs between them?

## A.

1. Q.
2. A .

No , not person al knowl ed ge.

Wer e you i nvol v ed i n the busi ness? No.

17 Q. Do you h ave any i dea wh o the accou n tant - -

18 wel l , you know who th e accou ntant was because they

1. hav e a cl ai m. Have you ever spoken to the
2. accou ntant about the l awsui t?

# A.

1. Q.

No.

Hav e you ever i nterv i ewed any wi tnesses

1. abou t th e l awsui t i nd epend ent of m aybe tal ki ng to
2. M r. Stansbu ry and sayi ng hel l o and sayi ng h el l o to
3. Ted?

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1 A . Or tal ki ng to d i fferent parti es , d i fferent

2 fam i l y m embers.

3 Q. N ow, d i d you si g n a wai ver , wri tten wai ver

4 form?

# A.

1. Q.

7 A.

8 Q.

Yes.

And d i d you read i t before you si gned i t? Yes.

Di d you ed i t i t substant i al l y and pu t i t

9 i n you r own wor ds?

10 A.

11 Q.

12 A.

13

Yes.

M uch d i fferent than the d raft I prepared? Seven pag es shorter.

M R. ROSE: Okay. I mov e Exh i bi t 1 i nto

14 ev i dence. Th i s i s the th ree - pag e PR statem ent 15 of h i s posi ti on.

1. M R. FEAMAN: Objecti on , i t' s cum ul ati v e
2. and i t's h earsay.
3. THE COU RT: Th i s i s h i s affi d av i t , h i s
4. sworn consen t?

20 M R. ROSE: Ri gh t. It's not cum ul at i ve.

21 It's the onl y ev i d ence of wr i tten consent.

22 THE COURT: How i s i t cum u l ati v e? That' s

23 what I was g oi ng to say.

24 M R. FEAMAN: He just testi fi ed as to why

25 h e th i n ks th ere' s no confl i ct.

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1 THE COURT: But a wri tten consent i s

1. necessary und er th e ru l es , and th at' s been
2. rai sed as an i ssue.
3. M R. FEAM AN: The rul e says th at
4. THE COURT: I m ean , whether you can wai ve

6 i s an i ssue , and I thi nk th at speci fi cal l y

7 und er four poi nt - - I am goi ng to al l ow i t.

8 Over ru l ed .

9 M R. ELIOT BERNSTEI N: Can I object?

10 THE COURT: Sure.

11 M R. ELIOT BERNSTEI N: That just cam e on

12 Febr uary 9th to m e.

13 THE COURT: Okay .

1. M R. ELIOT BERNSTEI N: They d i d n' t copy me
2. on th i s th i ng. I just saw i t.
3. THE COURT: Okay.

17 M R. ELIOT BERNSTEI N: Wh i ch ki nd of

1. actual l y exposes a h uge fraud goi ng on h ere.
2. But I wi l l get to th at wh en I get a momen t. It
3. shou l d n't be i n. I h ard l y had ti me to rev i ew
4. i t. An d I wi l l expl ai n some of that i n a
5. moment , bu t.

23 THE COURT: I am overru l i ng th at

1. objecti on. Al l docum ents were supposed to be
2. prov i d ed by the Court pu rsuant to my ord er by

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* 1. Feb ruary 9th. Th i s i s a wai v er of any
  2. pot ent i al confl i ct th at' s th ree pag es. An d i f

1. you got i t Febr u ary 9th you had suffi ci ent
2. ti m e. So overru l ed .

5 I am not sure wh at to cal l th i s ,

1. pet i ti oner's or respond ent's , i n th i s case. I
2. am goi ng to mark these as respond ent 's.
3. M R. ROSE: You can cal l i t Trustee' s 1 .
4. THE COURT: I coul d do that. Let m e m ark
5. i t.

11 (Trustee' s Exb. No. 1 , Person al 12 Represen tati ve Posi ti on Statem ent. )

13 BY M R. ROSE:

14 Q. I th i n k you al l uded to i t. But after the 15 med i ati on that was h el d i n J u l y , there were some

16 d i scussi ons wi th the ben efi ci ari es , i ncl ud i ng J udge 17 Lewi s who's a g uard i an ad l i tem for th ree of the

18 ch i l d ren , correct?

# A.

1. Q.

Yes.

And you were asked i f you wou l d consen t to

1. th i s proced u re of hav i ng me come i n as counsel
2. because

23 THE COURT: I know you are goi ng fast , but

1. you d i d n' t p re- m ark i t , so you got to g i ve me a
2. second to m ark i t.

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1 M R. ROSE: Oh , I am sorry.

2 THE COURT: That's okay.

1. I h ave to add i t to my exh i bi t l i st.
2. You m ay proceed , than k you .
3. BY M R. ROSE:

6 Q. You ag reed to th i s proced u re that I wou l d

1. becom e counsel and Ted wou l d become th e
2. admi n i strator ad l i tem because you though t i t was
3. i n th e best i nterests of the estate as a wh ol e , 10 ri ght?

1 1 A.

12 Q.

For the reasons stated prev i ousl y , yes.

And oth er th an h av i ng to g o th rough th i s

1. expensi v e p roced u re to not be d i squ al i fi ed , you
2. sti l l ag ree th at i t's i n the best i nterests of the
3. estate th at ou r fi rm be counsel and that Ted
4. Bernstei n be admi n i strator ad l i tem?

17 A. For th e d efense of th e Stansbu ry ci v i l

18 act i on , yes.

19 Q. And that' s th e onl y th i ng we are aski ng to

20 get i nvol ved i n , correct?

21 A.

Correct.

22 Q. Now, you wer e asked i f you had a fi d uci ary

1. d u ty to the i nterested persons i ncl ud i ng
2. M r. Stansbu ry , ri g ht?
3. A . I was asked th at , yes.

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1 Q. So i f you hav e a fi d uci ary d u ty to h i m ,

1. why d on't you just sti pu l ate that he can h ave a two
2. and a h al f mi l l i on dol l ar jud gment and g i ve al l the
3. mon ey i n th e estat e to h i m? Beca use just because
4. you h ave a d uty , you have m ul ti pl e d ut i es to a l ot
5. of peo pl e , correct?

## A.

Cor rect.

1. Q. And you h ave to bal ance those d ut i es and

9 do wh at you bel i eve i n you r professi onal judg men t 10 i s i n the best i nterests of th e estate as a whol e?

11 A.

1. Q.
2. A .
3. Q.

Cor rect.

An d you h ave been a l awy er for m any years? Yes.

Cor rect? And you hav e serv ed as trustee

1. as a fi d uci ary , serv i ng as a fi d uci ary ,
2. rep resent i ng a fi d uci ary , opposi ng fi d uci ary ,

17 that' s been th e b u l k of you r pract i ce , correct?

18 A. Yes , yes and yes.

19 M R. ROSE: Not h i ng fu rth er.

20 TH E COURT: Red i rect?

21 M R. FEAMAN : Yes.

1. THE COURT: Wai t a mi nute. Let m e l et
2. M r. El i ot Ber nstei n ask any q uesti ons.

24 M R. ELIOT BERNSTEI N : Can I ask h i m

25 q uesti ons at one poi nt?

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1 THE COURT: You can.

2 M R. ELIOT BERNSTEI N : You r Honor , fi rst , I

1. just wanted to g i ve you thi s and apol og i ze for
2. bei ng l ate.

5 THE COU RT: Don't wor ry about i t. Okay.

6 M R. ELIOT BERNSTEI N : Wel l , no , i t' s

1. i m portan t so you und ersta nd som e th i ngs.
2. I h ave got ten steel nai l s i n my mout h so
3. I speak a l i ttl e fu nny ri g h t now. It's been 10 for a few weeks. I wasn' t prepared beca use I 1 1 am on a l ot of med i cati on , and th at shoul d

12 expl ai n th at. But I sti l l got som e q uesti ons 13 and I woul d l i ke to h ave my . . . .

14 M R. ROSE: I woul d just state for the

1. record that h e h as been d eterm i ned to have no
2. stand i ng i n the estate proceed i ng as a 17 ben efi ci ary.

18 TH E COURT: I thought that was i n the

19 Estate of Sh i rl ey Ber nstei n .

20 M R. ROSE: It's the same ru l i ng - ­

21 (Ov erspeaki ng .)

22 THE COU RT: Pl ease , I wi l l not en tertai n

23 more th an one person.

24 M R. ROSE: By v i rtue of J u dge Ph i l l i ps'

25 fi nal judgment u phol d i ng th e docum ents, he i s

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1. not a ben efi ci ary of the resi d u ary estate. He
2. has a smal l i nterest as a one- fi fth ben efi ci ary
3. of tang i bl e person al p roperty , wh i ch i s - -
4. THE COURT: I u nd erstand .
5. M R. ROSE: Yes , h e has a very l i m i ted
6. i nterest i n th i s. And I don't know th at h e
7. TH E COURT: Wou l d n' t th at g i v e h i m
8. stand i ng , th ough?

9 M R. ROSE: Wel l , I don't th i n k for the

10 p u rposes of th e d i squ al i fi cati on by M r. Feama n 1 1 i t wou l d n' t.

1. THE COURT: Wel l , th at woul d be you r
2. arg ument , just l i ke you are arg ui ng that
3. M r. Stansbu ry d oesn't h ave stand i ng to 15 d i squal i fy you , correct?

16 M R. ROSE: Ri ght.

17 THE COU RT: So th at's an arg u m ent you can

1. rai se.
2. You m ay proceed .
3. CROSS (BRIAN O'CON N ELL)
4. BY M R. ELIOT BERNSTEI N:
5. Q. M r. O'Connel l , am I a dev i see of the wi l l
6. of Si mon?

24 M R. ROSE: Objecti on , outsi d e the scope of

25 d i rect.

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## THE COURT: That i s true. Sustai ned .

1. That was not d i scussed .
2. BY M R. ELIOT BERNSTEI N:

4 Q. Do I h ave stand i ng i n the Si m on estate

5 case - -

6 M R. ROSE: Obj ect i on , cal l s for a l egal

1. concl usi on.
2. BY M R. ELIOT BERNSTEI N:

9 Q. - - i n you r opi n i on?

10 M R. ELIOT BERNSTEI N: Wel l , h e i s a 11 fi d uci ary.

12 THE COURT: He was asked regard i ng h i s

13 thoughts regard i ng a cl ai man t , so I wi l l al l ow 14 i t. Over ru l ed .

1 5 THE WITN ESS: You have stand i ng i n certai n

16 acti ons by v i rtue of you r bei ng a benef i ci ary 17 of the tang i bl e person al pro perty.

18 BY M R. ELIOT BERNSTEI N:

1. Q.

# A.

21 Q.

## Okay , so ben efi ci ary? Ri g ht.

Okay. Thank you. Wh i ch wi l l go to th e

|  |  |  |
| --- | --- | --- |
| 22 | bi gger poi nt | of th e fraud goi ng on h ere , by the |
| 23 | way. |  |
| 24 | Ar e | you aware that Ted Bernst ei n i s a |
| 25 | defend ant i n | th e Stansb u ry act i on? |

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1 A.

2 Q.

Wh i ch Stansbu ry acti on?

The l awsu i t th at M r. Rose wan ts Ted to

3 represen t the estate i n?

4 A. I'd have to see the acti on , see the

5 compl ai nt.

6 Q .

7 A.

You h ave nev er seen the com pl ai nt?

I hav e seen th e compl ai nt , but I want to

8 make su re i t' s the same documents.

9 Q. So Ted - -

10 THE COURT: You m ust al l ow hi m to answer 11 the quest i ons.

1. M R. ELIOT BERNSTEI N: I am sorry , okay.
2. THE WITN ESS: I woul d l i ke to see i f you
3. are referr i ng to Ted Ber nstei n bei ng a
4. defend ant , i f som eone has a copy of i t.

16 M R. ROSE: Wel 1 , I object. M r. Feaman

17 knows th at he has d i smi ssed the cl ai ms agai nst

18 al l these peo pl e , and th i s i s a com pl ete waste.

1. We h ave a l i m i ted amou nt of ti m e and th ese are
2. v ery i m portant i ssues.

21 M R. ELIOT BERNSTEI N: Excuse me.

1. THE COURT: Wai t.
2. M R. ROSE: These defen d ants they are
3. d i smi ssed , th ey are settl ed . M r. Feaman knows
4. because h e fi l ed th e p aper i n th i s court .

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## THE COURT: M r. Rose.

* 1. M R. ROSE: It's p u bl i c record .

3 THE COURT: M r. Rose , you are goi ng to

4 h ave to l et go of the - - i t's goi ng to fi n i sh

5 by 4:30.

1. M R. ROSE: Okay.
2. THE COU RT: Beca use I know th at' s why you

8 are object i ng , and you know I h av e to al l ow - -

1. M R. ROSE: Okay.
2. THE COURT: Al l ri gh t? The l egal

1 1 objecti on i s noted . M r. O'Connel l can respon d . 12 He asked to see a docum ent.

13 BY M R. ELIOT BERNSTEI N:

14 Q. I wou l d l i ke to sh ow you - -

1. THE DEPUTY: Ask to app roach , pl ease.
2. M R. ELIOT BERNSTEI N: Oh , ask to.

1 7 BY M R. ELIOT BERNSTEI N:

18 Q. Can I ap proac h you?

## 19 THE COURT: Wh at d o you want to approac h

1. wi th?
2. M R. ELIOT BERNSTEI N: I just want to show
3. h i m th e compl ai nt.

23 THE COURT: Com pl ai nt? As l ong as you

1. show th e other si de wh at you are app roach i ng
2. wi th .

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## 1 M R. ELIOT BERNSTEI N: It' s you r second

2 amen ded com pl ai nt.

3 M R. ROSE: No obj ect i on .

4 BY M R. ELIOT BERNSTEI N:

5 Q. Is Ted Bernstei n a d efendant i n th at

6 acti on?

7 A .

8 Q.

## I bel i eve h e was a d efendant , past tense. Okay. Let me ask you a questi on. Has th e

9 estate that you are i n charg e of settl ed wi th Ted 10 Bernstei n?

11 A. In connecti on wi th th i s acti on?

12 M R. ROSE: Objecti on , rel evance. 13 BY M R. ELIOT BERNSTEI N:

14 Q. Yes , i n connect i on wi th th i s act i on?

1. THE COURT: Wh i ch acti on?
2. M R. ELIOT BERNSTEI N: The Stansbu ry

17 l awsu i t th at Ted wants to represent.

18 THE COURT: If he can answer.

19 M R. ELIOT BERNSTEI N: Th i s i s th e confl i ct

20 that' s the el eph ant i n th e room.

21 THE COURT: No , no , no.

22 M R. ELIOT BERNSTEI N: Okay.

23 THE COURT: I d i d n' t al l ow anyone el se to

24 h ave any ki nd of narrat i v e.

25 M R. ELIOT BERNSTEI N: Sorry.

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## 1 THE COURT: Ask a q uest i on and move on .

2 M R. ELIOT BERNSTEI N: Got i t.

3 THE COURT: M r. O'Con nel l , i f you can

4 answer th e q uest i on , answer the q uest i on .

5 THE WITN ESS: Sure. Thanks , You r Honor.

1. I am goi ng to g i ve a correct an swer. We h ave
2. not had a settl ement i n connect i on wi th Ted
3. Ber nst ei n i n connecti on wi th what I wi l l cal l
4. the Stansbu ry i ndepen dent or ci v i l acti on. 10 BY M R. ELIOT BERNSTEI N:

11 Q.

12 A.

## Okay. So that l awsui t - -

The estat e has not entered i nto such a

13 settl ement.

14 Q. So Stansbu ry or Ted Bern stei n i s sti l l a

1. defen dant beca use he sued the est ate and th e estate
2. hasn' t settl ed wi th h i m and l et h i m out?

17 A. The estat e pri or to - - I thoug ht you were

18 tal ki ng abo ut me , my i nvol vem ent. Pri or to my

19 i nv ol vem ent th ere was a settl emen t.

1. Q.
2. A .

22 Q .

23

## Wi th Shi rl ey' s trust , correct? No , I don't recal l th ere bei ng Wel l , you just - -

THE COURT: Wai t. You h av e to l et h i m

24 answer.

25 M R. ELIOT BERNSTEI N: Sorry , okay.

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## THE WITN ESS: I recal l th ere bei ng a

1. settl emen t agai n pri or to my i nvol v em ent wi th
2. M r. Stansbu ry and Ted Bernstei n .
3. BY M R. ELIOT BERNSTEI N:
4. Q. But not the estat e? The estate as of
5. tod ay hasn't settl ed the case wi th Ted?

7 A. The estate , th e estate , my estate , when I

1. have been personal repr esentat i v e , we are not i n
2. l i ti gat i on wi th Ted . We are i n l i t i gati on wi th
3. M r. Stansbu ry. That' s where th e d i sconnect i s. 11 Q. In th e l i ti gati on Ted i s a defend ant , 12 correct?
4. A. I h ave to l ook at the pl ead i ng s. But as I
5. recal l the cl ai ms agai nst Ted Bernstei n were
6. settl ed , resol v ed .
7. Q. On l y wi th M r. Stansbu ry i n the Shi rl ey
8. trust and i nd i v i d ual l y.
9. So l et me ask you
10. THE COURT: You can' t testi fy.
11. M R. ELIOT BERNSTEI N: Okay.
12. BY M R. ELIOT BERNSTEI N:
13. Q. Ted Bernstei n , i f you are repr esenti ng th e
14. est ate , there' s a th i ng cal l ed shared l i abi l i ty ,
15. m eani ng i f Ted i s a d efend ant i n th e Stansbu ry
16. acti on , wh i ch h e i s , and h e h asn' t been l et out by

!

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## th e estate, th en Ted Ber nstei n comi ng i nto th e

1. est ate can settl e hi s l i abi l i ty wi th th e est ate.
2. You fol l owi ng? He can settl e h i s l i abi l i ty by
3. m aki ng a settl ement th at says Ted Bernstei n i s out
4. of the l awsu i t , th e estate i s l etti ng h i m out , we
5. are not g oi ng to sue h i m. Because the estate
6. shoul d be sayi ng that Ted Bern stei n and Si mon
7. Ber nstei n were sued .
8. THE COURT: I am sorry , M r. Ber nstei n , I
9. am try i ng to g i v e you al l d ue respect.
10. M R. ELIOT BERNSTEI N: Okay.
11. THE COURT: But i s th at a q uest i on?
12. M R. ELIOT BERNSTEI N: Yeah , okay.
13. THE COURT: I can't - -
14. M R. ELIOT BERNSTEI N: I wi l l break i t
15. down , beca use i t i s a l i ttl e bi t com pl ex , and I
16. wan t to go step by step.
17. THE COURT: Thank you . An d we wi l l be
18. concl ud i ng i n si x mi n utes.
19. M R. ELIOT BERNSTEI N: Then I wou l d ask for
20. a conti nuance.
21. THE COURT: We wi l l be concl ud i ng i n si x
22. m i n utes.
23. M R. ELIOT BERNSTEI N: Okay.
24. THE COURT: Ask what you can.

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1 M R. ELIOT BERNSTEI N: Okay.

2 BY M R. ELIOT BERNSTEI N:

3 Q. Ted Bernstei n was sued by M r. Stansb u ry

4 wi th Si m on Ber nstei n ; are you aware of that?

5 A . I am aware of th e parti es to th e second

6 am end ed compl ai nt th at you hav e h and ed m e.

1. Q.

# A.

1. Q.

## Okay.

At th at poi nt i n ti m e.

So bot h those part i es share l i abi l i ty i f

10 Stansbu ry wi ns , correct?

11 M R. ROSE: Obj ect i on .

12 THE WITN ESS: N o.

1. THE COURT: Hol d on.
2. M R. ROSE: Obj ect i on , cal l s for a l eg al
3. concl usi on , mi sstates th e l aw and th e facts.
4. M R. ELIOT BERNSTEI N: Wel l , i f

17 M r. Stansb u ry won h i s su i t and was sui ng Ted

18 Ber nstei n - -

19 THE COURT: Hol d on one second . Hol d on ,

1. pl ease. You h av e got to l et m e ru l e. I don't
2. mea n to rai se my voi ce at al l .
3. Bu t h i s q u esti on i n theory i s appro pri ate.
4. He says th ey are bot h defend ants , th ey sh are
5. l i abi l i ty. M r. O'Connel l can answer th at. The
6. record speaks for i tsel f.

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## THE WITN ESS: A nd th e p robl em , You r Honor ,

* 1. wou l d be th i s , and I wi l l answer th e q uest i on ,
  2. but I am answer i ng i t i n th e bl i nd wi th out al l
  3. the pl ead i ng s. Because as I - - I wi l l g i ve you
  4. the best answer I can wi thou t l ooki ng at th e
  5. pl ead i ngs.

7 THE COURT: You can onl y answer how you

8 can.

9 THE WITN ESS: As I recal l the state of 10 th i s m atter , si r , th i s i s th e i nd epen dent

1 1 act i on , the Stansbu ry acti on , wh atev er you want 12 to cal l i t , Ted Bernstei n i s no l onger a

13 d efend ant d ue to a settl emen t. 14 BY M R. ELIOT BERNSTEI N:

1. Q. He onl y settl ed wi th M r. Stansbu ry ,
2. correct? The estate , as you sai d a mom ent ago , h as 17 not settl ed wi th Ted Bernstei n as a defend ant. So 18 th e estate coul d be
3. THE COURT: M r. Bernstei n , M r. Bernstei n.
4. M R. ELIOT BERNSTEI N: U h - h uh.
5. THE COURT: From the pl ead i ng s th e Cou rt
6. u nd erstan d s there i s not a cl ai m from th e
7. estate ag ai nst Ted Bernstei n i n th e Stansbu ry
8. l i ti gati on. Is th e Court correct?

25 M R. ELIOT BERNSTEI N: The Cou rt i s

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1. correct.
2. THE COURT: Okay.

3 M R. ELIOT BERNSTEI N: But the estate , i f

1. M r. O'Connel l was representi ng the
2. ben efi ci ari es pro perl y , shou l d be sui ng Ted
3. Ber nstei n beca use the com pl ai nt al l eges that h e
4. d i d most of th e fraud agai nst M r. Stansbu ry ,
5. and my d ad was just a part ner.

9 THE COURT: Okay. So th at's you r 10 arg ument , I u nd erstan d .

1 1 M R. ELIOT BERNSTEI N: Okay.

12 THE COURT: But pl ease ask the q uest i ons

13 p u rsuant to the pl ead i ngs as th ey stand .

14 M R. ELIOT BERNSTEI N: Okay .

1. BY M R. E LIOT BERNSTEI N:
2. Q. Coul d the estat e sue Ted Bernstei n si nce 17 he i s a defend ant i n th e acti on who has sh ared

18 l i abi l i ty wi th Si mon Ber nst ei n?

19 M R. ROSE: Object i on , mi sstates - - there' s

20 no such th i ng as shared l i abi l i ty.

21 THE COURT: He can answer the q uest i on i f

22 h e can .

23 M R. ROSE: Okay.

24 THE WITN ESS: One of the d i sconnects h ere

25 i s that h e i s not a cu rrent ben efi ci ary i n th e

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1. l i ti gati on as you just stated .
2. M R. ELIOT BERNSTEI N : There' s no
3. benefi ci ary i n that l i ti g ati on.
4. THE COURT: Okay. You can' t answer agai n.
5. M R. ELIOT BERNSTEI N : Oh.
6. THE COURT: Remem ber , you h ave got to ask

7 q u esti ons.

8 THE WITN ESS: Defend ant , You r Honor , wron g

9 term. He i s not a nam ed d efen d ant at th i s 10 poi nt d ue to a settl em ent .

1 1 BY M R. ELIOT BERNSTEI N:

1. Q. Cou l d th e estate su e back a
2. counter - com pl ai nt to Ted Bernstei n i nd i v i d ual l y who
3. i s al l eged to h ave com mi tted m ost of th e eg reg i ous 15 acts agai nst M r. Stansbu ry? H e i s a defend ant i n
4. the acti on . Nobod y settl ed wi th hi m yet from the
5. estate. Cou l d you sue h i m and say th at h al f of th e 18 l i abi l i ty , at l east h al f , i f not al l , i s on Ted

19 Bernst ei n?

20 A. Anyon e , of cou rse , th eoret i cal l y coul d sue

1. anyone for anyth i ng . Wh at th at woul d i nv ol ve wou l d
2. be som eone presen t i ng i n th i s case m e the facts ,
3. th e ci rcumst ances , the ev i d ence that wou l d support
4. a cl ai m by the estate agai nst Ted Bernstei n. That
5. I h aven' t seen or been tol d .

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* 1. Q. Okay. M r. Stan sbu ry's compl ai nt , you see
  2. Ted and Si mon Ber nstei n were sued . So th e estate
  3. coul d meet th e arg ument , correct , th at Ted
  4. Ber nstei n i s a h und red percen t l i abl e for th e
  5. d amag es to M r. Stansbu ry , correct?

6 A . I can't say that wi th out h av i ng al l th e

7 facts , fi gu res , docum ents

1. Q.

# A.

You h aven' t read th i s case?

- - i n front of m e. Not on th at l evel .

10 Not to the poi nt that you are - - not to the poi nt 11 that you are

12 Q.

13 A.

14

Let m e ask you a q uest i on.

- - tryi ng to.

M R. ROSE: You r Honor?

1. BY M R. ELIOT BERNSTEI N:
2. Q. Let me ask you a q uesti on.

17 THE COURT: Hol d on one second , si r.

1. M R. ROSE: He i s not g oi ng to fi n i sh i n
2. two mi n ut es and th ere are other th i ngs we n eed
3. to add ress , i f we h ave two mi n utes l eft. So
4. can he conti n ue h i s cross - exam i nati on at th e
5. cont i n uance?

23 TH E COU RT: M arch we h ave another hear i ng .

24 M R. ELIOT BERNSTEI N: Can we cont i n u e th i s

25 h ear i ng?

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## 1 THE COURT: Yes. Bu t I am goi ng to g i v e

1. you a l i mi tat i on. You get as m uch ti me as
2. everybod y el se h as.
3. M R. ELIOT BERNSTEI N: That' s fi ne.
4. THE COURT: You hav e about ten more

6 mi nutes when we com e back.

7 M R. ELIOT BERNSTEI N : Okay . Can I subm i t

8 to you the bi nd er that I fi l ed l ate?

1. THE COURT: Sure.
2. M R. ELIOT BERNSTEI N : (Overs peaki ng ).
3. THE COURT: As l ong as i t has been - - h as

12 i t been fi l ed wi th the Cou rt and h as every bod y 13 gotten a copy?

14 M R. ELIOT BERNSTEI N: I sent th em copi es

1 5 and I brou gh t th em copi es tod ay.

16 THE COURT: As l ong as every bod y el se gets 17 a copy - -

18 M R. ELIOT BERNSTEI N : Okay.

19 THE COURT: - - you can submi t th e bi nd er.

20 J ust g i ve i t to my deputy. 21

(Bri an O'Connel l excerpt concl ud ed .)

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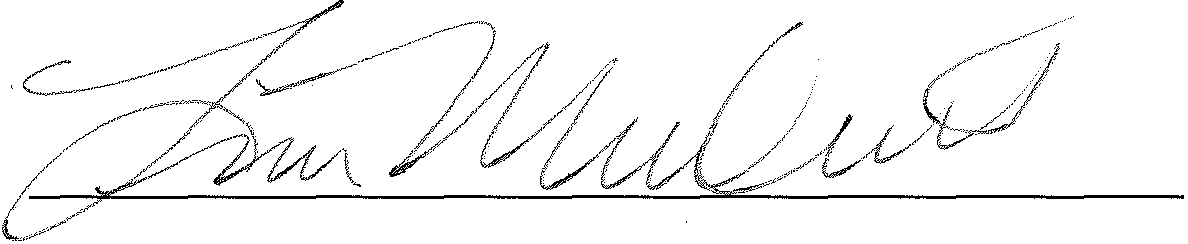
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# C E R T I F I C A T E

## The State of Fl ori da County of Pal m Beach

I , Li sa M ud ri ck , RPR , FPR , cert i fy that I was authori zed to and d i d stenog raph i cal l y report th e foregoi ng p roceed i ngs , and that th e excerpted transcri pt i s a true record .

Dated February 21 , 201 7.



## LISA M UDRICK, RPR , FPR

M ud ri ck Cou rt Report i ng , Inc.

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