

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

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,  
  
Deceased.

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ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all  
parties associated and of counsel);  
ROBERT L. SPALLINA (both personally  
and professionally); DONALD R. TESCHER  
(both personally and professionally);  
THEODORE STUART BERNSTEIN (as alleged  
personal representative, trustee, successor  
trustee) (both personally and professionally);  
et al.,

Respondent(s).

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TRANSCRIPT OF PROCEEDINGS BEFORE  
  
HONORABLE MARTIN COLIN

DATE: January 8, 2015

TIME: 9:17 a.m. - 9:58 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.  
3 3615 W. BOYNTON BEACH BOULEVARD  
4 BOYNTON BEACH, FL 33436  
By: PETER M. FEAMAN, ESQ.  
JEFFREY ROYER, ESQ.

5 APPEARING ON BEHALF OF TED BERNSTEIN:

6 PAGE, MRACHEK, FITZGERALD ROSE  
7 KONOPKA & DOW, P.A.  
8 505 SOUTH FLAGLER DRIVE, SUITE 600  
WEST PALM BEACH, FL 33401  
By: ALAN B. ROSE, ESQ.

9 APPEARING ON BEHALF OF THE PR:

10 CIKLIN LUBITZ  
11 515 N. FLALGER DRIVE, 20TH FLOOR  
12 WEST PALM BEACH, FL 33401  
By: BRIAN M. O'CONNELL, ESQ.

13 APPEARING ON BEHALF OF MOLLY SIMON, ET AL:

14 JOHN P. MORRISSEY, ESQ.  
15 330 CLEMATIS STREET, SUITE 213  
WEST PALM BEACH, FL 33401

16 ELIOT I. BERNSTEIN, Pro se

17 ALSO PRESENT: CANDICE BERNSTEIN

18

19 BE IT REMEMBERED, that the following  
20 proceedings were taken in the above-styled cause before  
21 the Honorable MARTIN COLIN, at the Palm Beach County  
22 Courthouse, 200 West Atlantic Avenue, Room 8, in the City  
23 of Delray Beach, County of Palm Beach, State of Florida,  
24 on January 8, 2015, to wit:

25

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Mr. Bernstein, do you want to do  
4 what you're doing at 8:45 or do you want to wait  
5 until 9:30?

6 MR. ELIOT BERNSTEIN: You mean me?

7 THE COURT: I mean, whoever has --

8 MR. FEAMAN: I have an 8:45, Your Honor.

9 THE COURT: And you would not normally be  
10 here for the 9:30?

11 MR. FEAMAN: That's correct.

12 THE COURT: All right. Okay. All right.  
13 Okay. We'll take it.

14 MR. FEAMAN: Thank you, Your Honor.

15 May it please the court.

16 THE COURT: I don't have any paperwork, so...

17 MR. FEAMAN: May I approach, Your Honor?

18 THE COURT: Sure. Okay.

19 MR. FEAMAN: Peter Feaman, Your Honor, on  
20 behalf of William Stansbury in the Estate of Simon  
21 Bernstein.

22 This is a motion, Your Honor, to relieve  
23 Mr. Stansbury of further responsibility of  
24 funding what we call the Chicago insurance  
25 litigation. Your Honor may recall that while

1 Mr. Tescher and Spalina were the personal  
2 representatives, there was this case going on  
3 in Chicago involving \$1.7 million of life  
4 insurance. They, for reasons unknown as yet to  
5 the court, did not get the estate involved.

6 Mr. Stansbury, as you know, is a creditor  
7 of the estate. And so he's looking for ways --  
8 a substantial creditor, 2.5 million is the  
9 claim -- he's looking for ways to get money  
10 into the estate, sees that there's this  
11 litigation going on in Chicago which could  
12 result in all that money coming into the  
13 estate.

14 THE COURT: I remember.

15 MR. FEAMAN: Okay. And so at this point,  
16 Your Honor, the mission has been accomplished, in  
17 the sense that the estate was allowed -- has been  
18 allowed to intervene, discovery is ongoing. In  
19 fact, there is a deposition this week up in  
20 Chicago, and the attorneys up in Chicago  
21 representing the estate have now said, you know,  
22 we'll even take this case on a contingency to  
23 benefit the estate, or even a modified  
24 contingency, like reduced hourly.

25 THE COURT: What was Mr. Stansbury -- what

1 was the nature of what he was paying?

2 MR. FEAMAN: Just a straight hourly.

3 THE COURT: To the Chicago lawyers?

4 MR. FEAMAN: Yes, Your Honor.

5 And now we think we've got the --

6 THE COURT: What's the status of the case up  
7 there?

8 MR. FEAMAN: Discovery is ongoing. Not yet  
9 set for trial.

10 In discussing this with Mr. O'Connell,  
11 who's here, now the full-fledged PR. When we  
12 first did this, Ben Brown was the curator,  
13 authority is limited.

14 So in discussing this with Mr. O'Connell,  
15 he agrees. He thinks that they can now go  
16 forward without --

17 THE COURT: Did I hear something that you  
18 settled?

19 MR. FEAMAN: We have a signed settlement  
20 agreement that Mr. Stansbury has signed.

21 Mr. O'Connell will be coming before the court  
22 after notice to every interested party.

23 Mr. O'Connell --

24 THE COURT: Is everyone on board on the  
25 settlement?

1 MR. O'CONNELL: I'm not sure, Your Honor.

2 Mr. Rose negotiated with Mr. Feaman --

3 THE COURT: You on board, Mr. Bernstein?

4 MR. ELIOT BERNSTEIN: I haven't seen anything  
5 yet.

6 THE COURT: Oh, you haven't seen it yet.

7 Okay. So you say okay to let him off?

8 MR. O'CONNELL: Let him off because, Your  
9 Honor, the solution is this: If we get the  
10 settlement agreement approved, hopefully we can --

11 THE COURT: Okay.

12 MR. O'CONNELL: -- then that litigation,  
13 basically, will go away so some bells and whistles  
14 in terms of --

15 THE COURT: The litigation in --

16 MR. O'CONNELL: In Chicago.

17 THE COURT: Meaning, they're going -- the  
18 insurance case is going to settle?

19 MR. O'CONNELL: Well, it can, in this sense.  
20 The real need for it, the driver, at least for me,  
21 as the fiduciary, is the fact that it's been  
22 mentioned, is a claim against the estate that  
23 exceeds the existing assets. Ergo, I can't just  
24 turn my back on the fact that there's a potential  
25 amount of money to come into the estate. But if

1 we get the settlement done with Mr. Stansbury,  
2 then based on what I've seen, there aren't any  
3 other claims that really need attention in that  
4 sense. And if I need money, there's a clause in  
5 the trust that I can get money from the trust. So  
6 I'm pretty much covered in that respect. So  
7 that's why I wanted to point out to the court the  
8 real solution to this --

9 THE COURT: Are they still going to pursue  
10 the 1.7 million in Chicago?

11 MR. O'CONNELL: On that, I think I can deal  
12 with Mr. Rose, and I can deal with Mr. Morrissey  
13 and come up with a way, based on how all this  
14 would shake out, and Eliot as well. We might be  
15 able to get rid of that litigation.

16 THE COURT: Okay.

17 MR. O'CONNELL: I know it's a little  
18 complicated, but it has to do, Judge, with who  
19 would sort of get what based on how that  
20 litigation turns out. But I think we would be in  
21 a much better position, we would have advanced the  
22 ball if we can get that accomplished.

23 THE COURT: Eliot, what do you say of  
24 Mr. Stansbury's request?

25 ELIOT BERNSTEIN: I haven't seen anything.

1 THE COURT: No, the --

2 ELIOT BERNSTEIN: Be paid by the estate,  
3 yeah.

4 THE COURT: Mr. Rose?

5 MR. ROSE: We have the same concerns that  
6 we've had from the beginning, which is to not be  
7 spending estate assets on this litigation. We  
8 had, you know, if you recall, a lengthy hearing  
9 and discussion about it. The concern is it's a  
10 case where we don't believe the estate has a  
11 strong case. And our concern was that you expend  
12 estate assets to do it.

13 THE COURT: Now, I hear that the lawyers up  
14 there will do it on a contingency fee for the rest  
15 of the case.

16 MR. ROSE: That's actually something Your  
17 Honor raised at the last hearing, which is concern  
18 that if you take 40 percent of the money, you  
19 know, and give it to lawyers, you're taking it out  
20 of the family. If you get rid of Mr. Stansbury --

21 THE COURT: Mr. Stansbury kind of did this  
22 semi-gratuitously to keep the litigation alive.  
23 He may have had a personal financial interest, but  
24 if he's settling the case and getting out, how can  
25 I keep him in paying for that Chicago litigation?



1           MR. ROSE: That was -- I agree with you. My  
2 suggestion is that you would almost defer this  
3 until we have the hearing on the approval of the  
4 settlement. If the settlement is approved, I  
5 agree, Mr. Stansbury should be out completely.  
6 And then, as Mr. O'Connell says, if you do the  
7 math, if you're going to hire a lawyer on a  
8 contingency fee with -- if Mr. Stansbury is out of  
9 the picture, if you hire a lawyer on contingency  
10 fee and give up 40 percent of the money, or a  
11 third of the money, to a lawyer, then no matter  
12 how you do the math, it ends up -- everyone ends  
13 up worse off. Every single person that is a  
14 potential beneficiary --

15           THE COURT: I obviously would do a  
16 contingency fee because the estate and those  
17 interested persons don't want to pay hourly. And  
18 so it's one or the other, or drop the suit. And  
19 drop the suit doesn't seem to be what we want to  
20 do at this point. So, you know, if --

21           MR. ROSE: Our suggestion --

22           THE COURT: -- the interested people who  
23 would have, you know, which are the Bernsteins and  
24 Mr. O'Connell, you know, don't want to pay hourly  
25 because they don't want to continue to diminish,

1           you know, the value of the estate, then  
2           contingency is what's left.

3           MR. ROSE: Mr. Morrissey represents four of  
4           the individual creditors.

5           MR. MORRISSEY: Judge, John Morrissey here on  
6           behalf of the four adult grandchildren. And if I  
7           may approach, I'll provide Your Honor with a copy  
8           of the excerpts from a hearing that we had wherein  
9           Ben Brown was initially appointed, and Your Honor  
10          allowed him to go forward with the Illinois  
11          litigation on behalf of the estate.

12          ELIOT BERNSTEIN: Can I have a copy of that?

13          MR. MORRISSEY: I just have this.

14          At that hearing -- that hearing was on  
15          November 23rd. Your Honor made it absolutely  
16          clear that under no circumstances was the  
17          estate to pay. And I've highlighted various  
18          portions. Your Honor indicates that Mr. Feaman  
19          says that his client will not seek fees for his  
20          role as administrator ad litem unless and until  
21          recovery might take place, and then he'll make  
22          application to the funds available.

23          That was what the deal was, essentially.

24          And if Your Honor will look then on the  
25          bottom of Page 34, top of Page 35, I make

1 inquiry. We're now talking about having to  
2 pay, you know, from my client's prospective  
3 profits -- pockets -- Mr. Brown's fees, an  
4 attorney up in Illinois. And Your Honor says,  
5 I just said that won't be the case. It would  
6 only be the case if there was a recovery for  
7 the estate to which then Mr. Stansbury would  
8 say, under the statute, I performed a benefit  
9 to the estate. Your Honor then says there is  
10 not a dollar coming out of the estate unless  
11 there is a recovery, basically. And then the  
12 recovery would take place. And he, meaning  
13 Mr. Stansbury, would seek some recovery of  
14 fees.

15 So at that May 23rd hearing --

16 THE COURT: That was before we had a PR and,  
17 you know, while we had a curator. Now  
18 Mr. Stansbury is getting out. So what are you  
19 suggesting we do?

20 MR. MORRISSEY: Well, I mean, either you  
21 don't let Mr. Stansbury get out, or, if you do --

22 THE COURT: So hold it. Time out. Your  
23 position on behalf of your clients is that  
24 Mr. Stansbury purportedly is going to settle the  
25 case and he should still pay for the fees up

1           there?  Is that what you're telling me?

2           MR. MORRISSEY:  No.  We don't agree with this  
3           purported settlement.  That's another issue.

4           THE COURT:  I didn't know that.

5           MR. MORRISSEY:  This purported settlement is  
6           something that we disagree with.

7           THE COURT:  All right.

8           MR. MORRISSEY:  We vehemently oppose.  So my  
9           client's position is, we oppose the settlement  
10          agreement.  Mr. Stansbury represented to the court  
11          that, yes, he would go forward and intervene to  
12          the conclusion of this litigation.  Now, at  
13          midstream, he's backing out.

14          THE COURT:  He's not really backing out.  
15          He's saying I'm settling.  I'm getting out.  I  
16          shouldn't continue to pay.  That sounds logical.  
17          If that happens.

18          MR. MORRISSEY:  He's not settling, though.

19          THE COURT:  But until you just told me that,  
20          this side of the room said that there was a  
21          settlement agreement that's going to be  
22          circulated -- I understand not everyone saw it.  I  
23          didn't even know there was opposition, at least in  
24          principal.  So you're the first voice that I've  
25          heard that you're opposing it.  So, you know, I

1 mean --

2 MR. MORRISSEY: Judge, there are two things  
3 that before Your Honor rules on this motion and  
4 allows Mr. Stansbury to withdraw, essentially, in  
5 terms of paying fees, there are two things that  
6 should happen. Number one, as Mr. Rose said, Your  
7 Honor should hear, you know, this settlement  
8 issue, and hear the objections to it and determine  
9 whether the settlement should go forward. But  
10 even before that, Your Honor should hear the  
11 Count II of a complaint that Mr. Rose filed. And  
12 that is as to the validity of the documents -- the  
13 underlying documents themselves.

14 If I may provide Your Honor --

15 THE COURT: The underlying documents, which  
16 documents are you talking about?

17 MR. MORRISSEY: All of them. The last will  
18 and testament of Shirley Bernstein.

19 THE COURT: How does that help me decide what  
20 to do with this?

21 MR. MORRISSEY: Well, essentially, everything  
22 falls into place after that. Why? Because we  
23 don't even know who, ultimately, the beneficiaries  
24 are.

25 So in terms of a settlement, Mr. O'Connell

1 has filed a motion to approve a settlement.  
2 It's theoretically possible that after Your  
3 Honor determines the validity of these various  
4 documents, my clients might not be  
5 beneficiaries. So Your Honor would want to  
6 make the determination who's the beneficiaries  
7 before Your Honor hears a motion to approve a  
8 settlement and knows who can object to that  
9 settlement, or agree to it.

10 And if I may provide Your Honor with a  
11 copy of the -- Your Honor's order and the  
12 notice of trial that has been filed by  
13 Mr. Rose.

14 Mr. Rose filed a two-count complaint. And  
15 that the second count, if you look at Your  
16 Honor's order, and specifically Paragraph 3 of  
17 that order, says that upon the filing of the  
18 answers to Count II -- Count II relates to the  
19 validity of the documents themselves -- the  
20 court severs Count II --

21 THE COURT: Okay. I got it. So  
22 Mr. O'Connell, do I have to decide Count II in the  
23 amended complaint before you have a clear sense of  
24 how to deal with the potential settlement of Mr.  
25 Stansbury?

1           MR. O'CONNELL: I don't think so, Your Honor.  
2           And here's why. Because I'm happy to have Mr.  
3           Morrissey advocate -- now I'm hearing -- against  
4           the settlement because I think that's, frankly,  
5           good for the court to hear all sides of this. So  
6           if there is some concerns that he has that the  
7           court may find valid, that's fine. I don't think  
8           there are.

9           THE COURT: I don't adjudicate sides of  
10          settlements. Settlements are outside --

11          MR. O'CONNELL: I guess whatever his  
12          objections are.

13          THE COURT: But those are private to you.  
14          And I think Mr. Feaman agrees with that, correct?

15          MR. FEAMAN: Yes.

16          THE COURT: I mean, I can't -- I'm not going  
17          to have a hearing on that.

18          What about the point that is made that  
19          assuming you do have a draft of a settlement  
20          agreement that appears to be appropriate.  
21          Mr. Morrissey is saying until Count II is  
22          adjudicated, you don't even know who the  
23          parties are to the settlement who would be in a  
24          position to either agree or not agree with it.

25          MR. O'CONNELL: Actually, we know who the

1 parties are, Your Honor, because it would be we  
2 have Mr. Stansbury as the claimant and then  
3 myself as the defendant.

4 THE COURT: Estate.

5 MR. O'CONNELL: Right. Those are the  
6 parties. And then --

7 THE COURT: Then you have interested people  
8 who may or may not agree?

9 MR. O'CONNELL: Right. Who are here.

10 THE COURT: Who may or may not be interested,  
11 depending on Count II, according to what  
12 Mr. Morrissey says.

13 MR. O'CONNELL: I think it's important  
14 enough, Your Honor, just from the standpoint of  
15 getting this estate moving towards a conclusion.

16 THE COURT: Right. True.

17 MR. FEAMAN: That settlement really does  
18 handle a number of important matters.

19 THE COURT: All right. Here's how I'm going  
20 to do this. Is the settlement between the estate  
21 and Mr. Stansbury in a final form yet?

22 MR. O'CONNELL: It is. We just need some  
23 hearing time, Your Honor.

24 THE COURT: It's circulated --

25 MR. O'CONNELL: It's signed by Mr. Stansbury,



1 Your Honor.

2 THE COURT: And signed by you, Mr. O'Connell,  
3 or will be?

4 MR. O'CONNELL: Will be, once it's approved.

5 THE COURT: So --

6 MR. O'CONNELL: And drafted by Mr. Rose.

7 THE COURT: You two are the two main parties  
8 to the settlement, correct?

9 MR. O'CONNELL: Yes. And it was drafted by  
10 Mr. Rose, Your Honor.

11 THE COURT: Hold on. Let me finish what I'm  
12 going to say. And so there will be a motion to  
13 approve the settlement. Okay. Notice will go to  
14 all interested persons, who are here. And they  
15 have a right then to tell me if they object. And  
16 I can hear whether or not I think they have  
17 standing to object, and all those other things  
18 that I normally hear at a hearing like that?

19 Yes, Eliot?

20 ELIOT BERNSTEIN: If I'm going to be asked to  
21 accept or deny that --

22 THE COURT: You get service.

23 MR. O'CONNELL: He will.

24 ELIOT BERNSTEIN: I think it's between the  
25 other --

1 THE COURT: Yeah, they're the main parties,  
2 but they'll serve you with --

3 ELIOT BERNSTEIN: If I have to do that, I  
4 have children that have a conflict of my interests  
5 versus theirs and that. They would need  
6 representative counsel to sign off on it.

7 THE COURT: You have a conflict with your  
8 children on that?

9 ELIOT BERNSTEIN: On that particular issue.

10 THE COURT: I don't know, you know, so --

11 ELIOT BERNSTEIN: So they would need counsel  
12 and I don't -- I would ask the estate to provide  
13 that if they're asking us to sign off.

14 MR. FEAMAN: If I may, Your Honor. There is  
15 a whole issue as to whether the children even have  
16 standing before this court because, as Mr. Rose  
17 has alleged, the trustee, his client, is the sole  
18 beneficiary of the estate.

19 THE COURT: I got that part. Okay. So  
20 here's the way that works. I mean, anyone can  
21 appear who says they are interested at the hearing  
22 on the motion to approve settlement. You know,  
23 they can appear pro se or through counsel.  
24 Whoever shows up, I determine who are you, do you  
25 have standing. And then if there is standing,

1           then I'll hear what the basis of the objection is.  
2           So the children can -- if you say are -- if you  
3           think they are independently interested persons,  
4           they can hire counsel.

5           ELIOT BERNSTEIN: They're minors.

6           THE COURT: They can appear themselves. If  
7           they want to take that position. But I can't, at  
8           8:45 today, direct the estate to pay for their  
9           lawyer. I can't do that. I mean, that's beyond  
10          what I'm allowed to do.

11          ELIOT BERNSTEIN: I'll check with the estate.

12          THE COURT: You can talk to counsel about  
13          that.

14          All right. Then -- so how quickly can  
15          that be done?

16          MR. O'CONNELL: Today, I can circulate it.

17          THE COURT: Okay. So I'm going to make this  
18          a priority matter and I'm going to give you a  
19          hearing time on a motion to approve.

20          And then what I'll do is, depending upon  
21          that hearing, which I'm going to have right  
22          away, I'll deal with the issue of  
23          Mr. Stansbury's request to be discharged.

24          And I'm not saying, though, that his  
25          discharge is solely tied into whether the

1 settlement is accepted.

2 MR. FEAMAN: That's correct, Your Honor.

3 THE COURT: I have to independently decide  
4 whether I think it's appropriate that he continue  
5 to fund the litigation. It's never -- never like  
6 a life jail sentence type of thing, you know,  
7 there's always -- it's an interlocutory order that  
8 could be modified.

9 MR. FEAMAN: Right.

10 THE COURT: I mean, let's, you know, keep in  
11 mind what I'm thinking. Okay.

12 MR. FEAMAN: Yeah, because I --

13 THE COURT: How much time do you think you  
14 need? I got it.

15 MR. FEAMAN: I respectfully suggest to the  
16 court that there is no compulsion for  
17 Mr. Stansbury to do anything with regard to the  
18 Chicago litigation.

19 THE COURT: Okay. We'll take a look. I  
20 mean, I've got a grasp of what's going on.

21 How much time do you think you need,  
22 collectively, to have a hearing?

23 MR. MORRISSEY: To approve the settlement.

24 THE COURT: I mean, if there's going to be  
25 standing and/or substantive objections, I need

1 time to be able to hear that.

2 MR. ROSE: I'm not going to shed a brief  
3 light on that. They said that I drafted the  
4 agreement. I did actually, on behalf of the --  
5 Ted, as trustee, I explored settlement with  
6 Mr. Stansbury to the point of you need to know  
7 what the number is so you can go to the  
8 beneficiaries and sort of take their pulse. If  
9 it's a dollar, it's one thing. If it's two  
10 billion dollars --

11 THE COURT: Whoever did the drafting of it  
12 doesn't matter to me.

13 MR. ROSE: My point to you was, though, I did  
14 get a sense that at least seven of the  
15 beneficiaries are theoretically against the  
16 settlement.

17 THE COURT: Okay.

18 MR. ROSE: So I didn't proceed forward with  
19 the settlement. And I didn't have a chance to  
20 speak to Mr. Eliot Bernstein about his position,  
21 but he's been opposed to many things, but...

22 THE COURT: No, Eliot doesn't do that. He  
23 rarely opposes anything. That's my recollection  
24 of it.

25 ELIOT BERNSTEIN: Last hearing I didn't

1 object to it.

2 THE COURT: Eliot has turned a new leaf,  
3 haven't you noticed?

4 MR. ROSE: I haven't, unfortunately.

5 THE COURT: I have.

6 MR. ROSE: Seven out of ten are opposed so I  
7 think you may get some -- you may get a  
8 significant amount of objection to the settlement.

9 THE COURT: I just need to know how much  
10 time. How much time?

11 MR. ROSE: Ninety minutes, maybe.

12 MR. O'CONNELL: Hour and a half, John?

13 THE COURT: Hold on. I'm filling up this  
14 week very quickly. We want to do this right away,  
15 so let's take a look here. I mean, can you be  
16 ready by the 27th? I can give you two hours. And  
17 you probably heard, I gave three dates to that  
18 other case ahead of you, I'll just take away the  
19 date that I give you folks.

20 MR. O'CONNELL: 27th is fine for me, Your  
21 Honor.

22 THE COURT: Three to five. I'll give you two  
23 hours. Take a look at your calenders, see if that  
24 works.

25 MR. FEAMAN: We're fine.

1 MR. ROSE: I can be there.

2 MR. MORRISSEY: I think so. I don't have my  
3 calendar, but I'm pretty sure I can.

4 THE COURT: All right. So you folks have  
5 that. All right. So I got to -- okay. So you  
6 have that on the -- and I'm going to call it  
7 motion for settlement.

8 MR. O'CONNELL: Sure.

9 THE COURT: Do a notice of hearing 3:00 to  
10 5:00, January 27th. Okay. And let me just make a  
11 note for the other case now. Hold on.

12 Okay. Yes.

13 MR. ROSE: Just briefly. To follow up with  
14 what Mr. Morrissey said, though, his count --

15 THE COURT: I'm not --

16 MR. ROSE: I was going to mention  
17 Mr. O'Connell and I've discussed the issue. He's,  
18 I think, of the opinion it's important to get a  
19 resolution on the validity of the documents,  
20 although it doesn't have to be tied to the  
21 Stansbury motion. I just wanted to point out,  
22 I've actually discussed the issue with Mr.  
23 O'Connell.

24 THE COURT: So we need to give a trial date  
25 on Count II?

1 MR. O'CONNELL: Yes. And I agree with that,  
2 Your Honor. That's correct.

3 THE COURT: How much time?

4 ELIOT BERNSTEIN: What case is that in?

5 THE COURT: What case is that in? It's in  
6 14CP3698.

7 ELIOT BERNSTEIN: That's a separate case,  
8 right?

9 THE COURT: Yeah.

10 ELIOT BERNSTEIN: Than what we're here for.  
11 We're here on Simon.

12 THE COURT: Let's see.

13 MR. ROSE: It's technically a trust  
14 construction case.

15 ELIOT BERNSTEIN: I'm not ready for that yet  
16 because we have to see if the trustee is fit to  
17 argue that case first.

18 THE COURT: I'm just trying --

19 ELIOT BERNSTEIN: We should have that first  
20 like we've been trying to.

21 THE COURT: But we have hearing dates on  
22 other things. But let me ask you this. How much  
23 time do you need for the trial on that?

24 MR. ROSE: Half a day, at most, because there  
25 is no evidence. You know, if he has to present



1 evidence that the documents are invalid --

2 THE COURT: All right. So --

3 MR. ROSE: And it is a pretty important  
4 threshold issue.

5 THE COURT: It's at issue?

6 MR. ROSE: It's at issue.

7 THE COURT: Ready for trial?

8 MR. ROSE: Ready for trial. We noticed it  
9 for trial.

10 THE COURT: Well, I know that. But ready --  
11 you can notice something ready for trial -- is it  
12 ready now for trial? All the reasonable discovery  
13 that has to be made has been made?

14 MR. ROSE: I'm prepared to try the case. I  
15 don't know how much Mr. Bernstein --

16 THE COURT: So who are the other parties in  
17 that case?

18 MR. ROSE: Mr. O'Connell would like to  
19 intervene in the case solely because he's the  
20 personal representative of the estate. And this  
21 will decide who the beneficiaries are of the  
22 estate. So he has an interest in it. But he's  
23 indicated that he wants to -- he wants to be  
24 involved, but he's not going to necessarily be  
25 actively litigating it.

1 THE COURT: So who else --

2 MR. O'CONNELL: Correct.

3 THE COURT: So these -- let me look at the  
4 defendants. Looks like a bunch of children. So  
5 is that -- Mr. Morrissey, are you the defendant's.

6 MR. MORRISSEY: For four of those. Molly --

7 THE COURT: And some of these, are they  
8 Eliot's children?

9 ELIOT BERNSTEIN: Minors. Who are  
10 unrepresented.

11 THE COURT: Okay. And then your clients?

12 MR. MORRISSEY: Four.

13 THE COURT: And then who are the other  
14 children?

15 MR. ROSE: Everyone else defaulted. They  
16 defaulted in the sense that they're not taking a  
17 position that they're going to rely on what Your  
18 Honor rules. So it's technically, I think, at  
19 issue. And it would go a long way to resolving a  
20 lot of issues, like, who has standing to do  
21 various things.

22 THE COURT: So tell me this. What hearings,  
23 other than the one set for -- one second. So let  
24 me ask you this. Today's 9:30 on the motion for  
25 instructions, what's that about? That's the

1 estate case, correct?

2 MR. O'CONNELL: It is.

3 THE COURT: Is that related to this, or not?

4 MR. O'CONNELL: The estate, but not to the  
5 litigation, Your Honor. But we need to hear it  
6 later.

7 THE COURT: So what hearings do we have that  
8 are special set now coming up?

9 ELIOT BERNSTEIN: We need the hearing to  
10 remove Ted first.

11 THE COURT: There is no date for that?

12 ELIOT BERNSTEIN: Still serving the  
13 complaint.

14 THE COURT: Because there was an amendment  
15 on the complaint.

16 ELIOT BERNSTEIN: So there's -- then  
17 there's -- still serving two of the parties.

18 THE COURT: So is there a -- is there a  
19 removal action to remove Ted as trustee of  
20 Shirley's trust?

21 ELIOT BERNSTEIN: Yes.

22 THE COURT: That's been pending for a while?

23 ELIOT BERNSTEIN: Yeah, we can hear that.

24 THE COURT: There's been amendments to that.

25 MR. ROSE: There was actually a recent filing

1 of a -- there's been a motion to dismiss served  
2 directed to it. He hasn't served all the other  
3 people. It's not at issue and it's not going to  
4 be at issue for a significant period of time. I  
5 think what Mr. O'Connell feels, and what I feel,  
6 and what Mr. Morrissey feels, and the other  
7 beneficiaries are, that -- first of all, if you  
8 rule that the documents are invalid, then you  
9 don't have to remove Ted because he doesn't ever  
10 get appointed if the documents go away. So  
11 that's, you know, sort of the cart before the  
12 horse. And the other thing is, you need to get a  
13 ruling on the validity of these five documents  
14 that are being challenged, only by Eliot, as to  
15 the validity, and, I assume, testamentary  
16 capacity. And whether Ted is the trustee or --  
17 then you have Mr. O'Connell -- that needs to be  
18 tried.

19 THE COURT: I got it. I understand. Okay.

20 MR. ROSE: And then the removal can happen in  
21 its ordinary course.

22 THE COURT: Go ahead.

23 ELIOT BERNSTEIN: The problem is that you  
24 have to have the hearing to remove Ted as  
25 successor because then he can't argue that case.

1           And somebody will have to be appointed to come in  
2           and argue these things that only these guys seem  
3           to want to argue. So if Ted doesn't survive, then  
4           a qualified trustee, somebody else will be  
5           appointed who will then decide if we're going to  
6           have this or if they're going to concede the  
7           documents are a fraud.

8           THE COURT: If it's a hearing to decide  
9           validity of documents, and everyone else is going  
10          to be participating, including yourself, I don't  
11          see why I can't have that hearing.

12          ELIOT BERNSTEIN: Because Ted -- we can have  
13          it, but they shouldn't be allowed to -- Ted has  
14          conflicting interests in the outcome of this.

15          THE COURT: You know, I can take that into  
16          consideration at the hearing.

17          ELIOT BERNSTEIN: Okay. That's fine. I'm  
18          good with that.

19          THE COURT: I do all that. That's part of  
20          what I'll -- you know, it's not only what's said,  
21          but who says it, and what --

22          ELIOT BERNSTEIN: So, yeah, then let's have  
23          that hearing to remove Ted.

24          THE COURT: Because here's what I want to do.  
25          I want to start giving hearing dates that are --

1           where we can get some orders and move this estate  
2           along. Because I think that's important. Okay.  
3           So --

4           ELIOT BERNSTEIN: In the last hearing you  
5           said you would hear the petition to remove Ted.  
6           You ordered it, actually.

7           THE COURT: I wanted that heard a while  
8           ago --

9           ELIOT BERNSTEIN: Then we'll hear the  
10          document stuff, if he survives?

11          THE COURT: Yeah, but here's the thing, your  
12          case got -- I thought I had given a hearing date  
13          on that petition to remove and then you amended, I  
14          think, isn't that what happened?

15          ELIOT BERNSTEIN: No.

16          MR. ROSE: You denied the petition because it  
17          was improperly filed. He just started a complaint  
18          in which there are --

19          THE COURT: Don't talk over each other.

20          ELIOT BERNSTEIN: Okay.

21          MR. ROSE: He's just filed a new complaint.  
22          We have just filed motions to dismiss. There's  
23          other parties that haven't been served. And I  
24          think Mr. O'Connell is involved in --

25          ELIOT BERNSTEIN: That's in Sy.

1 MR. ROSE: Mr. O'Connell is involved in --

2 ELIOT BERNSTEIN: That's in Sy, not Shirley.

3 THE COURT: All right. Here's what I'm  
4 doing. I'm going to give you your half a day  
5 trial date on Count II in this 3698 case. I mean,  
6 I'm not going to give it to you now, I'll have my  
7 assistant look at my calendar and give you a half  
8 a day. Eliot

9 MR. ROSE: That's fine.

10 THE COURT: Eliot, as soon as you're able to  
11 serve and do what you can in Shirley --

12 ELIOT BERNSTEIN: I'm ready.

13 THE COURT: -- you get on whatever you file  
14 in any of the cases --

15 ELIOT BERNSTEIN: On Sy. Okay. But on  
16 Shirley I'm ready to have the petition heard.

17 THE COURT: Is that ready to be heard, the  
18 petition in the Shirley case?

19 ELIOT BERNSTEIN: Let's have it heard the  
20 same day.

21 MR. ROSE: There's a motion to dismiss  
22 directed to that.

23 THE COURT: Well, then get that set for  
24 hearing. Okay. I mean, let me start hearing,  
25 knocking out the things --

1           ELIOT BERNSTEIN: That's the order you  
2 wanted. That's the order you ordered.

3           THE COURT: The hearing date on a motion to  
4 dismiss is easier to get than a half-day trial  
5 date. So it will work out.

6           ELIOT BERNSTEIN: Okay.

7           THE COURT: Any objection to the PR  
8 intervening in this 3698 case, which is Ted versus  
9 the children?

10          ELIOT BERNSTEIN: I haven't even read this  
11 thing. I just got it. Did you send this out  
12 prior to this?

13          MR. O'CONNELL: I believe we did.

14          ELIOT BERNSTEIN: We got a notice for the  
15 hearing. We didn't get the document attached with  
16 it.

17          THE COURT: You want -- tell you what. You  
18 want, like, I'm going to take some other people,  
19 you want to look at it?

20          ELIOT BERNSTEIN: Actually, I do, because we  
21 don't know what it was.

22          MR. ROSE: Our position, just for the record  
23 is --

24          THE COURT: Are you okay with him  
25 intervening?



1           MR. ROSE:  If I can -- I have discussed the  
2           issue with Mr. O'Connell.  I'm concerned that, you  
3           know, a lot of estate resources not be expended --  
4           I discussed with Mr. O'Connell.  He's intervening  
5           because he wants to protect his right as PR  
6           because he needs to know who the beneficiaries  
7           are.

8           THE COURT:  Okay.

9           MR. ROSE:  So if he's not going to be  
10          spending a lot of money on the thing to be  
11          involved in it, we have no objection on that  
12          basis.

13          THE COURT:  Okay.  Mr. Morrissey, you okay  
14          with that?

15          MR. MORRISSEY:  The objection -- my objection  
16          would have been the same.  I haven't spoken with  
17          Mr. O'Connell, but to the extent that -- all  
18          beneficiaries are going to be presumably arguing  
19          in the clause, and so everyone -- every  
20          beneficiary's rights are represented.  I don't  
21          know that we need extra resources.

22          THE COURT:  I'm going to let him intervene,  
23          subject to Eliot saying no.  So talk to him about  
24          that.

25          MR. O'CONNELL:  Sure.

1           THE COURT: Give me the order and I'll sign  
2           that before you're done with your 9:30.

3           MR. O'CONNELL: Okay.

4           THE COURT: All right. So then Mr. Feaman,  
5           I'm going to defer on your motion until I rule on  
6           the 27th. And then bring that back and I'll rule  
7           on it at that time.

8           MR. FEAMAN: Okay.

9           THE COURT: And just kind of, you know -- all  
10          right. That finishes your 8:45.

11          Okay. Any other 8:45's?

12          MR. O'CONNELL: There are no other 8:45's.

13

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15                                 (Thereupon, the proceedings were  
16                                 concluded at 9:58 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA  
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,  
State of Florida at large, certify that I was  
authorized to and did stenographically report the  
foregoing proceedings and that the transcript is a  
true and complete record of my stenographic notes.

Dated this 21st day of January, 2015.

\_\_\_\_\_  
DAVID L. MARSAA, COURT REPORTER

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