

## AGREEMENT

This agreement is executed as of the first day of October, 1995 by and between Robert I. Cantor ("Cantor"), having an address at 175 Riverside Drive; New York, New York 10024 and Scott W. Epstein ("Epstein"), having an address at 280 Henry Street, Brooklyn, New York.

## Article 1 - NAME AND PRINCIPAL PLACE OF BUSINESS

## Section 1.1 Name

Cantor and Epstein agree to form the partnership of Cantor, Epstein, Bailey & Degenshein, LLP (the "Partnership"). Cantor acknowledges that Epstein, at the present time, plans to form another law firm specializing in, but not limited to, the practice of personal injury and general litigation, and that such fact has been duly considered by him before entering into this Agreement. Cantor further agrees to take out malpractice insurance coverage for the Partnership and to name Epstein as either an assured or additional assured on such policy such that Epstein is covered for all acts of malpractice that he commits which occur within the Partnership.

## Section 1.2 Principal Place of Business

The principle place of business shall be in an office space selected by Cantor located in the City, State and County of New York.

## ARTICLE 2 - PURPOSE OF THE BUSINESS

The Partnership is established for the purpose of engaging in the practice of law, specifically commercial litigation and other related areas of commercial practice. The Partnership may expand to engage in additional fields of legal practice, other than personal injury law, as may be determined by Cantor from time to time. Conversely, the Partnership may decrease or limit its area of practice as may be determined by Cantor from time to time, provided however that Cantor shall not eliminate any area of practice required to service any of the Partnership's then existing clients.

## ARTICLE 3 - TERMS OF THE PARTNERSHIP

The Partnership shall commence as of the date hereof and shall continue until terminated as hereinafter provided.

## ARTICLE 4 - ACCOUNTING METHOD

The Partnership shall keep its accounting records and shall report its income for income tax purposes on a cash basis of accounting. The accounting for partnership purposes will be done in the same manner as for tax purposes.

## ARTICLE 5 - ORIGINAL AND ADDITIONAL CAPITAL CONTRIBUTIONS AND OTHER CONTRIBUTIONS

### Section 5.1 Original and Additional Capital Contributions

The initial capital of the Partnership shall consist of the total cash and property now contributed to the Partnership by the respective partners as set forth on Exhibit A annexed hereto. Cantor shall contribute such initial and additional capital as he deems necessary to properly service the Partnership's clients in accordance with the terms of this Agreement. The parties understand that Cantor's original capital contribution and additional capital contributions shall be used for startup costs associated with the formation of a new partnership and for costs and expenses associated with the operations thereof, such as, by way of illustration only, office space, rent, commercial rent tax, supplies, computers, telephone system, office furnishings, fees for reconstruction, remodeling and reconfiguration of office space, and any other expense, including salaries for office staff and associate attorneys and research materials, ordinarily incurred in the formation of a partnership.

### Section 5.2 Existing and Future Clients

Cantor agrees to use his best efforts to bring to the Partnership all of the corporate and professional liability clients whom he brought into the firm of Haas, Greenstein, Cohen, Gerstein & Starr, P.C. Epstein agrees to use his best efforts to bring to the Partnership Chubb/Federal Insurance Company and its insureds. However, Epstein shall have no obligation to bring to the Partnership any other clients or accounts. The parties understand that their respective existing clients have the right to choose any lawyer or law firm they desire to represent them in pending legal matters. Notwithstanding the foregoing, the parties agree, upon execution of this Agreement, to inform the clients whom they are obligated to attempt to refer to the Partnership that they have formed a partnership, and to use their best efforts to have those clients retain the Partnership to service their existing and future legal needs, and Cantor agrees to use his best efforts to bring additional clients to the Partnership. Epstein further agrees that he shall not perform any legal work on behalf of directors' and officers' liability policies issued by Chubb/Federal Insurance Company, or have an interest in the fees generated by any such work, except for his interest therein set forth in Article 6 of this Agreement, subject to any contrary provisions of this Agreement.

Cantor agrees that to the extent his existing clients or additional clients have matters involving personal injury law, he will use his best efforts to have those clients retain Epstein or any law firm of which he is a partner or to which he is of counsel to service such personal injury matters, Cantor and Epstein acknowledge that the provisions of this Article 5 are of the essence to each of them, that each of them has received good and valuable consideration therefor, and that each of them intends the provisions of this Article 5 to survive the dissolution of the Partnership and/or other termination of this Agreement, unless and until the parties agree, in a writing signed by both of them, that the provisions of this Article 5 shall no longer bind them.

## ARTICLE 6 - NET PROFITS AND LOSSES; CASH DISTRIBUTIONS

## Section 6.1 Net Profit/Loss of the Partnership

All net profits and losses generated by the Partnership shall be allocable to Cantor except that Epstein shall be entitled to an interest in certain portions of the gross income generated by the Partnership as set forth in Section 6.2 hereof.

## Section 6.2 Epstein's Interest in Gross Income

[a] Epstein shall be entitled to an interest, payable as set forth on Exhibit B annexed hereto, equal to twenty-five percent (25%) of the gross income (excluding reimbursement of disbursements) received by the Partnership from fees paid to the Partnership by Chubb/Federal Insurance Company and their insureds ("Chubb"). Additionally, Epstein shall be entitled to an interest, payable when the respective fee is received by the Partnership, equal to such percentage as to which Cantor and Epstein shall, as to each client, agree of gross income received by the Partnership from fees paid by Epstein's other clients which he brings to the firm. Those additional clients as to which Epstein has an interest as of the date hereof are named on Exhibit C annexed hereto, together with the percentage of the gross income received by the Partnership from fees paid to the Partnership by each such client to which Epstein shall be entitled set forth opposite the name of such client. Cantor's existing clients which he is bringing to the firm as of the date hereof are named in Exhibit D annexed hereto. To the extent an additional client is brought to the Partnership jointly by Cantor and Epstein, Epstein's interest in the fees paid by such clients shall be as mutually agreed to by Cantor and Epstein. If Cantor and Epstein cannot agree on the interest to be payable to Epstein, the issue shall be referred to Barry J. Yellen, Esq. or such other party agreed to by Cantor and Epstein for a final determination which shall be binding on both parties, and in such case the arbitration provisions of Article 10 hereof shall not apply.

[b] Notwithstanding the provisions of Section 6.2[a] above, and subject to the terms and conditions of the Note, in the event that the gross income (excluding reimbursement of disbursements) received by the Partnership during any calendar year commencing as of January 1, 1996 and each January 1 thereafter from any client referred to the Partnership by Epstein is between \$400,000 and \$500,000, Epstein shall be entitled to an interest equal to 30% of such sums as exceed \$400,000 and, in the event such annual gross income received by the Partnership exceeds \$500,000, Epstein shall be entitled to an interest equal to 33<sup>1</sup>/<sub>3</sub>% of such sums as exceed \$500,000. Any such additional amounts shall be payable to Epstein within 30 days after the close of such calendar year.

## Section 6.3 Payments subject to Promissory Note

Simultaneous with the execution of this agreement, Cantor has loaned Epstein \$25,000 and Epstein has delivered his promissory note payable to Cantor (the "Note"). Notwithstanding the foregoing provisions of this Article 6, all amounts otherwise payable or distributable to Epstein under Article 6 shall be subject to the terms of the Note as follows: in the event that the Partnership's aggregate gross income from Chubb (exclusive of disbursements) during any

calendar year (commencing with the 1996 calendar year) shall exceed \$350,000, then one-half the interest in gross income in all fees in excess of \$350,000 otherwise payable to Epstein under Section 6.2 of the Partnership Agreement shall be paid directly to Cantor in satisfaction of Epstein's outstanding indebtedness. Similarly, if such annual gross income from Chubb shall exceed \$450,000 in any calendar year, then Cantor shall receive in addition to the amounts set forth in the preceding sentence two-thirds of Epstein's interest in all gross income of \$450,000 in satisfaction of his outstanding indebtedness. No additional payments set forth under this Section of the Agreement shall be due Cantor when Epstein's indebtedness to Cantor is extinguished.

## ARTICLE 7 - ADMINISTRATIVE PROVISIONS

### Section 7.1 Time Devoted to Partnership

[a] Cantor shall devote all of his normal business time to the operation of the Partnership business, and shall be exclusively responsible for the management of the Partnership's business operations and, subject to the exercise of his discretion, paying all bills and expenses in a timely manner and, to the extent within his reasonable business control, collecting receivable in a timely manner, monitoring the Partnership's legal files, hiring necessary staff, and otherwise servicing the Partnership's clients in accordance with the reasonable business practices of a law firm the size of the Partnership.

[b] Cantor acknowledges that he has been informed that Epstein will not be devoting all of his normal business time to the Partnership, but plans to form a second firm specializing in personal injury law and/or other specific areas of law. Cantor warrants and represents that he has carefully considered Epstein's plan and has decided to enter into this Agreement after receiving disclosure thereof.

Notwithstanding the foregoing, Epstein shall make himself available, by telephone or in person, with respect to his clients, for client consultation, strategy review sessions and the development of overall trial strategies with regard to pending litigation. In addition, Epstein shall be permitted the opportunity for reviewing all bills and reports prepared by the Partnership for Chubb. However, if he shall not comment on same within three (3) days after delivery to him, then such documents may be transmitted by Cantor. Cantor's decisions with respect to the content of such documents shall be final.

Epstein shall not be responsible for personally litigating any of the cases for which the Partnership is retained. Notwithstanding the foregoing, in the event Epstein, at Cantor's request, performs legal services outside of those set forth in Section 7.1 hereof, Epstein shall be entitled to receive such remuneration therefor as to which he and Cantor shall at any time and from time to time agree. It is agreed that for work performed by Epstein on any cases, the Partnership shall pay Epstein at the rate of \$40 per billed hour. Epstein shall be paid for such work when the Partnership receives payment from Chubb for said work.

### Section 7.2 Epstein's Election

At any time after twelve (12) months from the date of this Agreement, Epstein may serve upon Cantor written notice advising that he has elected as of a date not less than three (3) months from the date of the notice to devote all of his normal business time to the Partnership and to become a full and equal partner with Cantor in the Partnership, with each having an equal say in the management, operations and running of the Partnership. Any such election shall become effective automatically upon the expiration of such three (3) month period (or such longer or shorter period agreed to in writing by Cantor and Epstein provided that Epstein agrees in writing to accelerate the Note and to pay to Cantor 1/2 of Cantor's capital contributions to the Partnership under the following terms and conditions: First, the unpaid balance on the Note shall be calculated and added to the monetary amount that Epstein is required to pay to Cantor representing 1/2 of the capital fee or monies to the Partnership contributions that Cantor made to the Partnership (the "Principal Amount"). Epstein shall be obligated, upon the date of his right of election under this Section 7.2 is to become effective, to pay to Cantor 1/2 of the Principal Amount as of the date the election is to take effect. The unpaid balance on the Principal Amount shall be due and payable in 24 equal monthly installments on the last day of each month following the initial <sup>1</sup>A payment with interest accruing on such unpaid balance at the rate of 1% above Citibank's then prime rate calculated as of the date Epstein's election becomes effective. Epstein shall have the right to pre-pay, without penalty, all or any part of the Principal Amount at any time after the election is made. The amount of Cantor's aggregate contributions to the capital of the Partnership shall be determined by the accountant regularly retained by the Partnership in accordance with generally accepted accounting practices consistently applied, which determination shall be binding upon Cantor and Epstein. From and after the effective date of Epstein's election, Epstein shall cease to be entitled to the interest in the gross proceeds of the Partnership described in Section 6.2 hereof. Cantor and Epstein acknowledge that the provisions of this Section 7.2 are of the essence to each of them and that each of them has received good and valuable consideration thereof. In the event Epstein becomes a full and equal partner with Cantor in the Partnership pursuant to his election rights under this Section of the Agreement, all provisions herein giving exclusive control to Cantor to make decisions affecting and concerning the Partnership shall cease to be valid so that both partners shall have an equal right to run, manage, operate and control the affairs of the Partnership.

### Section 7.3 Bank Accounts

One or more Partnership bank accounts, including an attorney's escrow account, shall be established and checks on the account may be signed only by Cantor or such other individual as Cantor may select.

### Section 7.4 Books and Records

Cantor shall be responsible for maintaining all of the Partnership's books and records. Epstein shall have the right during normal business hours, upon reasonable notice given to Cantor, to examine, or to cause his representative to examine, all of the Partnership's books and records pertaining to his clients and, upon delivering notice of election described in Section 7.1

Phereof, to examine, or cause his representative to examine, all of the Partnership's books and records.

#### Section 7.5 Personnel

Cantor shall have the sole responsibility and discretion with respect to the hiring and termination of personnel including, without limitation, associate attorneys. Notwithstanding the foregoing, Cantor shall not allow any associate attorney, independent contractor attorney, of counsel attorney or any other worker, administrator, paralegal or other employee to work on cases involving Epstein's clients without Epstein's approval.

#### Section 7.6 Entertainment Expenses of Partners

Cantor and Epstein will each incur those entertainment expenses each deems necessary for the development of the Partnership's business. Expenses incurred by Epstein will not be paid for or reimbursed by the Partnership except where agreed to by Cantor in advance in writing. The partners will review this policy as they deem necessary.

### ARTICLE 8 - ADDITIONAL PROVISIONS AFFECTING THE PARTNERSHIP

#### Section 8.1 Epstein's Office

From October 1 through December 31, 1995, Epstein shall be provided with a fully equipped and fully functional office with a secretarial space. He shall not be obligated to pay any fee or monies for the use of such office. Epstein shall have the right, during this three month period, to conduct legal work, outside of the legal work performed by the Partnership. Furthermore, Epstein shall have the right to elect to keep such an office after the expiration of such three month period, provided however, he agrees to pay to the Partnership 50% of the overhead attributable to the use of such office. Epstein may exercise such right of election at any time up to the expiration of the three month period in which he is entitled to use of the aforesaid office without fee or charge. If Epstein ceases to work out of the Partnership's offices and opens another office for the practice of personal injury litigation or any other legal work, then Epstein shall be responsible for paying to the Partnership \$225 per month as reimbursement for the expenses incurred by the Partnership in providing him with an office for the term of this Agreement, provided, however, that Epstein shall not be responsible for making any monetary payments to the Partnership if the Partnership is actually utilizing Epstein's office in any fashion.

#### Section 8.2 The Partnership's Obligation to Service the Clients of Epstein

The Partnership, Cantor and Epstein understand and agree that the clients of Epstein will attempt to refer to the Partnership require the type of representation that was afforded to them previously by the firm Hans, Greenstein, Cohen, Gerstein & Starr (the "Haas firm"). Accordingly, the Partnership and Cantor agree to provide to Epstein's clients the representation previously provided to them by the Hans firm.

### Section 8.3 Non-Solicitation of Epstein's Clients In the Event of Breach

The Partnership, Cantor and Epstein acknowledge and agree that Epstein. Pursuant to Section 7.2 hereof, has the right to elect to become a full partner in the Partnership. In the event the Partnership and/or Cantor fails to honor such right of election, or the Partnership and/or Cantor dissolve the Partnership or discontinue its operations, Cantor agrees not to solicit work and/or perform work from Chubb/Federal Insurance Company or other clients referred to the Partnership by Scott Epstein for a period of two years from the date of the breach or the date the Partnership dissolves or discontinues its business operations. Furthermore, Cantor agrees that all attorneys who perform work for the Partnership, whether as associate attorneys, of counsel attorneys or independent contractor attorneys, shall execute an agreement with the Partnership in which they too agree, in the event of any such breach, dissolution or discontinuance, not to solicit work from Epstein's clients for a period of two years from the date of their termination or the date on -which they no longer perform work for the Partnership.

The partners have read and reviewed the Court of Appeals decisions in Cohen v. Lord Dav & Lord, 75 N.Y.2d 103 [1989] and Denbury v. Parker, Chapin, Flattay & Klimol, 82 N.Y.2d 375 [1993] and understand that pursuant to DR 2-108[A] participation "in a partnership or employment agreement with another lawyer that restricts the right of the lawyer to practice law after the termination of the relationship created by the agreement" is void as against public policy. Notwithstanding the above, the effect of the non-solicitation provisions herein is not to restrict the ability of Cantor to practice law nor to preclude clients of Epstein, if they choose, from retaining the services of Cantor as an attorney. Rather, it is to assert that if Epstein's right to elect to become an equal partner with Cantor is in any way impaired, abridged, nullified or abrogated by Cantor's act of leaving the Partnership or refusing to honor such right of election, the value of Epstein's election rights cannot be diminished or impaired by Cantor's soliciting clients brought to the Partnership by Epstein. However, the partners herein acknowledge that under Cohen and Denbury direct and indirect prohibitions on an attorneys' ability to practice law are generally proscribed; thus, this section of the Agreement has been drafted so as to protect the Partnership's "legitimate interest in its own survival and well-being" (Cohen, 75 N.Y.2d at 101-102, Denbury, 82 N.Y.2d at 381) and the partners explicitly recognize such fact.

Furthermore, in the event Cantor, for any reason, fails to allow Epstein to elect to become a full and equal partner in the Partnership for any reason including, but not limited to, Cantor's withdrawing from the Partnership, attempting to dissolve the Partnership or simply refusing to acknowledge Epstein's election right, Cantor in addition to his ownership of all accounts receivables and WIP as of the date of the effectiveness of Scott W. Epstein's election; shall be obligated to work for the Partnership for three months at a monthly rate equal to the average monthly amount of salary and/or draw received by Cantor during the prior six (6) months, as reflected on the books of the Partnership so as to facilitate Epstein's becoming a full and equal partner in the Partnership.

### ARTICLE 9 - DISSOLUTION

Subject to the other provisions of this Agreement, if any controversy or claim arising out of this agreement cannot be settled by Cantor and Epstein, the controversy or claim shall be .....

settled by arbitration in accordance with the rules of the American Arbitration Association then in effect in New York County before a single arbitrator who shall be an attorney actively engaged in the practice of law in New York County.

The parties agree that any arbitration award shall be confirmed in accordance with the Civil Practice Law & Rules of the Supreme Court, New York County.

**ARTICLE 10 - ADMISSION OF NEW PARTNERS**

Until such time as Epstein shall have exercised his election under Section 7.2., subject to Section 7.5, the admission of any new partner shall require the consent solely of Cantor, provided, however, that no partner may be added as a "named partner" without the express written consent of Epstein. The term "named partner" shall refer to any new partner whose name will appear on the firm's letterhead such that the name of the firm actually changes. After the effective date of such election, the admission of any new partner shall require the consent of all existing partners. The capital contribution of the new partner and the percentage of his or her interest in the Partnership shall be determined by Cantor, or by the existing partners, as applicable. A new partner must consent to and be bound to sign this agreement upon admission as a partner.

**ARTICLE 11 - CLIENT RECORDS**

All records of clients shall be retained by the Partnership until it receives written instructions from the client regarding the records.

**ARTICLE 12 - MISCELLANEOUS PROVISIONS**

This Agreement shall be construed pursuant to the laws of the State of New York.

If any portion hereof be deemed unenforceable, the remainder shall continue in full force and effect.

This Agreement, together with the Note, represent the complete agreement of the parties, who expressly disclaim reliance upon any oral or other written representations, warranties or statements not mentioned herein.

This Agreement, where not otherwise provided, shall be binding upon the parties' successors, heirs, assigns and personal representatives.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

ROBERT I. CANTOR  
SCOTT W. EPSTEIN