

## Robert Spallina

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**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:32 PM  
**To:** 'Scott.welling@jackson.com'  
**Subject:** Simon Bernstein Trust - Policy #1009208  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf

Scott – I understand you are out of the office until tomorrow. We sent this to you previously and in error addressed it to the wrong email address. We would like to file this on Monday so if you could take a few minutes to review it would be greatly appreciated. We have not attached a copy of the Order but it will obviously be in the form of the relief requested.

Thanks,

Robert L. Spallina, Esq.  
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If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: SIMON BERNSTEIN                      PROBATE DIVISION  
IRREVOCABLE INSURANCE  
TRUST dated JUNE 21, 1995                      FILE NO.:

**DECLARATORY ACTION TO ESTABLISH A LOST  
TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

COMES NOW TED BERNSTEIN, son of SIMON BERNSTEIN (“SIMON”), deceased, and alleges the following:

Parties, Jurisdiction and Venue

1. This is an action to establish the terms of a lost trust, including the determination of a successor trustee, pursuant to Florida Statutes 86.011, 86.041 and 736.0201(2) and (4).
2. Florida Statutes 86.736.0201 provides, in part, for the Court to intervene in the administration of a trust when invoked by an interested person relating to the validity, administration or distribution of a trust, appoint or remove a trustee and ascertain beneficiaries.
3. Petitioner, TED S. BERNSTEIN (“TED”), is of legal age and a resident of Palm Beach County, Florida, and the former Personal Representative and current trustee of the FAMILY TRUST F/B/O SIMON BERNSTEIN under the SHIRLEY BERNSTEIN REVOCABLE TRUST.
4. SHIRLEY BERNSTEIN is the predeceased spouse of SIMON, who upon information and belief was the Trustee of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST (the “ILIT”) , an irrevocable trust established by SIMON on June 21, 1995 .
5. SIMON died on September 13, 2012 and his estate is now being probated in the Circuit Court for Palm Beach County, Florida. SIMON is survived by the following adult children:

TED S. BERNSTEIN, resident of Palm Beach County, Florida ;  
PAMELA BERNSTEIN, resident of Chicago, Illinois;  
ELIOT BERNSTEIN, resident of Palm Beach County, Florida;  
JILL IANTONI, resident of Highland Park, Illinois; and  
LISA S. FRIEDSTEIN, resident of Highland Park, Illinois (hereinafter sometimes referred to as the "Children").

All of the Children are sui juris and have either executed and filed Consents to the relief sought or have been served with this Petition.

6. Venue of this proceeding is proper in this Court pursuant to Florida Statutes 737.0204 and Chapter 47 because the ILIT's principal place of administration and Trust situs was and remained in Palm Beach County, Florida.

#### General Allegations

7. Attached as Exhibit "A" is a copy of the Form SS-4, Application for Employer Identification Number, reflecting the name of the ILIT and signed by SHIRLEY as the Trustee and dated June 21, 1995.
8. Diligent search for the ILIT or a copy of it has been made, including inquiry with the insurance carrier, HERITAGE UNION LIFE INSURANCE COMPANY ("HERITAGE"), search of SIMON'S and SHIRLEY'S papers and documents, lawyer files and accountant files, and no original or copy has been located.
9. Upon information and belief, the Petitioner, TED, was named as the successor Trustee to SHIRLEY of the ILIT. (See Affidavit of David Simon, Esq., son-in-law of SIMON and SHIRLEY, attached hereto as Exhibit "B").
10. Upon information and belief, the beneficiaries of the ILIT were the children of SIMON and SHIRLEY, in equal shares and per stirpes. (See Affidavit of Robert L. Spallina, Esq., personal attorney to SIMON and SHIRLEY during their lifetimes, attached hereto as Exhibit "C").
11. HERITAGE has advised counsel for the Petitioner that their records reflect the owner of the life insurance policy to be SIMON and the beneficiary to be the ILIT. (See copy of communication from carrier dated \_\_\_\_\_ attached hereto as Exhibit

“D”).

12. HERITAGE will not settle and pay the death benefit under policy #1009208 until receipt of a court order identifying the successor trustee of the ILIT.
13. In order to avoid delays occasioned by the need to open new banking arrangements for the ILIT to process and distribute the insurance proceeds, TED wishes to authorize HERITAGE to disburse the death benefit proceeds to Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

WHEREFORE, Petitioner respectfully requests this Court to determine that

A. TED S. BERNSTEIN is the successor trustee to SHIRLEY BERNSTEIN of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995;

B. The remainder beneficiaries of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dated June 21, 1995 are the five (5) children of SIMON and SHIRLEY, in equal shares, per stirpes;

C. HERITAGE UNION LIFE INSURANCE COMPANY be directed to distribute the death benefit proceeds to the Tescher & Spallina, P.A. Trust Account at Sabadell Bank.

UNDER PENALTIES OF PERJURY, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on \_\_\_\_\_, 2013

\_\_\_\_\_  
TED S. BERNSTEIN

\_\_\_\_\_  
Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was served via U.S.

Mail to the following individuals on this \_\_\_\_ day of \_\_\_\_\_, 2013:

TESCHER & SPALLINA, P.A.

By: \_\_\_\_\_

Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

TRUST dated JUNE 21, 1995      FILE NO.:  
\_\_\_\_\_ /

**WAIVER, CONSENT AND JOINDER TO  
DECLARATORY ACTION TO ESTABLISH A LOST TRUST  
AND APPOINT A SUCCESSOR TRUSTEE**

The undersigned, a surviving child of SIMON BERNSTEIN and SHIRLEY BERNSTEIN, acknowledge receipt of the captioned pleading, waive formal service and join in and consent to the relief requested.

Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
PAMELA BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN          PROBATE DIVISION

IRREVOCABLE INSURANCE

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Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

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Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
JILL IANTONI



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

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Dated this \_\_\_ day of March, 2013.

\_\_\_\_\_  
LISA S. FRIEDSTEIN

2/25/13 Bernstein      6/21, 1995      Trust execution date

Chapter 86 F.S.

~~Illinois resident~~  
~~Trust executed there~~

736.0108 Principal place of admin.

736.0201

736.0204(3) principal place of admin - FL.

INS - Heritage

- 1995 Trust reflected as been in INS. Co does

Both were FL residents

Sev owned policy died 9/13/12

Donly was trustee died 12/8/10

Pam, Jill, Lisa - all Illinois residents  
Eliot, his minor children & Ted - FL residents

SS-4 .6/21/95 - 65-6178916