From:	Robert Spallina
To:	Pam Simon
Cc:	Eliot Bernstein; Ted Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Christine P. Yates ~ Director @ Tripp Scott
Subject:	Re: Heritage Policy
Date:	Friday, February 8, 2013 8:41:25 PM

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed.

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <psimon@stpcorp.com> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.
Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <iviewit@gmail.com> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.
I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.
Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.
Now that you know my position, I will respond to your comments

respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?-

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. – DL
Iviewit Holdings, Inc. – DL (yes, two identically named)
Iviewit Holdings, Inc. – FL
Iviewit Technologies, Inc. – DL
Uviewit Holdings, Inc. - DL
Uview.com, Inc. – DL
Iviewit.com, Inc. – FL
Iviewit.com, Inc. – DL
I.C., Inc. – FL
Iviewit.com LLC – DL

Iviewit LLC – DL
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http://www.iviewit.tv
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http://iviewit.tv/wordpresseliot
http://www.youtube.com/user/eliotbernstein?feature=mhum
http://www.TheDivineConstitution.com

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video courtesy of NY Senate, my fav part at end
http://www.youtube.com/watch?v=7oHKs_crYIs

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video Handheld Camera View, my favorite version at the very end
http://youtu.be/3Q9MzqZv4lw

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @
http://www.youtube.com/watch?v=6BlK73p4Ueo

and finally latest blog
http://iviewit.tv/wordpress/?p=594

Eliot Part 1 - The Iviewit Inventions @
http://www.youtube.com/watch?v=LOn4hwemqW0

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #1
http://youtu.be/i1Ao1BYvyoQ

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #2
http://youtu.be/OaXys6bImFI

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #3
http://youtu.be/9R1PNnJVVGU

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #4
http://youtu.be/rUHCZFkro08

Eliot Bernstein Iviewit Inventor Televison Interview Dick Woelfle Network 125
http://youtu.be/WEgSXJFqrhQ

Eliot for President in 2012 Campaign Speech 1 with No Top Teeth, Don't Laugh, Very Important
http://www.youtube.com/watch?v=DuIHQDcwQfM

Eliot for President in 2012 Campaign Speech 2 with No Top OR Bottom Teeth, Don't Laugh, Very Important
http://www.youtube.com/watch?v=jbOP3U1q6mM

Eliot for President in 2012 Campaign Speech 3 Very Important
https://www.facebook.com/iviewit?ref=tn_tnmn#!/note.php?note_id=319280841435989

Other Websites I like:

http://www.deniedpatent.com
http://exposecorruptcourts.blogspot.com
http://www.judgewatch.org/index.html
http://www.enddiscriminationnow.com
http://www.corruptcourts.org
http://www.makeourofficialsaccountable.com
http://www.parentadvocates.org
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http://heavensclimb.blogspot.com
http://www.VoteForGreg.us Greg Fischer
http://www.liberty-candidates.org/greg-fischer/
http://www.facebook.com/pages/Vote-For-Greg/111952178833067
http://www.killallthelawyers.ws/law (The Shakespearean Solution, The Butcher)

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"We the people are the rightful master of both congress and the courts - not to overthrow the Constitution, but to overthrow the men who pervert the Constitution." - Abraham Lincoln

"Whensoever the General Government assumes undelegated powers, its acts are unauthoritative, void, and of no force." -- Thomas Jefferson, The Kentucky Resolutions of 1798

“If a law is unjust, a man is not only right to disobey it, he is obligated to do so.” Thomas Jefferson

"Each time a person stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, these ripples build a current that can sweep down the mightiest walls of oppression and resistance." - Robert F. Kennedy

"Is life so dear or peace so sweet as to be purchased at the price of chains and slavery? Forbid it, Almighty God! I know not what course others may take, but as for me, give me liberty, or give me death!" - Patrick Henry

I live by the saying,

ELLEN G. WHITE
The greatest want of the world is the want of men, --men who will not be bought or sold; men who in their inmost souls are true and honest, men who do not fear to call sin by its right name; men whose conscience is as true to duty as the needle to the pole, men who will stand for the right though the heavens fall. -Education, p. 57(1903)

If you are one of these people, nice to be your friend ~ Eliot
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