

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95,)

Counter-Defendant)

and,)

JPMORGAN CHASE BANK, N.A.,)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN,)

Third-Party Defendants)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

MOTION TO INTERVENE
PURSUANT TO FED. R. CIV.
P. 24 BY INTERESTED PARTY
WILLIAM E. STANSBURY

_____)
)
 ELIOT IVAN BERNSTEIN,)
)
 Cross-Plaintiff,)
)
 v.)
)
 TED BERNSTEIN, individually and as)
 alleged Trustee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd 6/21/95,)
)
 Cross-Defendant,)
 and,)
)
 PAMELA B. SIMON, DAVID B. SIMON,)
 both Professionally and Personally,)
 ADAM SIMON, both Professionally and)
 Personally, THE SIMON LAW FIRM,)
 TESCHER & SPALLINA, P.A.,)
 DONALD TESCHER, both Professionally)
 and Personally, ROBERT SPALLINA,)
 both Professionally and Personally,)
 LISA FRIEDSTEIN, JILL IANTONI,)
 S.B. LEXINGTON, INC. EMPLOYEE)
 DEATH BENEFIT TRUST, S.T.P.)
 ENTERPRISES, INC., S.B. LEXINGTON,)
 INC., NATIONAL SERVICE)
 ASSOCIATION (OF FLORIDA),)
 NATIONAL SERVICE ASSOCIATION)
 (OF ILLINOIS) AND JOHN AND JANE)
 DOES,)
)
 Third-Party Defendants.)

William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 24, files this Motion to Intervene in this action and in support states as follows:

1. Stansbury filed a lawsuit the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect

compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars. (A copy of the Complaint is attached as Exhibit "A").

2. Simon Bernstein died in September of 2012. A Petition for Administration was filed on October 2, 2012, and is pending in the Circuit Court of Palm Beach County, Florida, under the Court No. 502012 CP 4391XXXXSB. (A copy of the Petition for Administration is attached hereto as Exhibit "B"). Simon Bernstein's estate was substituted as a party defendant in Stansbury's lawsuit.

3. Stansbury also asserted claims against the Estate of Simon Bernstein (the "Estate") in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate. (A copy of Stansbury's claim filed in the Probate Court against the Estate is attached hereto as Exhibit "C").

4. The alleged beneficiary of the life insurance policy that is at issue in the instant litigation is designated as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"), established June 21, 1995, with Simon Bernstein's wife, Shirley Bernstein, identified as Trustee. Shirley Bernstein predeceased Simon Bernstein in 2010. The Trust is the Plaintiff in the instant action.

5. Representatives of the Trust claim that Shirley Bernstein was the initial beneficiary of the Trust, but she predeceased Simon Bernstein. The representatives also claim that the children of Simon and Shirley Bernstein are the secondary beneficiaries of the Trust, but they also acknowledge that the written Trust document cannot be found. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit "D"). Thus, the Trust no longer exists.

6. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. Harris v. Byard, 501 So.2d 730, 12 Fla. L. Weekly 429.

7. Under the circumstances of this case the proceeds of the life insurance policy should be paid to the Estate and made available to pay creditors such as Stansbury.

8. Stansbury is entitled to Intervention of Right under Fed. R. Civ. P. 24(a)(2) in that Stansbury, as a substantial creditor of the Estate, claims an interest in the life insurance proceeds that are the subject of this action and is so situated that disposing of this action without his intervention may as a practical matter impair Stansbury's ability to protect his interest in the life insurance proceeds that are or may be payable to the Estate and available to pay creditors such as Stansbury.

9. The parties to this action will not adequately represent Stansbury's interest in this litigation. The proponents of the Trust and the children of Simon Bernstein will advocate that the Trust exists and that the children are the proper beneficiaries, which means the life insurance proceeds will be paid directly to the children and outside the Probate Estate, making the life insurance proceeds unavailable to pay creditors of the Estate such as Stansbury. None of the current parties, upon information and belief, will advocate that the life insurance proceeds at issue are and should be payable to the Estate and made available to pay creditors such as Stansbury.

10. Stansbury is also entitled to Permissive Intervention under Fed. R. Civ. P. 24(b)(1)(B) in that Stansbury has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds that are the subject of this action.

11. Plaintiff is alleged to be a Trust formed in Chicago, Illinois. Defendant is a Minnesota corporation and Stansbury is a resident of the State of Florida. Therefore, Stansbury's intervention will not destroy diversity of citizenship.

12. A pleading that sets out the claim for which intervention is sought is attached hereto as Exhibit "E".

WHEREFORE, proposed Intervenor, William E. Stansbury moves this Honorable Court for an Order permitting him to intervene in this action pursuant to Fed. R. Civ. P. 24 (a)(2) or 24 (b)(1)(B).

WILLIAM E. STANSBURY

By: /s/ John M. O'Halloran
John M. O'Halloran (02095076)

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 5, 2013, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

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By: /s/ John M. O'Halloran
John M. O'Halloran (02095076)

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

WILLIAM E. STANSBURY,
Plaintiff,

vs.

Case No.

50 2012 CA013 93 3XXXXNB

TED S. BERNSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,
Defendants.

AA
COPY
RECEIVED FOR FILING

JUL 30 2012

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

COMPLAINT
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF”), by and through his undersigned co-counsel,
hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendants TED S. BERNSTEIN (“TED BERNSTEIN”), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.
4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.
5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively “Defendants



BERNSTEIN”) are, respectively, one another’s father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another’s alter egos.

7 The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients’ financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept (“the said concept”), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff’s knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals..

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than \$1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff's money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up

his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied, or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

I. ACCOUNTING
(Against LIC and ARBITRAGE, for Accounting
as to Withholding of Money Due Plaintiff)

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by

Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

II. ACCOUNTING
(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting
as to Money Due to Plaintiff Which Said Defendants Converted)

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31. The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

III. BREACH OF ORAL CONTRACT
(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contract between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

IV. BREACH OF IMPLIED COVENANT OF GOOD FAITH and FAIR DEALING

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

V. BREACH OF FIDUCIARY DUTY

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47 Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VI. CIVIL THEFT
Against All Defendants

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

VII. FRAUD
(Against All Defendants)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated

herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VIII. EQUITABLE LIEN

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

IX. CONTRACT IMPLIED IN LAW

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

X. CONSTRUCTIVE TRUST

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.

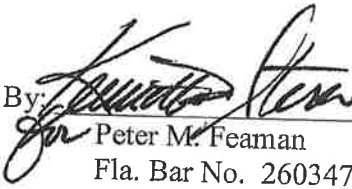
78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from


and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

Peter M. Feaman, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552 Fax: 561-734-5554
pfeaman@feamanlaw.com

By: 
Peter M. Feaman
Fla. Bar No. 260347

Kenneth D. Stern, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-740-1413 Fax: 561-734-5554
kdstern@gmail.com

By: 
Kenneth D. Stern
Fla. Bar No. 0244929

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12.

SIMON L. BERNSTEIN, File No. _____

Deceased.

502012 CP00 4391 XXXX SB

2012 OCT - 2 AM 8:58
 JERARDON A. BOGARD, CLERK
 PALM BEACH COUNTY, FL
 SOUTH CITY BRANCH - FILED

PETITION FOR ADMINISTRATION
 (testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult



502012CP004391XXXXSB

I2

WILL OF
SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

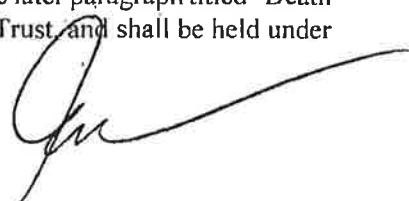
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

LAST WILL
OF SIMON L. BERNSTEIN

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the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL
OF SIMON L. BERNSTEIN

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estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL
OF SIMON L. BERNSTEIN

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operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

LAST WILL
OF SIMON L. BERNSTEIN

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k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL
OF SIMON L. BERNSTEIN

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interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

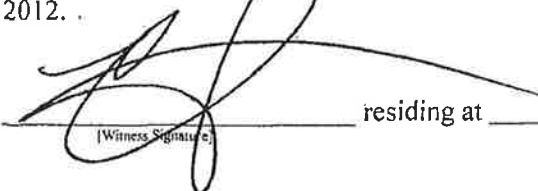
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I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.


SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 24 day of July, 2012.


[Witness Signature]

residing at

ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Witness Address]


[Witness Signature]

residing at

Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

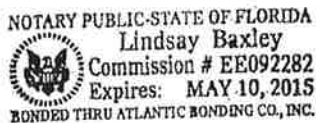
[Signature]
Witness

Kimberly Moran
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Signature]
Signature - Notary Public-State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]



LAST WILL
OF SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 50201201004391
IZ *KXXSB*

Deceased.

2012 OCT -2 AM 9:31
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH - FILED

LETTERS OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN

WHEREAS, Simon L. Bernstein, a resident of Palm Beach County, died on September 13, 2012, owning assets in the State of Florida, and

WHEREAS, Robert L. Spallina and Donald R. Tescher have been appointed as co-Personal Representatives of the Estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Robert L. Spallina and Donald R. Tescher as duly qualified under the laws of the State of Florida to act as co-Personal Representatives of the Estate of Simon L. Bernstein, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

DONE and ORDERED in Chambers at Delray, Palm Beach County, Florida, on this 2 day of Oct, 2012.

Estate must be closed 12 months from the date of order

Circuit Judge *[Signature]*



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

IN RE: **Case No. 502012CP004391 SB**

ESTATE OF SIMON
BERNSTEIN,
Deceased.

Division: IZ

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED

NOV 06 2012

SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.


5. The claim is not secured.

[Signature page follows this page]

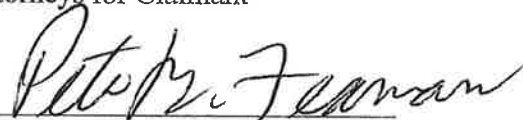


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.


William E. Stansbury, Claimant

Attorneys for Claimant



Peter M. Feaman, Esq.
Florida Bar No.: 260347
PETER M. FEAMAN, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
Phone: (561) 734-5552
Facsimile: (561) 734-5554
Primary Electronic Mail Address:
pfeaman@feamanlaw.com

Copy mailed to attorney for Personal
Representative on _____
2012.

MUST BE FILED IN DUPLICATE

LAW OFFICES

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER 1
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
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ROBERT L. SPALLINA
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SUPPORT STAFF
DIANE DUSTIN
KIMBERLY MORAN
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

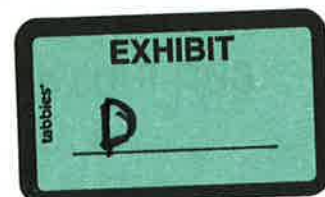
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,


ROBERT L. SPALLINA

RLS/km

Enclosures



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95,)

Counter-Defendant)

and,)

JPMORGAN CHASE BANK, N.A.,)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

INTERVENOR COMPLAINT FOR
DECLARATORY
JUDGMENT PURSUANT TO
FED. R. CIV. P. 57



Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN,)

Third-Party Defendants)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff,)

v.)

TED BERNSTEIN, individually and as)
alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)

Cross-Defendant,)

and,)

PAMELA B. SIMON, DAVID B. SIMON,)
both Professionally and Personally,)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI,)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC., S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES,)

Third-Party Defendants.)

WILLIAM E. STANSBURY)

Intervenor)

William E. Stansbury (“Stansbury”), by and through his undersigned counsel, as Intervenor, hereby files, pursuant to Fed. R. Civ. P. 57, this Complaint for Declaratory Judgment against the Simon Bernstein Irrevocable Trust DTD 6/21/95 (the “Trust”) and Heritage Union Life Insurance Company (the “Insurance Company”), and alleges as follows:

INTRODUCTION

1. This is a declaratory judgment action filed pursuant to Fed. R. Civ. P. 57 seeking a declaration that the Trust, which is the party plaintiff in this action, either no longer exists, or if it does exist, the proper beneficiary of the Trust, and therefore the proper recipient of the life insurance proceeds at issue, is the Estate of Simon Bernstein (the “Estate”), currently pending in the Circuit Court of Palm Beach County, Florida. As a result, the Insurance Company should be directed by Order of this Court to pay the life insurance proceeds directly to the Estate.

THE PARTIES AND JURISDICTION

2. Stansbury is an Intervening Party pursuant to Fed. R. Civ. P. 24 and is a resident of Boynton Beach, Palm Beach County, Florida.

3. The Simon Bernstein Irrevocable Insurance Trust, as alleged in the original Complaint, was a trust established in Chicago, Illinois.

4. Heritage Union Life Insurance Company issued life insurance insuring the life of Simon Bernstein and is a Minnesota corporation. The death benefit payable under the life insurance policy exceeds \$1 million dollars.

5. District Courts have original jurisdiction over all civil action where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. §1332(a).

6. The death benefit payable under the life insurance policy exceeds \$1 million dollars. Additionally, the parties to this action are all residents of different states. Therefore, this Court has original diversity jurisdiction.

BACKGROUND

7. Stansbury filed a lawsuit in the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars. (A copy of the Complaint is attached as Exhibit "A.")

8. Simon Bernstein died in September of 2012. A Petition For Administration was filed on October 2, 2012 and is pending in the Circuit Court of Palm Beach County, Florida, under the Court No. 502012 CP 4391XXXXSB. (A copy of the Petition For Administration is attached hereto as Exhibit "B."). Simon Bernstein's estate was substituted as a party defendant in Stansbury's lawsuit.

9. Stansbury also asserted claims against the Estate of Simon Bernstein (the "Estate") in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate. (A copy of Stansbury's claim filed in the Probate Court against the Estate is attached hereto as Exhibit "C.")

10. The beneficiary of the life insurance policy that is at issue in the instant litigation is designated as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust").

11. Representatives of the Trust claim that Shirley Bernstein was the initial beneficiary of the Trust, who predeceased Simon Bernstein. The representatives also claim that the children of Simon and Shirley Bernstein are the secondary beneficiaries of the Trust, but they also acknowledge that the written Trust document cannot be found. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit "D.")

12. Since the written Trust cannot be found, the proponents of the Trust must prove, by clear and convincing evidence, the continued existence of the Trust and the identity of the intended beneficiaries.

13. Failure by the proponents of the Trust to establish the continued existence of the Trust and the identity of the beneficiaries will mean the Trust has terminated. As a result, the proceeds of the life insurance policy will be payable to the Estate, not the Trust, and the proceeds will be available to pay creditors of the Estate such as Stansbury.

14. The existing parties to this action will not adequately represent Stansbury's interest in this litigation. The proponents of the Trust and the children of Simon Bernstein, who are all parties to this primary litigation, will advocate that the Trust exists and that the children are the proper beneficiaries, which means the life insurance proceeds are to be paid directly to the children and outside the Estate, making the life insurance proceeds unavailable to pay creditors of the Estate such as Stansbury. None of the current parties, upon information and belief, will advocate that the life insurance proceeds at issue are and should be payable to the Estate and made available to pay creditors such as Stansbury.

15. Stansbury seeks from this court a judgment declaring that the Trust either no longer exists, or that the intended beneficiaries cannot be identified, which means the Trust has

terminated. In such event, the proceeds of the life insurance policy are payable to the Estate.

WHEREFORE Intervenor, William E. Stansbury requests this Court to enter judgment as follows:

- A. Declare that the Simon Bernstein Trust has terminated;
- B. Declare that, as a result of the termination of the Trust, the identified beneficiary on the life insurance policy no longer exists;
- C. Declare that the policy proceeds are payable to the Estate of Simon Bernstein;
- D. For Stansbury's costs herein expended, including reasonable attorneys' fees, and such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ John M. O'Halloran
John M. O'Halloran (02095076)

McVEY & PARSKY, LLC
Attorney for Plaintiff
30 North LaSalle Street
Suite 2100
Chicago, IL 60602
joh@mcveyparsky-law.com
Tel: 312-551-2130
Fax: 312-551-2131

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

WILLIAM E. STANSBURY,
Plaintiff,

vs.

Case No.

50 2012 CA013 93 3XXXXNB

TED S. BERNSTEIN;
SIMON BERNSTEIN;
LIC HOLDINGS, INC.; and
ARBITRAGE INTERNATIONAL
MANAGEMENT, L.L.C., f/k/a
ARBITRAGE INTERNATIONAL
HOLDINGS, L.L.C.,
Defendants.

AA
COPY
RECEIVED FOR FILING

JUL 30 2012

SHARON R. BOCK
CLERK & COMPTROLLER
CIRCUIT CIVIL DIVISION

COMPLAINT
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF"), by and through his undersigned co-counsel,
hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.
4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.
5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants



BERNSTEIN”) are, respectively, one another’s father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another’s alter egos.

7 The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients’ financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept (“the said concept”), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff’s knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals..

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than \$1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff's money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up

his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied, or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

I. ACCOUNTING
(Against LIC and ARBITRAGE, for Accounting
as to Withholding of Money Due Plaintiff)

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by

Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

II. ACCOUNTING

(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting as to Money Due to Plaintiff Which Said Defendants Converted)

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31. The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

III. BREACH OF ORAL CONTRACT
(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contract between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

IV. BREACH OF IMPLIED COVENANT OF GOOD FAITH and FAIR DEALING

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

V. BREACH OF FIDUCIARY DUTY

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47. Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VI. CIVIL THEFT
Against All Defendants

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

VII. FRAUD
(Against All Defendants)

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated

herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

VIII. EQUITABLE LIEN

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

IX. CONTRACT IMPLIED IN LAW

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

X. CONSTRUCTIVE TRUST

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.


78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from


and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

July 30, 2012

Peter M. Feaman, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-734-5552 Fax: 561-734-5554
pfeaman@feamanlaw.com

By: 
Peter M. Feaman
Fla. Bar No. 260347

Kenneth D. Stern, P.A.
3615 W. Boynton Beach Blvd.
Boynton Beach, FL 33436
Tel: 561-740-1413 Fax: 561-734-5554
kdstern@gmail.com

By: 
Kenneth D. Stern
Fla. Bar No. 0244929

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. _____

Deceased.

502012 e.p00 4391 XXXX SB

2012 OCT -2 AM 8:58
 SHARON R. BODA, CLERK
 PALM BEACH COUNTY, FL
 SOUTH CITY BRANCH-FILED

PETITION FOR ADMINISTRATION
 (testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 th St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult



502012CP004391XXXXSB

I2

WILL OF
SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.

WILL OF

SIMON L. BERNSTEIN

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

ARTICLE I. TANGIBLE PERSONAL PROPERTY

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

ARTICLE II. EXERCISE OF POWER OF APPOINTMENT

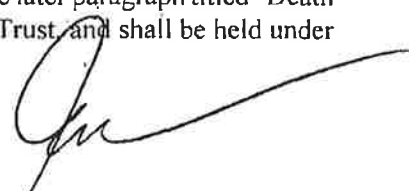
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ARTICLE III. RESIDUE OF MY ESTATE

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

LAST WILL
OF SIMON L. BERNSTEIN

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the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL
OF SIMON L. BERNSTEIN

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estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL
OF SIMON L. BERNSTEIN

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operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

LAST WILL
OF SIMON L. BERNSTEIN

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k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL
OF SIMON L. BERNSTEIN

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interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

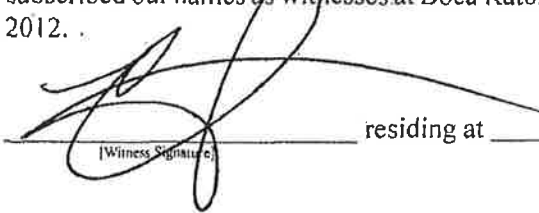
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I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.


SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.


[Witness Signature]

residing at

ROBERT L. SPALLINA
7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Witness Address]


[Witness Signature]

residing at

Kimberly Moran
6362 Las Flores Drive
Boca Raton, FL 33433

[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran,

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

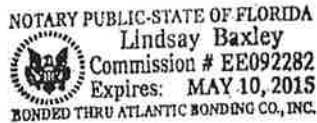
[Signature]
Witness

Kimberly Moran
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced _____ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced _____ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced _____ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

[Signature]
Signature - Notary Public - State of Florida
Lindsay Baxley
Print, type or stamp name of Notary Public



LAST WILL
OF SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 50201209004391

Deceased.

JZ
XXXXSB

2012 OCT -2 AM 9:31
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CTY BRANCH - FILED

LETTERS OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN


WHEREAS, Simon L. Bernstein, a resident of Palm Beach County, died on September 13, 2012, owning assets in the State of Florida, and

WHEREAS, Robert L. Spallina and Donald R. Tescher have been appointed as co-Personal Representatives of the Estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Robert L. Spallina and Donald R. Tescher as duly qualified under the laws of the State of Florida to act as co-Personal Representatives of the Estate of Simon L. Bernstein, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

DONE and ORDERED in Chambers at Delray, Palm Beach County, Florida, on this 2 day of Oct, 2012.

Estate must be closed 12 months from the date of order

Circuit Judge 

Bar Form No. P-3,0420
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Text Revised October 1, 1998



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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON
BERNSTEIN,
Deceased.

Division: IZ

COPY
SOUTH COUNTY BRANCH OFFICE
ORIGINAL RECEIVED

NOV 06 2012

SHARON R. BOCK
CLERK & COMPTROLLER
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis ~~for the claim is the action~~ pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.

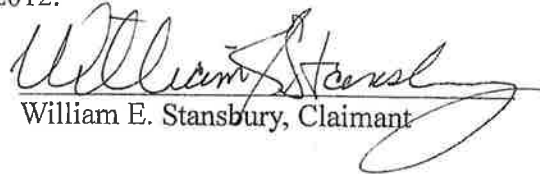
5. The claim is not secured.

[Signature page follows this page]

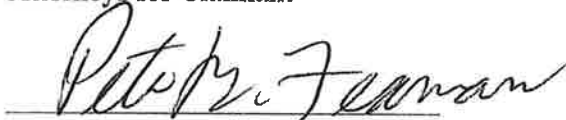


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.


William E. Stansbury, Claimant

Attorneys for Claimant



Peter M. Feaman, Esq.
Florida Bar No.: 260347
PETER M. FEAMAN, P.A.
3615 West Boynton Beach Blvd.
Boynton Beach, FL 33436
Phone: (561) 734-5552
Facsimile: (561) 734-5554
Primary Electronic Mail Address:
pfeaman@feamanlaw.com

Copy mailed to attorney for Personal
Representative on _____
2012.

MUST BE FILED IN DUPLICATE

LAW OFFICES

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FLORIDA 33431

ATTORNEYS
DONALD R. TESCHER
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DIANE DUSTIN
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December 6, 2012

VIA FACSIMILE: 803-333-4936

Atn: Bree
Claims Department
Heritage Union Life Insurance Company
1275 Sandusky Road
Jacksonville, IL 62651

**Re: Insured: Simon L. Bernstein
Contract No.: 1009208**

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

Robert L. Spallina/km
ROBERT L. SPALLINA

RLS/km

Enclosures

