

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT COURT 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)
INSURANCE TRUST DTD 6/21/95,)**

Counter-Defendant,)

and,)

**FIRST ARLINGTON NATIONAL)
BANK, 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 alleged Trustee of the Simon)
Bernstein Irrevocable Insurance Trust)
Dtd. 6/21/95, and ELIOT BERNSTEIN,)**

Third-Party Defendants.)

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Case No. 13-cv-03643

**Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

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, INC.)
(OF FLORIDA) NATIONAL)
SERVICE ASSOCIATION, INC.)
(OF ILLINOIS) AND)
JOHN AND JANE DOE’S)
))
Third Party Defendants.)

POTENTIAL BENEFICIARIES¹:

¹ Parents act as beneficiary Trustees in the estate of Simon L. Bernstein to their children, where Simon’s estate may be the ultimate beneficiary of the policy and their children named below would be the ultimate beneficiaries of the policy proceeds. The failure of the grandchildren to be represented in these matters and listed as potential beneficiaries is due to an absolute conflict with their parents who are trying to get the benefits paid to them directly. This is gross violations of fiduciary duties and may be viewed as criminal in certain aspects as the lawsuit attempts to convert the benefits from the grandchildren to 4/5 of the children of SIMON by failing to inform their

**JOSHUA ENNIO ZANDER BERNSTEIN
(ELIOT MINOR CHILD);
JACOB NOAH ARCHIE BERNSTEIN
(ELIOT MINOR CHILD);
DANIEL ELIJSHA ABE OTTOMO
BERNSTEIN (ELIOT MINOR CHILD);
ALEXANDRA BERNSTEIN (TED
ADULT CHILD);
ERIC BERNSTEIN (TED ADULT
CHILD);
MICHAEL BERNSTEIN (TED ADULT
CHILD);
MATTHEW LOGAN (TED'S SPOUSE
ADULT CHILD);
MOLLY NORAH SIMON (PAMELA
ADULT CHILD);
JULIA IANTONI – JILL MINOR CHILD;
MAX FRIEDSTEIN – LISA MINOR
CHILD;
CARLY FRIEDSTEIN – LISA MINOR
CHILD;**

INTERESTED PARTIES:

**DETECTIVE RYAN W. MILLER –
PALM BEACH COUNTY SHERIFF
OFFICE;
ERIN TUPPER - FLORIDA GOVERNOR
OFFICE NOTARY EDUCATION - THE
OFFICE OF THE GOVERNOR OF
FLORIDA RICK SCOTT**

**MOTION TO: STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED,
FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL
TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL
TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A
LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE**

children (some minors) or have them represented in these matters. The Court should take Judicial Notice of this, especially in the interests of the minor grandchildren who may lose their benefits if the proceeds of the insurance policy are converted to the knowingly wrong parties.

Eliot Ivan Bernstein (“ELIOT”) a third party defendant and his three minor children, Joshua, Jacob and Daniel Bernstein, are alleged beneficiaries of a life insurance policy Number 1009208 on the life of Simon L. Bernstein (“Policy(ies)”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” and a “Simon Bernstein Trust, N.A.” that are at dispute in the Lawsuit, makes the following (1) MOTION TO: STRIKE AMENDED COMPLAINT DUE TO ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADING AND MORE.

I, Eliot Ivan Bernstein (“ELIOT”), makes the following statements and allegations to the best of my knowledge and on information and belief as a Pro Se Litigant²:

BACKGROUND

1. That ELIOT apologizes in advance to this Court for the length of this filing, however due to the number of willful misstatements made in the proposed Amended Complaint it was

² Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)."
In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court which holds that all pleadings shall be construed to do substantial justice.

virtually impossible as a lay person, unskilled in the art of Legalese to make it fit any predefined page numbers or limits.

2. That the Motion to File an Amended Complaint filed by Adam Simon, Esq., appears to attempt to pepper the file with false statements of facts after having reviewed evidences filed with this Court and others by ELIOT and others, as their original pleading is fraught with false statements of fact and is alleged part of a Fraud on this Court and Insurance Fraud scheme.
3. That the proposed Amended Complaint states in Exhibit A attached therein, “22. Following Simon Bernstein’s death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured’s death certificate and other documentation.” This statement is factually incorrect as Robert Spallina, Esq. filed the claim form as TRUSTEE of the MISSING or SUPPRESSED “Simon Bernstein Irrevocable Trust dtd. 6/21/95, not as counsel to the trust. This is a trust that Robert Spallina, Esq. has made written statements that he has never seen or had copies of and thus his claims that he is “Trustee” appear fraudulent. The claim in the new and improved Fraud on this Court proposed Amended Complaint is that Spallina has now become counsel to the Lost or Suppressed Trust and filed the claim in that capacity. See Exhibit 1 – Spallina Insurance Claim.
4. The “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” is LOST or SUPPRESSED and NO COPIES OF AN ORIGINAL EXECUTED COPY have been tendered to this Court since the filing of the Complaint and therefore the trust has no legal standings as it does not exist and therefore anyone’s claims to be Trustee and/or Beneficiaries is a best guess at this

point and where the Beneficiary is missing the proceeds should be paid to the Estate of the Insured.

5. That defendant SPALLINA knew he was not the “Trustee” of the lost trust, as he has claimed repeatedly that he has NEVER ever seen a copy of the lost trust and everything therefore was a “best guess” as already evidenced in prior pleadings, Spallina claiming “Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.” If the beneficiaries of the lost trust are at best a “best guess,” so would who the trustees would be. This is Prima Facie evidence of INSURANCE FRAUD and as such the claim was denied when none of the claim form information requested by the carrier was provided to prove the trusteeship or beneficial interests and thus there was no way for Heritage to legally pay the benefits to the true and proper beneficiaries.”
6. That in correspondences included in JACKSON’S production for this lawsuit, Bates # JCK001262 in a letter dated October 09, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” Again on, Bates #JCK001281 in a letter dated November 05, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O

ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” Then again on Bates # JCK001290 in a letter dated November 29, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” Then again on Bates # JCK001301 in a letter dated December 07, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” EXHIBITS (1-4)

7. That ELIOT states that after an exhaustive online search at Google the only listing at the address 4855 Technology Way Suite 720 Boca Raton, FL 33431 is the law offices of Tescher & Spallina, P.A. and no reference to a listing for INSTITUTIONAL TRUST COMPANY named LaSalle National Trust, N.A. is referenced at that address in Boca Raton, FL, where SPALLINA’S law office now resides.
8. That the only address found for the INSTITUTION TRUST COMPANY named "LaSalle National Trust, N.A." is 135 South LaSalle Street Chicago, IL 60603 and the INSTITUTIONAL trust company of that name appears to have been acquired by Chicago Title Land Trust Company, as Successor and which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603.
9. That in letters from HERITAGE addressing SPALLINA as “Trustee” of an INSTITUTIONAL TRUST COMPANY LaSalle National Trust, N.A. addressed to his

office, addressing SPALLINA as "Trustee" of the INSTITUTIONAL TRUST COMPANY LaSalle National Trust N.A., the number of possible criminal code violations this may impart is staggering as this implicates that SPALLINA gave his address to HERITAGE as Lasalle National Trust N.A. and acted as an "Trustee" of that Institutional Trust Company at that fictitious address. The entire time, through several letters and correspondences, Attorney at Law SPALLINA fails to notify the carrier that he is not "Trustee" of the INSTITUTIONAL TRUST COMPANY LaSalle National Trust, N.A. and that the address and title for him and the INSTITUTIONAL TRUST COMPANY are wholly incorrect and as an Attorney at Law Spallina knew this was all untrue when he received and replied to the letters without corrections. This impersonation of SPALLINA as an INSTITUTIONAL TRUST COMPANY, Lasalle National Trust, N.A. at his address and further acting as "Trustee" of this INSTITUTIONAL TRUST COMPANY, Lasalle National Trust, N.A., ELIOT alleges was intentional, to appear as if SPALLINA was the INSTITUTIONAL TRUST COMPANY, Lasalle National Trust, N.A. at his address and further to appear as "Trustee" of this INSTITUTIONAL TRUST COMPANY, Lasalle National Trust, N.A. If these false claims were true SPALLINA would have been easy to pay as he would have been the Primary Beneficiary of SIMON'S Policy(ies). With his other alleged role he plays in these matters when filing his fraudulent claim acting as the "Trustee" of the Lost or Suppressed "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" he would have been easy to pay as he claimed he was also the alleged Contingent Beneficiary falsely acting as "Trustee" of the Lost or Suppressed trust. This implicates that SPALLINA was acting in multiple imposter legal and fiduciary capacities in efforts to try and secure the death benefits as both the

Primary and Contingent Beneficiaries Trustee from HERITAGE through a clever fraud, acting as the “Trustee” of the Primary Beneficiary listed on the Policy(ies), the INSTITUTIONAL TRUST COMPANY LaSalle National Trust N.A. in efforts to have the proceeds paid to the Lasalle National Trust N.A. at a fictitious address, his address, while acting as a fictitious OFFICER of the INSTITUTIONAL TRUST COMPANY Lasalle National Trust, N.A. as “Trustee” to HERITAGE to convert the benefits to Tescher & Spallina, P.A. law firm’s trust account acting in this false fiduciary capacity, knowingly and with scienter. From JACKSON’S production it appears that their notes indicate QUESTIONS and RED FLAGS arose when SPALLINA contacts them in these fraudulent fiduciary capacities.

10. That on JACKSONS Bates # _____ on _____ Simon has a new and unknown daughter named MaryAnn who makes contact with the carrier attempting to secure information on her father’s policy. Simon was married to Shirley his whole life and they only had three daughters named Pamela, Jill and Lisa.

11. That on JACKSONS Bates # _____ on _____ want the Insurance Carrier to talk to certain children of his, at this time unknown.

12. That on JACKSONS Bates # _____ on _____ and

13. That on JACKSONS Bates # _____ on _____

14. That on JACKSON’S Bates # JCK001228 & JCK001229, the following language is found in the carriers records on December 31, 2012, “\$1,689,070.00 - Received letter and death cert with cause and manner on 12/26/12 from attorney advising that they are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated Jun 1, 1995, Lasalle National Trust, N.A.,

trustee, the beneficiary of record, page 20 of source CPG. **(A claim form was completed by Robert Spallina as Trustee?)** [Emphasis Added] However, indication is made that they know Shirley Bernstein was the initial beneficiary (now deceased) and the Bernstein children were the secondary beneficiaries. The attorney is offering to have the proceeds paid to the firm's Trust account so that distribution can be made to the five children. They have also offered an Agreement and Mutual Release be prepared from the children for Heritage Life. A Robert Spallina has signed the claim form but there is nothing to document that he is the current trustee of the Trust. Please advise how to proceed.”

15. The false statement in the proposed Amended Complaint that SPALLINA filed the claim acting as Attorney at Law to the Lost or Suppressed trust and not as “Trustee” of the Lost or Suppressed trust or as the “Trustee” of Lasalle National Trust N.A. is merely an attempt to cover up the fraud to this Court that occurred by SPALLINA and these new false statements in the proposed Amended Complaint are put forth by conflicted and adverse counsel in this Lawsuit to the Lost or Suppressed Trust, A. SIMON. A. SIMON puts forth these false statements of facts knowing the Record and having these Exhibits and knowing how and who filed the fraudulent insurance claim and in what fraudulent capacity they acted and this proposed Amended Complaint is to try and further cover up their initial complaints flaws and try to convince this Court of a whole new set of bogus claims and perpetrate further Fraud on this Federal Court, Your Honor and the true and proper beneficiaries of SIMON’S policy. This attempt to further con this Court is more reason to remove DEFENDANT A. SIMON as counsel to the non-existent trust.

16. That prior to A. SIMON'S claim in the proposed Amended Complaint that SPALLINA was counsel to the lost trust when the claim was filed, which is not true as he signed and filed the claim as "Trustee" of the Lost or Suppressed trust while acting simultaneously as "Trustee" of LaSalle National Trust, N.A. at a fictitious address, which begs the question of when exactly did A. SIMON and SPALLINA switch as counsel for the non-existent Lost or Suppressed trust, as A. SIMON claims he is counsel now to the Lost or Suppressed trust that filed this Federal action only weeks after he is alleging SPALLINA was acting as Counsel, which has no basis in truth or fact and no evidence to support such false statement.
17. That another sudden switch in fiduciary roles is noted when Defendant A. SIMON filed this tort, as suddenly THEODORE becomes the "Trustee" of the Lost or Suppressed trust and Defendant SPALLINA attempts to "exit stage right" and disappears from this alleged Fraud on a Federal Court / Breach of Contract Suit as "Trustee" of the Lost or Suppressed trust, "Trustee" of LaSalle National Trust, N.A. and as alleged in the proposed Amended Complaint, former Counsel for the Lost or Suppressed trust.
18. That Attorneys at Law SPALLINA and TESCHER and their law firm have failed to respond to the Waiver of Service in these matters that ELIOT has served both SPALLINA and his partner TESCHER both personally and professionally and their law firm Tescher & Spallina, P.A., when they know they are indispensable parties in this lawsuit under Rule 19 of Federal Procedures, where they must be joined. Perhaps the Court can take it on its own motion to compel SPALLINA and TESCHER and their law firm to join and save ELIOT the expenses and costs of chasing Attorneys at Law who appear afraid to appear in this Lawsuit that they are centrally involved in.

19. That Judicial Notice should also be taken by this Court to the fraudulent activity described herein thus far and take it on the Court's own Motion to report these Attorneys at Law, SPALLINA, TESCHER, A. SIMON and D. SIMON for the probable cause and prima facie evidence exhibited in ELIOT'S and now others pleadings, regarding, false statements to this Court, improper filing of pleadings, the knowing in advance lack of standing and basis in filing this Lawsuit, the alleged Insurance Fraud, the alleged now BANK TRUST COMPANY FRAUD, Fraud, Fraud on a Federal Court by Officer of the Court A. SIMON and Fraud on ELIOT and others and instantly put a stop to the vexatious, frivolous and fraudulent series of pleadings, which are fraught with false statements of fact in official proceedings and all leading to huge wastes of time and effort by the injured parties and this Court who have had to sift through this proverbial "bullshit."
20. That the proposed Amended Complaint states, "NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee" and here ELIOT states that where comes the trust when it does not exist and no copies exist, so it comes to this Court as a figment of one's imagination. Ted Bernstein is also alleged to not be a legal name for Theodore Stuart Bernstein and despite it being a minor technicality it remains another possible false statement of the proposed Amended Complaint.
21. That as for the claim that THEODORE is "Trustee" of the Lost or Suppressed trust, in addition to the evidence that SPALLINA stated he was "Trustee" when filing the claim with HERITAGE only weeks earlier that this Breach of Contract Lawsuit is also remarkable in that somehow on the way to filing this Lawsuit the "Trustee" magically it appears switches from SPALLINA to THEODORE and ELIOT offers new and additional evidence of the

fallacy of this claim in the proposed Amended Complaint that Theodore is “Trustee” and will quote very disturbing words from JACKSON’S response to questions posed by A. SIMON to them to affirm or deny, whereby each answer states, **“ANSWER: JACKSON OBJECTS TO THE REQUESTS BECAUSE AN EXECUTED COPY OF THE TRUST HAS NOT BEEN PRODUCED, AND THUS TO THE EXTENT ANY FINDING IS SUBSEQUENTLY MADE THAT THE TRUST WAS NOT ESTABLISHED AND/OR IS NOT VALID, IT WILL NOT HAVE BEEN A PROPER PARTY PLAINTIFF TO THIS SUIT, INCLUDING PROPOUNDING THESE REQUESTS. REGARDLESS, EVEN IF THE TRUST IS ESTABLISHED, TED BERNSTEIN, UPON INFORMATION AND BELIEF, IS NOT THE PROPER TRUSTEE OF THE TRUST, AND THEREFORE HE DOES NOT HAVE STANDING TO PURSUE THIS MATTER ON BEHALF OF THE TRUST, INCLUDING PROPOUNDING THESE REQUESTS.” [EMPHASIS ADDED]**

22. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, “4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.” Since no legally valid or executed copy of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 exists this claim is not a factual statement but based on nothing but a nonsexist trust and again, ELIOT thought SPALLINA was “Trustee” of Lost or Suppressed trust as stated when he filed the claim this Lawsuit is based upon. If THEODORE were the “successor trustee” in fact, why did he not file the fraudulent insurance claim and if A. SIMON believes his own B.S., then why has he not notified this Court and the authorities of SPALLINA’S fraudulent claims?

23. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims, “5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.” Since no legally valid or executed copy of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 exists this claim is not a factual statement but based on nothing legal just imagination. ELIOT quotes Spallina in an email sent to ELIOT stating, ““Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.” If the beneficiaries of the Lost or Suppressed trust are at best a “best guess,” so would who the trustees would be is also a best guess. Yet, suddenly A. SIMON appears to try and make this best guess a statement of fact to Your Honor, despite knowing it is only a guess, in fact, he does not even qualify it as a guess but instead states it as a fact, without legal authority when divvying up the loot in the proposed Amended Complaint, thereby these statements attempt to further prejudice the case with misstatements of fact.
24. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims, “7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the

BERNSTEIN TRUST as to the Policy proceeds at issue.” Where ELIOT states that if the Beneficiaries of the Lost or Suppressed trust are a best guess than what percentages they own are also a best guess, if that is the guess is correct in the first instance and the five children are the true and proper beneficiaries. The 4/5th of SIMON’S children who are making this anointment of THEODORE as “Trustee” seems odd too, as why would THEODORE need consent if he could prove he was “Trustee” of the Lost or Suppressed trust legally? Further, these are the same 4/5th of SIMON’S children who for almost two years prior to his death were so angry with SIMON that they boycotted him and refused to let their children see or talk to him and left him after the death of his beloved wife SHIRLEY alone, refusing to speak to him if he did not change his and SHIRLEY’S beneficiaries (THEODORE & P. SIMON) and did not stop seeing his companion Maritza Puccio Rivera (THEODORE, P. SIMON, IANTONI and FRIEDSTEIN) and Tough Love him to bend to their ways.

25. That in a letter from THEODORE he states the following,

From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]
Sent: Friday, January 18, 2013 6:04 PM
To: 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (iviewit@gmail.com); 'Pam Simon'
Subject: UPDATE > HERITAGE INSURANCE POLICY

Hello > I hope everyone is well.

Heritage Life Insurance company has made a decision concerning dad’s life insurance policy. They will require a court order to pay the proceeds, based on the large face amount of the policy (\$1.7MM). They have sent a letter to Robert Spallina. The letter was sent by a senior attorney within the company. It is short and to the point.

From here, this should be simple and straightforward. Assuming that we (5 children) agree to create an agreement, we will need to hire a Palm Beach attorney to draft the agreement that will be submitted to the judge. It is my understanding that the agreement can be drafted to reflect our agreement to split the proceeds among the 5 of us or in such a way that would enable one or more of us to effectively refuse our individual share in

favor of our children. I am not sure, but I believe that disclaiming our share in favor of our children will put that share at risk of creditors of dad's estate. Seems to me that we should do whatever we can to keep the proceeds out of the reach of potential creditors.

As the successor trustee of the trust that cannot be found, I will be happy to act as trustee of a trust that would receive the proceeds under the new agreement, created by us. Once the court order is issued, the insurance company should pay quickly and I will distribute the proceeds immediately.

Please let me know that you will agree to be a party to the agreement between us (and possibly the grandchildren who will need to acknowledge and agree to the language). If you could do that in the next day or so, we can then decide the most cost effective way to get the agreement created and submitted. It makes no sense at this point to leave the proceeds at the insurance company.

Call me with any questions or maybe we should establish a call between the 5 of us.

Take care...

Ted

26. That from the above email one can see that THEODORE has not followed any of the statements in the letter regarding doing a new POST MORTEM trust for the Policy(ies) proceeds that he would then act as Successor too based on his belief that he was "Successor Trustee" to the Lost or Suppressed trust. This was to be done after preparing a Settlement and Mutual Release agreement to get a Probate Court order to approve. Instead, none of that was done and secretly behind ELIOT and his children's counsel backs, they ditched all those crazy plans in his email attempting to create new POST MORTEM insurance trusts for SIMON and skipped the requested Probate Court order and tried this crazy and alleged fraudulent Lawsuit. Now THEODORE and A. SIMON make claims to the Court that contradict their own prior statements, the evidence submitted thus far and even their own actions and try to pepper the Record in the Lawsuit with factually incorrect statements to

continue to try and defraud ELIOT and this Court and even Creditors through this proposed Amended Complaint.

27. That the Court should ponder why in THEODORE'S email the grandchildren would have to acknowledge and agree to anything and would have to have their names signed in the proposed (Settlement & Mutual Release) SAMR and SAMR TRUST (see ELIOT's Answer and Cross Complaint for more information on the SAMR) as being released from their claims to the proceeds and suddenly when filing this Lawsuit, those parties have been dispensed of and in fact, ELIOT to was dispensed of as party when they filed this Lawsuit. The reason to hide this suit from interested parties, as explained in the prior pleadings is that THEODORE, P. SIMON, IANTONI and FRIEDSTEIN did not want their children to know that they could have received the benefits through the estate and in the SAMR, they would act as their children's trustees for their alleged estate inheritances and they were even willing to Waive their children's claims as their trustees to then put the monies directly into their pockets and not their children's as SIMON may have intended to go through the estate plans and these conflicts with this scheme are what forced ELIOT'S counsel to state that he could not act in both capacities without running into legal and perhaps criminal acts. That again, in the estate plans, THEODORE and P. SIMON would get nothing if the proceeds flowed through the estate plans, as they were wholly disinherited by their parents for compensation received while alive in the form of multimillion dollar businesses and later for bad behavior and bad blood between SIMON and SHIRLEY with THEODORE and P. SIMON in the waning years of their lives. SIMON was tortured after SHIRLEY passed to attempt to put THEODORE and P. SIMON back into the estates by withholding SIMON'S grandchildren from seeing or

talking with him and even recruited IANTONI and FRIEDSTEIN into the isolation claiming they had to work together in a pack to Tough Love their father over his companion, Maritza Puccio, who they claimed was an “Anna Nicole” despite her having absolutely no interest in the Estate, unlike an Anna Nicole. This isolation and deprivation lasting almost two years from SHIRLEY’S death to SIMON’S death. ELIOT and his children refused to participate in the Tough Love of his Father and in fact, he, his wife and three children retaliated with ANTI TOUGH LOVE and began to see SIMON, who was so Depressed and Distraught over the torture of him, that he sought medical psychological help to cope with, even more frequently than their twice a week planned meetings for Brunch and Dinner that had gone on for years prior trying to offset the damages being inflicted on him.

28. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims, “8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.” This statement again is factually incorrect as it again assumes there is a valid and legally binding BERNSTEIN TRUST that defines valid and legal beneficiaries and their interests, again a guess, not a fact, again an attempt to pepper the Record with false statements in official proceedings by A. SIMON and THEODORE.
29. That further this statement is also factually incorrect as ELIOT did not choose to pursue his own purported claims, pro se, in this matter, as ELIOT was forced to pursue his claims in this matter when he was notified by JACKSON that this fraudulent Lawsuit was in progress and was sued as a Defendant by JACKSON. Up to JACKSON suing ELIOT in this matter,

ELIOT was unaware the Lawsuit was taking place, as he was conned that the Court Order the carrier requested from the Probate Court was being sought for approval. Also, ELIOT appears to be representing the interest not only of himself but the estate beneficiaries who were also not notified of this fraudulent Lawsuit by their parents and are not independently represented in these matters and neither surprisingly is the Estate of SIMON represented despite SPALLINA and TESCHER who are the alleged Personal Representative / Executors knowledge of the Lawsuit.

30. That the next false statement to this Court in the proposed Amended Complaint by A.

SIMON claims, "19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death." From JACKSON'S production, Bates # JCK000110, on April 23, 2010 SIMON was sent a letter by HERITAGE confirming the current primary beneficiary of the Policy as Lasalle National Trust, N.A. and SIMON BERNSTEIN TRUST, N.A. as the contingent BENEFICIARY and no records indicate that SIMON rejected these as his BENEFICIARIES or corrected them. ELIOT states that SIMON BERNSTEIN TRUST, N.A. may be a trust that is further being suppressed.

31. That further, after reviewing production documents from JACKSON and A. SIMON, it appears no POLICY or TRUST exists in these matters and ELIOT alleges the records may have been tampered with by A. SIMON, P. SIMON and others in order to attempt to now paint a picture that the Lost or Suppressed trust is the ALLEGED beneficiary currently and

support their new claims that will need further discovery from ALL parties in these matters. This Court should take notice that with no legally binding trust or policy retained by any party thus far in this Lawsuit the whole Lawsuit appears based on a mirage and not a legal basis and this Court should demand, as it did in the first hearing ELIOT attended that these trust documents and Policy(ies), essential to the Lawsuit be produced and if they cannot be produced assess the damages to each of the parties that has liabilities for these failures to retain records, produce the records in filing this complaint and the insurance claim and more.

32. That the next false statement to this Court in the proposed Amended Complaint by A. Simon claims, “20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.” That as stated above, the sole surviving beneficiary according to the records provided by JACKSON is SIMON BERNSTEIN TRUST, N.A., not the BERNSTEIN TRUST and not SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95. Again, instead of just stating the facts to Your Honor, A. SIMON tries to bend the truth and pepper the record with the continuous drumbeat that the beneficiary is something that it is not.

33. That the next statement that deserves mention is, “24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE’S receipt of due proof of the insured’s death. 25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE’S receipt of due proof of the insured’s death.” This claim is further ludicrous as HERITAGE is obligated to pay the POLICY(IES) proceeds to a legal beneficiary where a clear path to the legal beneficiary is proven as stated in their

claim form by legitimate parties to the proceeds. No insurance carrier ELIOT knows would pay a claim to a Lost or Suppressed trust with claims made by people impersonating Trustees and Beneficiaries when no valid legally binding proof of their claims are made. The claim was DENIED due to the fraudulent nature of the assertions and when clarification was not received back this ploy of a Breach of Contract lawsuit was initiated.

34. That HERITAGE DENIED the claim as they should have and requested an order by the Probate Court to approve their SAMR scheme they told the carrier they would create to replace the Lost or Suppressed trust, which was never done and further was abandoned in favor of a clever Breach of Contract Lawsuit behind the back of ELIOT and his children's counsel, without seeking the carriers requested Probate Court Order approving their prior scheme, in efforts to use this Court as a host to facilitate this Fraudulent Insurance Scheme.
35. That the next statements suffer from having any lack of standing as it is made based on a hearsay account by a Defendant in the Lawsuit D. SIMON who has a direct interest in making such claim as he is direct benefactor of the proceeds if this Lawsuit succeeds through his spouse P. SIMON. "30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature. 31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same." ELIOT states that DEFENDANT D. SIMON is not stating in 31 above that he attests that the final version is the children of

SIMON and the Court should note that it based on legally worthless ALLEGED draft as discussed further herein.

36. That Defendant A. SIMON claims in the proposed Amended Complaint that defendant D. SIMON, his brother and partner in the law firm, Defendant The Simon Law Firm, saw this Lost or Suppressed trust in 1995 leaving the law offices of Hopkins & Sutter, now known as Foley & Lardner, LLP and that unsigned ALLEGED drafts submitted to this Court by A. SIMON somehow validate the claim that SIMON elected his children as beneficiaries and he saw the signature on the document. The problem here is that the UNSIGNED UNDATED UN-AUTHORED draft that was submitted to this Court by A. SIMON, Bates # BT000003 through BT000021, comes on BLANK paper basically, with no markings of Hopkins & Sutter law firm on the ALLEGED draft and where in all the years ELIOT saw drafts of work done by Hopkins & Sutter, he cannot recall a single instance where their letterhead and author was missing from their work product, no author listed, no file number stated, no date, no cover letter accompanying the document, just words on an unidentified ALLEGED “draft.” The ALLEGED draft could have been done by anyone, anywhere at any time and one would think if they retained drafts why they did not retain the original signed and executed agreements or copies.

37. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, “32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.” Again, if there is no copy of the “final version” and the beneficiaries are a best guess according to SPALLINA then how can they state with authority as fact to this Court that THEODORE

was successor Trustee? Why, if they knew this along, did SPALLINA file the claim as Trustee of the Lost or Suppressed trust and not THEODORE? Again, this statement appears and attempt to pepper the Record of this case with false statements of fact and hope Your Honor is a fool to believe any of this and distribute the proceeds to improper beneficiaries based on a hoax fraught with imaginary Trustees and Beneficiaries at an imaginary INSTITUTIONAL TRUST COMPANY at a fictitious address, with imaginary Officers of that INSTITUTIONAL TRUST COMPANY and all based false on false statements of fact in official proceedings made by an Officer of the Court, A. SIMON whose brother and he's law firm and his brother's family have direct beneficial interests in the outcome and direct adverse interests with ELIOT and who have failed to respond to this Lawsuit and therefore have technically defaulted in each capacity they were sued under and their law firm too has failed to respond and therefore technically defaulted.

38. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, "33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy." The drumbeat of false statements continues with this claim that tries to pepper the Record again and again with this false statement of fact of who the beneficiary is on the Policy(ies), as the defined primary and contingent beneficiaries are not proven to be the BERNSTEIN TRUST or the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 but instead the SIMON BERNSTEIN TRUST, N.A., is the contingent beneficiary no matter how many times the proposed Amended Complaint tries to pound this misstatement into the Record. Further, since the Chicago Title Land Trust Company, as Successor to LaSalle National

Trust, N.A. still exists, which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603, it appears that BERNSTEIN TRUST is not the sole surviving beneficiary either.

39. That the next series of statements to this Court in the proposed Amended Complaint by A. SIMON are revealing and claim, “35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein’s home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein’s counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.”

40. That a series of searches was done for the Policy and Trust and one wonders first why THEODORE and other Bernstein family members would search SIMON’S home and business office and why this was not conducted by the ALLEGED Personal Representative / Executor, Defendant SPALLINA who did not conduct this search of his records. Why would SPALLINA others to search the files who may have adverse interests in suppressing and denying the information to benefit themselves? In fact, on the night ELIOT’S father SIMON passed away, a one, Rachel Walker, assistant to SIMON, removed from the premises almost minutes after SIMON was pronounced dead, a large amount of files from the home of SIMON including many estate documents and brought them to the hospital to THEODORE

at his request and those documents were never accounted for and remain missing and when ELIOT requested copies from both THEODORE and SPALLINA he was refused. That for more on that factual account of events of that night, please see ELIOT'S first Petition in the Estate of SIMON and SHIRLEY with the Florida Probate Courts of Judge Martin Colin and Judge David E. French, Titled **“EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SIMON/SHIRLEY BERNSTEIN AND MORE”** @

- www.iviewit.tv/20130506PetitionFreezeEstates.pdf 15th Judicial Florida Probate Court and
- www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf US District Court Southern District of New York, Most Honorable Shira A. Scheindlin. Pages 156-582 reference estate matters in Simon and Shirley as it relates to RICO allegations.

41. That then a search was conducted of the law firm Defendant Tescher & Spallina, P.A. and one must wonder how and why if SPALLINA claims he did not ever see or have possession of the Lost or Suppressed trust why a search would be conducted there at all. From an email from Robert Spallina one can see he claims to never have seen the trust but in fact claims he knew of it and knew who the beneficiaries were to be and as the attorney at law who did the estate plans of SIMON he took no steps to protect the Beneficiaries by having SIMON write a letter stating who the Beneficiaries were or any other steps to insure that since he did not allegedly possess the Lost or Suppressed trust the Beneficiaries he claims to have known

about were protected and the liabilities caused by this failure have led to this circus of fraud in and upon this Court. From his email, ELIOT quotes,

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

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

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

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you.

This should be of no surprise to anyone. Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy. [Emphasis Added]

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There

44. That on information and belief, Foley & Lardner may have claimed to have sent all the documents to Proskauer Rose LLP who also claims to have not had any executed copies or originals and it is interesting to note here that Proskauer was left out of the proposed Amended Complaint's list of places searched. The reason ELIOT believes this was omitted is because both Foley & Lardner LLP and Proskauer Rose LLP are the two main alleged perpetrators of the theft of ELIOT and SIMON'S Intellectual Properties that have an estimated value in the TRILLIONS of dollars as they have profoundly changed the world and have been quoted by leading engineers as "The Holy Grail" of the Internet and "Digital Electricity" and more. To further understand how Proskauer and Foley may be influencing all of these efforts to deprive ELIOT and his family of their inheritances the way SIMON and SHIRLEY designed and keep alive his efforts to prosecute them, see the Federal Court filing @ www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf, Pages 217-242, Section **"XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS."** The Court should note here that previous efforts to silence ELIOT and his family to stop their efforts to have fair and impartial due process against the Attorneys at Law and others in Public Offices who allegedly stole his IP, please visit the graphic images of the TERRORIST STYLE CAR BOMBING ATTEMPTED MURDER of ELIOT and his wife and children @ www.iviewit.tv .

45. The final search according to Defendant A. SIMON'S statement was conducted in his very own law firm, Defendant The Simon Law Firm, that is located inside the offices of Defendant P. SIMON'S companies that she received from SIMON worth millions in exchange for her rights to any later inheritances and partially why she was wholly excluded, along with her lineal descendants, from the Estates and Trusts of SIMON and SHIRLEY.
46. That this search of A. SIMON'S law firm further supports ELIOT'S claims in his **“(1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL”**
47. www.iviewit.tv/20131208MotionStrikePleadingAdamSimonForFraudOnCourt.pdf filed with this Court, that Defendants, The Simon Law Firm, A. SIMON and D. SIMON cannot represent these matters not only due to their Adverse Interests but because they are conflicted and have direct financial interest in the claims and knowledge of the matters and therefore will be deposed and called as material and fact witnesses directly involved in these matters and standing to gain benefits to themselves at the detriment of the true and proper beneficiaries, including P. SIMON and D. SIMON'S own children. Why would The Simon Law Firm have copies and where did they go? Were they responsible and most likely then **LIABLE** to maintain copies of the Policy(ies) and trusts under the VEBA Trust or any other agreements they were involved in with SIMON, including but not limited to, the Lost or

Suppressed trust and the Lost or Suppressed Policy(ies)? Why do they have an unidentifiable ALLEGED draft of the Lost or Suppressed trust that they included in their production and are missing executed copies that the author and more can be verified? Why did they not have other witnesses to their claims of who the Trustees and Beneficiaries are from the many places they searched, including law firms who allegedly drafted and executed these documents with SIMON and who were responsible for the maintenance and safe keeping of the Records? Do they have LIABILITIES for failure to retain Records, which would further their adverse interests and conflicts? Were copies of the Lost and Suppressed trust sent to their law firm and where did they go? Were copies sent to their law firm as attorneys for the VEBA trust, what roles did they play? From these questions alone and the fact that they have direct interests in suppressing these documents and policies to inure benefits directly to their family members and their law firm, makes the Conflicts and Adverse Interests prohibitive of A. SIMON further representing any parties in this lawsuit, other than themselves as Pro Se defendants. The fact that A. SIMON, D. SIMON and their law firm are all Defendants for these and other reasons defined in ELIOT'S motions is just and good cause for this Court to report them for this misconduct and violations of Attorney Conduct Codes and State and Federal Laws.

48. That the proposed Amended Complaint is filed by Adam Simon for a limited number of Defendants and ELIOT requests the Court clarify if parties not represented in these matters but served have defaulted by failure to appear in these matters despite being served. In A. SIMON'S pleading for LEAVE TO AMEND he states he is representing the following, "Attorneys for Plaintiffs and Third-Party Defendants Simon L. Bernstein Irrevocable

Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, and individually, Pamela Simon, Lisa Friedstein and Jill Iantoni. In the proposed Amended Complaint he claims he will be representing the same parties. However, many parties sued by ELIOT do not appear at the moment to have counsel or filed any responsive pleadings and thus may have defaulted already, including but not limited to, all of the following,

- i. DAVID B. SIMON, PERSONALLY was sued and served both Professionally and Personally and A. SIMON does not represent him personally or professionally and appears to have left him off the third party defendants in both capacities. Where is D. SIMON'S separate counsel for his capacities personally and professionally and he has failed to respond in both capacities?
- ii. DAVID B. SIMON, PROFESSIONALLY was sued and served both Professionally and Personally and A. SIMON does not represent him personally or professionally and appears to have left him off the third party defendants in both capacities. Where is D. SIMON'S separate counsel for his capacities personally and professionally and he has failed to respond in both capacities?
- iii. ADAM SIMON, PERSONALLY was sued and served both Professionally and Personally, where A. SIMON does not appear to represent himself Pro Se in either capacity, have separate counsel representing him in each capacity and appears to have left himself off the list of third party defendants he represents. Where is D. SIMON'S separate counsel for his capacities personally and professionally and he has failed to respond in both capacities?

- iv. ADAM SIMON, PROFESSIONALLY was sued and served both Professionally and Personally, where A. SIMON does not appear to represent himself Pro Se in either capacity, have separate counsel representing him in each capacity and appears to have left himself off the list of third party defendants he represents. Where is D. SIMON'S separate counsel for his capacities personally and professionally and he has failed to respond in both capacities?
- v. THE SIMON LAW FIRM, was sued and served and has failed to respond.
- vi. TESCHER & SPALLINA, P.A., were served Service Waivers and failed to reply, ELIOT has sought a Court Order on the Court's Own Motion to Join them before having to have them served at additional cost to ELIOT for a mess created in part by TESCHER & SPALLINA, P.A.
- vii. DONALD TESCHER, PERSONALLY was served a Service Waiver and failed to reply, ELIOT has sought a Court Order on the Court's Own Motion to Join them before having to have them served at additional cost to ELIOT for a mess created in part by TESCHER & SPALLINA, P.A.
- viii. DONALD TESCHER, PROFESSIONALLY was served a Service Waiver and failed to reply, ELIOT has sought a Court Order on the Court's Own Motion to Join them before having to have them served at additional cost to ELIOT for a mess created in part by TESCHER & SPALLINA, P.A.
- ix. ROBERT SPALLINA, PERSONALLY was served a Service Waiver and failed to reply, ELIOT has sought a Court Order on the Court's Own Motion to Join

them before having to have them served at additional cost to ELIOT for a mess created in part by TESCHER & SPALLINA, P.A.

- x. ROBERT SPALLINA, PERSONALLY was served a Service Waiver and failed to reply, ELIOT has sought a Court Order on the Court's Own Motion to Join them before having to have them served at additional cost to ELIOT for a mess created in part by TESCHER & SPALLINA, P.A.

49. That all of the above parties sued and served in these matters have failed to timely respond or respond at all and a default judgment should be awarded ELIOT and there can be no excuses for failing to respond by any of the parties served and sued that are Attorneys at Law who knowingly have chosen to fail to respond and especially A. SIMON who conceals himself from his list of third party defendants he represents to hide his obvious conflicts and adverse interests in representing himself as Defendant while representing others in matters he should not be representing anyone other than himself Pro Se for as discussed already herein and the prior Motion to Remove A. SIMON as counsel.

50. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, "36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012." This statement is also incorrect as none of the Plaintiffs provided HERITAGE with due proof of death, defendant Attorney at Law SPALLINA and his legal assistant / notary public, a one Kimberly Moran provided this information to HERITAGE. Where ELIOT has evidenced already in prior pleadings that MORAN has been arrested and admitted to FORGING and FRAUDULENTLY NOTARIZING six separate signatures for six separate people on six

separate documents that were then posited in the Court by defendants, SPALLINA, TESCHER and their law firm Tescher & Spallina P.A. on behalf of a Deceased SIMON who acted as Personal Representative / Executor while dead, as if alive, to serve documents to the Probate Court in another Fraud on the Court under Judge Martin Colin, leading Judge Colin when discovering that a Fraud on his Court had occurred, to state he had enough to read SPALLINA, TESCHER, THEODORE and Mark Manceri their Miranda Warnings, twice.

51. “39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein’s death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.” That ELIOT states that this “unexecuted draft” of the Lost or Suppressed trust is a further hoax as the trust was done by law firm Hopkins & Sutter and drafts as mentioned earlier would be identifiable and the draft submitted as part of their “proof” offers very little in legal proof of anything as it has no author, no dates, no year even and could have been done the morning it was sent to this Court by A. SIMON who also knows this document proves nothing but possibly further Fraud on the Court and the true and proper beneficiaries of the LOST Policy(ies) and trust.

52. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims, “41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.” While this statement sounds great who did Simon express this intent to, as it was not to his estate planners who would have then secured the trust or documentary evidence of his intent or have mass exposure for their lack

of duty and care, it was not his children, for in JACKSON'S production it is noted that certain of his children were to receive NO information on his Policy for unknown reasons at this time and again this evidences a peppering of the Record with biased unproven false statements.

53. That That to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the beneficiary was changed to the lost trust in 1995. Yet, in JACKSON'S discovery documents produced thus far, evidence is found that SIMON was sent a letter April 23, 2010, which stated, "Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance Company. Our records indicate the following beneficiary designation for the above referenced contract number:

Primary Beneficiary/Beneficiaries: Lasalle National Trust, N.A.

Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A."

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

54. That the next statement "38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown." ELIOT claims if the trust and Policy are lost and the beneficiaries are not known, despite their efforts to claim such falsely then the benefits are to be paid to the estate of the decedent. 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.

55. That the next false statement to this Court in the proposed Amended Complaint by A.

SIMON claims, “43. At the time of Simon Bernstein’s death, the beneficiary of the Policy was the BERNSTEIN TRUST.” Again, this is not factually correct as the Primary Beneficiary of the Policy(ies) at the time of SIMON’S death was factually according to HERITAGE, “Lasalle National Trust N.A.” as primary and contingent was factually, “Simon Bernstein Trust, N.A.” and at the time of his death it is NOT the BERNSTEIN TRUST aka SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95.”

56. That the next false statements to this Court in the proposed Amended Complaint by A.

SIMON claims, “48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA. 49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.” That LaSalle National Trust, N.A. was still acting as Trustee when the insurance claim was filed by SPALLINA who impersonated the INSTITUTIONAL TRUST COMPANY LaSalle National Trust, N.A., and further impersonated himself as an OFFICER / TRUSTEE at his address as already defined herein. Also, ELIOT does not believe that Bank of America, N.A. is the Successor as Chicago Title Land Trust Company, appears as Successor and which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603.

57. That the next statement is a fallacious statement claims, 50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.” That ELIOT states this statement is merely conjecture as there is nothing legally valid in the proposed Amended Complaint as it is made mainly of false statements in an official proceeding by an Officer of this Court that is a Defendant in the matters who has failed to respond to ELIOT’S Cross Claim and is conflicted attorney at law with financial interests in the outcome and adverse interests to ELIOT.

58. That this patchwork attempt to Amend their Original Complaint to dodge the evidence provided in the Motions already filed by ELIOT and others and carefully attempt to change their original statements is a bit late and is wholly reprehensible. Contrary to their claims in the Motion to Amend that they are only trying to Add Plaintiffs and “There will be very little or no prejudice to the other parties to the litigation as this First Amended Complaint is being submitted with sufficient time left to conduct discovery, and the parties have already had time to initiate discovery because the new Plaintiffs are not new parties to the litigation” the proposed Amended Complaint prejudices Plaintiffs by attempting to pepper the Records with a stream of further false statements in official proceedings as statements of fact that are prejudicial and false and not just add some Plaintiffs but to wholly change material statements from their original complaint.

59. That ELIOT states that further wastes of time and monies by ELIOT and this Court and the delays caused to the Beneficiaries by allowing these improper pleadings from Defendants A. SIMON, D. SIMON and the The Simon Law Firm who have failed to Answer the complaint

served upon them either and have therefore Defaulted. That responding to this almost wholly false proposed Amended Complaint was torturous enough as they try to pepper the Record with false statements and questionable documents in official proceedings that they assert as facts before this Court.

60. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was “involved” with MORAN in her fraud and forgery.
61. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify that court that SIMON was dead at the time he was using him as if he were alive, thus acknowledging that he perpetrated a Fraud on the Court and more in the closing of SHIRLEY’S estate with a dead Personal Representative and Trustee, SIMON.
62. That in an October 28, 2013 Evidentiary Hearing before Judge Colin, it was learned that TED had been acting in fiduciary capacities that he did not have prior, including acting as Personal Representative and Trustee for the estate of SHIRLEY. Due to the FRAUD ON THE COURT using SIMON’S identity, after he was deceased as if alive, to close the estate of SHIRLEY, no successors were elected or appointed by the court after he died and SIMON was continued to be used as if alive. SPALLINA, acting as estate counsel failed to notify the

court that SIMON, the Personal Representative and Trustee was dead and continued for four months to use SIMON and file documents on his behalf, filed as if SIMON were still alive to close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate.

63. That the proposed Amended Complaint may also invoke the Probate Exception to Federal Jurisdiction in this matter. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim.

64.

Wherefore, for all the reasons stated herein, ELIOT prays this Court STRIKE the proposed Amended Complaint and further Sanction and Report the Attorneys at Law that Prima Facie evidence provided herein and prior pleadings of improper filing of pleadings and alleged criminal acts defined herein.

BACKGROUND

65. That after reviewing discovery documents tendered by JACKSON in this Lawsuit, it was discovered that a **fraudulent insurance claim** to the Policy(ies) benefits was made by defendant, Attorney at Law, SPALLINA, with the life insurance carrier HERITAGE, whereby SPALLINA acted under a false fiduciary capacity on behalf of an alleged missing and lost trust, the “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that

SPALLINA claimed fraudulently to be the “Trustee” for when filing the fraudulent insurance claim form.

66. That ELIOT’S position, as a non-lawyer, is that in the event of a lost beneficiary or trust for an insurance policy, the benefits are to be paid to the estate of the decedent. 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.

67. That defendant A. SIMON knowing this law as an Attorney at Law should never have filed this frivolous, vexatious and abusive Lawsuit, as defined further herein.

68. The SPALLINA’S fraudulent insurance claim acting as Trustee of the lost trust was DENIED by HERITAGE and a request for a Court Order was issued by the carrier to SPALLINA to approve of the trust and beneficiary scheme purported by SPALLINA.

EXHIBIT 1 – SPALLINA FRAUDULENT CLAIM FORM AND CARRIER REQUEST.

69. That EXHIBIT 1 shows that on November 01, 2012, SPALLINA tendered a letter written by Kimberly Moran (“MORAN”) with a Claimant Statement to HERITAGE that on page 5 of the form SPALLINA fraudulently signed as the “Trustee” of the LOST “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that he knew he was not a “Trustee” of, as evidenced herein.

70. That the cover letter prepared by MORAN for SPALLINA claims that “We are unable to locate a copy of the original insurance policy” and then in a December 06, 2012 letter included in EXHIBIT 1, SPALLINA further states, “We are unable to locate the Simon

Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.”

71. That this Court should note that defendants’ TSPA, SPALLINA and TESCHER’S notary public, MORAN, while working for the law firm TSPA as a legal assistant/notary public, did admit to authorities that she had FORGED and FRAUDULENTLY altered six documents to fraudulently close the estate of SHIRLEY and then attempts were made to change her beneficiaries POST MORTEM using other alleged fraudulent documents currently under investigation. EXHIBIT 2 – MORAN SUSPENSION and EXHIBIT 3 – PALM BEACH COUNTY SHERIFF ARREST REPORT.
72. That due to a lost policy and lost trust, the insurance carrier denied SPALLINA’S claim that he was the “Trustee” of the lost trust and demanded valid legal documentation of such claim or a probate court order to approve of the beneficiary scheme he was proposing in his alleged capacity as “Trustee” of a lost trust.
73. That defendant SPALLINA knew he was not the “Trustee” of the lost trust, as he has claimed repeatedly that he has NEVER ever seen a copy of the lost trust and everything therefore was a “best guess” as evidenced in Exhibit 1 herein, claiming “Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.” If the beneficiaries of the lost trust are at best a “best guess,” so would

who the trustees would be. This is Prima Facie evidence of INSURANCE FRAUD and as such the claim was denied when none of the claim form information requested by the carrier was provided to prove the trusteeship or beneficial interests and thus there was no way for Heritage to legally pay the benefits to the true and proper beneficiaries, so new schemes were hatched by SPALLINA, TED, P. SIMON, A. SIMON and others to try to abscond with the insurance benefits outside of the estate of Simon, including this instant baseless and vexatious Breach of Contract Lawsuit.

74. That due to problems caused in part by the estate planners TESCHER and SPALLINA, including but not limited to in this insurance scheme, missing insurance policies and missing trusts and where it is alleged that this lost trust is instead suppressed by TSPA, TESCHER and SPALLINA intentionally, creates now disputes and conflicts between SIMON'S children and their children for the insurance benefits. By the estate planners failing to secure the necessary documents for the insurance proceeds and protecting the beneficiaries, as was their duty in preparing alleged 2012 estate planning documents, massive liabilities have now been caused. Due to the conflicts of interest caused, ELIOT was advised by counsel to then have his children represented by separate counsel and ELIOT was then left representing his interests without counsel in the insurance matters.

75. That the estate Personal Representatives (TESCHER and SPALLINA) of SIMON'S estate have refused to pay for counsel for the parties despite the need arising due to the estate planners TSPA, TESCHER and SPALLINA'S Willful, Wanton, Reckless, and Grossly Negligent acts in violation of Law in preparing the estate plan for SIMON and neglecting to protect the beneficiaries of the Policy(ies) and trusts.

76. That SPALLINA claimed in letters that he was aware of whom the beneficiaries were intended by SIMON to be but then failed to get copies or any documentation regarding these claims. Even failing to include these alleged wishes of SIMON in his ALLEGED Will and Amended Trust, done supposedly only weeks before SIMON died when he was physically and emotionally under great duress. That these documents have also been submitted to civil and criminal authorities for further investigation as MORAN and SPALLINA are again involved in improper documentation with estate documents.
77. That this Court should note that NOBODY is representing the estate of SIMON or the alleged beneficiaries of SIMON'S estate in this matter and where SPALLINA and TESCHER are the alleged Personal Representatives of SIMON'S estate and thus indispensable parties in this lawsuit, perhaps in violation of Rule 19 of Federal Procedures, where they must be joined. Despite being aware that the beneficiaries of the estate may be harmed and despite being sued by ELIOT in these matters, TSPA, TESCHER and SPALLINA failed to enter into this Lawsuit on any parties' behalf, including themselves, only further complicating the problems they are already largely responsible for creating.
78. That the Personal Representatives of SIMON'S estate, TESCHER and SPALLINA are indispensable parties to this action and because under Florida law where a trust is the designated beneficiary of an insurance policy and the trust cannot be located or is lost and the proceeds are then payable to the estate through the Personal Representatives accordingly, appropriate and complete relief cannot be granted in this Lawsuit without the Personal Representatives as parties to this action, thus this aspect of the case regarding the proceeds of

the policy must be dismissed without prejudice to ELIOT'S cross claims and damages and relief sought.

79. That TED, P. SIMON, D. SIMON, IANTONI and FRIEDSTEIN are acting as alleged trustees for their children in the estates over their minor and adult children's trusts and yet failed to have their children included in this Lawsuit as well, knowing they are potential beneficiaries of the now lost or suppressed Policy(ies) if the proceeds were to flow to the estate, as they should. Where each child of SIMON'S now stands in direct conflict with SIMON'S grandchildren, their own children, for inheritance of the benefits and where none of the other children, other than ELIOT, has had their children represented in the insurance matters that have now metamorphosed into this baseless, vexatious and frivolous, Breach of Contract Lawsuit.

80. That ELIOT is unaware if his siblings children even know they are possible direct beneficiaries of the Policy(ies) and trusts, as evidence exists that efforts were made to keep these insurance matters from their children (and it is known that this Lawsuit was kept secret from ELIOT'S children counsel and ELIOT), in order to prevent lawsuits by their children in the future by intentionally not disclosing the conversion of the benefits to themselves to their children.

81. That legal advice to conceal the insurance scheme from their children was given to TED, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN by SPALLINA who advised them to keep it a secret from their children in a meeting. Where in that meeting SPALLINA was acting adversely as Personal Representative to the estate beneficiaries, allegedly the grandchildren. SPALLINA, who claims the beneficiaries are the grandchildren, was working against their

interests by making these claims to secret the information from them, in order to advantage his very close personal friend and business associate, TED, to the disadvantage of his own children. SPALLINA did not like that TED and P. SIMON were excluded from the estates entirely and even stated he was trying to get them paid, in opposite of the desires and wishes of SIMON and SHIRLEY. Other witnesses were present on the calls when SPALLINA made these claims when proposing the SAMR scheme. EXHIBIT 4 - TRIPP SCOTT CONFLICT LETTER.

82. That knowing that the grandchildren were possible beneficiaries of the Policy(ies), A. SIMON and TED filed this Lawsuit and intentionally failed to notify and include possible beneficiaries of the Insurance Claim or this Breach of Contract Lawsuit. They also failed to include the Personal Representatives as indispensable parties with scienter.
83. That the actions alleged herein may also invoke the Probate Exception to Federal Jurisdiction in this matter and further evidences fraudulent intent in filing this Lawsuit by A. SIMON and TED who both knew the grandchildren of SIMON may be beneficiaries and filed this Lawsuit without their knowledge or consent and without forcing the estate representatives into the Lawsuit. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim.
84. That the SAMR scheme attempted to convert the assets of the estates from the grandchildren to the children of SIMON without the grandchildren's knowledge and consent and where the parents were going to sign off rights on behalf of their children, acting as "Trustees" for them, in order to release the insurance proceeds to themselves. The breaches of fiduciary

duties from this Willful, Wanton, Reckless, Grossly Negligent and alleged unlawful behavior of TED, P. SIMON, IANTONI and FRIEDSTEIN as trustees for their children as the estate beneficiaries constitutes alleged fraud, conversion of estate assets and more. SEE EXHIBIT 5 – ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE FRAUD SCHEMES.

85. That in a lost beneficiary situation the proceeds of the Policy(ies) appear to legally flow to the estate for distribution to the estate beneficiaries, where TED and P. SIMON would be wholly excluded from ANY of the insurance benefits, as both TED and P. SIMON were wholly disinherited from both of their parents estates and trusts and therefore have promulgated failed scheme after failed scheme to try and redirect the insurance benefits and other estate assets to themselves, aided and abetted by TED'S very close personal and business associates, TESCHER and SPALLINA.
86. The reason the beneficiaries of the estates are alleged to be beneficiaries at this time and are not known exactly, is due to revelations in the probate hearings before Judge Martin Colin in SHIRLEY'S estate of forgery, fraud, identity theft and more to close SIMON'S wife estate and attempt to change her beneficiaries POST MORTEM and also change SIMON'S beneficiaries post mortem. Due to an alleged fraudulent Will and Amended and Restated Trust in SIMON'S estate, which are both being challenged and investigated by state authorities currently, as they too are improperly notarized, witnessed and drafted by SPALLINA and TESCHER, it is unclear at this time whom the ultimate beneficiaries of the estates will be.

87. That it was learned in a September 13, 2013 hearing and an October 28, 2013 Evidentiary Hearing that SPALLINA and TESCHER used SIMON post mortem as if he were alive to file a series of documents to close SHIRLEY'S estate and pulled a fraud on the court, whereby Judge Colin stated he had enough evidence at that time that he should read SPALLINA, TESCHER and TED their Miranda Warnings when he discovered these crimes upon his court and the ultimate beneficiaries. The closed estate of SHIRLEY was then reopened and remains open today.

88. That MORAN has been arrested and admitted to filing forged and fraudulent documents in SHIRLEY'S estate on six different documents for six different people, including SIMON who was deceased at the time his name was forged and used in probate court filings. From her statement to Palm Beach County Sheriff officers, "Moran stated that at this time, she took it upon herself to trace [aka FORGE] each signature of the six members of the Bernstein family onto another copy of the original waiver document. She then notarized them and resubmitted them to the courts." This statement contradicts her prior statement to the Governor's Notary Public office where she claimed the documents were identical other than her notary stamp, thus the crime of perjury and/or false statements in official proceedings are now being pursued as well with authorities. This lie about the documents not being forged was also echoed by MORAN'S employer, SPALLINA in the September 13, 2013 hearing before Colin when SPALLINA knowingly lied to the judge and claimed the signatures were also not forged,

8 THE COURT: I mean everyone can see he [ELIOT]
9 signed these not notarized. When they were
10 sent back to be notarized, the notary notarized

11 them without him re-signing it, is that what
12 happened?
13 MR. SPALLINA: Yes, sir.
14 THE COURT: So whatever issues arose with
15 that, where are they today?
16 MR. SPALLINA: Today we have a signed
17 affidavit from each of the children other than
18 Mr. Bernstein that the original documents that
19 were filed with The Court were in fact their
20 original signatures which you have in the file
21 attached as Exhibit A was the original document
22 that was signed by them.
23 THE COURT: It was wrong for Moran to
24 notarize -- so whatever Moran did, the
25 documents that she notarized, everyone but
00051
1 Eliot's side of the case **have admitted that**
2 **those are still the original signatures of**
3 **either themselves or their father?**
4 MR. SPALLINA: **Yes, sir.**
5 THE COURT: I got it.

From MORAN'S statement to the Sheriff's office we see that MORAN did not send back the documents sent back to her by the probate court and merely rubber stamped a notary on it but in fact recreated each of the documents from scratch, then allegedly "traced" aka **forged** the signatures, including one for SIMON post mortem, then affixed her notary stamp and resubmitted them to the court. Where SPALLINA perjuriously told Judge Colin the opposite knowing of her statement to the Sheriff already but knowing the truth in court would invalidate the documents wholly and FORGERY was a far more serious crime with far more serious ramifications according to Judge Colin.

17 THE COURT: Mr. Bernstein, I want you to
18 understand something. Let's say you prove what
19 seems perhaps to be easy, that Moran notarized

20 your signature, your father's signature, other
21 people's signatures after you signed it, and
22 you signed it without the notary there and they
23 signed it afterwards. That may be a wrongdoing
24 on her part as far as her notary republic
25 ability, but the question is, unless someone
00060

1 claims and proves forgery, okay, forgery,
2 proves forgery, the document will purport to be
3 the document of the person who signs it

89. Further, from Judge Colin's order dated November 14, 2013, "1. The Estate shall remain open pending the filing of a Petition for Discharge by Ted Bernstein, as Successor Personal Representative **and any disposition thereof pursuant to probate rules and statutes.**" The bolded text was added to the order in handwriting by Judge Colin and indicates that all rules of probate must be followed now to close the estate, including now giving the beneficiaries/interested parties all accountings, inventories, attorney records, etc. according to probate rules and statutes.

90. That SHIRLEY'S estate was subsequently reopened due to these forgeries and frauds. These matters are not yet fully resolved in the probate courts of Judge Colin and Judge French in Florida or with state authorities. Therefore, who the ultimate beneficiaries of the estates will be remains unclear as was further learned in an Evidentiary Hearing held in SHIRLEY'S estate on October 28, 2013. If the currently alleged beneficiaries were so effectuated through a series of fraudulent documents and acts done to seize Dominion and Control of the estates illegally and change the beneficiaries, in efforts to loot the estate through a variety of

fraudulent acts, insurance benefits paid to this Court in this Lawsuit should not be distributed to any parties until all matters are fully resolved both criminally and civilly in the estates first and determination by this Court instantly if this suit is an Abuse of Process and part of an insurance fraud.

91. That the benefits deposited with this Court by JACKSON should be returned to the insurance carrier immediately until it can be determined if this Court is even the proper court to determine the beneficiaries of the missing and lost trust, the missing and lost insurance Policy(ies) and who the beneficiaries of the estates are and if these matters are legally under the jurisdiction of the Florida state probate court handling the estate. This Court must also determine instantly if this Lawsuit is and was filed legally or is merely an intentional abuse of process to facilitate a fraud.

92. That ELIOT and his children's counsel were told that the SAMR trust was being submitted to the probate court for approval as requested by HERITAGE and once approved it would be submitted for approval and signature by ELIOT and his children's counsel before any distributions would be made. However, during that time, without informing ELIOT or his children's counsel, this Breach of Contract lawsuit was filed with consent of "4/5" of SIMON'S children, as stated in the original complaint filed and was filed intentionally behind ELIOT and his children's counsel backs with scienter by TED acting as Trustee of the lost trust.

93. That of interest to this Court is that TED filed the lawsuit as a Breach of Contract lawsuit and acted as Trustee on what they allege is the failure to pay of HERITAGE on a claim form filed

by SPALLINA as Trustee only weeks earlier. Why would SPALLINA have not filed this Breach of Contract as Trustee of the lost trust on a claim he was denied on, not TED?

94. That it was learned that meetings were held without ELIOT or his children's counsel present, to conspire how to get the proceeds paid to ELIOT'S siblings without informing ELIOT and the grandchildren, without now the need for the SAMR, which resulted in this cleverly concealed baseless lawsuit to knowingly commit insurance fraud and further failing to include all possible beneficiaries of the Policy(ies).
95. That ELIOT would never have even known of this Lawsuit without JACKSON suing ELIOT as a third party defendant and this Court could have paid out the benefits and circumvented the true and proper beneficiaries and none of these parties with interests would have known until after the proceeds were distributed, if ever.
96. That knowing the SAMR would never get approval by the probate court and ELIOT, that scheme was discarded and this new vexatious, frivolous and abuse of process scheme to convert the benefits fraudulently was then hatched and facilitated through this meritless and baseless Breach of Contract lawsuit brought on behalf of an alleged lost trust by an alleged Trustee, either SPALLINA or TED, as both have made separate claims that they are the Trustee of the lost trust knowing full well that they are not Trustees and cannot be of a lost contract.
97. That this Lawsuit is actually a clever Legal Abuse of Process, which uses this Court to facilitate the crime of Insurance Fraud through a Fraud on a Federal Court, an Insurance Carrier, estate beneficiaries and estate creditors, that attempts to convert the insurance benefits to imagined beneficiaries, with no legally valid contracts to prove their claims,

concocted together by Defendants TED, P. SIMON, D. SIMON, A. SIMON, IANTONI, FRIEDSTEIN, TSPA, TESCHER, SPALLINA, et al.

98. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was “involved” with MORAN in her fraud and forgery.
99. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify that court that SIMON was dead at the time he was using him as if he were alive, thus acknowledging that he perpetrated a Fraud on the Court and more in the closing of SHIRLEY’S estate with a dead Personal Representative and Trustee, SIMON.
100. That in an October 28, 2013 Evidentiary Hearing before Judge Colin, it was learned that TED had been acting in fiduciary capacities that he did not have prior, including acting as Personal Representative and Trustee for the estate of SHIRLEY. Due to the FRAUD ON THE COURT using SIMON’S identity, after he was deceased as if alive, to close the estate of SHIRLEY, no successors were elected or appointed by the court after he died and SIMON was continued to be used as if alive. SPALLINA, acting as estate counsel failed to notify the court that SIMON, the Personal Representative and Trustee was dead and continued for four months to use SIMON and file documents on his behalf, filed as if SIMON were still alive to

close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate.

101. That it is alleged that to make POST MORTEM beneficiary changes to SHIRLEY'S estate they needed to make it look like SIMON was alive when he closed SHIRLEY'S estate, so that they could then attempt to change her beneficiaries POST MORTEM through a combination of the forged and fraudulent documents in SHIRLEY'S estate combined with the alleged FORGED and FRAUDULENT alleged Will and Amended and Restated Trust filed in SIMON'S estate.

102. That the Will and Amended and Restated Trust of SIMON are improperly drafted, notarized and witnessed and are now being investigated by authorities in Florida. MORAN and SPALLINA are both involved in the documents in question in SIMON'S estate as well, as they improperly witnessed them and more and where MORAN and SPALLINA have admitted involvement in forged and fraudulent documents already in SHIRLEY'S estate, nothing they have done, past, present or future can be trusted or relied upon without forensic evaluation and more.

103. That the Court should note that SPALLINA witnesses these documents, the alleged Will and Amended and Restated Trust of SIMON, documents he drafted and which gave him fiduciary powers and financial gain, as they elect him and his partner defendant Donald Tescher as Co-Personal Representatives of SIMON'S estate, allowing them to seize Dominion and Control of the estates, these problems make the documents further legally invalid, not just for the improper notarizations but for the improper witnessing by SPALLINA.

104. That MORAN, who already has been arrested for fraud and forged documents in the estate of SHIRLEY, also witnesses these documents in SIMON'S estate and nothing she has done can be relied upon. What unfolds when looking at all of these alleged fraudulent documents and those already admitted forged and fraudulent, is a pattern and practice of fraudulent documents that combine to allow SPALLINA and TESCHER to illegally seize dominion and control of the estates of SIMON and SHIRLEY and then using their illegally gained fiduciary powers to change beneficiaries to the advantage of some parties and disadvantage of others and then loot the estates and covert assets to the wrong beneficiaries (primarily their close personal friend and business associate TED) in a variety of alleged felony crimes, including insurance fraud and fraud upon this Court, fraud upon the Florida Probate courts and fraud on the beneficiaries of the Policy(ies) through this baseless Breach of Contract suit and more.

STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS.

105. That when SPALLINA'S insurance fraud failed, this frivolous and baseless instant Breach of Contract lawsuit was instituted before this Court with TED now suddenly and bizarrely claiming to be the alleged "Trustee" of the lost trust. A. SIMON claiming TED now instead of SPALLINA is the "Trustee" of the lost trust and as such stating TED can elect new beneficiaries POST MORTEM for SIMON. SPALLINA now disappears as "Trustee" for this lawsuit and magically transfers trusteeship to TED in an unknown

transaction to any alleged beneficiaries and TED then through his brother-in-law, D. SIMON'S brother and P. SIMON'S brother-in-law, A. SIMON who acts as counsel now for TED as alleged "Trustee" and also represents the lost trust as his client and then files this lawsuit to fraudulently attempt to convert the death benefits. Again, ELIOT reminds the Court that all of these bogus claims are being made on behalf of a lost trust on a lost insurance Policy(ies) and no one to date has produced for this Court any legal and binding contracts to prove their claims.

106. That ELIOT alleges that the trusts and Policy(ies) are being suppressed and denied by the parties responsible for maintaining them, in order to change the beneficiaries and convert the funds illegally to themselves. That it was learned in letters from SPALLINA that P. SIMON had good relationships at one of the insurance carriers involved in the claim and that she could facilitate payment of the claim to their SAMR scheme, despite the obvious illegality of the scheme, in the end this failed.

107. P. SIMON and SIMON sold the "lost" insurance Policy(ies) on SIMON, acting as the broker and agent of record and also maintained and setup the VEBA trust through trust companies they operate that paid the insurance proceeds to the plan participants.

108. That D. SIMON, A. SIMON and TSL provided legal counsel to the businesses and trusts involved in this lawsuit and are alleged to be suppressing records relating to the "lost" insurance Policy(ies) and "lost" trust and more, with intent to conceal and illegally change the beneficiaries of SIMON'S policy(ies) to their immediate family members to the detriment of other beneficiaries and potential creditors of the estate.

109. That defendant A. SIMON and his law firm, defendant TSL, are directly involved as counsel to many of these trusts and the insurance agencies involved that are Bernstein family owned companies and they are located in the same offices. That A. SIMON and P. SIMON have had access to all these records, including the policies and various trusts over the years and it should be noted that when producing documents for this lawsuit, they have failed to include all of the VEBA trust documentation that was responsible for beneficiary designations of the VEBA plan. The VEBA paid the insurance benefits of the plan to the employees elected beneficiaries under the plan. The Policy(ies) direct beneficiaries in the VEBA are trust companies, not typically individuals or their personal trusts. The VEBA trust receives the benefits and then pays the plans beneficiaries designated under the VEBA trust who are not typically listed on the underlying Policy(ies). This appears to be the case with the Policy(ies) claimed in this lawsuit and why the primary beneficiary is LaSalle National Trust, N.A. and the contingent beneficiary is SIMON BERNSTEIN TRUST N.A. Nowhere is the lost "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" trust named as a beneficiary of the Policy(ies), as it was a beneficiary of the VEBA plan and would have been so listed in the documentation of the VEBA trust not on the Policy(ies).

110. That to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the beneficiary was changed to the lost trust in 1995. Yet, in JACKSON'S discovery documents produced thus far, evidence is found that SIMON was sent a letter April 23, 2010, which stated, "Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance

Company. Our records indicate the following beneficiary designation for the above referenced contract number:

Primary Beneficiary/Beneficiaries: Lasalle National Trust, N.A.

Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A.”

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

111. That it should be noted by this Court, that after thousands of pages of discovery were sent to ELIOT by defendants A. SIMON and JACKSON in these matters, **NEITHER PARTY SENT A COPY OF THE POLICY AND A VALID LEGAL TRUST DOCUMENT WITH CLAIMS TO THE POLICY.** Where this may be the first such case where all responsible parties to maintain insurance contracts and trusts appear to be missing the insurance contract and trusts entirely, no valid copies even tendered, indicating further alleged insurance fraud and massive liabilities since the suppression of these documents benefits directly those alleged to be suppressing them. Where ELIOT has worked in the insurance and estate planning industry and sold hundreds of millions of dollars of premium to billionaires and multimillionaires for over 20 years and has never heard of a “lost” trust and missing Policy(ies), where no one, including the policyholder, the estate planners, the fiduciaries of the trusts and Policy(ies) and even the INSURANCE CARRIER claim to have original contracts, copies of originals, valid drafts or anything of substantive legal contractual value for making a claim or paying a claim. That the insurance carrier claims not to have a copy of the Policy(ies) and thus far has provided only a specimen contract and claims to not have a single page of the any of the trusts claimed to be beneficiaries and this may expose

them to liabilities and reason they should not be allowed of these matters until they are fully resolved.

112. That also missing from the records sent to ELIOT thus far are the entire records of the VEBA TRUST maintained by P. SIMON, D. SIMON and A. SIMON for SIMON that supposedly was dissolved according to the original complaint in this matter, including but not limited to the annual VEBA trust statements, information pertaining to the dissolution of the VEBA, conversion policies, the sold case information that was maintained by P. SIMON and D. SIMON'S companies and what SIMON and SHIRLEY'S total beneficial interest in the VEBA plan were, including other policies and other assets.

113. That the VEBA TRUST was written for companies owned by SIMON, insuring all the employees of his company and where SIMON was a Pioneer of the life insurance VEBA plans.

114. That also missing at this time is any information from other defendants involved in these matters who have not yet responded to the complaint or answered the actions and have not disclosed under Rule 26, including trust companies and other law firms involved that are largely responsible to the beneficiaries of the VEBA TRUST and Policy(ies), including but not limited to, the estate planners, TSPA, TESCHER and SPALLINA, who are largely responsible for this insurance fraud and the estate planning fraud already discovered in the estate of SHIRLEY.

115. That from the records sent thus far by JACKSON, it appears that the last named alleged beneficiary and contingent beneficiary on the Policy(ies), according to JACKSON is not the lost trust claimed by SPALLINA, TED, P. SIMON and A. SIMON, the "Simon Bernstein

Irrevocable Insurance Trust dtd. 6/21/95” but instead the primary beneficiary appears to be LaSalle National Trust and the contingent beneficiary appears to be another lost trust where no records were tendered to ELIOT by JACKSON or A. SIMON, the “Simon Bernstein Trust, N.A.” Therefore, at this time it does not appear relevant who the trustee or the beneficiaries of the “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” are in this lawsuit, as this trust is not a primary or contingent beneficiary on the Policy(ies) according to JACKSON, even if it were the contingent beneficiary there is no legally valid controlling document produced to claim the benefits. Thus, the lost trust serves no purpose to establish a claim as it is not a beneficiary, other than to prove the attempted Insurance Fraud, Abuse of Process and Fraud on this Court taking place to attempt to convert the benefits illegally. Further, in the 2500 page document dump thus far, no clear beneficiary forms have been evidenced for “Simon Bernstein Trust, N.A.” showing how this entity became the contingent beneficiary or what it is.

116. .That this Willful, Wanton, Reckless, and Grossly Negligent illegal behavior of the Attorneys at Law, TSPA, TESCHER and SPALLINA who have largely caused this mess of unknown beneficiaries and missing trusts and missing Policy(ies) in the estate, by failing to protect the beneficiaries through the extensive estate planning that SIMON and SHIRLEY contracted and paid them do, have still not answered this lawsuit at this time as they were served a courtesy copy to respond to without forcing process serving and more costs to their victims and delaying the ability to settle these matters or litigate them timely and further causing damages to the true and proper beneficiaries of the Policy(ies) who have been denied benefits by these fraudulent insurance and estate schemes and frauds for over a year now.

117. That in filing this instant action, A. SIMON knew that SPALLINA had fraudulently filed a claim as Trustee of the lost trust, which his client TED claims now to be Trustee of the same lost trust claimed in this Lawsuit. Where A. SIMON knew SPALLINA was not the “Trustee” and could never have been the “Trustee” of the lost trust, as SPALLINA himself claimed never to have seen a copy and A. SIMON knowing of this fraudulent claim failed to notify the proper authorities of this Insurance Fraud by another Attorney at Law as required by state and federal Ethics Codes and Law. A. SIMON has also failed to notify this Court of the fraudulent attempt by SPALLINA to collect the benefits acting as “Trustee” of the lost trust. A. SIMON, filed a Breach of Contract lawsuit for TED on a failed claim of SPALLINA’S and “who’s on first.”

118. That instead of doing what was required by Law when someone attempts to make a fraudulent insurance claim while acting in a false capacity and reporting the crime to the proper authorities, A. SIMON further conspired with TED and SPALLINA to then file this FRAUDULENT BREACH OF CONTRACT LAWSUIT ON A US FEDERAL COURT switching the trustee of the lost trust with intent.

119. That two other documents presented to this Court in Motions and Discovery deserve special note, as they were drafted by **anonymous** Attorneys at Law, no markings of who the draftsmen were and what law firm prepared them, in fact, no identifying marks upon them as to the author(s) at all. The first document is the SAMR trust agreement already exhibited herein, in EXHIBIT 5 and the Court should demand to know who the draftsmen of this document are, so as any legal liabilities or evidence of fraud can be identified to the proper parties.

120. That the second document that deserves further scrutiny was submitted by A. SIMON on behalf of his clients, the lost trust and TED, via discovery in this lawsuit, a document which attempts to now be inserted into the record as some kind of parole evidence of the lost trust, alleged to be a draft of the lost trust. SEE EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST. This document lacks any identifying marks as to who the Attorneys at Law were that drafted it. The document is unsigned and bears no markings that it was ever sent to any party, it is also undated and has absolutely no legal validity and represents an attempt to fool this Court into believing this document validates the lost trust scheme's trustees and beneficiaries proposed in this baseless Lawsuit. Again, this Court should demand to know who the legal draftsmen of the document are so that any legal liabilities or evidence of further fraud can be identified to the proper parties. It is not standard operating procedure for law firms to send out documents, especially estate planning documents, even a draft, without the proper nomenclature identifying their works. This blank un-authored document is worthless to establish a legal claim to the proceeds and proves nothing but another attempted alleged fraud, this time to fulfill Your Honor's request at the last hearing for a copy of the signed lost trust that has been missing since the start of this action.

121. That both TED and P. SIMON were aware that their signatures had been forged on fraudulent documents for both themselves and their father SIMON in the estate of SHIRLEY in May of 2012. Despite knowing their signatures were forged and fraudulent in documents that materially affected the estate beneficiaries, forcing SHIRLEY'S estate to be reopened by Judge Colin, they failed to take any actions to rectify these felony criminal acts with the

proper authorities and Probate court for months and further concealed this information, while they rushed to liquidate assets of SHIRLEY'S estate.

122. That not until Florida state investigators from the Governor's office and Palm Beach Sheriff's office came knocking on the door of SPALLINA, MORAN and ELIOT'S siblings in regard to the forgeries and fraud in documents in the estate of SHIRLEY and the jig was up, did TED and P. SIMON come forward on September 13, 2013, immediately prior to the first hearing on the fraudulent documents of MORAN and expose their concealed knowledge. Five months after they learned of the forgeries and fraud in their names and in their deceased father's name, they then attempt to claim that the felony crimes were OK by them, including the fact that their signatures and their father's signature were forged on fraudulent documents. Simon's signature was forged and the document created POST MORTEM and then filed along with other documents filed in Simon's name for several months after his death, all filed as if Simon were alive at the time, used to close the estate of SHIRLEY and attempt to change the beneficiaries. These crimes appear OK by TED, as stated in a recent email, sent to ELIOT on 12/06/2013 at 10:16PM EST, "You pursued and caused to be arrested a paralegal that our parents loved and without ill-intent, only tried to help a situation along because of dad's death, and it now appears that you are in the process of trying that again with my assistant who has done nothing wrong. You continue to drag Don and Robert through the mud, both of whom our parents were very fond of and who did very good work for our family, notwithstanding your relentless and slanderous accusations."

123. That it should be noted that TED in the hearings before Judge Colin was found making false statements to the Court regarding his fiduciary roles in the estate of SHIRLEY, prior to

September 2013, when he made multiple fraudulent transactions using these knowingly false fiduciary titles, even stating to judge Colin that he was the Trustee of the Estate of Shirley on September 13, 2013 and where it was later learned in that hearing that due to the Fraud on the Court where SIMON was used dead as if alive and serving as Personal Representative and Trustee to close the estate and thus no successors had been chosen when SIMON died, due to the fraud.

124. That in an Order dated, November 14, 2013 in SHIRLEY'S estate, Judge Martin Colin ruled, "2. The Court has determined that it will take no action regarding the form of the pleadings or other documents that were submitted to the Court to close the Estate while Simon Bernstein was serving as Personal Representative." What is important to note is that in the September 13, 2013 hearing it was learned that the estate of SHIRLEY was closed in January 2013, months after SIMON was dead, with SPALLINA and TESCHER using ILLEGALLY SIMON as the Personal Representative while he was dead, as if he were alive. Therefore, the estate was illegally closed by a dead person who could not be "serving" as Personal Representative while dead as only living people can serve in any capacity. This exchange at the hearing is what led to Judge Colin asking the attorneys, defendants SPALLINA and TESCHER (through his counsel) at the September 13, 2013 hearing, how this could be legally possible and then stating he should read them their Miranda Warnings for the fraud upon the court and beneficiaries. Therefore, Colin's Order claims that any documents submitted while SIMON was "serving" as Personal Representative are not actionable and those documents filed POST MORTEM for SIMON by others while he was dead and not legally "serving," remain actionable.

125. That it should be noted that the documents SIMON signed and filed while alive have not been questioned at this time for forgery and fraud, only the documents that appear signed and forged and incomplete in the estates that were filed for him illegally by SPALLINA and TESCHER POST MORTEM are being questioned. See EXHIBIT 7 – PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM. Virtually all of these POST MORTEM documents filed with the court appear legally invalid, as they are improperly notarized, witnessed and more and when combined together attempt to make POST MORTEM changes to the beneficiaries in SIMON and SHIRLEY’S estates that counteract those SIMON and SHIRLEY made while alive. The changes appear made after they were both deceased, by those who were cut out of the estates, TED and P. SIMON, similar to what is going on in this lawsuit in attempts to convert the insurance proceeds of the estate of SIMON against SIMON’S wishes through suppression of documents and fraud.

126. Another question for this Court to determine is how the lost trust that was being replaced with the SAMR, due to the fact that no one can determine who the trustee and beneficiaries are of the lost trust, now files a suit against the carrier, if it was unknown who the trustees and beneficiaries were prior to the lawsuit? If the trustee and beneficiaries are a “best guess” according to SPALLINA as evidenced in EXHIBIT 5, how can a lost trust with no valid legal contractual rights sue anyone, when TED or SPALLINA or Alice in Wonderland could be the trustee and beneficiaries and no valid binding documents exist?

127. That William Stansbury, a creditor in the estate of SIMON, has filed a Motion to Intervene in this Lawsuit and claims that this action is merely an attempt to defraud him as

creditor in the estate, further supporting the claim of ELIOT that this Lawsuit was filed steeped in attempted fraud on beneficiaries and now a creditor of the estate of SIMON.

128. That for all of these reasons defined herein, this Court should strike the pleadings filed by A. SIMON and remove A. SIMON from legal representations in the Lawsuit other than as a Defendant for Fraud on the Court and Abuse of Process for his knowing violations of law in filing this Lawsuit and more.

REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL

129. That A. SIMON in two hearings held already before this Court appears to have personal feelings and emotions involving ELIOT as an extended family member that interfere with his ability to act independently and without malice towards ELIOT as an adversary in these proceedings. It should be noted that defendant A. SIMON has an adverse and conflicting interest in these proceedings as he is now a defendant and ELIOT is alleging that he is committing Insurance Fraud, Abuse of Process and Fraud on the Court, as he and his law firm are involved directly in the lost/suppressed Policy(ies) and trusts and now is found attempting to convert the funds to his brother's wife/employer P. SIMON through this fraudulent Lawsuit.

130. That for these reasons and more A. SIMON and his law firm TSL'S partners, including defendant D. SIMON, will be deposed and called as witnesses in these matters, regarding direct involvement in the lost Policy(ies) and trusts and for knowingly fraudulently filing this Lawsuit with no basis in law and all of these personal and professional reasons make his representations and pleadings far from impartial on behalf of both his clients, the lost trust,

TED, P. SIMON, FRIEDSTEIN and IANTONI, his law firm TSL, his brother D. SIMON and himself both Personally and Professionally. Defendant A. SIMON can no longer be unbiased either in his representations as counsel for himself or others, especially where there is adverse interest in the matter that could put him behind bars for felony crimes alleged herein that he is a central party to.

131. That defendant A. SIMON appears to have responded to ELIOT'S answer and cross claim representing himself as his own attorney personally and it is further unclear if he is attempting to represent himself professionally, as he was sued in both capacities and may need separate counsel to represent each capacity independently.

132. That in a hearing before this Court, defendant A. SIMON admitted to Your Honor that he was conflicted once he became a defendant and claimed to this Court that ELIOT sued him only to conflict him from further representation. Where this admission of his conflict, despite the claimed reason, is cause for Defendant A. SIMON to withdraw as counsel for any party or be removed from further representing himself and any other parties by this Court. It should be noted that ELIOT sued defendant A. SIMON for good reason and cause, as he is not impartial to these matters and has sued knowing there was no basis to the claims, knowing that he was filing without noticing ELIOT or other potential beneficiaries of this Lawsuit to abscond with the proceeds of the Policy(ies), knowing that SPALLINA had already made a claim as Trustee of the lost trust to the carrier and failed to notify this court or authorities that SPALLINA was not the Trustee and had committed insurance fraud and finally, as he knew in a lost beneficiary situation Florida law has the insured's estate as the beneficiary.

133. That defendant D. SIMON is represented by defendant A. SIMON and again defendant D. SIMON was sued in both his personal and professional capacities and it is unclear which capacity defendant A. SIMON will be attempting to represent his brother in these matters.
134. That defendant A. SIMON for reasons stated herein and in the cross claim should be removed from acting as a counsel for TED or any other party and seek legal counsel for both himself, personally and professionally, and for his law firm, as they have all now been sued in this lawsuit as Cross Claim Defendants, with good cause. Where this Court may find that A. SIMON and other parties may need separate counsel to represent themselves in each capacity sued, prior to further adjudication.
135. That before ELIOT is compelled by this Court to respond to ANY further improper pleadings, wasting thousands of dollars more and further share information with defendants A. SIMON as counsel, this Court should first determine if there is any basis to this Lawsuit and if A. SIMON is conflicted from representing anyone other than himself Pro Se. This Court should note that in JACKSON'S Answer and Counter Complaint, they claim that TED was advised by counsel that he had no basis to file this Lawsuit in the first place and then TED sought out a family member with interests, defendant A. SIMON, whose brother has an interest in the Policy(ies) through his wife P. SIMON an alleged beneficiary, to knowingly file this fraudulent Lawsuit.
136. That if this Lawsuit is found to have no basis in law, then A. SIMON, SPALLINA, TESCHER and TED should be sanctioned and reported to the proper authorities for insurance fraud, fraud on the Court and more and this Court should take Judicial Notice of

these alleged crimes and act on its own motions to report and stop this abuse, awarding a Default Judgment and all reliefs and damages requested by ELIOT.

137. That in any event this Court must first determine if A. SIMON can continue to represent himself personally and professionally and others in their varied capacities they were sued under or if he and the parties he represents need to seek independent non-conflicted counsel before proceeding further **for each capacity they were sued under.**

RELIEF

WHEREFORE, Cross Plaintiff ELIOT prays to this Court:

- i. FOR AN ORDER TO STRIKE PLEADINGS BY A. SIMON FOR FRAUD ON THE COURT AND ABUSE OF PROCESS;
- ii. FOR AN ORDER TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL;
- iii. That all filings of A. SIMON should be withdrawn and disqualified from this proceeding and ELIOT should not be obligated to respond to improper pleadings, until non conflicted counsel can file the pleadings properly;
- iv. This Court should order that TED, P. SIMON, IANTONI, D. SIMON and FRIEDSTEIN find new non conflicted counsel to represent their interests in this FRIVOLOUS, ABUSIVE OF PROCESS AND FRAUDULENT Breach of Contract Lawsuit in each capacity;

- v. That each defendant party represented by defendant A. SIMON seek independent non-conflicted counsel and separate and independent counsel be demanded by this Court for their children who should be entered in this case as possible beneficiaries of the proceeds;
- vi. For sanctions to be levied against A. SIMON, D. SIMON, TSPA, TESCHER and SPALLINA for abuse of process and fraud on the court. That according to JACKSON'S original complaint, TED was advised by counsel, alleged to be SPALLINA, that he had no basis to file this lawsuit, and yet, defendant A. SIMON filed the action on behalf of a "lost" trust and with TED as alleged trustee of said "lost" trust and to further benefit his sister-in-law/employer, P. SIMON.
- vii. That this Court take Judicial Notice of the criminal activities alleged herein and the Fraud and Forgery already proven in the estate of SHIRLEY and act on its own Motions to stop further criminal activity and damages to the beneficiaries of the estate of SIMON and report these matters to state and federal authorities.
- viii. Award Court Costs not from the Policy(ies) but directly from alleged conspirators of this Fraud on the Court and Abuse of Process and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless and vexatious Lawsuit in efforts to perpetrate a fraud;
- ix. ELIOT requests this Court take Judicial Notice of the alleged Fraud on the Court and Fraud on the Beneficiaries of the Policy(ies) through this criminal abuse of process by Attorneys at Law violating ethical codes of conduct and law and act on its own motions to prevent any further possible criminal activities and damages to others

being incurred until these alleged criminal matters are fully resolved and report these alleged criminals with attorney at law degrees and all of them to the proper state and federal bar associations as required by Judicial Cannons and Attorney Conduct Codes.

- x. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Dated

December 08, 2013

Eliot I. Bernstein
2753 NW 34th St.

Boca Raton, FL 33434
(561) 245-8588

Certificate of Service

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on December 08, 2013 to the following parties:

Email

Robert L. Spallina, Esq. and
Tescher & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431
rspallina@tescherspallina.com

Donald Tescher, Esq. and
Tescher & Spallina, P.A.

Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431
dtescher@tescherspallina.com

Theodore Stuart Bernstein and
National Service Association, Inc. (of Florida) (“NSA”)
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, Florida 33487
tbernstein@lifeinsuranceconcepts.com

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park IL 60035
Lisa@friedsteins.com
lisa.friedstein@gmail.com

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Iantoni_jill@ne.bah.com

Pamela Beth Simon and
S.T.P. Enterprises, Inc.,
S.B. Lexington, Inc. Employee Death Benefit Trust,
SB Lexington, Inc.,
National Service Association, Inc. (of Illinois)
303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
psimon@stpcorp.com

David B. Simon and
The Simon Law Firm
303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
dsimon@stpcorp.com

Adam Simon and
The Simon Law Firm
General Counsel STP

303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
asimon@stpcorp.com

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588

**EXHIBIT 1 – SPALLINA CLAIM FORM WITH SPALLINA AS TRUSTEE OF THE
“LOST” TRUST**

EXHIBIT 2 – MORAN SUSPENSION

EXHIBIT 3 – PALM BEACH COUNTY SHERIFF REPORT

EXHIBIT 4 - TRIPP SCOTT CONFLICT LETTER

**SEE EXHIBIT 5 – ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE
FRAUD SCHEMES**

EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST

EXHIBIT 7 – PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM