

Issued by the  
UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

ILLINOIS

SIMON BERNSTEIN IRRV INS. TRST, DTD 6/21/5, et al.

SUBPOENA IN A CIVIL CASE

V.

HERITAGE UNION LIFE INSURANCE COMPANY, et al.

Case Number:<sup>1</sup> 13-cv-03643

TO: HERITAGE UNION LIFE INSURANCE COMPANY\*

\*SEE EXHIBIT "A" ATTACHED HERETO

YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	EAST LANSING MARRIOT AT UNIVERSITY PLACE 300 M.A.C. AVE., EAST LANSING, MI 48823	DATE AND TIME	3/19/2014 10:30 am
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YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE EXHIBIT 'A' ATTACHED HERETO

PLACE	EAST LANSING MARRIOT AT UNIVERSITY PLACE 300 M.A.C. AVE., EAST LANSING, MI 48823	DATE AND TIME	10:30 a.m. 3/19/2014 <del>0:00 am</del>
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YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)	DATE
<i>Adam Simon, Attorney for Plaintiffs</i>	2/28/2014

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER
ADAM SIMON, 303 E. WACKER DRIVE, Ste. 210, Chicago, IL 60601 P: 312-819-0730

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE	PLACE
SERVED	
SERVED ON (PRINT NAME)	MANNER OF SERVICE
SERVED BY (PRINT NAME)	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

\_\_\_\_\_  
ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject

to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT. Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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 purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

Third-Party Defendants. )

Case No. 13 cv 03643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

AMENDED NOTICE OF DEPOSITION  
PURSUANT TO FED. R. CIV. P. 45  
AND 30(b)(6)

\_\_\_\_\_ )

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

TO DEPONENT: HERITAGE UNION LIFE INSURANCE COMPANY,  
 by and through Jackson National Life Insurance Company,  
 as successor in interest to Reassure America Life Insurance Company,  
 reinsurer of Heritage's subject Policy,  
 as administrating and servicing agent for Heritage.  
 c/o COUNSEL FOR HERITAGE UNION LIFE INSURANCE COMPANY  
 Alexander David Marks  
 Frederic A. Mendelsohn  
 Burke Warren MaCkay & Serritella  
 330 N. Wabash Ave. -- 22nd Floor  
 Chicago, IL 60611

PLEASE TAKE NOTICE that, pursuant to Rules 30(b)(6) and 45 of the Federal Rules of Civil Procedure, Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995, Ted Bernstein, its Trustee and individually, Pam Simon, Jill Iantoni and Lisa Friedstein, by their attorney, will take the deposition upon oral examination, to be recorded by stenographic means of Heritage Union Life Insurance Company ("Heritage" as further defined in the attached Subpoena for Deposition.)

The oral examination will begin on March 19, 2014, at 10:30 a.m., at the East Lansing Marriot at University Place, 300 M.A.C. Ave., East Lansing, MI 48823. If necessary, the deposition will be adjourned from day to day until completed.

Heritage, the deponent, is hereby requested to designate the person or persons most knowledgeable and prepared to testify on its behalf concerning the subject matter described in the attached Subpoena.

All parties to the above-captioned litigation are invited to attend in person and examine the witness.

Dated: February 28, 2014

Respectfully submitted,

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

Adam M. Simon

The Simon Law Firm

303 E. Wacker Drive – Ste. 210

Chicago, IL 60601

Tel: (312) 819-0730

Fax: (312) 819-0773

COUNSEL FOR PLAINTIFF THE SIMON BERNSTEIN  
IRREVOCABLE INSURANCE TRUST DATED 6/21/95,  
and TED BERNSTEIN, TRUSTEE, TED BERNSTEIN, INDIVIDUALLY,  
PAM SIMON, JILL IANTONI AND LISA FRIEDSTEIN

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the foregoing Notice of Deposition to Deponent, Heritage Union Life Insurance Company (as described above), to be served upon the following persons and entities via. U.S. Mail, proper postage prepaid or by Hand Delivery where indicated to:

HERITAGE UNION LIFE INSURANCE COMPANY,  
by and through Jackson National Life Insurance Company,  
as successor in interest to Reassure America Life Insurance Company,  
reinsurer of Heritage's subject Policy,  
as administrating and servicing agent for Heritage.  
c/o COUNSEL FOR HERITAGE UNION LIFE INSURANCE COMPANY  
Alexander David Marks  
Frederic A. Mendelsohn  
Burke Warren MaCkay & Serritella  
330 N. Wabash Ave. -- 22nd Floor  
Chicago, IL 60611  
**(HAND DELIVERED)**

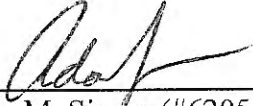
CC:

ELIOT IVAN BERNSTEIN  
2753 NW 34 St.  
Boca Raton, FL 33434  
Pro Se

Glenn E. Heilzer  
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Attorney for  
JPMORGAN CHASE BANK, N.A.

Thomas B. Underwood  
Michael Duane Sanders  
Purcell & Wardrope, Chtd.  
10 S. LaSalle Street  
Ste. 1200  
Chicago, IL 60603  
Attorneys for Donald R. Tescher, Robert Spallina  
And Tescher & Spallina, P.A.

on the 28<sup>th</sup> Day of February, 2014.

  
\_\_\_\_\_  
Adam M. Simon (#6205304)  
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Attorney for Plaintiffs  
COUNSEL FOR PLAINTIFFS  
*SIMON BERNSTEIN*  
*IRREVOCABLE INSURANCE TRUST DATED 6/21/95,*  
*and TED BERNSTEIN, TRUSTEE, TED BERNSTEIN,*  
*INDIVIDUALLY, PAM SIMON, JILL IANTONI AND LISA*  
*FRIEDSTEIN*

## EXHIBIT A

### DEFINITIONS:

- a) The term "Heritage" shall mean Heritage Union Life Insurance Company, by and through Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, reinsurer of Heritage's subject Policy, as administrating and servicing agent for Heritage,
- b) The term "Capitol Bankers" shall mean Capitol Bankers Life Insurance Company, and its successors and/or assigns.
- c) The term "Insured" shall refer to and mean Simon Bernstein.
- d) The term "Policy" shall refer to and mean that certain life insurance policy underwritten by Capitol Bankers Life Insurance Company, insuring the life of Simon Bernstein, and issued as policy no. 1009208.
- e) The term "Policy Proceeds" shall refer to and mean the sum of money deposited by Heritage with the Registry of the Court in the above-captioned matter as the payout of the death benefit proceeds of the Policy following the death of the Insured.

### SUBJECTS OF THE DEPOSITION:

- 1) Capitol Bankers Life Insurance Company, Policy No.1009208 (the "Policy") insuring the life of Simon Bernstein (the "Insured").
- 2) Heritage's files and records for the Policy.
- 3) Heritage's procedures for Policy changes including changes of owners and beneficiaries, generally.
- 4) The owners and beneficiaries of the Policy from the time of Policy issuance through the date of death of the Insured, and all files, documents and records pertaining so said owners and beneficiaries.
- 5) Heritage's death claim procedures.
- 6) The history of insurer succession from the date of issuance of the Policy through the date of death of the Simon Bernstein.



- 7) Heritage's policy administration systems including but not limited to input of Policy owners and beneficiaries into Heritage's computer database.
- 8) Procedures and practices of Capitol Bankers Life Insurance Company with regard to Policy changes (including changes of owner and beneficiary) and death claims.
- 9) Record keeping procedures of Heritage and Capitol Bankers Life Insurance Company.
- 10) The documents produced by Heritage in its Rule 26 disclosures in the above-captioned litigation.

**DOCUMENTS TO BE PRODUCED:**

- 1) All documents disclosed by Heritage pursuant to its Rule 26 disclosures.
- 2) Any and all documents that relate to the subjects of the deposition listed above.