

**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. )**

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**HERITAGE UNION LIFE INSURANCE )  
COMPANY, )**

**Counter-Plaintiff, )  
by )**

**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**

**Rule 26(a)1 Additional Disclosures**

**Eliot Ivan Bernstein**

**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.** )  
) )  
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**DEFENDANT'S FED. R. CIV. P. 26(a)(1) ADDITIONAL DISCLOSURES**

**TO: ALL PARTIES LISTED ON THE ATTACHED CERTIFICATE OF SERVICE**

Cross-Plaintiff and Third Party Defendant, Eliot Ivan Bernstein, pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure hereby submits the following additional disclosures:

**(i) Relevant documents to be used as proof in Eliot's possession**

1. Eliot hereby produces the following documents attached as Exhibit A.
2. Eliot hereby produces documents located at the following URL, hereby incorporated in entirety by reference herein @  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140602EstateFiles/BenBrownCuratorDelieveredByTeschAndSpallina.pdf> The file is 240MB so patience is a virtue and please download and print these files for the Court Record. Bates #TS000001 through Bates TS007421.

Eliot Ivan Bernstein reserves the right to supplement this response as additional documents become known or which may be used in the prosecution or defense of claims asserted, unless solely for impeachment.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Dated June 06, 2014

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Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

EXHIBIT A

SIMON BERNSTEIN  
2000 INSURANCE TRUST

DATED: *August 15, 2000*

PROSKAUER ROSE LLP

Attorneys at Law  
2255 Glades Road, Suite 340 West  
Boca Raton, FL 33431-7360

TRUST AGREEMENT dated this 15 day of August, 2000, between SIMON BERNSTEIN, as Settlor, and SHIRLEY BERNSTEIN and ALBERT W. GORTZ, as Trustees.

1. As and for a gift, the Settlor hereby assigns and transfers to the Trustees and their successors (together, the "Trustees") the life insurance policies set forth in Schedule A annexed hereto, and the Settlor agrees to execute all such assignments and changes of beneficiary and to do such other acts and things as may be necessary in order to make the Trustees irrevocable absolute assignees of said life insurance policies. The Trustees shall hold said policies, together with any other property which may be received by them, in trust upon the terms and conditions set forth herein. This trust shall be known as the "SIMON BERNSTEIN 2000 INSURANCE TRUST."

2. (a) During the Settlor's lifetime, the Trustees shall hold the trust property, shall invest and reinvest the same, and shall pay so much of the income therefrom to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the Settlor's descendants, living from time to time, in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine, accumulating any balance of the income and adding the same to principal.

(b) During the Settlor's lifetime, the Trustees are further authorized and empowered, from time to time, to pay to any one or more of the Settlor's wife, SHIRLEY BERNSTEIN, and the

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Settlor's descendants, living from time to time, such sums out of the principal of the trust (even to the extent of the whole thereof), in equal or unequal amounts, and to any one or more of them to the exclusion of the others, as the Trustees, in their absolute discretion, shall determine; provided, however, that the Trustees shall notify the Settlor's wife and each of the Settlor's descendants of their intention to make any distribution pursuant to this subdivision, whereupon the Settlor's wife and each of said descendants shall have the right (prior to such distribution) to withdraw principal pursuant to subdivision (c) of this Article 2 within thirty days after receipt of such notice.

(c) In each calendar year (including the year in which the trust is first funded), with respect to any addition to principal,

(1) The Settlor's spouse is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to the fair market value of the property added to principal (valued as of the date the addition is made),

or,

(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to the Settlor's spouse (determined on the date the addition is made, after taking into

account all prior gifts to the Settlor's spouse by such individual and assuming that in the case of any such individual other than the Settlor, his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code,

and

(B) the amount from prior years (if any) that remains subject to his or her power of withdrawal.

(2) If the aggregate additions to the trust made in said year exceed the amount that the Settlor's spouse may withdraw pursuant to paragraph (1) of this subdivision (c), each of the Settlor's descendants, living from time to time, is authorized and empowered to withdraw from principal the sum of subparagraphs (A) and (B) below, namely:

(A) the lesser of,

(i) an amount equal to,

(I) a) the fair market value of the property added to principal (valued as of the date the addition is made),

reduced by,

b) the amount subject to the power of withdrawal of the Settlor's spouse pursuant to paragraph (1) of this subdivision (c),

divided by,

(II) the number of the Settlor's descendants having a power of withdrawal under this paragraph (2) immediately after the addition is made,

or,



(ii) an amount that, with respect to the individual making the addition, would qualify for the Federal gift tax annual exclusion under Section 2503(b) of the Code for a gift made directly to such descendant (determined on the date the addition is made, after taking into account all prior gifts to said descendant by the individual making that addition and assuming that his or her spouse, if any, will elect to "split" all gifts under Section 2513 of the Code),

and

(B) the amount from prior years (if any) that remains subject to said descendant's power of withdrawal.

(3) Said rights of withdrawal may be exercised only by written notice to the Trustees and any such withdrawals shall be made out of additions to principal made during the current year, and, to the extent that those additions are insufficient, out of the balance of the principal. The Trustees shall notify the Settlor's spouse and each of the Settlor's descendants, living from time to time, in writing of his or her power of withdrawal with respect to each addition within fifteen days after the date the addition is made.

(4) (A) Each beneficiary's power of withdrawal in any calendar year shall lapse at the end of that year to the extent of,

(i) the amount described in Section 2514(e) of the Code (which, if expressed as a percentage of the fair market value of trust principal, shall be that percentage determined as of the end of the year in question), combining, for this purpose, the fair market

values of the principal of the trust under this Agreement and of all other trusts as to which the beneficiary may have a power of withdrawal,

reduced (but not below zero) by,

- (ii) the amounts by which the beneficiary's powers of withdrawal with respect to each such trust shall have lapsed at the end of that year (assuming that, with respect to each beneficiary, his or her powers of withdrawal as to each such trust, including this trust, shall lapse in the order in which the trust granting such power was created).

(B) Each beneficiary's power of withdrawal shall lapse in its entirety, (i) upon the beneficiary's death, or (ii) upon the Settlor's death if any part of the principal of the trust is includable in the Settlor's gross estate for Federal estate tax purposes.

(5) Notwithstanding the foregoing, any individual making an addition to the principal shall have the right, by written instrument delivered to the Trustees when the addition is made, with respect to any power of withdrawal that otherwise would be created as a result of said addition, (A) to exclude any beneficiary from exercising his or her power of withdrawal that would otherwise be created, (B) to increase (but not exceeding the amount of his or her addition) or decrease the amount subject to any beneficiary's power of withdrawal, or (C) to change the period during which any beneficiary's powers of withdrawal may be exercised.

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3. Upon the death of the Settlor, the then principal of the trust shall be held by the Trustees in further separate trust to pay the income therefrom in quarterly or more frequent installments to the Settlor's wife during her life.

The Trustees are authorized and empowered, from time to time, to pay to the Settlor's wife such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees, in their absolute discretion, deem in her best interests.

Upon the death of the Settlor's wife, the then principal of the trust shall pass to such of one or more of the Settlor's descendants in such shares, equal or unequal, and subject to such lawful trusts, terms and conditions as the Settlor's wife shall by Will appoint. To the extent that said power of appointment shall not be effectively exercised, or upon the Settlor's death if the Settlor's wife predeceases the Settlor, said principal shall be divided into shares, per stirpes, for such of the Settlor's children TED STUART BERNSTEIN, ELIOT BERNSTEIN, JILL IANTONI and LISA SUE FRIEDSTEIN, as are then living and for the then living descendants of such of them as are then dead, and each such share shall be distributed absolutely, provided, however, that any share so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty shall be disposed of as provided in Article 4 of this Agreement.

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4. All shares or portions above or below directed to be set aside for a grandchild or more remote descendant of the Settlor and directed to be disposed of as provided in this Article 4 shall be held by the Trustees in further separate trust to apply so much of the income therefrom for the health, education, maintenance or support of the beneficiary as the Trustees deem necessary or advisable, accumulating any balance of the income and adding the same to principal until the beneficiary attains the age of twenty-one; thereafter, the income shall be paid to the beneficiary in convenient installments.

The Trustees are authorized and empowered, from time to time, to pay to the beneficiary such sums out of the principal of the trust (even to the extent of the whole thereof) as the Trustees shall deem that the beneficiary needs for his or her health, education, maintenance or support.

Upon the beneficiary's attaining the age of twenty-five, one-half of the then principal of his or her trust shall be distributed to the beneficiary absolutely, and upon the beneficiary's attaining the age of thirty, the balance of the principal of his or her trust shall be distributed to the beneficiary absolutely.

In the event of and upon the death of the beneficiary during the continuance of his or her trust, the then principal thereof shall be divided into portions, per stirpes, for the beneficiary's then living descendants, or, in default thereof, for the then living descendants of the beneficiary's nearest ancestor who was a descendant of the Settlor and who has

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descendants then living, or, in default thereof, for the Settlor's then living descendants, and each such portion shall be distributed absolutely, except that any portion so set aside for a grandchild or more remote descendant of the Settlor who is then the beneficiary of a trust under this Article 4 shall be added to the principal of said trust and disposed of as a part thereof, subject to subsequent, but not prior, mandatory distributions of principal, and any portion so set aside for a grandchild or more remote descendant of the Settlor who has not then attained the age of thirty and who is not then the beneficiary of a trust under this Article 4 shall be disposed of as provided in this Article 4.

5. The Trustees shall have the power, in their absolute discretion, at any time or from time to time: to apply for and to purchase contracts of insurance on the life of the Settlor; to make premium payments out of the income or principal on any policy of life insurance held by them hereunder; to exercise any of the rights or options with respect to any policy of life insurance held by them hereunder, whether granted in said policy or allowed by the insurer, including, but not limited to, surrendering, converting (into paid up or extended term insurance) or borrowing upon said policy, applying dividends against premiums or purchasing paid up additions, and exercising options with respect to conversion, surrender or payment of death proceeds.

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6. If ALBERT W. GORTZ ceases to be qualified as a Trustee hereunder, the Settlor's daughter PAMELA BETH SIMON shall be entitled to qualify as successor Trustee in his place.

The Trustees from time to time qualified hereunder are authorized and empowered to designate one or more co-Trustees and, subject to the foregoing, a sole surviving Trustee at any time qualified hereunder is authorized and empowered to designate one or more successor Trustees to succeed himself or herself; provided, however, that the Settlor may not serve as a Trustee hereunder and that the Settlor's wife may not serve as a sole Trustee hereunder, and, provided further, that JEANNIE BERNSTEIN shall never be designated as or serve as a Trustee of any trust created hereunder.

An individual Trustee shall cease to be qualified as Trustee hereunder if he or she is under a legal disability or if by reason of illness or mental or physical disability, in the written opinion of two doctors then practicing medicine, he or she is unable to manage his or her affairs. Each Trustee acting hereunder hereby waives any doctor-patient privilege that may exist and authorizes said doctors to release all medical information that may be requested by the Trustees acting hereunder.

At all times at least one Trustee of any trust created hereunder shall not have an interest in the income or principal of such trust.

No bond or other security shall be required for any reason whatsoever of any Trustee named herein or designated as herein provided.

7. The Trustees hereunder shall have the following discretionary powers in addition to those conferred by law:

(a) To make any payment or distribution (required or authorized under this Agreement) either wholly or partly in kind at market value at date of distribution; to cause any share to be composed of cash, property or undivided fractional interests in property different in kind from any other share and without regard to the income tax basis of property allocated to any beneficiary.

(b) To continue to hold any property, real, personal or otherwise, including, but not limited to, stocks, bonds or other securities, domestic or foreign, in the form in which it shall be when received by them hereunder (without regard to any rule of law that may require them to decide whether or not to retain such property) or as the form thereof may be changed pursuant to the provisions of the other subdivisions of this Article, so long as they, in their absolute discretion, deem it advisable.

(c) To invest and reinvest in any property, including, but not limited to, stocks, bonds or other securities or so-called derivative investments, domestic or foreign, options to sell or to purchase such securities or so-called derivative investments (whether or not then held hereunder), shares or interests in mutual funds, investment companies, investment trusts or common trust funds of a bank or trust company, currencies, precious metals, oil and gas properties or other natural resources and commodities, or interests in, rights to or options to sell or to purchase any of the foregoing (whether or not then held hereunder), improved or unimproved real property or tangible personal property or life insurance, endowment, annuity or similar contracts (including such contracts insuring the then income beneficiary of any trust hereunder) that they may, in their absolute discretion, deem advisable, without regard to any duty to diversify or, except with respect to any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, to make such property productive of income, and in any manner, including by direct purchase, entry into a joint venture, creation of or purchase of an interest in any form of partnership or corporation or through any other form of participation or ownership.

(d) To employ any person, firm, corporation, bank or trust company for advice with respect to investment policy, but the Trustees may, in their absolute discretion, follow or refrain from following any recommendations so obtained, and said recommendations shall not in any way limit the discretionary power and authority herein conferred upon, and not otherwise delegated by, them with respect to investments; to designate a corporation, partnership or other firm, authorized so to act, as custodian, and to employ attorneys, accountants and bookkeepers; and to charge the fees and expenses of the foregoing to any trust hereunder.

(e) To exercise or perform every power, authority or duty, including discretionary powers, by the concurrence and in the names of a majority of the Trustees qualified to participate, with the same effect as if all had joined therein; but by unanimous vote of the Trustees they may determine the number (one or more) who may give instructions to custodians, sign checks or have access to safe deposit boxes.

(f) Severally to resign, by delivering to any successor or co-Trustee written notice of such resignation, to take effect at such date as said resigning Trustee may specify in said notice, without necessity for prior accounting or judicial approval.

(g) Severally to authorize, by instrument in writing, any person or corporation, including any co-Trustee, bank or trust company, to act in the place of said Trustee with respect to specified transactions, to sign a particular check or checks, or to execute any other specifically stated instruments in the name of said Trustee.

(h) To credit to principal or income or to apportion between them in such manner as they deem advisable any distributions from partnerships, any extraordinary, wasting or liquidating dividends, any dividends payable in the stock of the corporation paying the dividend or payable in the stock of another corporation and any so-called "capital gains dividends" declared by investment companies or investment trusts.

(i) To charge to principal or income or to apportion between them any ordinary or extraordinary expenses in such manner as they deem advisable.

(j) To determine if and to what extent they shall amortize any premium paid by them on bonds or other obligations for the payment of money.

(k) To alter, repair, improve, demolish, manage, partition, mortgage, lease for any period (including a period in excess of any fixed by statute and extending beyond the duration of the trusts herein), exchange, grant options to lease or to



buy, and sell or dispose of, at public or private sale and upon such conditions and such terms as to cash and credit as they deem advisable, any property held by them hereunder.

(l) To borrow such sums as they deem advisable for the proper administration of the trusts and to give security therefor.

(m) With respect to any property distributable absolutely to an infant remainderman: in their absolute discretion, to retain possession of and manage the same during his or her minority, with all the rights, powers and compensation of Trustees hereunder, and from time to time to apply so much of the income and principal thereof to the use of said infant as they deem advisable, accumulating any balance of the income and adding the same to principal at convenient intervals; upon said infant's attaining majority (or sooner death), the then principal and any accumulated income shall be distributed to said infant (or his or her estate); this power shall not affect the vesting of said property in said infant.

(n) In determining the amount of income or principal applicable to the use of an infant, to disregard the duty or ability of the parent or parents of said infant to support said infant; and to make payment of any income or principal, applicable to the use of or payable to an infant, (1) to the Guardian (qualified in any jurisdiction) of the person or property of such infant, or (2) to the parent or parents of such infant (whether or not legally appointed his or her Guardian(s)), or (3) to the extent permitted by law, to a Custodian for such infant under a Uniform Gifts to Minors Act or a Uniform Transfers to Minors Act and to select age twenty-one for termination of custodianship, or (4) to apply the same for his or her benefit; the receipt of such Guardian, parent or Custodian or the evidence of the application of such income or principal shall be a full discharge to the Trustees for such payment; provided, however, that with respect to any such payments to or for the benefit of the Settlor's grandchildren ALEXANDRA BERNSTEIN, ERIC BERNSTEIN and MICHAEL BERNSTEIN, no such payment shall be made to JEANNIE BERNSTEIN in any capacity as such grandchild's parent, guardian or Custodian.

(o) To remove any of the property held hereunder to or from any jurisdiction; to change the situs of administration of any trust hereunder from one jurisdiction to another and to elect the law of such other jurisdiction to govern the same.

(p) To organize or participate in the organization of corporations, and to transfer to them any part or all of the property held hereunder in exchange for securities thereof.

(q) To set apart out of the income of the trusts herein (or out of the income of corporations of which the trusts

own securities) reserves for such purposes including, without limitation, depreciation, depletion, obsolescence and other contingencies, and in such amounts as the Trustees, in their absolute discretion, shall deem advisable.

(r) To hold the principal or part of the principal of any of the trusts herein in one or more joint funds in which the separate trusts shall have undivided interests.

(s) To participate in and consent to any corporate reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in any corporation or in its financial structure, and to become a depositor with any protective, reorganization or similar committee, and to make all necessary payments incident to the foregoing; to exercise or to sell any conversion, subscription or similar rights; and in general to exercise in respect to any securities the unrestricted rights of a personal owner, including voting in person or by proxy.

(t) To the extent permitted by law, to register any of the property held hereunder in their names as Trustees or in the names of nominees, or to take and keep the same unregistered, in bearer form or otherwise in such condition as to pass by delivery.

(u) To lend such sums out of the income (other than of any trust for the benefit of the Settlor's spouse that qualifies for the marital deduction under either Federal or State law) or principal of the trusts hereunder and upon such terms and conditions as they deem advisable; provided, however, that under no circumstances may any loan be made to the Settlor.

(v) To exercise any settlement option with respect to the proceeds of any policy of life insurance payable to them as beneficiaries and, in the event of any controversy concerning the payment of such proceeds (or any other controversy with the insurer), to compromise any claim they may have, without the necessity of court approval; to receive such sums as may become payable to them as beneficiaries of any policy of life insurance, with authority to execute all necessary receipts and releases to the insurer, and, upon being advised of the death of the insured, to make efforts to collect such sums as may appear to be due them, without any obligation to institute suit or maintain any litigation to collect the proceeds of any such policy unless in possession of funds sufficient for that purpose or unless indemnified to their satisfaction for attorneys' fees, costs, disbursements and other expenses and liabilities to which they may be subjected by reason of such action; provided, however, that the Trustees may utilize any property held by them hereunder to pay expenses incurred in connection with enforcing the payment of any such sums due them. Any insurer issuing such policy shall, upon payment of the proceeds to the Trustees, be released

and discharged of any obligation to see that such proceeds are applied as provided in this Agreement and of any further liability to the Trustees or to any beneficiary hereof.

(w) To guarantee loans made to any beneficiary hereunder.

(x) To trade on margin (but only with the approval of the Settlor's spouse in the case of any trust that qualifies for the marital deduction under either Federal or state law) and, for such purpose, to maintain and operate a margin account with any broker and to pledge any property held hereunder with such broker for loans and advances made to them. In connection with the foregoing, the Trustees are authorized and empowered to hold title in and to property in bearer, nominee or other form, without disclosure of any trust, so that title may pass by delivery.

8. (a) All the powers granted in this Agreement may be exercised after the termination of the trusts in connection with the proper administration and distribution thereof.

(b) Except as otherwise provided in subdivision (o) of Article 7 of this Agreement, this Agreement shall be governed by and its validity, effect and interpretation determined by the laws of the State of Florida.

(c) This Agreement shall be irrevocable.

(d) In any judicial proceeding involving any trust hereunder and in any non-judicial settlement of the account of a Trustee hereunder, the interest of a person under disability may be represented by a party to such proceeding or settlement who is not under disability and who has the same interest.

(e) If any person beneficially interested hereunder shall die in the course of or as a direct result of the same disaster, accident or calamity as shall cause the death of the life beneficiary upon whose death said person's interest is to take effect or under such circumstances that it cannot be readily determined whether said life beneficiary or said person died first, then, for the purposes of this Agreement, said person shall be deemed to have died before said life beneficiary.

(f) Upon the commencement of the trusts herein and upon the death of an income beneficiary, or any other termination of the trusts herein, any accrued income (including dividends theretofore declared but not yet payable) shall be paid to the persons entitled to receive the income when it becomes payable, but any undistributed income which the Trustees are authorized in their discretion to accumulate shall be added to principal.

(g) Any income or principal payable to a beneficiary hereunder may, in the discretion of the Trustees, be applied by them for the benefit of said beneficiary.

(h) Notwithstanding any provision in this Agreement to the contrary, any power (including discretionary powers) granted to the Trustees hereunder shall be absolutely void to the extent that the right to exercise or the exercise thereof would in any way cause the Settlor's estate to lose all or part of the tax benefit afforded the Settlor's estate by the marital deduction provisions under either Federal or state laws; without limiting the foregoing, with respect to any trust for the Settlor's spouse that qualifies for the marital deduction under either Federal or state law, (1) subdivisions (h), (i), (j), (p), and (q) of the preceding Article of this Agreement and subdivision (f) of this Article shall not apply, and (2) the Settlor's spouse may direct the Trustees, from time to time, to sell any property held as part of the principal, if it produces little or no income, and to invest the proceeds of sale in property that produces sufficient income to assure that such trust will qualify for the marital deduction.

(i) Any Trustee who is an income beneficiary of a trust hereunder shall not be qualified to participate in the exercise of any power to make discretionary distributions to himself or herself or to make allocations, in his or her own favor, of receipts or expenses as between principal and income of such trust; nor shall any Trustee participate in the exercise of a discretionary power to pay or apply income or principal to or for the benefit of a beneficiary whom said Trustee (in his or her individual capacity) is then legally obligated to support; all said powers shall be exercisable by the other Trustee(s).

(j) With respect to any Trustee who is interested, in his or her individual capacity, in any firm or corporation in which the Settlor's estate or any trust hereunder may have an interest, said Trustee may deal freely with said firm or corporation in his or her individual capacity, notwithstanding that there may be a conflict with his or her fiduciary capacity hereunder, but, if one or more of said Trustees has no such personal interest, then as to all matters pertaining to said firm or corporation involving such conflict of interest the decision of said trust shall be made by said disinterested Trustee(s).

(k) A person from time to time qualified as Trustee hereunder shall not be disqualified from purchasing assets of the trust, provided (1) said purchaser shall not participate as Trustee in the decisions of the Trustees as to the price, conditions and terms of the sale, all of which decisions shall be made by the other Trustee(s); and (2) in fixing said price, conditions and terms said other Trustee(s) shall in all respects treat said purchaser in the same manner as though he or she were a third party, not qualified as Trustee.

(l) The Trustees may purchase assets from or sell assets to other estates or trusts not created hereunder, notwithstanding that one or more of said Trustees are fiduciaries of or beneficially interested in said estates or trusts; provided, however, that if one or more of said Trustees has no such interest, then as to all such matters the decision of the trusts hereunder shall be made by said disinterested Trustee(s).

(m) During the minority of any beneficiary, notice of his or her right to withdraw principal from a trust hereunder shall be given to and such right shall be exercisable on his or her behalf by his or her natural or legal guardian, his or her conservator, or his or her committee (in each case, other than the Settlor); provided, however, that no such notice shall be given to or exercisable by JEANNIE BERNSTEIN in any capacity as such beneficiary's natural or legal guardian, conservator, committee, parent or Custodian.

(n) The Settlor or any other person may from time to time add assets to the principal of the trusts hereunder, provided only that said assets are acceptable to the Trustees.

(o) All testamentary powers of appointment granted in this Agreement shall be exercisable only by specific reference to this Agreement and, except as provided in subdivision (p) herein, shall not be exercisable in favor of the power holder or his or her estate or his or her creditors or the creditors of his or her estate.

(p) Notwithstanding the provisions of Article 4 of this Agreement, if (1) pursuant thereto, upon the death of the beneficiary of a trust thereunder, any trust property would be set aside for a person who is assigned to a generation younger than that of the beneficiary under Section 2651 of the Code and if (2) said property would be subject to a generation-skipping transfer tax on the death of the beneficiary, but would not be subject to said tax to the extent that said property is includable in the beneficiary's estate for Federal estate tax purposes, then and in that event said property shall instead pass in such manner, including to his or her estate, if he or she shall so appoint, as the beneficiary shall by Will appoint with the unanimous prior written consent of all of the then qualified Trustees of said trust, except those whose required concurrence would prevent said power of appointment from being a "general power of appointment" within the meaning of Section 2041(b)(1) of the Code. Only if and to the extent that said power of appointment is not effectively exercised shall said property be disposed of as provided in said Article 4.

(q) Whenever property is directed to be held in a trust hereunder, the Trustees are authorized and empowered to establish two or more separate trusts for such property, with said trusts to have identical provisions, to the end that the

Federal generation-skipping transfer tax inclusion ratio, as defined in Section 2642(a) of the Code, of each trust will be either zero or one after allocation of the Settlor's available GST exemption pursuant to Section 2631 of the Code. The Trustees are further authorized and empowered to make different tax elections with respect to each such separate trust (including the allocation of the Settlor's available GST exemption), to invest such trusts in the same or different manners, to exercise any and all discretionary powers granted to them hereunder with respect to such separate trusts in the same or different manners, and to take any and all other actions consistent with the fact that such trusts are separate entities. The Settlor recommends (but does not direct) that no distribution of principal be made to a beneficiary from his or her trust(s) with a generation-skipping transfer tax inclusion ratio of zero until the trust(s) for his or her benefit with a generation-skipping transfer tax inclusion ratio of one shall first have been exhausted.

(r) Wherever in this Agreement property is directed to be added to an existing trust for a descendant of the Settlor hereunder, the Trustees shall not combine property with different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code, but shall add such property to the trust for such descendant hereunder which has the same generation-skipping transfer tax inclusion ratio as defined in Section 2642(a) of the Code as such property, or, if necessary, such property shall be held in a separate trust for such descendant, with said trust to have identical provisions to the existing trust for such descendant hereunder.

(s) If, at any time, there shall be a trust created under the Settlor's Will, the Will of the Settlor's spouse or a trust created by the Settlor or the Settlor's spouse (or both of them) during the Settlor's lifetime, for the same beneficiaries and subject to the same provisions as a trust under this Agreement (or as a trust intended to be created under this Agreement), or if there shall be more than one trust under this Agreement for the same beneficiaries and subject to the same provisions, the Trustees are authorized and empowered, in their absolute discretion, to transfer the principal held (or intended to be held) in trust hereunder to the Trustees of such other trust (whether or not the Trustees of such other trust or their successors are the Trustees nominated or appointed hereunder) or to combine them (unless such trusts have different generation-skipping transfer tax inclusion ratios, as defined in Section 2642(a) of the Code) to form a single trust for simplicity and convenience of administration; provided, however, that if any such trusts are prevented from being combined or otherwise consolidated pursuant to the provisions of this subdivision because any such trust has a different maximum period of time that property held in such trust could remain held in such trust (the "perpetuities period"), the Trustees shall be permitted to combine or otherwise consolidate such trusts pursuant to the

provisions of this subdivision with the resulting trust assigned the lesser of the perpetuities periods of the original trusts.

(t) Wherever the context permits, the word "Trustees" shall be deemed to include "their survivor or survivors, successor or successors."

(u) To the extent permitted by law, none of the beneficiaries hereunder shall have the power to convey, anticipate, assign, encumber or in any way dispose of any part of the income or principal of their respective trust funds, nor shall said principal or income be in any way or in any amount answerable or chargeable with their duties, obligations, judgments or claims however arising, nor shall said principal or income be taken or reached by any legal or equitable process in satisfaction thereof, it being the Settlor's intent, so far as the law allows, to make said trusts what are commonly known as "spendthrift trusts."

(v) In no event shall any addition to the trust be made less than thirty days before the end of any calendar year.

(w) In no event shall any trust hereunder continue longer than the maximum term allowable under Florida law (or any other state that may govern the provisions of this Agreement) in effect at the date of this Agreement, and any trust then still in effect hereunder shall thereupon terminate and the then principal thereof shall be distributed absolutely to the beneficiary thereof.

(x) In determining whether or not to exercise any discretionary power to pay income or principal of any trust hereunder, the Trustees may, but shall not be required to, (1) with respect to the trust created under Article 3 of this Agreement, take into account any other resources available to the beneficiary under consideration; (2) take into account any effect the exercise thereof may have on the respective tax liabilities of any trust hereunder and the beneficiary under consideration; and (3) consider and accept as correct any statement concerning these matters made by the beneficiary under consideration or on behalf of such beneficiary.

(y) The Trustees must own each policy of insurance purchased by the Trustees or contributed to the trust. The Trustees shall have no liability or responsibility for any loss resulting from the failure of any insurance company and inability to pay its claim under any insurance policy purchased by the Trustees. The Trustees shall have the power to borrow any sum in accordance with the provisions of any such insurance contracts; however, the Trustees shall be under no obligation to invest any cash value accumulated in any life insurance policy owned by the trust regardless of the investment yield on such value within the policy as compared to the net investment yield which could be

obtained outside the policy. Except as expressly provided otherwise herein, the Trustees shall be under no duty or obligation to exercise any benefit, option or privilege granted by any insurance policy and the Trustees shall not be liable or accountable to anyone for the exercise or non-exercise of any such benefit, option or privilege, including the ability to borrow against the cash values to obtain a higher investment yield outside the policy.

(z) The Trustees shall be responsible for the proceeds of the policies only when, as and if collected by them, and the Trustees shall not be liable or accountable to anyone if, because of default in premium payments, failure of the insurance company or for any other reason whatsoever, the policies, or any of them, shall lapse or be otherwise uncollectible. The Trustees shall not be deemed, because of this trust, to have entered into any covenant to keep any insurance policies in force.

(aa) In determining the amount of any power to withdraw principal that may lapse under this Agreement, the Trustees may rely upon the written statement of the Trustees of any other trust to which this Agreement refers as to the fair market value of the principal thereof at the end of any year and shall have no duty to inquire as to the correctness of such statement.

(bb) Wherever reference is made in this Agreement to the "Code" it shall mean the Internal Revenue Code of 1986, as amended, and, if to any specific provision, it shall include any comparable provision of any subsequently enacted revenue law of the United States in effect from time to time.

9. The term "descendants" as used in this Agreement shall specifically exclude the Settlor's daughter PAMELA BETH SIMON and her descendants. The Settlor has not made any provisions herein for PAMELA BETH SIMON or any of her descendants not out of lack of love or affection but because they have been adequately provided for.

10. The Trustees hereby accept the trust herein and




agree to carry out the provisions hereof and faithfully to perform and discharge all of their duties as Trustees.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands and seals the day and year first above written.


Signed, sealed and delivered in the presence of the following persons, each of whom also signed as a witness in the presence of the Settlor

  
GEORGE D. KARIBJANIAN

 (L.S.)  
SIMON BERNSTEIN, Settlor

Print Name 33 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz  
Print Name  
2415 NW 32nd St.  
Address  
Boca Raton, FL

Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

  
GEORGE D. KARIBJANIAN

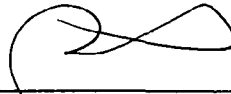
Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

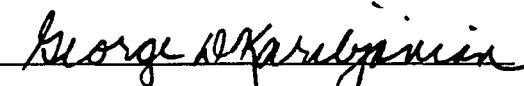
  
Robert Jacobowitz

Print Name 2415 NW 32nd St

Address Boca Raton, FL

  
SHIRLEY BERNSTEIN, Trustee (L.S.)

Signed, sealed and delivered  
in the presence of the following  
persons, each of whom also signed  
as a witness in the presence of  
the Trustee

  
GEORGE D. KARIBJANIAN

Print Name 1133 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

  
Robert Jacobowitz


Print Name 2415 NW 32nd St

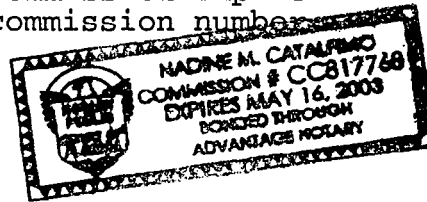
Address Boca Raton, FL

  
ALBERT W. GORTZ, Trustee (L.S.)

STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)

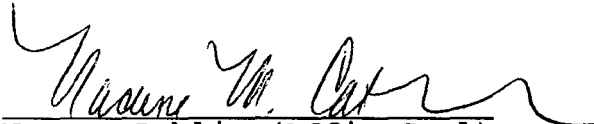
The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by SIMON BERNSTEIN, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_ as  
identification.

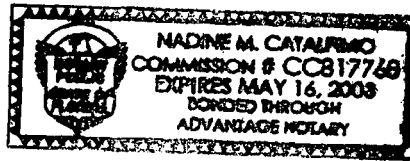
  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)


The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by SHIRLEY BERNSTEIN, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_  
as identification.

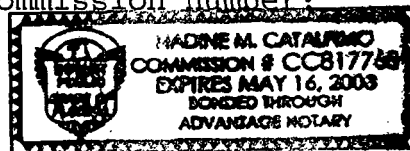
  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



STATE OF FLORIDA        )  
                                  )    SS.:  
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me  
this 15<sup>th</sup> day of August, 2000 by ALBERT W. GORTZ, who is  
personally known to me or ~~has produced~~ \_\_\_\_\_  
as identification.

  
\_\_\_\_\_  
Notary Public (Affix Seal)  
My commission expires:  
My commission number:



**SCHEDULE A**  
**TRUST AGREEMENT dated the 4th day**  
**of August, 2000, between**  
**SIMON BERNSTEIN, as Settlor,**  
**and SHIRLEY BERNSTEIN AND**  
**ALBERT W. GORTZ, as Trustees**

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,  
Policy No.: 1009208

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Tuesday, April 30, 2013 12:16 PM  
**To:** Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** Bernstein Estate

Do you communicate with your siblings other than Pam and Scooter? Below is an email to Robert from Jill and Lisa. In addition to being factually inaccurate, clearly indicates that they are not being kept in the loop. As a reminder, you were to obtain an appraisal from the jeweler as the one he gave you is inadequate. Also, you were to provide us with an accounting. How is that coming?

It has been over a month since we last heard any update on the Bernstein Estate, the insurance proceeds, the real estate, the law suit(s) and jewelry. It is our understanding that everything EXCEPT for the jewelry and insurance proceeds is under your jurisdiction as the Executor, so I am not clear on where that jewelry is or the appraisals I had asked for. I shared with my siblings, that once we have those appraisals I have several strong contacts that we will use to sell it, unless anyone of us wants to purchase it. We understand your Partner, Don has resigned from his duties regarding my Dad's estate. We would like to know why, so we fully understand what is going on. Please send us the sale information of the condo and where that money is going for our beneficiaries and the latest update with the insurance company and the proceeds.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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

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4/30/2013

TS004429

## Robert Spallina

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** David (Scooter) Simon; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** **Bernstein**

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:scott.welling@jackson.com)**



## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

## Robert Spallina

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** asimon21@att.net; David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [<mailto:asimon21@att.net>]  
**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Trustee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:43 AM  
**To:** Ted Bernstein  
**Cc:** Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Ted – I'm done with this matter. I have bent over backwards for YOU to try to keep things in order out of respect for your father and mother but your family has gotten to the point of completely dysfunctional and I do not need the aggravation in my life. Handle the insurance matter as you please (or as your in-laws please which seems to be the case). I cannot and will not help people that do not want to help themselves. Don is a much more patient man than I so he may continue to assist you but I will not. Sorry.

---

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:31 AM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

That will get you absolutely nowhere SIR.

I will speak to Ted and never to you AGAIN in my life!!

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** adam simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Tuesday, April 16, 2013 9:28 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Because we are not underhanded disrespectful assholes! You're not really asking that question are you? Please forward me a copy of the withdrawal of your complaint. This is absurd already!

---

**From:** adam simon [mailto:asimon21@att.net]  
**Sent:** Tuesday, April 16, 2013 10:26 AM  
**To:** Robert Spallina  
**Cc:** Ted Bernstein; David (Scooter) Simon; Donald Tescher  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina: the reason we filed in Illinois was to make sure this matter got started somewhere. If we dismiss we have no assurance that the matter will be promptly filed in Florida.

Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

On Apr 15, 2013, at 10:53 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

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4855 Technology Way, Suite 720  
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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

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**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon



## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Tuesday, April 16, 2013 10:36 AM  
**To:** 'Adam Simon'; David (Scooter) Simon  
**Cc:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Problem is that you NEVER did speak with us before you did what you did...shame on you guys!

---

**From:** Adam Simon [mailto:asimon21@att.net]  
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**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

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Adam Simon

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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

*ATTORNEYS*  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

*SUPPORT STAFF*  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

May 10, 2013

*Personal & Confidential*

FEDERAL EXPRESS

Adam Simon, Esq.  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

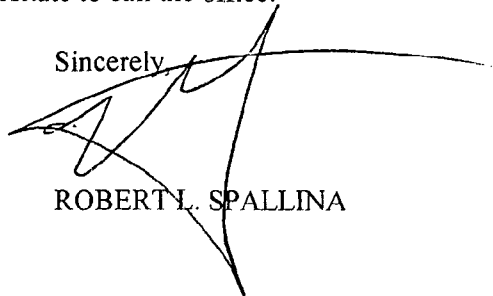
**Re: Simon Bernstein Estate**

Dear Adam:

Enclosed for your records is a copy of the Heritage Union Life Insurance file for the above referenced Estate.

If you have any questions, please do not hesitate to call the office.

Sincerely,



ROBERT L. SPALLINA

RLS/ac  
Enclosure

TS006542



## Shipment Receipt

**Address Information****Ship to:**

Adam Simon, Esq.  
The Simon Law Firm  
303 E. Wacker Drive  
Suite 210  
CHICAGO, IL  
60601  
US  
312-819-0730

**Ship from:**

Lauren Galvani  
4855 Technology Way  
Suite 720  
Boca Raton, FL  
33431  
US  
5619977008

**Shipment Information:**

Tracking no.: 799732615270  
Ship date: 05/10/2013  
Estimated shipping charges: 33.50

**Package Information**

Service type: Standard Overnight  
Package type: FedEx Pak  
Number of packages: 1  
Total weight: 2 LBS  
Declared Value: 0.00 USD  
Special Services:  
Pickup/Drop-off: Drop off package at FedEx location

**Billing Information:**

Bill transportation to: MyAccount-343  
Your reference: e/o Bernstein - 11187.006  
P.O. no.:  
Invoice no.:  
Department no.:

**Thank you for shipping online with FedEx ShipManager at fedex.com.**

**Please Note**

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.  
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Friday, May 03, 2013 6:41 PM  
**To:** Welling, Scott  
**Cc:** Donald Tescher  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Scott there is no trust instrument to be found. That was what the Dec action was all about.

Sent from my iPhone

On May 3, 2013, at 5:58 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Hello,

Can you gentlemen pdf me a copy of the trust?

Thanks.

Scott

---

**From:** Donald Tescher [<mailto:dtescher@tescherspallina.com>]  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** Welling, Scott; Robert Spallina  
**Cc:** [asimon21@att.net](mailto:asimon21@att.net); David (Scooter) Simon; Ted Bernstein  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Ted: This is principally addressed to you but have included others so that they are aware. I feel that we have serious conflicts in continuing to represent you as Trustee of the Life Insurance Trust and need to withdraw from further representation in regard to that matter. We have been under the impression that the interpleader action to be filed in Palm Beach County, Florida would be filed in the Circuit Court which is a State court. That is where Sy's estate is being administered. I have spent the past couple of days acting as an intermediary with Scooter and Scott and thought that we had reached a reasonable resolution that would permit the carrier to bring the action here and have Adam then dismiss the Cook County suit. It appears that I was unsuccessful. Given the conflicting issues of who is representing the Trust, our removal will at least solve that issue. If you gave written authority to the Simon Lawfirm it was without our knowledge.

Should our testimony or affidavits regarding Sy's intent or any other aspects of this matter that we may have knowledge be useful we will certainly be available to assist.

Donald R. Tescher, Esq.  
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4855 Technology Way, Suite 720  
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Telephone: 561-997-7008  
Facsimile: 561-997-7308  
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be imposed on the taxpayer, and (b) any statement contained herein relating to any Federal tax issue. It should not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Friday, April 19, 2013 5:26 PM  
**To:** Robert Spallina; Donald Tescher  
**Subject:** FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Gentlemen,

Can you advise on the below...?

**From:** adam simon [<mailto:asimon21@att.net>]  
**Sent:** Friday, April 19, 2013 5:25 PM  
**To:** Welling, Scott  
**Subject:** Re: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling:

You have been given inaccurate information. I have received written authorization from Ted Bernstein as Tstee of the Trust to file the action that was filed in Cook County.

Thank you,  
Adam Simon

Sent from my iPhone

On Apr 19, 2013, at 4:02 PM, "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)> wrote:

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to

resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]

**Sent:** Friday, April 19, 2013 3:48 PM

**To:** Welling, Scott

**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)



Bernstein - Life Ins.

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 6:01 PM  
**To:** 'Welling, Scott'; Robert Spallina  
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**From:** adam simon [mailto:asimon21@att.net]

4/19/2013

TS006547

**Sent:** Friday, April 19, 2013 5:25 PM

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It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

4/19/2013

Please give this matter your prompt attention.

---

**From:** Cheryl Sychowski [<mailto:cheryl@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 3:48 PM  
**To:** Welling, Scott  
**Cc:** [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com); Adam Simon; Adam Simon  
**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013

TS006549

**Donald Tescher**

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, April 19, 2013 5:03 PM  
**To:** 'Cheryl Sychowski'  
**Cc:** Donald Tescher; Adam Simon; Adam Simon; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013L003498  
**Importance:** High

Dear Mr. Simon,

Thank you for your correspondence.

I just tried to call you, but neither you nor your colleague David Simon were available.

I have briefly discussed this matter with Cook County counsel.

It is my understanding that Jackson has a very short timeframe in which to remove this action to federal court, should it choose to do so. Inasmuch as I am out of the office all next week, I would like to resolve this issue sooner rather than later.

My understanding of this matter is that the Trustee of the Simon Bernstein Irrevocable Insurance Trust has not authorized you to file this lawsuit on behalf of the Trust. Indeed, the Trust's counsel (Robert Spallina) and I have had several amicable and productive dialogues regarding this matter, and have agreed that the best way to resolve this matter is for Jackson to file a federal interpleader action in Palm Beach Florida, where venue indisputably lies.

If I am incorrect, and if the Trustee of the Trust HAS directed you to file this suit, please advise me of same at your soonest convenience.

I will allow you until Wednesday, April 24, 2013 to voluntarily dismiss the above action, and provide me with email confirmation of the dismissal.

If I do not receive confirmation of the dismissal by that date, I will instruct our Cook County counsel to file an Appearance, and then seek to dismiss the action on the grounds that the Trust never authorized the suit.

Naturally, I will ask that our fees and costs be recovered from whichever person or entity is appropriate.

I remain committed to working with the Trust to resolve this matter amicably and with as little expense as possible. However, I decline to do so with an improperly filed lawsuit hanging over my head.

Please give this matter your prompt attention.

---

**From:** Cheryl Sychowski [mailto:cheryl@stpcorp.com]  
**Sent:** Friday, April 19, 2013 3:48 PM

4/19/2013

TS006550

**To:** Welling, Scott

**Cc:** dtescher@tescherspallina.com; Adam Simon; Adam Simon

**Subject:** Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company-  
Case Number 2013L003498

Mr. Welling,

Please see attached for a letter from Adam Simon regarding Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company - Case Number 2013L003498.

Thank you,

**Cheryl Sychowski**

**The Simon Law Firm**

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: [cheryl@stpcorp.com](mailto:cheryl@stpcorp.com)

4/19/2013

TS006551

# THE SIMON LAW FIRM

303 EAST WACKER DRIVE  
SUITE 210  
CHICAGO, IL 60601-5210  
PHONE: (312) 819-0730 • FAX: (312) 819-0773

April 19, 2013

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951

RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company, Case Number 2013L003498

Mr. Welling:

This email confirms that the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Very truly yours,  
THE SIMON LAW FIRM



Adam M. Simon

**Donald Tescher**

---

**From:** Donald Tescher  
**Sent:** Friday, April 19, 2013 2:18 PM  
**To:** 'David (Scooter) Simon'; Ted Bernstein  
**Cc:** Robert Spallina  
**Subject:** RE: Heritage Union

Scooter, as per my telephone conversation with you where I advised you of my subsequent telephone conversation with Heritage's counsel, please revise the message as modified below and have it typed on your letterhead, signed and addressed to Scott D. Welling, Associate General Counsel, Jackson National Life Insurance Company, One Corporate Way, Lansing, Michigan 48951. Email is [scott.welling@jackson.com](mailto:scott.welling@jackson.com). Please copy us also. Thank you.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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

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---

**From:** David (Scooter) Simon [<mailto:dsimon@stpcorp.com>]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Welling:

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the later of (i) 30 days from today; or (ii) the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time stated.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]

4/19/2013

**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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

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---

**From:** Ted Bernstein [<mailto:tbernstein@lifeinsuranceconcepts.com>]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

4/19/2013

TS006554



See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**

4/19/2013

TS006555

**Donald Tescher**

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, April 19, 2013 1:36 PM  
**To:** Ted Bernstein; Donald Tescher  
**Subject:** RE: Heritage Union

Mr. Tescher,

This email confirms that the Insurance Trust will dismiss the action filed in Cook County upon a filing of the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter. Heritage need not file an answer or other pleading provided if and only if Heritage files the interpleader action in the Palm Beach County Circuit Court within the time for filing an answer or other responsive pleading in the Cook County matter.

Thank you for your participation in this resolution.

Adam Simon

---

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:24 AM  
**To:** Donald Tescher  
**Cc:** Robert Spallina; David (Scooter) Simon  
**Subject:** Re: Bernstein

Thanks Don.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 19, 2013, at 9:22 AM, "Donald Tescher" <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)> wrote:

Good. Spoke to Scooter yesterday. They are sending us a letter agreeing to dismiss the Cook County lawsuit upon a filing of the interpleader action in the Palm Beach County Circuit Court. However, a new wrinkle has cropped up: the insurance company has now been formally served. I will ask Scooter to modify the letter to indicate that they need not file an answer or other pleading and the suit will be dismissed provided they file the interpleader here within the time for filing an answer or other responsive pleading in the Cook County matter. I will call the in house counsel at the carrier and make sure that this will be acceptable.

Donald R. Tescher, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

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

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4/19/2013

TS006556

avoiding penalties that may be imposed on the taxpayer, and (b) any written statement contained herein relating to any Federal tax issue may not be used by any person to support the promotion or marketing of, or to recommend, any Federal tax transaction(s) or matter(s) addressed herein. We would be happy to discuss the effect of this disclaimer, and alternatives to this disclaimer, with you if desired.

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---

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Friday, April 19, 2013 8:28 AM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** Re: Bernstein

Condo closed yesterday. Money should be wired today. One down, one to go.

Ted Bernstein  
561-988-8984  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

On Apr 18, 2013, at 9:19 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling

Associate General Counsel

Jackson National Life Insurance Company

One Corporate Way

Lansing, Michigan 48951

4/19/2013

TS006557

Phone: (517) 367-4337

Fax: (517) 706-5517

**Please note: Jackson's email address has changed to  
[@jackson.com](mailto:)**

4/19/2013

TS006558

**Donald Tescher**

**From:** Robert Spallina  
**Sent:** Thursday, April 18, 2013 9:19 PM  
**To:** Donald Tescher  
**Cc:** TBernstein@lifeinsuranceconcepts.com  
**Subject:** Fwd: Bernstein

See below

Sent from my iPhone

Begin forwarded message:

**From:** "Welling, Scott" <[scott.welling@jackson.com](mailto:scott.welling@jackson.com)>  
**Date:** April 18, 2013, 4:22:55 PM EDT  
**To:** 'Robert Spallina' <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**Subject:** Bernstein

Hi Bob,

Not only has the Cook County lawsuit not been dismissed, I was just informed it was formally served on the 17<sup>th</sup>...??

I cannot file the Palm Beach interpleader with this action pending.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

30 days  
[ - helps ~~with~~ out next week ]

**Please note: Jackson's email address has changed to [@jackson.com](mailto:@jackson.com)**

4/19/2013

**Donald Tescher**

---

**From:** Alexa Collevchio  
**Sent:** Thursday, April 18, 2013 3:09 PM  
**To:** Donald Tescher  
**Subject:** David Simon "Scooter" 312-819-0730

*dsimon@stpcorp.com*

Ted Mentioned to him that you called him and left him a voicemail but has no recollection of that happening

**Alexa Collevchio, Receptionist**  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: 561.997.7008  
Facsimile 561.997.7308

4/19/2013

TS006560

## Robert Spallina

---

**From:** Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 6:34 PM  
**To:** Robert Spallina  
**Cc:** Donald Tescher  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

No, still not.

Ted Bernstein  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Have you spoken to them now? We want the filing in Cook County withdrawn ASAP.

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Monday, April 15, 2013 12:27 PM  
**To:** Robert Spallina  
**Subject:** RE: FW: Simon Bernstein Irrv Trust v Heritage Union

Hmmmm - haven't spoken with him since being on phone in your office.

Ted  
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----

**Subject:** FW: Simon Bernstein Irrv Trust v Heritage Union  
**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**CC:** FW: Simon Bernstein Irrv Trust v Heritage Union

Ted – see below. Instructions from ... clients??? Convenient how he didn't copy you.

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)>  
**To:** Adam Simon <[asimon21@att.net](mailto:asimon21@att.net)>  
**Cc:** Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)>; David (Scooter) Simon <[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)>; Donald Tescher <[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed



Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at <http://www.tescherspallina.com/>

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**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this

trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]

**Sent:** Monday, April 08, 2013 12:47 PM

**To:** 'Adam Simon'; Robert Spallina

**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

## Robert Spallina

---

**From:** Adam Simon [asimon21@att.net]  
**Sent:** Monday, April 15, 2013 12:01 PM  
**To:** Robert Spallina  
**Subject:** Re: Simon Bernstein Irrv Trust v Heritage Union

Mr. Spallina:

I am trying to get final instructions from my clients, and will be back to you as soon as I can.

Thank you.

Adam Simon

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**To:** Adam Simon <asimon21@att.net>  
**Cc:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>; David (Scooter) Simon <dsimon@stpcorp.com>; Donald Tescher <dtescher@tescherspallina.com>  
**Sent:** Monday, April 15, 2013 10:53 AM  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Please advise timing as we have not received a response on the below email.

---

**From:** Robert Spallina  
**Sent:** Friday, April 12, 2013 11:22 AM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; David (Scooter) Simon; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - I have spoken to Scott Welling at Jackson (who is copied on this email) and he will interplead here in South Palm Beach County which was the path he and I have been on since we discovered the defect in the ownership change. He is in the process of speaking to counsel here in Palm Beach County. As discussed Monday, please withdraw the pleading filed in Cook County and provide notice of same to all the parties on this email. He cannot file his inter-pleader with this matter pending in Cook County. Thank you

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at <http://www.tescherspallina.com/>

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---

**From:** Robert Spallina  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** 'Adam Simon'  
**Cc:** 'Welling, Scott'; 'Ted Bernstein'; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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---

**From:** Welling, Scott [<mailto:scott.welling@jackson.com>]  
**Sent:** Monday, April 08, 2013 12:47 PM  
**To:** 'Adam Simon'; Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

I have been working with attorney Robert Spallina to try and amicably resolve this matter.

Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

---

**From:** Adam Simon [<mailto:asimon21@att.net>]  
**Sent:** Monday, April 08, 2013 12:15 PM  
**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 2:01 PM  
**To:** Robert Spallina  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Appreciate it Bob. My assistant was actually assembling the file to send to outside counsel to file an interpleader.

---

**From:** Robert Spallina [mailto:rspallina@tescherspallina.com]  
**Sent:** Monday, April 08, 2013 1:59 PM  
**To:** Adam Simon  
**Cc:** Welling, Scott; Ted Bernstein; Donald Tescher  
**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

Mr. Simon - we would like an explanation as well. Our client, Ted Bernstein (and the alleged successor trustee of the subject trust), never had a conversation with us that his family would be taking it upon themselves to attempt to collect the proceeds from the carrier through his brother-in-law's firm. We have represented this trust from the date of Mr. Bernstein's death. Is our client even aware that this was filed? He did not sign the pleading. Please advise.

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## Robert Spallina

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**Subject:** RE: Simon Bernstein Irrv Trust v Heritage Union

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Who do you represent, and why are you suing us? Have you been apprised of attorney Spallina's efforts to help us resolve this matter?

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**To:** Welling, Scott  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

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Adam Simon



## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Monday, April 08, 2013 12:58 PM  
**To:** Robert Spallina  
**Subject:** FW: Simon Bernstein Irrv Trust v Heritage Union  
**Attachments:** COMPLAINT AT LAW-heritage union.pdf

Hello,

Did you know anything about this?

**From:** Adam Simon [mailto:asimon21@att.net]  
**Sent:** Monday, April 08, 2013 12:19 PM  
**To:** Welling, Scott  
**Subject:** Fw: Simon Bernstein Irrv Trust v Heritage Union

I believe the complaint may have been missing from the prior email. Here it is. Thanks.

----- Forwarded Message -----

**From:** Adam Simon <asimon21@att.net>  
**To:** "scott.welling@jackson.com" <scott.welling@jackson.com>  
**Sent:** Monday, April 8, 2013 11:14 AM  
**Subject:** Simon Bernstein Irrv Trust v Heritage Union

Mr. Welling:

Attached please find a complaint in this matter filed in the Circuit Court of Cook County. My client has attempted to reach you but has been unsuccessful. We remain hopeful that this matter can be resolved quickly. If you have any questions and need to speak with me today, please try my cell phone at 312-320-4491. Thank you.

Adam Simon

- FREE Doc Apps

- Ours - 1/1 X

- The Cost Law - Bone  
11 4

- SCOTT, WALTER @ JFCLEAN.COM

## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Thursday, March 14, 2013 7:17 AM  
**To:** Pam Simon  
**Cc:** David (Scooter) Simon; Ted Bernstein  
**Subject:** Re: Simon Bernstein

Waiting for carrier to clear up title and beneficiary designation. Did you get the email I sent everyone from the carrier last week? Scooter knows where we are in process.

Sent from my iPhone

On Mar 14, 2013, at 12:41 AM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Next step? By who? Or is it whom?

On Mar 13, 2013, at 7:42 PM, "Robert Spallina" <[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)> wrote:

Thanks.

Sent from my iPhone

On Mar 13, 2013, at 6:02 PM, "David \ (Scooter\ ) Simon"  
<[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)> wrote:

last of the docs we can dig up.

**Very Truly Yours,**  
**David B. Simon**  
**The Simon Law Firm**  
303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730  
Fax: (312) 819-0773  
E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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**From:** Cheryl Sychowski  
**Sent:** Wednesday, March 13, 2013 4:32 PM  
**To:** David (Scooter) Simon  
**Subject:** Simon Bernstein

<DOC (9).PDF>

## Robert Spallina

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,**  
**David B. Simon**  
**The Simon Law Firm**  
303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730  
Fax: (312) 819-0773  
E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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## Robert Spallina

---

**From:** Welling, Scott [scott.welling@jackson.com]  
**Sent:** Friday, March 08, 2013 1:44 PM  
**To:** Robert Spallina  
**Subject:** Bernstein; Policy No. 1009208

Hi Bob,

First, let me thank you for discussing this matter with me, and for your continued cooperation in helping ensure that the \$1 – million – plus proceeds of this policy are paid correctly.

As I noted during our conversation, Jackson recently acquired Reassure Life Insurance Company, and is now responsible for administering this policy. I have been working with former Reassure personnel to obtain the necessary documentation confirming the last-named owner and beneficiary of the policy. Unfortunately, due to the age of this policy, this is proving to be a difficult task.

My assistant, who is quite thorough, went through the policy file and prepared a detailed outline noting all policy activity, including owner changes and beneficiary changes. This outline revealed instances where letters were sent confirming ownership and/or beneficiary changes, for which no valid ownership change or beneficiary change directive could be found. I have sent the Reassure folks several emails pointing out these issues and I have asked them to provide all documentation substantiating the confirmation letters.

Clearly, Jackson wants to pay the proceeds of this policy to the correct beneficiary as swiftly as possible. If we need to seek the court's determination of who that beneficiary is, it is vitally important that we name in any pleading all entities which may have a claim to the proceeds. Hence the need to confirm, to the extent possible, all beneficiary designations which may (rightly or wrongly) have been recorded against the policy.

At this point, my hope is to resolve this matter by way of a Petition which (i) names all possible beneficiaries/claimants, and (ii) specifically asks for an order directing Jackson to pay a specific beneficiary. As I noted, the Petition should name Jackson as a party, so we will be bound by the Order. Assuming no hostile allegations are made against Jackson, I will not oppose the entry of the Order, but will simply await entry of the final Order, at which time payment can be made.

I will help you draft the Petition and Order.

Alternately, Jackson could simply interplead the funds and let the court decide who is entitled to the proceeds. I would like to avoid this if possible, as it would prove to be more expensive for both your clients and Jackson.

I pledge to work with you to resolve this matter as swiftly and economically as possible.

Please let me know if you need anything else.

Scott D. Welling  
Associate General Counsel  
Jackson National Life Insurance Company  
One Corporate Way  
Lansing, Michigan 48951  
Phone: (517) 367-4337  
Fax: (517) 706-5517

**Please note: Jackson's email address has changed to @jackson.com**

## Robert Spallina

---

**From:** David (Scooter) Simon [dsimon@stpcorp.com]  
**Sent:** Friday, March 08, 2013 11:21 AM  
**To:** Robert Spallina  
**Subject:** LaSalle

Robert,

The policy was originally bought by a 501(c)(9) Death Benefit VEBA Trust. LaSalle was a successor Trustee and the last Trustee before the VEBA was dissolved. SB Lexington, the corporation that established the VEBA Trust was also dissolved. Simon, as sole owner of SB Lexington at the time of dissolution, became the owner of the policy and he named the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as beneficiary. LaSalle has also since been dissolved or merged into Bank of America.

**Very Truly Yours,  
David B. Simon  
The Simon Law Firm**

303 East Wacker Drive, Suite 210  
Chicago, IL 60601

Phone: (312) 819-0730

Fax: (312) 819-0773

E-mail: [dsimon@chicago-law.com](mailto:dsimon@chicago-law.com)

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## Robert Spallina

---

**From:** Robert Spallina  
**Sent:** Wednesday, March 06, 2013 5:26 PM  
**To:** 'Ted Bernstein'; 'Pam Simon'; lisa.friedstein@gmail.com; Jill lantoni  
**Cc:** Donald Tescher  
**Subject:** Dec Action and Waivers  
**Attachments:** Declaratory Action to Establish a Lost Trust.pdf; Jill Waiver Consent and Joinder.pdf; Lisa Waiver Consent and Joinder.pdf; Pam Waiver Consent and Joinder.pdf

All – attached is the petition we intend to file along with the waivers that each of you will need to sign. We have not heard from the attorney at Heritage but as discussed we intend to file the attached on Monday regardless. We did check with his office and he is out until tomorrow so we will reach out to him again to see if he has any comments as a courtesy prior to filing. Please sign your waivers and send us the originals in the overnight mail so I can receive them on Friday. Ted does not need to sign a waiver as he is signing the petition.

If we need to have a call on any of this I am available tomorrow afternoon or on Friday most of the day.

Thanks,

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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## Robert Spallina

---

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

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

Thanks,

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

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

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

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

Parties, Jurisdiction and Venue

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

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

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

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

#### General Allegations

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

“D”).

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

WHEREFORE, Petitioner respectfully requests this Court to determine that

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

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

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

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

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

---

TED S. BERNSTEIN

---

Donald R. Tescher, Esq.  
Attorney for Petitioner  
Florida Bar No. 121086  
Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431  
Telephone: (561) 997-7008  
Fax: (561) 997-7308

N:\WPDATA\estates\Bernstein, Simon\Life Insurance Trust\Declaratory Action to Establish a Lost Trust.wpd

**CERTIFICATE OF SERVICE**

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

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

TESCHER & SPALLINA, P.A.

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

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

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

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

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN          PROBATE DIVISION

IRREVOCABLE INSURANCE

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

**WAIVER, CONSENT AND JOINDER TO  
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AND APPOINT A SUCCESSOR TRUSTEE**

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

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

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

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

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

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



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: SIMON BERNSTEIN      PROBATE DIVISION

IRREVOCABLE INSURANCE

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

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AND APPOINT A SUCCESSOR TRUSTEE**

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

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

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

Chapter 86 F.S.

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

736.0108 Principal place of admin.

736.0201

736.0204(3) principal place of admin - FL.

INS - Heritage

- 1995 Trust reflected as been in INS. Co does

Both were FL residents

Sey owned policy      died 9/13/12

Dinky was trustee      died 12/8/10

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

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

## Certificate of Service

The undersigned certifies that a copy of the foregoing Rule 26 Additional Disclosure was served by ECF and by E-mail on June 06, 2014 to the following parties:

### **Email**

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto: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](mailto:asimon@stpcorp.com)

Jackson National Insurance Company  
Heritage Union Insurance Company  
(and including all successor insurers to Capitol Bankers Life Insurance Company  
as the issuing insurer of the Policy)  
c/o Alexander D. Marks and Frederic A. Mendelsohn  
Burke, Warren, MacKay & Serritella, PC  
330 N. Wabash Ave.  
22nd Floor  
Chicago, IL 60611 -3607  
312-840-7000  
[amarks@burkelaw.com](mailto:amarks@burkelaw.com)

James J. Stamos  
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