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

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, by Ted S. Bernstein,

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE COMPANY

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE TRUST DTD 6/21/95

Counter-Defendant

and,

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

Third-Party Defendants.

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

PLAINTIFFS MEMORANDUM OF LAW IN OPPOSITION TO ESTATE OF SIMON BERNSTEIN'S MOTION TO INTERVENE

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

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

Cross-Defendant

and,

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

Third-Party Defendants.

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN, and state as their Memorandum of Law in Opposition to the Estate of Simon Bernstein's Motion to Intervene as follows:

INTRODUCTION

On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury -- a potential creditor of the Estate of Simon Bernstein. In so doing, the court found that allowing Stansbury to intervene would (i) "not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit", and (ii) "unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit."[1]

Now, six months later, Stansbury seeks a second bite at the apple. Stansbury petitioned the Florida Probate Court to have an administrator ad litem appointed on behalf of the "Estate" to further Stansbury's own agenda against the express wishes of decedent, Simon Bernstein. In fact, had Stansbury's motion been granted in its entirety by the Florida court¸ Stansbury himself would have been appointed administrator ad litem. Instead, the Florida Court appointed the Curator (Mr. Brown) as administrator ad litem, but that appointment was expressly made subject to the conditions placed on the record in the Probate Court which will be discussed later.

What will become apparent is that this motion is a motion of the Estate in name only. This court should apply the law of the case established by its January 14th Order to deny Stansbury's second effort to intervene in this lawsuit.

[1] Order entered January 14, 2014 [Dkt. #110].

FACTUAL BACKGROUND

1. After this court denied Stansbury's first motion to intervene, Stansbury filed a petition in the Florida Probate Court to have himself appointed as administrator ad litem.[2]

2. Benjamin Brown had been appointed curator of the Estate of Simon Bernstein following the resignation of the Estate's personal representative.

3. During the hearing counsel for the various interested parties in the probate matter, either objected to the appointment of any administrator ad litem so as to preserve estate assets, and/or objected to the appointment of William Stansbury. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem.

4. As stated in the Probate Court's Order appointing Benjamin Brown, such appointment was made subject to the conditions that were made part of the record during the hearing. [3]

5. During the hearing on the motions, the discourse between counsel for the various interested parties and the judge made it clear that the instant motion to intervene would only occur with the legal fees and costs being funded not by the Estate, but by William Stansbury.[4]

6. One condition demanded by William Stansbury since he was funding this excursion was that he be kept advised by the Curator and his counsel and have input with how this litigation is prosecuted.[5]

[2] See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein at pg. 5-6. A true and accurate copy of the transcript is attached hereto as **Exh. A**. See
[3] See Probate Court Order attached to the Estate's motion to intervene as Exhibit B (Dkt. #).
[4] See Transcript of Hearing on petition to appoint administrator ad litem in the matter of the Estate of Simon Bernstein. **Exh. A** pg. 13-14, 34-35, 39.
[5] See Transcript, **Exh. A** at pg. 28-29.

7. The sole factual basis asserted by the Estate for its motion to intervene is set forth in its Complaint for Intervenor as follows: "Intervenor Benjamin Brown seeks a judgment from this Court declaring that *no* valid beneficiary is named under the Policy and the proceeds of the Policy must therefore be paid to the Estate."

8. It has been over six months since the court entered its Order denying Stansbury's motion. Stansbury chose not to pursue any motion for reconsideration or appellate review of the Order. Instead, Stansbury initiated and funded the Estate's motion to intervene.

9. The Insurer, in response to a Notice for a Rule 30(b)(6) deposition provided the Affidavit of its witness, Don Sanders.[6] A true and correct copy of the Aff. of Don Sanders is attached hereto as **Exh. B**.

10. At the time of the making of his Affidavit, Don Sanders was familiar with the Insurer's Policy records. (Aff. of Don Sanders, **Exh. B** at ¶33).

11. According to the Policy records as verified by Don Sanders, no owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary. (Aff. of Don Sanders, **Exh. B** at ¶70).

12. According to the Policy records as verified by Don Sanders, "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as 'LaSalle National Trust, N.A. as Successor Trustee', and the Contingent Beneficiary was designated as 'Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995.' " (Aff. of Don Sanders, **Exh. B** at ¶62).

[6] The Affidavit of Donald Sanders is attached hereto and made a part hereof as **Exh. B**.

STANDARD OF REVIEW

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra,* 2013 Ill. App. (1st) 123025, 373 Ill. Dec. 620, 994 N.E.2nd 105 (1st Dist., 2013).

This court's summary of the standard of review for a motion to intervene included the following:

> "Whether an applicant has a sufficient interest to intervene is a highly fact-specific making comparison to other cases of limited value." "Permissive intervention under Rule 24(b), permits "anyone to intervene who… has a claim or defense that shares with the main action a common question of law or fact," unless intervention would "*unduly delay or prejudice the adjudication of the original parties rights*."[7] (emphasis added).

ARGUMENT

A. This court should apply the law of the case to bar the Estate's motion to intervene since the Estate is in privity with Stansbury whose own motion to intervene was previously denied in this same litigation.

Over six months ago, this Court denied Stansbury's motion to intervene. The holding was based, in part, on the tenuousness of the connection between the instant litigation over the Policy proceeds and Stansbury's claims pending in Florida against certain corporate defendants' and the Estate of Simon Bernstein relating to unpaid insurance commissions. The court rejected both of Stansbury's arguments for intervention as a matter of right, and for permissive intervention. Stansbury did not file any motion to reconsider or seek appellate review.

[7] See Order of January 14, 2014 [Dkt. #110]

The basis for Stansbury's motion to intervene was identical to that set forth by the Estate in the instant motion to intervene. Both Stansbury and the Estate argue that the Estate's purported interest in the Policy proceeds is solely as a beneficiary of last resort. Neither Stansbury nor the Estate set forth any affirmative argument or evidence attempting to establish that the Estate was the named beneficiary of the Policy proceeds.

The doctrine of collateral estoppel applies to avoid relitigation of a substantially similar issue arising between the same parties (or their privies) where such issue has already been determined in the course of a separate proceeding. *Rekhi v. Wildwood Industries, Inc.*, 61 F.3d 1313, 130 Lab Cas. P57, 969, 2 Wage & Hour Cas.2d 1428 (7th Cir., 1995).

The doctrine of law of the case also applies to avoid relitigation of substantially similar issues but in the *same* proceeding. In *Radwill v. Manor Care of Westmont, IL LLC*, 2013 IL App (2d) 120957, 369 Ill. Dec. 452, 986 N.E.2d 765 (2nd Dist., 2013), the court explained the rationale behind the law of the case doctrine as follows:

"The law-of-the-case doctrine protects the parties' settled expectations, ensures uniformity of decisions, maintains consistency during the course of a single case, effectuates proper administration of justice, and brings litigation to an end. *Petre v. Kucich*, 356 Ill.App.3d 57, 63, 291 Ill.Dec 867, 824 N.E.2d 1117 (2005). Thus, the doctrine bars relitigation of an issue previously decided in the same case. *Long v. Elborno*, 397 Ill.App.3d 982, 989, 337 Ill.Dec. 432, 922 N.E.2d 555 (2010). Issues previously decided include issues of both law and fact. *Alwin v. Village of Wheeling*, 371 Ill.App.3d 898, 910, 309 Ill.Dec. 656, 864 N.E.2d 897 (2007).

As set forth in the transcript of the Probate hearing appointing the Curator as administrator ad litem, the Estate, in this instance, is in privity with Stansbury. It is a matter of public record that Stansbury is funding this venture, and was granted direct involvement in litigating this matter under the auspices of the "Estate".

The arguments set forth by the Estate mirror those contained in the prior motion made by Stansbury. Because the issues, and arguments are virtually identical, and the moving party (the Estate) is in privity with the prior movant (Stansbury), the law of the case must apply to bar relitigation of this issue. The court spoke in its Order of January 14, 2014, and nothing contained in the Estate's motion or complaint to intervene necessitates revisiting the issue.

B. The unrefuted sworn testimony of Don Sanders, Vice-President of Operations for the Insurer both supports Plaintiff's claim that it is the named beneficiary of the Policy proceeds and negates the Estate's claims. (go through the Paragraphs and cite in the statement of unrefuted facts).

As indicated in Plaintiffs' Statement of Undisputed Facts, the Insurer has provided its Policy records and the Affidavit of Don Sanders as evidence in this case. Don Sanders reviewed the Policy records and in his Affidavit Don Sanders declares that the Estate was never named a beneficiary of the Policy proceeds. The Estate has offered nothing to dispute this essential truth.

C. The Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on efforts to negate the claims of the true beneficiary.

As stated above, the Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the motion merely attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983).

Here, the Estate argues that no one is representing its interests. But, the Estate, like Stansbury before it, fails to articulate any facts that support an affirmative claim by the Estate to the Stake.

The Estate argues that if all other claims are negated and thus fail then the Estate would have a claim by default. As such, the Estate needs no representation because under the Estate's theory it would simply be the beneficiary of last resort.

More importantly, in order to enforce the intent of Simon Bernstein as expressed in his Will, the Curator or Personal Representative of the Estate should be disclaiming any interest in the Stake. Instead, the Curator seeks to ignore the Will of the Simon Bernstein in order to unjustly enrich the Estate largely for the benefit and at the behest of a potential third-party creditor, and at the expense of the ultimate beneficiaries, decedent's five children. That's just plain wrong.

In Stansbury's prior motion to intervene, he attached the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will was incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

> **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or *insurance contract*; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons in the manner provided in such designation which is incorporated herein by reference.[8]

Here, the designations of beneficiary of the Policy proceeds point directly to one such beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. None of the Bank Defendants whose names appear in the caption above, and whom acted as corporate trustees of the VEBA from to time has made a claim to the Stake. In fact, the only Bank party to have appeared in this matter was dismissed on their own motion after having expressly disclaimed any such interest.[9]

In his Will, Simon Bernstein instructs the executor to disclaims the Estate's interest in the Policy proceeds at issue. Simon Bernstein's instructions were that in the case of an invalid testamentary disposition the instrument designating the beneficiary shall be incorporated into the Will and the proceeds shall be gifted to the intended beneficiaries as established by the beneficiary designation.

[8] *See* (Dkt. #56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)
[9] See Motion for Judgment on the Pleadings filed by JPMorgan Bank, and the Order dismissing JP Morgan . (Dkts. #102 and #106).

Here, it is clear that Simon Bernstein expressed his intent by named the Bernstein Trust as beneficiary of the Policy proceeds, that the Policy proceeds should go to the Bernstein Trust beneficiaries (the five Bernstein children) even in the event that the beneficiary designation is ruled to be an invalid testamentary disposition such as the Estate argues.

D. As set forth above, the Estate's motion to intervene is not based on any actual claim it has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.

The Estate's motion to intervene is not based on any allegation of its own claim to the Stake. Rather, the Estate attempts to negate the claim of the Bernstein Trust by baldly asserting that the trust does not exist because a trust agreement cannot be located.

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.,* 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983). Here, the Estate argues that no one is representing the claims of the Estate. But, the Estate fails to articulate any facts that support a claim by the Estate to the Stake.

It appears the Estate is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is the Estate's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate. Simon Bernstein, in his Will, expressly reaffirmed his beneficiary designations and in so doing he essentially disclaimed the Estate's interest in the Policy proceeds.

E. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.

The Estate's request for permissive intervention is based on its conclusory assertion that it "has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds in excess of $1,000,000.00."[10]

This language again mirrors the language in Stansbury's prior motion to intervene.[11] And like Stansbury, this conclusory allegation is totally unsupported by any evidence establishing a claim to the stake. Without any factual allegations of a claim, the court is left with nothing additional to determine as a result of the motion and complaint to intervene. Since the Estate has nothing to offer in support of its claim, there is no reason whatsoever for this court to add it to this litigation especially at this late date.

F. Public policy concerns mitigate against the Estate's motion.

Should the court grant the Estate's motion to intervene it will provide precedent to other similarly situated claimants who lack any factual basis for its claim. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the stake.

[10] *See* Dkt. #110, Estate motion to intervene at ¶9.

[11] *See* Dkt. #56-5 at ¶9, Stansbury Motion to Intervene.

CONCLUSION

For all of the foregoing reasons (including the reasons set forth by this court in its prior Order of January 14, 2014) this court should deny the Estate's motion to intervene.

By: */s/Adam M. Simon*
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorneys for Plaintiffs and Third-Party Defendants
Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, and individually, Pamela Simon, Lisa Friedstein and Jill Iantoni

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to the Estate of Simon Bernstein Motion to Intervene to be served upon the following persons and entities electronically by ECF notification and/or by US Mail (if so indicated):

Eliot Ivan Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Via ECF and Mail
Pro Se

James John Stamos
Stamos & Trucco LLP
One East Wacker Drive
Suite 300
Chicago, IL 60601
(312) 630-7979
Email: jstamos@stamostrucco.com
Attorney for Benjamin Brown, as Curator and Administrator
Ad Litem for the Estate of Simon Bernstein

Kevin Patrick Horan
Stamos & Trucco Llp
1 E. Wacker Dr.
3rd Floor
Chicago, IL 60601
(312) 630-7979
Email: khoran@stamostrucco.com
Attorney for Benjamin Brown, as Curator and Administrator
Ad Litem for the Estate of Simon Bernstein

on the 28th day of June, 2014.

/s/ *Adam M. Simon*
Adam M. Simon (#6205304)
303 E. Wacker Drive, Suite 210
Chicago, IL 60601
Phone: 312-819-0730
Fax: 312-819-0773
E-Mail: asimon@chicagolaw.com
Attorney for Plaintiffs

EXHIBIT A

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

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN
_____/

NOTICE OF FILING

Curator, Benjamin P. Brown, hereby gives notice of filing the transcript of the hearing on May 23, 2014, attached hereto as Exhibit A, in connection with matters being heard on June 11, 2014.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon Alan Rose, Esq., Page Mrachek, 505 S. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; John Pankauski, Esq, Pankauski Law Firm, 120 S. Olive Ave., Suite 701, West Palm Beach, FL 33401, courtfilings@pankauskilawfirm.com, Peter M. Feaman, Esq., Peter M. Feaman, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, service@feamanlaw.com; Eliot Bernstein, 2753 NW 34th Street, Boca Raton, FL 33434, iviewit@iviewit.tv; William H. Glasko, Esq., Golden Cowan, Palm Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay FL 33157, bill@palmettobaylaw.com, on this 5th day of June, 2014.

MATWICZYK & BROWN LLP
625 N. Flagler Drive, Suite 401
West Palm Beach, FL 33401
Telephone: (561) 651-4004
Fax: (561) 651-4003

By: /s/
Benjamin P. Brown
Florida Bar No. 841552

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP004391XXXXSB

IN RE: THE ESTATE OF SIMON L. BERNSTEIN

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PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: MAY 23, 2014

TIME: 9:00 a.m. to 10:00 a.m.

APPEARANCES:

APPEARING ON BEHALF OF WILLIAM STANSBURY:

MR. PETER M. FEAMAN, ESQ.
MR. JEFFREY T. ROYER, ESQ.
PETER M. FEAMAN, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436

APPEARING OF BEHALF OF TED BERNSTEIN:

MR. ALAN ROSE, ESQ.
PAGE MRACHEK
505 S. Flagler Drive
West Palm Beach, FL 33401

APPEARING ON BEHALF OF FOUR ADULT GRANDCHILDREN:

JOHN P. MORRISSEY, ESQ.
JOHN P. MORRISSEY, P.A.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401

APPEARING AS THE CURATOR:

BENJAMIN BROWN, ESQ.
MATWICZYK & BROWN, LLP
625 N. Flagler Drive, Suite 401
West Palm Beach, FL 33401

APPEARING PRO SE:

ELIOT BERNSTEIN

BE IT REMEMBERED, that the following proceedings were taken in the above-styled cause before Honorable MARTIN COLIN at the Palm Beach County Courthouse, 200 West Atlantic Avenue, in the City of Delray Beach, County of Palm Beach, State of Florida, on Friday, the 23rd day of May, 2014, to wit:

THE COURT: Good morning. Let me get my computer on. We're here in the Bernstein case. Appearances.

MR. BERNSTEIN: Eliot Bernstein, pro se.

MR. FEAMAN: Peter Feaman on behalf of William Stansbury. And from my office, Jeff Royer.

MR. MORRISSEY: John Morrissey on behalf of four of the adult grandchildren.

MR. ROSE: Alan Rose on behalf of Ted Bernstein.

MR. BROWN: Ben Brown as curator of the estate.

THE COURT: All right. What do we have for today?

MR. ROSE: Before we get to that, I have

one -- sort of an important issue that came up last night.

THE COURT: Go ahead.

MR. ROSE: It will take 30 seconds.

Ted Bernstein sent me an email. And he replied to an email, and accidently the email went to Eliot Bernstein. It was attorney-client privileged communication directly to me from my client Ted Bernstein. The email went to Eliot Bernstein. Under Rule 1.285 I sent to Mr. Eliot Bernstein an email immediately asking him to delete or return the privileged materials.

I discussed the issue with Mr. Eliot Bernstein this morning and he advised me that he has emailed the document to 2,000 people.

He's had a history of posting things on the internet. Because it's attorney-client privileged information it's very sensitive and I'd request the Court to instruct him to comply with Rule 1.285. It was a reply to an email that had a bunch of names and accidentally it went to him. Mr. Bernstein advised me immediately and I advised Eliot immediately.

THE COURT: Mr. Bernstein, did you get an

email from counsel?

MR. BERNSTEIN: I did not get his email. I got an email from my brother addressed to me only. I read it, as usual when I get something bizarre that's attacking and threatening me, or whatever. It was from Ted Bernstein to Eliot Bernstein.

THE COURT: It was from --

MR. BERNSTEIN: Ted Bernstein to Eliot Bernstein.

THE COURT: Not from the lawyer?

MR. BERNSTEIN: No. He misrepresents everything.

THE COURT: We'll take it up at the end. There's other things scheduled. If you remember, we'll take it up.

MR. ROSE: Fine.

THE COURT: Go ahead.

MR. FEAMAN: May it please the Court. Peter Feaman, Your Honor, on behalf of William Stansbury, interested person in the estate.

This is Mr. Stansbury's petition for the appointment of an administrator ad litem which has been submitted to Your Honor together with a supplement to the petition to the requested

relief.

We're asking this Court to appoint Mr. Stansbury as an administrator ad litem of the estate for the sole purpose of making an appearance on behalf of the estate in some litigation that is currently pending in Illinois involving a life insurance policy on Simon Bernstein's life, the deceased, with a death benefit of $1.7 million.

That litigation has been pending for over a year from what I can tell, or about a year. And it has not involved the estate which is very interesting because the documents that I've recently obtained since the filing of our motion, Your Honor, we found out that insurance policy, according to internal records of the insurance company, is actually owned by the deceased Simon Bernstein. So arguably not only is it an asset of the estate, that insurance policy, and the proceeds therefrom, but any litigation concerning the distribution of those proceeds should be in this court, Your Honor.

Now that's jumping ahead. But the point is that we're dealing with an asset of the estate and, therefore, this court has every

interest in seeing that the estate's assets are marshaled. The first step for that, Your Honor, would be to appoint an administrator ad litem to at least intervene in that federal court action that's up in Illinois.

The former personal representatives of this estate, Your Honor, were doing everything they could to keep the money out of the estate from that life insurance policy. They have alleged that the beneficiary is the life insurance trust. The problem is nobody can find the original life insurance trust. Nobody can find even a copy of the life insurance trust. And the records that we show show that the beneficiaries are not, in fact, a life insurance trust. But the first beneficiary, according to Heritage, which is the insurance company, is LaSalle National Trust. The second beneficiary is the Simon Bernstein Trust, whatever that is. But it's not the Simon Bernstein Irrevocable Insurance Trust that is being alleged up in Illinois.

Now if there's no clear beneficiary, as Your Honor is aware, then the life insurance proceeds would go to the estate and become an

asset, or liquid assets for the estate. Now that money presently has been put into the registry of the court up in Illinois by the insurance company. They were first requested by the personal representatives of this estate, the former, to pay it to others. And the insurance company said we don't have any documentation to justify that. So they just impleaded the funds.

The litigation has been pending, and despite the fact that the estate is the owner of the policy, the estate has never been represented in that action. Now the estate has a high probability of success, we believe, in this case. Because if they're going to try to establish a lost instrument without the original or without a copy it's going to be based, I assume, on oral testimony from people. And that is a high burden. Interestingly we found out at first, on this so-called insurance trust, Mr. Spallina (phonetic), who was the personal representative, formerly, of this estate, represented to the insurance company that he was the trustee of this insurance trust. When that didn't work, Your Honor -- we

have a document that we'll show to the court up in Chicago -- when that didn't work they're now in court up there saying that Mr. Ted Bernstein is the trustee, or successor trustee, of that insurance trust. Yet there is no copy of that trust before the court in any fashion. The plaintiffs in that lawsuit are now not only the insurance trust, the so-called insurance trust, it's now all the adult children of Mr. Simon Bernstein. Interestingly enough, Your Honor the adult children are not beneficiaries of this estate, Your Honor. It's the ten grandchildren who are the residual beneficiaries as a result of the pour-over provision of the will that leaves all the liquid assets in a trust. The beneficiaries of that trust are the ten grandchildren. So the adults, the adult children of Mr. Simon Bernstein, have every incentive, Your Honor, to see that the estate is not inherited with these life insurance proceeds because if they succeed in this action in Illinois then the adult children inherit or receive the proceeds of the life insurance not the ten grandchildren over whom you have jurisdiction as the beneficiaries

in this estate.

The curator, Your Honor, has no objection.

Mr. Brown --

THE COURT: Let me stop and hear from Mr. Brown. What's your position on their motion?

MR. BROWN: I'm not taking a position on the motion, Your Honor. I can get into it further, I don't really want to interrupt Mr. Feaman. But it would seem to me that if the main estate creditor wants to try to intervene in Chicago on behalf of the estate to bring assets into the estate without looking to the estate for current payment of his fees, in other words, if he finally succeeds then he can then come back to this Court and ask to have his fees reimbursed, then that would seem to be a benefit to the estate as far as marshaling the assets of the estate and, of course, the curator and/or personal representative has a duty to the creditors also to try to marshal the assets of the estate.

THE COURT: I got your position.

Mr. Rose?

MR. ROSE: Our position is pretty simple. And I -- this is an evidentiary hearing --

THE COURT: It's an opening to tell me what's going on. I just want your position.

MR. ROSE: Tetra (phonetic) and Spallina, who were the prior PRs, believe that the claim to the insurance policy by the estate had no merit because of their discussions with their client, because of their investigation of facts. These people have no evidence to support -- they have no parol evidence. This is a fight over an insurance policy that only beneficiary -- there's no dispute that the beneficiary the insurance company has on record, there was a prior beneficiary which was a company pension plan that the company is dissolved, and that's out -- the only contingent beneficiary, and there's an affidavit that's been filed attached to one of their motions in this Court where the insurance company says the only other beneficiary ever named was the Simon Bernstein Irrevocable Life Insurance Trust. There's a shorthand in a computer system, where somebody shorthanded it in the computer, and the affidavit in the insurance company addressing that which says that's shorthand, but in our forms the only

beneficiary ever listed is this irrevocable life insurance trust, their only piece of evidence supporting their claim is that the insurance trust cannot be found. But the trust did exist. It has a tax ID number from -- a federal tax ID number. There's numerous references to it between different lawyers and nobody can find the trust document now. That's an issue that's going to be resolved in Illinois. But they have no evidence -- other than the fact that the trust doesn't exist -- they don't have any parol evidence. They don't have any documents. They don't have anything on behalf of the estate.

Our concern is they're going to spend the precious few estate assets that are remaining to go to Illinois and fight an issue that has no merit, can subject the estate to a claim, you know, for fees or indemnification or prevailing party attorney's fees award.

The policy was owned by Simon Bernstein. That means it's included in his taxable estate. But it does not mean it's owned in his probate estate. The beneficiary is the beneficiary. The policy proceeds are in Illinois. They've

been deposited into the court --

THE COURT: What's the issue that the Illinois judge is being asked to decide?

MR. ROSE: Being asked to decide, among competing claims, to the proceeds of this race. Eliot Bernstein is there asserting the exact position that Mr. Stansbury wants to go there to assert. Eliot is asserting that the money should go to the estate and not the irrevocable life insurance trust. That issue is going to require, you know, a summary judgment or a trial with parol evidence to determine who the beneficiary is of that policy.

Mr. Stansbury has gone there to intervene and was denied by the judge the right to intervene in the case already once.

Our main concern really is twofold. The expense on both -- what's actively being spent. We want to make sure no estate funds are being expended to pursue this. In an estate that has a very limited amount of funds here --

THE COURT: Mr. Feaman says that his client will not seek fees for his role as administrator ad litem unless and until a recovery might take place and then he'll make

an application with funds then available, meaning the $1.7 million would then apparently come into the estate.

MR. ROSE: I haven't heard testimony to that effect yet.

THE COURT: That's a representation.

MR. ROSE: He'd also need to represent that he would indemnify and hold the estate harmless if there's any adverse action as a result of him intervening in that case and losing either an award of attorneys fees or --

THE COURT: I'm not sure about that part yet. I got your position.

MR. ROSE: And then the final point is Mr. Stansbury is a potential creditor of the estate. To the extent he goes and -- even if he would win that lawsuit and bring money into the estate I don't think it's fair to let him get a -- I don't know what his fee arrangement would be.

THE COURT: I'd hear that. Under the statute he has to prove that he provided a benefit to the estate.

MR. ROSE: We don't even know if his claim will still exist --

THE COURT: It may or may not.

Mr. Morrissey?

MR. MORRISSEY: To address first the last point why should Mr. Stansbury not be allowed to act even though his fees may or may not come at the end. Well, he's a claimant. He's not a creditor. There's a distinction here. As a claimant he might not be privy, or should not be privy, to certain information because he doesn't have a judgment. He's not one of the eight classes of people. If he's allowed to intervene as a claimant in the Illinois action he may, in fact, become privy to certain information that we, or the estate, does not want him to become privy to because we may end up having to negotiate with a claimant to satisfy a claim. We don't want him privy to certain information. We don't want him intervening in actions, and certainly in actions that he's already sought intervention and been denied.

THE COURT: Was he denied because he didn't have standing because he hadn't been appointed as an administrator? Is that the reason why he was denied?

MR. MORRISSEY: He attempted to intervene individually and was denied. He was denied because -- I've attached the order. I filed an opposition and attached the order. And I can read from a couple of sections of the order to indicate and let Your Honor know why he was denied.

THE COURT: Hold on. I see it here.

MR. MORRISSEY: The court there went through an extensive analysis, legal standard and analysis in its order speaking of intervention as a right, and permissive intervention. And the court said, "The fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit, maybe, for example, you're a creditor of one of them, does not entitle you to intervene in their lawsuit." That is really the position that Mr. Stansbury is in. The court went on, "Here Stansbury's claimed interest is merely an economic interest that is too remote for purposes of the rule because the estate is not a party to this lawsuit. And Stansbury does not assert that he or the estate are beneficiaries to the life insurance

proceeds nor the Bernstein Trust."

THE COURT: You represent, Mr. Morrissey, who?

MR. MORRISSEY: I represent the four grandchildren.

THE COURT: Who, according to Mr. Feaman, may benefit if this money comes to the estate?

MR. MORRISSEY: Correct.

THE COURT: So the way the case is being litigated now -- is the only plaintiff the Simon Bernstein Irrevocable Insurance Trust vs. the life insurance company?

MR. MORRISSEY: Well --

THE COURT: That's the way the style of the case is. Are there more plaintiffs than that?

MR. FEAMAN: They amended subsequently and joined the adult -- four of the five of the adult children were joined as plaintiffs.

THE COURT: And who is representing them?

MR. FEAMAN: Somebody up in Chicago in that action.

THE COURT: Okay.

MR. ROSE: I think technically the lawsuit was started by the trust against the insurance

company. The insurance company filed an interpleaded, probably by counterclaim. My understanding is, subject to someone correcting me, the insurance company was granted interpleader. They put the funds in the registry of the court. The insurance company is out of the case and even though you have the original style what's left is people asserting a claim to the proceeds.

Eliot is there, I think, advocating the claim on behalf of the estate --

THE COURT: Eliot is pro se. I want -- we recognize that. From Mr. Morrissey's point of view, do you take a position that your clients, the grandchildren, may have an interest in these monies?

MR. MORRISSEY: No -- well, our position is the following --

THE COURT: That question first.

MR. MORRISSEY: Our position -- no, on behalf of the four grandchildren.

THE COURT: You waive any -- on behalf of those children you waive any claim to that money?

MR. MORRISSEY: I'm not going to waive on

the record.

THE COURT: You have to stand on one side of the fence or the other on that.

MR. MORRISSEY: Quite honestly, I haven't asked them that question. I can't waive something on behalf of my clients when I haven't asked them that question point blank.

THE COURT: All right. So you have -- who -- the Simon Bernstein Irrevocable Trust is represented by Chicago --

MR. BERNSTEIN: Adam Simon who is the brother to David Simon who is married to my sister Pam Simon who stands to benefit if the money goes through Illinois.

THE COURT: Illinois counsel, okay. And the four children are represented by one lawyer?

MR. FEAMAN: That's Adam Simon.

THE COURT: Because of the impleading of the funds the battle right now is between the trust and these four children because those are the parties that are now competing for the money?

MR. ROSE: I don't think -- I don't know if the four children are technically parties.

I think they're just -- the battle I think is between Eliot who is asserting that these funds should come into this estate --

THE COURT: Eliot was allowed to intervene?

MR. BERNSTEIN: I got sued in the case, Your Honor, because they had gone behind my back to try to steal this policy -- around you too -- and they were told by the insurance company, when Robert Spallina submitted what I allege is a fraudulent insurance claim, and they were told by the insurance company that the claim was denied and they needed a probate court order from you to approve the beneficiary scheme they were proposing using some mashugana lost trust --

THE COURT: Eliot, you're named as a cross-plaintiff, so you are --

MR. BERNSTEIN: Now I've somehow become a plaintiff -- a defendant that you showed me last week, or two weeks ago, when you handed me that order. I haven't quite figured out how I'm the named defendant.

Your Honor, I'm representing their -- my children's interests.

THE COURT: Hold it. I'm reading something. I see a entity in the style of the case up there called the Simon Bernstein Trust, N.A. What's that? Is that something different than the Simon Bernstein Irrevocable Trust?

MR. ROSE: It's in the affidavit that was filed, I think attached to Mr. Brown's recent petition for instructions, but... In the insurance company's computer they shorthanded the name of the trust. The beneficiary is the Simon Bernstein Irrevocable Life Insurance Trust which is the --

THE COURT: Ted Bernstein is an individual in this suit now. And who is representing him?

MR. ROSE: I don't know that he is an individual. If he's an individual he's represented by Adam Simon.

THE COURT: I'm reading it. That's where I get it. They're individually and/or as purported trustee of the irrevocable trust. Eliot is a cross-plaintiff -- that's where you're named, Eliot -- vs. Ted, individually and as trustee of the irrevocable trust. And then a bunch of other people and entities are cross-defendants. Right now the competing

parties in Illinois are the irrevocable trust and Eliot. Is that basically it --

MR. ROSE: Yes.

THE COURT: -- who are active; is that true?

So the question is should the claimant be declared here an administrator ad litem for the purposes of being permitted to ask the court to be able to intervene, which the court may or may not do?

MR. ROSE: There's one other part of my opening I missed on my notes --

THE COURT: Go ahead. Sure.

MR. ROSE: Mr. Morrissey touched on it and reminded me. If you're going to appoint an administrator ad litem it should not be Mr. Stansbury. You can appoint somebody and Mr. Stansbury could fund it, he could pay the expenses of, let's say, Mr. Brown or an independent person to hire a Chicago lawyer and, you know, advance the case. But you would then be preserving issues of privilege and you would be preserving the integrity of the system rather than have Mr. Stansbury, who is a claimant, who is adverse on multiple levels to

the estate, as the active person he would be funding the litigation and, in my view, he should be required to indemnify. But you'd have a neutral third person doing it rather that Mr. Stansbury which I think makes a lot more sense.

THE COURT: What do you say about the latter comment? That's the only one I want you to address.

MR. FEAMAN: The fact that Mr. Stansbury will become privy to confidential information --

THE COURT: Well, we're not at --

MR. FEAMAN: Ben Brown --

THE COURT: -- I'll allow someone else to intervene to appropriately determine whether the estate has an interest in this money or not. That's the issue, correct?

MR. FEAMAN: Yes.

THE COURT: All right. Right now the person technically doing that is Eliot who tries his best as a pro se. But it's pretty tough --

MR. FEAMAN: That's right. He doesn't represent the estate.

THE COURT: He represents himself individually. So someone who may look for the interest of the estate. And, you know, these type of litigation, obviously, the Illinois judge is going to have to take evidence -- I'm not going to do that in my hearing -- on who the beneficiary is of this policy. That's what has to be determined.

MR. FEAMAN: That's correct.

THE COURT: The issue is narrow and I think everyone agrees with that.

MR. FEAMAN: And --

THE COURT: What I'm thinking about is you kind of want to be able to make sure that everyone who, perhaps, could ultimately be a beneficiary of this policy have a voice in that litigation. That's the due process part of it. So my thought is, having heard everybody say what they said, I rarely find it to be a problem allowing someone to intervene -- unless they're a stranger, this wouldn't be a stranger -- because a voice is a good thing to have. We allow interventions all the time here on my cases. I just hear from someone else. They don't win or lose unless there's merit to

them. Someone right now is hovering the position that the Simon Bernstein Irrevocable Trust is the beneficiary. They're lawyered up. The only other person that seems to suggest that that may not be the case and it is the estate that's the beneficiary is Eliot. So I'm considering having someone other than Eliot -- or in addition to Eliot, because he's there individually on behalf of himself and he's not representing the estate -- someone represent the interest of the estate.

And so the proposal is that that be someone funded by your client, Mr. Feaman, but not -- but someone who is more neutral like Mr. Brown or something like that. What do you say about that?

MR. FEAMAN: We came up with Mr. Stansbury because if he's the one that's willing to fund the intervention and to fund the person -- the lawyer -- to make sure that the estate is going to be protected --

THE COURT: He has more -- he's like Eliot. He has his own interests, personal interest.

MR. FEAMAN: He does. He has interests in

money coming into the estate, absolutely.

THE COURT: But someone who is more neutral may be the right move there. If that's where I'm going on this, what is your position on that?

MR. FEAMAN: If that's where you're going on that then Ben Brown is acceptable in that regard. I would just -- since Mr. Stansbury is the one that's volunteering, if you will, to fund initially the cost of this, then he needs, through me, some input with Mr. Brown.

THE COURT: Sure.

MR. FEAMAN: On all matters.

THE COURT: You'd be allowed to have input with him. But Mr. Brown would be there, assuming he's willing to take the assignment, to preserve issues of confidentiality and other concerns that could exist. He sounded, all along, from the beginning, as the perfect centerpiece to do this. What do you say?

MR. BROWN: Actually, I -- a few things to say, Your Honor. The first thing is with regard to the privilege issue. I'm not aware of any privilege that would apply.

THE COURT: And I'm not either. But let's

get past that point.

MR. BROWN: The testamentary exception, this is squarely in the testamentary exception, so there is no privilege in my view of this.

THE COURT: Okay.

MR. BROWN: The second issue is that I promised David Simon, I've given to you before, this email thread where he sent me an email and said you're trying to have Mr. Stansbury appointed as administrator ad litem, the estate should not be appearing in Illinois, you're going to be wasting estate assets and you have a conflict of interest because you're the curator and the estate pours over into the revocable trust and the beneficiaries of the revocable trust don't want this policy to go to the estate. I've been accused of conflict of interest. I've been accused of beaches of fiduciary duty already by David Simon who, apparently, is Adam Simon's brother and the father of some of the grandchildren.

My third issue is that, I think it's from the Vietnam War, this comes within the category of mission creek. I'm supposed to be temporary interim limited curator. There's supposed to

be a personal representative appointed at some point. I've been asked by the parties to consider being the personal representative. Frankly, Your Honor, this case is -- goes off in a lot of different directions. Whoever the personal representative is going to spend a lot of money just dealing with the different parties and the different people who are involved. And, frankly, I don't know that I have the time. And I really don't want to be the personal representative.

THE COURT: Okay.

MR. BROWN: If I'm appointed administrator ad litem it seems like I'm in there for the long run on a federal case. They do move them pretty quickly here in the Southern District of Florida. I know that from experience. I don't know about the Northern District of Illinois.

MR. FEAMAN: Well, there's been -- I can answer that question.

THE COURT: Okay.

MR. FEAMAN: There's been a notification of a docket entry entered by the judge on -- it said that all case dispositive motions are to be filed by mid-July, July 13. So it sounds

like we're on a rocket docket to me, Your Honor.

And on behalf of Mr. Stansbury I would like to, since he is running the cost, be able to work with whomever it is to pick counsel up in Chicago. And that -- and to review counsel's bills from Chicago and to help strategize with that counsel the best way to proceed up there should Your Honor go that direction.

THE COURT: All right. So let me ask this question: Is there also before me a petition to appoint or determine a PR?

MR. FEAMAN: Not today.

THE COURT: Not today, okay.

MR. BROWN: Your Honor, I don't know if that's set for hearing at all. Although I request that it be set for hearing. The other issue with a PR versus a curator is that Mr. Stansbury has active litigation going on in front of Judge Blanc right now. So far there hasn't been any conflict as far as Ted Bernstein and the estate defending against Mr. Stansbury's claim, but there have been multiple instances where people in this case,

in this room, basically, have said that there could eventually be a conflict of interest because there could be some finger pointing in cross claims.

THE COURT: It's hard to purify a case like this and not have it -- not have a situation where it's allegation free of a purported conflict of interest. But it just sounds logical that if -- especially when I'm looking at the latest heading out of the case in Illinois -- if this is, in its simplest form, a dispute as to who the beneficiary of this life insurance policy is, I mean that's a -- that's kind of a narrow hearing. We do those types of things in state court. You know, you need some discovery. And then you present the evidence and the judge makes a decision. Kind of like the way you do in contract cases. And so the parties who claim to be beneficiaries of the policy seem to be Simon Bernstein's Irrevocable Trust and their representative. I'm treating Simon Bernstein Trust as the same party for the purpose of this discussion. Eliot, individually, he's there. And no one who may have a voice to say I want,

on behalf of the estate, because there's no PR. If there's a PR the PR would take care of that. Especially where Mr. Stansbury is willing to front the cost of the fees for that up front it sounds beneficial to have that voice.

So I'll put it this way, Mr. Brown, I would expand your curator duties, if you're willing, to take the assignment. If not, we got to go elsewhere. It's up to you.

MR. BROWN: The curator duties basically to just effectively be the party who's intervening using Mr. Stansbury's counsel?

THE COURT: No. You would be the party. You would hire a lawyer. You're allowed to, like in any other case, you and your lawyer can hear, because your phones work and your emails work, from anyone else including Mr. Feaman and Mr. Rose and Mr. Morrissey, and anyone else can stick their two sense in. That's the way litigation goes. But it seems to be that this isn't an issue that's a finger-pointing issue. This is who the beneficiary of the policy is. The judge is going to look at the documents and either say it's clear on its face or else take parol evidence and we're on our way. This

isn't a personal type of litigation. And so, you know, the strategies are legal strategies that would be in charge of you and the lawyer you hire.

MR. BROWN: I understand that, Your Honor. Basically what you just described is something that Mr. Stansbury could very easily do and pay for himself.

THE COURT: Right. But he's -- but I don't want him to be the party to do that because I think there's -- he's a claimant. There's -- I'm not comfortable there.

MR. BROWN: Okay.

THE COURT: And, you know, you're the neutral person looking out for the estate's interest. He has -- he's not -- he's looking out for the estate's interest but in a different manner. So hypothetically if you went up into the litigation and you got convinced by looking at everything you looked at, you and your lawyer, that the beneficiary was the Simon Bernstein Irrevocable Insurance Trust, whatever that is, and not the estate, you have a duty to argue in good faith. You follow what I'm saying? That's where the

neutrality part comes in. But you are more advocating, primarily, to the estate at -- that's the assignment.

MR. BROWN: I understand that, Your Honor. But -- and I know there's a lot of buts here -- the estate has about 6 to $700,000 worth of assets, that includes the jewelry.

THE COURT: Remember, I'm having Mr. Stansbury pay.

MR. BROWN: Oh, you are having Mr. Stansbury, okay.

THE COURT: That was the deal.

MR. BROWN: And just using his counsel that he already has retained and already tried to intervene with?

THE COURT: No. No. You pick the lawyer. He pays.

MR. BROWN: Your Honor, I will do it subject to whatever personal representative is appointed going ahead and taking over --

THE COURT: Ultimately if we get to the stage where there's a PR taking the place of you, that would be different. This is -- let me just tell you, I mean a couple of reasons why I think that works is Mr. Brown has worked

with me as curator in a lot of cases. I mean I haven't had one challenge to the reasonableness of the fees ever. He keeps control of the lawyers. You know, and he does really a good job there. So I really, you know, I can't think of a better person to deal with this issue given everyone's competing interest. He'll be fair on what he argues on behalf of the estate. He's not going to run up fees. He's not going to allow the lawyer to run up fees. If you want, I don't think he should be the lawyer probably because I don't think he's admitted in Illinois --

MR. BROWN: No.

THE COURT: -- and he'll be able to best determine how to filter whatever the information is that other counsel want to give to them. Again, it's a narrow issue. Okay, everyone is jumping up.

MR. MORRISSEY: If I could respond on behalf of four of the grandchildren. We're now talking about having to pay, you know, from my client's perspective pockets, Mr. Brown's fees, an attorney up in Illinois --

THE COURT: I just said that won't be the

case.

MR. MORRISSEY: That could potentially be the case.

THE COURT: It would only be the case if there was a recovery for the estate to which then Mr. Stansbury would say, under the statute, I performed a benefit for the estate. How could that not benefit -- and from what I'm told your clients, the grandchildren, would be the people who would benefit from that. So why would you complain about that if that's what wound up happening? There's not a dollar coming out of the estate unless there's a recovery basically, and then the recovery would take place and he would seek some recovery of fees.

MR. MORRISSEY: And he would seek that --

THE COURT: Here.

MR. MORRISSEY: Here?

THE COURT: Sure. You can say what I think you're going to say, it's okay.

MR. MORRISSEY: I just want to go back to the basics. The fact that the estate is only a taker in default. So the estate doesn't need to be represented in the Illinois action.

It's, for example, there was even talk, I believe, in the Illinois case by one of the banks or insurance companies that it's possible if there's no beneficiary then the State of Illinois could be the taker in default. Well, the State of Illinois wasn't named as a party. They don't have counsel there. Likewise, why should the estate have counsel in an action where they're only the taker of last resort?

THE COURT: Because if they're the taker as a matter of law -- I mean -- I don't really follow your argument because let's say there's a hearing, which there will be, and the trust is there, Eliot is there, and the estate is there, and the judge hears it all and says the decision is the beneficiary should be the estate, would we say that that's a ridiculous thing that we had the estate participate? I don't think so.

MR. MORRISSEY: I don't know what -- I mean there is no evidence that anyone on behalf of the estate can present that they have ever been named as a beneficiary --

THE COURT: That could be. It may be then that once Mr. Brown and counsel intervene, see

the documents -- I mean you're not talking -- how many pages of documents could the beneficiary forms be? It can't be that many. When we sign our life insurance forms we sign a page or two, that's about it. It's not like it's going to be really exotic litigation. This is a narrow, single issue who the beneficiary is of this policy. You know, it may be that it is clear that it's this irrevocable trust and then they'll go from there to see whether that really is an entity that exists. That may be a separate issue. If the judge says -- someone can name on the life insurance policy, you know, the Star Spangled Banner Fund and if that doesn't exist then we know from contract law what happens if you name a beneficiary that doesn't exist. You go to the next level. You certainly want the life insurance funds going somewhere. That's what we would determine if that took place. Step 1, step 2, step 3, doesn't sound to be that complexed. Last word.

MR. ROSE: If I understand what you are saying, which makes sense, Mr. Brown will keep separate time for the time he spends as curator

working on the Illinois issue. He will hire counsel and the fees of Mr. Brown and the Illinois counsel, under his direction and his discretion, would be paid by Mr. Stansbury?

THE COURT: That's the case. Subject to a claim for reimbursement under the statute.

MR. ROSE: I'd want to hear from Mr. Stansbury under oath that he's willing to undertake that expense. Not to talk out of school, but I haven't had discussion with counsel and I didn't necessarily get the sense that that was going to be the case.

THE COURT: All right. Well, Mr. Feaman can represent them.

MR. FEAMAN: I am representing as an officer of the Court, Your Honor.

THE COURT: Okay.

MR. FEAMAN: My only concern is if there's -- basically Mr. Stansbury is funding this there's -- there has to be some type of, I don't want to use the word control, but real input into the process.

THE COURT: Well, he's allowed to, like anyone else in cases like this, you could have conversations with Mr. Brown and his lawyer.

You can show them what documents there are. You can ask them to discuss things with them. And, you know, I mean they -- they obviously know he has an interest. And to the extent that they're comfortable I think it's appropriate they'll discuss these things with them.

MR. FEAMAN: On behalf of Mr. Stansbury, I would like assurances.

THE COURT: I'm not going to -- I have to keep the -- there's a line of demarcation I don't want to cross up front.

MR. FEAMAN: And I'm not objecting that it's not Mr. Stansbury. I just want to make sure the person who --

THE COURT: The person who is appointed is going to advocate for the estate.

MR. FEAMAN: Right. Agree with that.

THE COURT: But let me tell you this, the reason I appoint a curator to do this is the curator is not advocating for Mr. Stansbury. He's advocating for the estate. There's times when the curator could say, after doing everything, I don't think, for example, the estate has a bona fide interest. That may be

bad news for your side. But if that's what they conclude then that's what they conclude. If they conclude they do they will continue advocating. It's things we do as lawyers all the time. We go after cases with merit, and shy away from those we think don't have merit.

MR. FEAMAN: Yes.

THE COURT: There's multilevel here. If someone says that the Bernstein Irrevocable Trust is the beneficiary but that it doesn't exist there may be an argument that could be made how then still as a result of that the estate should get the funds, that would be something that Mr. Brown and counsel could consider advocating. But it's all in good faith stuff.

MR. FEAMAN: Sure. I just want to make sure --

THE COURT: You'll get copies of the bills. You'll be able to see what's that. If at anytime you think that Mr. Brown and the lawyer are, you know, going way beyond what you think they should, from an expense point of view, you can always come back to me.

MR. FEAMAN: I'm less concerned with the

expense, although it is important, more with being able to pick up the phone and speak to counsel in Chicago and say, hey, have you considered this, I have information that may help your case.

THE COURT: I'm not going to micromanage that part. Today if you want to call Mr. Brown for this hearing, for example, and say, Mr. Brown, this is what I think, what do you think, you're allowed to have a discussion on that. That happens all the time, doesn't it?

MR. BROWN: It does. It does with everybody in the case, emails and phone calls.

THE COURT: You guys email between each other like crazy now.

MR. BROWN: That's true. Your Honor, the only -- as far as keeping my time, if I kept my time at my rate as curator is Mr. Stansbury supposed to pay for that, or is that still payable by the estate?

THE COURT: Your time and the lawyer's time are the only rate I approve --

MR. BROWN: Paid by Mr. Stansbury.

THE COURT: -- the hourly rate, I approve of 350.

MR. BROWN: I also propose, it doesn't have to go on the order, it would seem to me, there's nothing wrong, once I retain a Chicago attorney, there's nothing wrong with Mr. Feaman calling that Chicago attorney and me telling the Chicago attorney don't get me on the phone --

THE COURT: I agree. There's no question. You're the conduit.

MR. BROWN: As far as the claim, I'll absolutely rely on Illinois counsel.

THE COURT: All right. I think this is pretty clear how it's going to be handled.

Yes, sir.

MR. ROSE: A couple of minor concerns, I think Mr. Brown went too far. Mr. Stansbury would not pay for all the curator fees, only the curator fees directly related to the Illinois matter.

THE COURT: That's what he said. Separate times sheets, sure.

MR. ROSE: I'm concerned if they -- he's going to hire a Chicago lawyer, a Chicago lawyer is going to be expensive. That's what our main concern is --

THE COURT: Hold on. Mr. Brown --

MR. ROSE: He's a practical guy --

THE COURT: -- he's going to find a good lawyer with a reasonable rate, and that's a little higher. He's not going to hire a $1,000-an-hour-guy.

MR. ROSE: But if he hires a lawyer and the bill is $12,000 and Mr. Stansbury's counsel looks at it and says we don't think we should pay it, Mr. Brown is retaining the person on behalf of the estate, we need to have not a chance for them to complain about bills.

THE COURT: Okay. I'm not worried about that now. There's too much -- I'm not finding, you know -- I mean one -- part of this is what I think is the sincerity of Mr. Feaman's side here. And it's kind of a good thing that we have the ability to be able to use Mr. Stansbury's funds that way. They've made the pledge to do it. I don't think they're going to go back on their word.

MR. ROSE: I understand. I think Mr. Stansbury should at least, under oath --

THE COURT: Your request is denied. Mr. Feaman is an officer of the court. He

represents --

MR. ROSE: -- it would be enforceable as a judgment if he doesn't pay -- the estate would have a claim against Mr. Stansbury if he, for example, didn't pay some invoices and we got stuck paying the bill for a Chicago lawyer.

THE COURT: You want me to rule on that now? Your answer is no. You're real premature on that. Draft an order along the lines I mention.

What else for today?

MR. BROWN: Your Honor, I had two motions for instructions.

THE COURT: One had to do with this issue, right?

MR. BROWN: That one I basically just took a backseat to because of the administrator ad litem motion.

The other, Eliot Bernstein sends me a lot of emails with a lot of requests. I'm not saying it's a bad thing. But he asks me questions I don't necessarily know I can answer. For instance, he got the accounting by Tetra and Spallina and then sent me an email that I've attached to the motion. I don't know

if you have the motion for instructions.

THE COURT: I do.

MR. BROWN: That had 44 different questions, not including subparts, and asked that I hire a forensic accountant, an analyst and acquire account statements from a number of third-party institutions.

THE COURT: Is that the motion? I don't have the attachments. It says motion for instructions -- that's the life insurance one. Hold on.

MR. BROWN: It's not necessarily important. Eliot is very thorough. But, again, the estate has limited assets. My view of what the curator should do with respect to the accounting is not take the lead on objecting to what Tetra and Spallina did, investigating the underpinnings of the accounting, that's up to -- we have a lot of beneficiaries here who are very, very passionate and interested in what's going on with the estate.

THE COURT: Stop. You don't have to go further. That position, that's the law. You don't do that. If there's an accounting,

there's a rule on objections, the parties object. They don't use you -- you don't work for them.

MR. BROWN: Okay.

THE COURT: You work for the court.

MR. BROWN: I'll try and craft an order that deals with that motion in that regard.

Also, there also was a motion, Eliot has concerns about the 2012 will and its validity. I think your ruling would be the same on that. I don't have a role in trying to contest that will --

THE COURT: Exactly. You're not an advocate. You don't investigate things that the parties may be interested in. They can do what they think they need to do based on the rules of procedure and statutes.

MR. BROWN: That's it.

MR. ROSE: If I may address the privilege issue?

THE COURT: Okay. The privilege issue, okay.

MR. ROSE: May I approach?

THE COURT: Yes.

MR. ROSE: I can file a copy of this.

This is the email in question. Without reading the email, if you look at who it is addressed to at the very top. Mr. Bernstein is saying, this is Ted, telling me he sent it to Eliot by mistake. Last night at 10:12 he got off an airplane and wanted to tell me things. It's to Eliot by accident. If you just read --

THE COURT: When you say to Eliot by accident, the only person this is sent to is Eliot.

MR. ROSE: Correct. He was trying to send it to me. If you look below the word analysis, the first word of the email is Alan.

THE COURT: So this was is supposed to go to you and it went to Eliot?

MR. ROSE: By mistake. And Mr. Bernstein has advised me this morning he sent it to 2,000 people already. He plans on publicizing it --

THE COURT: I'm sure he didn't do that because if he wants to participate in the case he's obligated to have and comply with the rules of court.

MR. BERNSTEIN: Your Honor --

THE COURT: When you --

MR. BERNSTEIN: I was sent an email to me.

Like I do when I get a letter that has threatening stuff to me I sent it to my friends who are lawyers. I sent it to a number of people. Actually, I got so busy sending it to people, because it scared me a little bit that it was very threatening to people, that by the time I was done my wife stopped me and said we got to go to court. All I know is my brother sent me an email that seems pretty threatening. It was addressed to me. I was the intended recipient.

THE COURT: Let me ask you, when the email starts off Alan --

MR. ROSE: I get a million emails --

THE COURT: That say Alan?

MR. BERNSTEIN: That say whoever's name.

THE COURT: Okay. All right. You know what, I don't buy anything you just told me.

MR. BERNSTEIN: I thought my brother was sending me a copy of an email --

THE COURT: Stop. Stop. Stop speaking. I'm going to look at the rule for a second.

MR. BERNSTEIN: Okay.

MR. ROSE: It's 1.285.

THE COURT: Okay.

MR. BERNSTEIN: I haven't been prepared for this, so...

THE COURT: Okay.

MR. BERNSTEIN: I haven't looked at the rules.

THE COURT: Okay.

MR. BERNSTEIN: I can show you several instances in my email of people sending me letters addressed to other people, several thousands of those.

THE COURT: So, all right. Everyone has to take a deep breath. This situation is done pursuant to Rule 1.285. So Mr. Rose, on your side, correct me if you think I'm wrong, Subsection A says, "When you" -- your client -- "takes a position that there's been an inadvertent disclosure of privileged materials to another person" -- which is what you say happened, correct?

MR. ROSE: Correct, sir.

THE COURT: It says here, "In order to assert the privilege the party, person or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of privilege on

the party to whom the materials were disclosed. The notice shall specify with particularity" -- etc. And then there's a procedure.

MR. ROSE: I did that last night. I emailed him last night.

THE COURT: I didn't know that. So you gave him the written notice. I assume he got it. Can I see a copy of the notice?

MR. ROSE: I'm trying to get a copy of the notice. Perhaps -- I'm not trying to have the whole argument heard today. I just --

THE COURT: The rule applies.

MR. ROSE: Right.

THE COURT: So once he gets notice, the rule applies. So the notice will have -- you sent it by email?

MR. ROSE: I have it here now. I do find it, sir. May I approach?

THE COURT: What's the time and date of the notice?

MR. ROSE: May 22, 2014 at 11:07 p.m. I said, "You received an email from Ted intended solely for me, and accidentally sent to you by mistake. The email was sent around 10:12 p.m. tonight. Please delete the email immediately

without reading it and confirm that deletion by email. The communication was attorney-client protected and you are not entitled to read or possess the email due to the accidental transmission. Thank you in advance. And if you fail to comply with this request we'll be forced to take corrective action with the court." Signed by me sent to the same email address that --

THE COURT: Okay. All right. So the rule says, to Eliot, he sent that to you, Rule 1.285, Subsection B tells you what you're supposed to do.

MR. BERNSTEIN: I haven't seen it yet.

THE COURT: Okay.

MR. BERNSTEIN: He's saying he sent it after Ted's email. The last email I read was Ted's email. So I haven't seen it.

THE COURT: So open that email --

MR. BERNSTEIN: Okay.

THE COURT: Okay. And do what the rule says.

MR. BERNSTEIN: Don't send it to anybody else.

THE COURT: Well, okay, that, but it also

says some other things of what you're supposed to do. You're supposed to return or destroy it. That's one thing you're supposed to do. And you are to notify anyone else who you disclosed it to that they're to do the same thing and you're also to take reasonable steps to retrieve the materials disclosed --

MR. BERNSTEIN: I'll do all that.

THE COURT: And the only exception to this is if you want to challenge that assertion that you were provided an inadvertent privileged matter. And then the rule says what could happen and we can have litigation and spend a lot of money.

MR. BERNSTEIN: No. I'll do whatever it is -- whatever the law says, as always.

THE COURT: There's nothing for me to do.

MR. ROSE: I understand. I just want to make sure you --

MR. BERNSTEIN: Your Honor, it went out to a lot of people. Like I said, I have a broad base --

THE COURT: Take a look. When you leave the courthouse --

MR. BERNSTEIN: Okay. I'll notify

everybody though.

THE COURT: Go and take a look at the rule and just do what the rule says.

MR. ROSE: And it's not to be posted on social media.

THE COURT: You see, I'm not allowed to have dialogue on that now. Other than signing the order, hearing over. Thank you.

(Whereupon the hearing is concluded at 10:00 a.m.)

CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 54, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable MARTIN COLIN, on May 23, 2014.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction or the reporter.

Dated this 27th day of May, 2014.

_____

Julie Andolpho

EXHIBIT B

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

SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95, by Ted S. Bernstein, its Trustee, Ted S. Bernstein, an individual, Pamela B. Simon, an individual, Jill Iantoni, an individual and Lisa S. Friedstein, an individual.

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE COMPANY

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE TRUST DTD 6/21/95

Counter-Defendant

and,

FIRST ARLINGTON NATIONAL BANK as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust, UNITED BANK OF ILLINOIS, BANK OF AMERICA, Successor in interest to LaSalle National

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

Trust, N.A., SIMON BERNSTEIN TRUST, N.A., TED BERNSTEIN, individually and as purported Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, and ELIOT BERNSTEIN

Third-Party Defendants.

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

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

Cross-Defendant

and,

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

Third-Party Defendants.

AFFIDAVIT OF DON SANDERS

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.

2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.

3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.

4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.

5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.

6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.

7. When I use the term "Insured", I mean Simon Bernstein.

8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.

10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.

11. When I use the term "Litigation", I mean the above-captioned litigation.

12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.

13. I am currently employed as Assistant Vice-President of Operations for Jackson.

14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.

16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.

17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.

18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.

19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.

20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.

21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.

22. I have received no compensation from any party to the Litigation in exchange for my testimony.

23. The Policy was issued by Capitol Bankers in 1982.

24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.

25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.

26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.

27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.

29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.

30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.

31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.

32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.

33. I have reviewed and made myself familiar with the Policy records.

34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bate-stamped records, and can attest that the bate-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.

35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.

36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.

37. Also, the Policy records do not include:
    (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
    (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
    (c) any purported trust named the "Simon Bernstein Trust, N.A.".

38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").

39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was $2 million.

41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.

42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).

43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.

44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was $1,689.070.00 (the "Policy Proceeds").

45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."

46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was $1,689.070.00.

47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of $1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of $1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)

48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.

49. According to Part I of the application, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".

50. Also according to Part I of the application, the beneficiary was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".

51. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).

52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of $2 million.

53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.

54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)

55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).

56. On or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
    (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
    (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.

57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No.JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).

58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.

59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.

60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.

61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).

62. After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).

63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).

64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.

66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.

67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.

68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.

69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.

70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.

71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.

72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).

73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).

74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

its face that it was prepared for Life Insurance Underwriting purposes only. (JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:
"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).

76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.

77. The Policy records do not include any notices of claims from any of the following individuals or entities:
    a) The VEBA;
    b) Any Bank Trustee of the VEBA;
    c) Adam Simon;
    d) David Simon;
    e) The Simon Law Firm ; or
    f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 8, 2014

Don Sanders, Assistant Vice-President
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 8th DAY OF APRIL, 2014.

NOTARY PUBLIC
County of Dallas, TX