

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

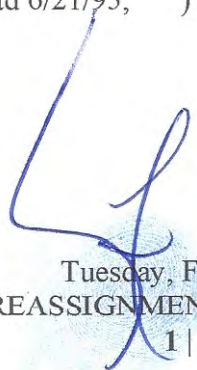
FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee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

Case No. 13 cv 3643  
Honorable John Robert Blakey  
Magistrate Mary M. Rowland

**NON-JOINT REASSIGNMENT**  
**MINORITY STATUS REPORT**

**Filers:**

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



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. )

BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )

Intervenor. )

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

**REASSIGNMENT STATUS REPORT**

1. That the following Non-Joint Minority Status Report is filed by Third Party Defendant / Cross Plaintiff, Eliot Bernstein (“Eliot” or “Cross Plaintiff”), as he was unable to speak with all parties to have his suggestions heard due to a refusal by Plaintiff’s Attorney, Adam Simon, Esq. (“A. Simon”) to speak with him regarding adding significant changes to the “facts” regarding the status of the case.
2. That Eliot was not a filer of the Status Report Submitted already to this Court as it states on the cover page and objects to his name in that capacity.
3. In efforts to have Eliot’s suggested changes considered for inclusion in the other Status Report submitted without him, the estate of Simon Bernstein’s counsel, Mr. Kevin Horan, Esq. (“Horan”) tried honorably to have Eliot’s comments and concerns added but A. Simon appears to have refused virtually all of Eliot’s clarifying comments and refused to speak with Eliot as indicated in the attached exhibited emails from A. Simon.
4. In order to have Eliot’s concerns with the Status Report heard, Eliot spoke with Horan after he spoke with A. Simon and he suggested filing a separate report since it appeared futile to reach a joint agreement on the language with A. Simon, especially with his refusal to speak to Eliot or make, or even discuss civilly the suggested changes making the attempt to comport with the Court’s Order impossible to achieve.
5. Therefore, the easiest way to make the Court aware of the problems that necessitated two Status Reports appears to be to exhibit to the Court the drafts that were circulated to Eliot and Eliot’s redlined version, which he sent back to Horan and A. Simon, so that the Court can see

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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- what the disagreements were that led to separate Status Reports being filed and thus both sides can be heard.
6. Attached as Exhibit A, is the initial report sent to Eliot by Horan, after he and A. Simon worked together, without Eliot's input to formulate such, sending their compilation to him for a first review on 1/30/15, with only two days until the deadline.
  7. Attached as Exhibit B, is Eliot's redlined version of the initial Status Report sent to him and whereby Eliot's comments are extensive as he had no input in the creation of the first draft.
  8. Attached as Exhibit C, is a letter from A. Simon to Horan showing his refusal to compromise or discuss the changes suggested by Eliot that forced Eliot to file this separate report. An attempt by Horan to modify the document was made but A. Simon then refused to talk with Eliot to discuss the minor changes Eliot wanted in the revision and thereby forced Eliot to file separately after making the concerns noted to Horan.
  9. Attached as Exhibit D, is a letter from Horan to Eliot with a final copy of the Status Report that Horan and A. Simon submitted, the attachment is omitted it was filed ECF with the Court already. Eliot was to have a chance to review the final as well but do an office snafu in Horan's office as described in his email, Eliot was not sent a final to review before they filed with Your Honor.
  10. Eliot did not review the email with their filing until 2:49am on 2/3/2015, which was after the deadline to submit a Status Report according to Your Honor's request and Eliot prays the Court understand his untimely filing.
  11. Eliot requests the Court use Exhibit B submitted herein as Eliot's final Status Report submitted to the Court.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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12. After reviewing the final submitted to the Court by Simon and Horan, Eliot would like to add the following substantive facts he suggested to Horan that were omitted from their final Joint Status, as these are significant misstatements of fact that remain.

- a. In reference to A. Simon's claim in the Status Report that Eliot's Motion to Remove him for conflicts of interest and more being denied by the Court, Eliot would like the Court to take Judicial Notice of the attached Exhibit E, which is a letter from the Creditor of Estate of Simon's attorney, Mr. Peter Feaman, Esq. ("Feaman") and the newly appointed Personal Representative / Executor of the Estate of Simon Bernstein, Mr. Brian O'Connell, Esq. ("O'Connell") describing Attorney at Law ethical and possible criminal continued misconduct regarding the representations in this litigation. That due to this letter amongst Attorneys at Law describing continued attorney and fiduciary misconduct in matters regarding Simon L. Bernstein the decedent's Estate and Trusts, the misconduct further described in Exhibit B, a thorough review by this Court of the misconduct should be undertaken before allowing A. Simon to continue what may be knowingly conflicted and perhaps illegal representations of parties in this matter, despite Judge Amy St. Eve's order to allow him to continue without certain new and germane facts contained in the exhibited letter.
- b. The Joint Status produced by Horan and Simon continues to refer to an alleged "Policy" when no such legally executed insurance contract has been produced by any party in this matter.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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- c. The Joint Status continues to attempt to define “beneficiaries” of the nonexistent “Policy,” where the beneficiaries are not yet known as the “Policy” naming them is missing and not produced to this Court. Reinsurers of the “Policy” have not been contacted to produce their records and copies of the “Policy” and further discovery will be necessary.
- d. The Joint Status refers to “beneficiaries” of the Estate of Simon Bernstein and the Court should note that there are upcoming hearings before Judge Martin Colin to determine if the dispositive documents in the Estate are legally valid and thus the beneficiaries different than what is alleged. The Governor of Florida, Rick Scott’s Notary Public Division has already investigated the dispositive documents notarization and determined that they were not properly notarized according to Florida Notary Public rules and regulations.
- e. That the Joint Status report fails to address the Primary Beneficiary as a viable beneficiary and attempts to claim benefits can be paid to the Contingent Beneficiary instead, without the Primary Beneficiaries consent or knowledge, which could lead to further fraudulent conversion of the benefits.
- f. That Ted Bernstein is an alleged “Trustee” of a legally nonexistent trust that claims to be the Plaintiff in this case, which trust is further an alleged Contingent Beneficiary of an alleged “Policy” that legally does not exist at this time. Where Ted mysteriously replaced Robert Spallina as the new Trustee when this lawsuit was filed several weeks after the claim was denied that was filed by Ted’s former counsel Spallina with Heritage Union Life, where Spallina acted as Trustee of the non-

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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existent trust at that time in efforts to collect the proceeds to his law firm trust account.

- g. That the denied claim by a legally nonexistent beneficiary is what led to this Breach of Contract Lawsuit (the contract breached however is still not produced to this Court by any party after Rule 26 disclosures and no legally executed trust has been produced) and this is the genesis of the issues leading up to the this “breach of contract: suit filed by Ted acting as Plaintiff and alleged Trustee of a legally nonexistent entity, now trying to have proceeds converted to himself directly.
- h. That Eliot has not been included in any settlement talks that would obfuscate the need for this case to be tried and thus does not agree with the statement in the Joint Status referencing such alleged settlement.

Respectfully submitted,

DATED: Tuesday, February 3, 2015

/s/ Eliot Ivan Bernstein  
Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
Telephone (561) 245-8588  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
[www.iviewit.tv](http://www.iviewit.tv)

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on 2/3/15, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

Tuesday, February 3, 2015

NON-JOINT REASSIGNMENT MINORITY STATUS REPORT

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**EXHIBIT A**

**INITIAL STATUS REPORT TENDERED TO ELIOT BY HORAN FOR COMMENT**



**Eliot Ivan Bernstein**

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**From:** Kevin Horan <KHoran@stamostrucco.com>  
**Sent:** Friday, January 30, 2015 12:07 PM  
**To:** Adam Simon; Eliot Ivan Bernstein  
**Cc:** James J. Stamos  
**Subject:** Estate of Bernstein: Joint Status Report  
**Attachments:** Joint Status Report for E. Bernstein Review.DRAFT.doc

Adam and Eliot,

Attached please find a revised draft of the Joint Status Report, due to be filed on February 2, 2015. The current version reflects edits and revisions which were made and agreed upon by me and Adam this morning. Adam, if any of my revisions do not comport with your understanding of our earlier conversation, please let me know. Eliot, please review and respond with any suggested additions, deletions, or revisions.

Thanks in advance for your cooperation.

Best wishes,

Kevin

**Kevin P. Horan**  
Stamos & Trucco LLP  
One East Wacker Drive  
Third Floor  
Chicago, IL 60601  
[\(312\) 630-1208](tel:3126301208) Direct  
[\(312\) 630-7979](tel:3126307979) Main  
[\(312\) 630-1183](tel:3126301183) Fax  
[www.stamostrucco.com](http://www.stamostrucco.com)

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

**Case No. 13 cv 3643  
Honorable John Robert Blakey  
Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT  
STATUS REPORT**

**Filers:**

Brian O'Connell, as Personal  
Representative of the Estate of  
Simon L. Bernstein, Intervenor;

Simon Bernstein Irrevocable Insurance Trust  
Dtd. 6/21/95, Plaintiff;

Eliot Ivan Bernstein, Third-Party Defendant  
and Counter-Plaintiff.



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, )  
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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 )  
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Third-Party Defendants. )

BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )

Intervenor. )

**REASSIGNMENT STATUS REPORT**

**I. Nature of the Case**

**A. Attorneys of Record**

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: asimon@chicagolaw.com

**Attorney for:**

*Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.*

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
*Pro Se*

James J. Stamos (#3128244)  
Kevin P. Horan (#6310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**Attorney for:**

*Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor*

**B. Basis for Federal Jurisdiction**

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

**C. Nature of the Claims Asserted**

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. After Mr. Bernstein's death, four out of five of his adult children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). Because (i) no executed original or executed copy of the 1995



Trust could be located, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein, filed a letter asserting a competing claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013, filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

**D. Relief Sought by Parties**

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are

not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

## **II. Discovery and Pending Motions**

### **A. Pending Motions**

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

### **B. Discovery**

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

### **C. Substantive Rulings Issued to Date**

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);

2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

### **III. Trial**

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery, and is preparing to file a dispositive motion by March 6, 2015.

### **IV. Settlement and Referrals**

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will continue. The parties should be in a position to report on the status of that settlement at the next status hearing.





Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on \_\_\_\_\_, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.



**EXHIBIT B**

**ELIOT'S REDLINED VERSION OF THE INITIAL STATUS REPORT**



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Representative of the Estate of )  
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)  
Intervenor. )



**REASSIGNMENT STATUS REPORT**

**I. Nature of the Case**

**A. Attorneys of Record**

Adam M. Simon (#6205304)  
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**Attorney for:**

*Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.*

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
*Pro Se*

James J. Stamos (#3128244)  
Kevin P. Horan (#6310581)  
STAMOS & TRUCCO LLP  
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Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**Attorney for:**

*Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor*

**B. Basis for Federal Jurisdiction**

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

**C. Nature of the Claims Asserted**

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed by the Estate Counsel and Co-Personal Representative/Executor Robert Spallina, Esq. who acted as an alleged Trustee of an alleged Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). This trust is alleged to be the Contingent Beneficiary of the policy and the Primary Beneficiary is

LaSalle National Trust, NA who is alleged by the carrier to be the beneficiary. The death benefit claim of Spallina's was DENIED by the carrier as Spallina was unable to prove a beneficial interest or produce a legally binding executed trust.

That Spallina and his legal partner Mr. Donald Tescher, Esq. have resigned and been removed by the Probate Court in Florida and their law firm has been found to have committed fraud on the probate court of Judge Martin Colin, forged documents POST MORTEM for Simon Bernstein, used Simon Bernstein POST MORTEM to close his wife's estate, which was reopened and fraudulently notarized and forged documents for six parties, in efforts to convert benefits to alleged improper parties. The following Estate and Trust cases for Simon and Shirley Bernstein are ongoing.

- i. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
- ii. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
- iii. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
- iv. Case # 502014CP003698XXXXSB – Shirley Trust Construction
- v. Case # 502014CA014637XXXXMB – Eliot Bernstein v. Trustee Simon Trust

After the claim was denied Mr. Bernstein's death, four out of five of Mr. Bernstein's his adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee for the lost trust claiming a right to the proceeds of the Policy as alleged beneficiaries under a trust they describe as the "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"). Because (i) no executed original or executed copy of the 1995 Trust could be located the claim was denied. The lawsuit was then filed as a breach of contract and Heritage Union notified Eliot Bernstein, and (ii) Eliot Bernstein, the fifth adult child of Simon Bernstein who was excluded without notice by his siblings from their lawsuit, that he was a third party

~~defendant in the matter by suing him as such.~~ ~~filed a letter asserting a competing claim, the Defendant insurance company,~~ Heritage Union Life Insurance Company (WAS THIS JACKSON NATIONAL?), as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013, filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the alleged Policy (no legally executed Policy has been produced to this Court or any party by the Plaintiffs or the Insurance Carrier and further discovery is necessary) proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014. That this is a breach of contract lawsuit and where there is no legal insurance contract that has been produced and the lawsuit was filed by a legally non-existent entity whereby Plaintiff has failed to produce a legally executed Trust document to give them standing.

**D. Relief Sought by Parties**

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:
  - a. The 1995 Trust is the beneficiary of the Policy Proceeds;
  - b. The Trustee of the 1995 Trust is Ted Bernstein;
  - c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
  - d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.
2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L.



Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Cross Plaintiff Eliot Bernstein seeks this Court,

1. Pay the Primary Beneficiary LaSalle National Trust NA that is now Chicago Title and Trust Co (check name exactly), which is Trustee and beneficiary for a Bernstein family benefit plan or have LaSalle National Trust NA produce their records to this Court to determine the proper course of payment of the proceeds after them.
2. Deny that the lost trust is a contingent beneficiary with any standing.
3. Determine Plaintiff has filed a frivolous, vexatious and fraudulent lawsuit as part of a Fraud on the Court.
4. Determine that there are no beneficiaries of a 1995 lost trust as it is a legally nonexistent entity and has been superseded by other dispositive documents of Simon Bernstein.
5. Acknowledge a 2000 trust that replaced any prior 1995 trust to deal with the life insurance policy and would make the prior trust moot. This trust may be the beneficiary of the Bernstein family qualified plan that LaSalle National Trust NA is the trustee for and beneficiary of the policy proceeds. The qualified plan may

have other assets in it as well. No records have been turned over by LaSalle National Trust, NA/Chicago Title.

6. Refer the case to Federal Authorities to investigate the fraudulent insurance application of Spallina, as Ted Bernstein filed that his father Simon may have been murdered on the day he died and contacted the Sheriff and the Coroner.

7. Take note that Eliot Bernstein has alleged in a Federal RICO action that the crimes in the Probate Courts already proven and admitted, committed by the Fiduciaries and Attorneys at Law in those matters, may all be part of a larger RICO regarding inventions of Eliot's and Simon's (his partner) worth and estimated Billions to Trillions. The following cases have been filed,

a. United States District Court - New York Sothern District Case 1:07-cv-11196-SAS<sup>i</sup>

b. United States District Court – Nevada Case No. 2:12-cv-02040-JAD-PAC

±8. To have the estate counsel or this Court now join Robert Spallina and Donald Tescher into the case as Defendants and indispensable parties to the action.

## **II. Discovery and Pending Motions**

### **A. Pending Motions**

---

<sup>1</sup> RELATED CASES TO CHRISTINE C. ANDERSON, ESQ., WHISTLEBLOWER CASE

(07cv09599) Anderson v The State of New York, et al.,

(07cv11196) Bernstein, et al. v Appellate Division First Department Disciplinary Committee, et al.,

(07cv11612) Esposito v The State of New York, et al.,

(08cv00526) Capogrosso v New York State Commission on Judicial Conduct, et al.,

(08cv02391) McKeown v The State of New York, et al.,

(08cv02852) Galison v The State of New York, et al.,

(08cv03305) Carvel v The State of New York, et al., and,

(08cv4053) Gizella Weissshaus v The State of New York, et al.

(08cv4438) Suzanne McCormick v The State of New York, et al.

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

**B. Discovery**

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

**C. Substantive Rulings Issued to Date**

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

3. That pleadings to deny the Estate a right to intervene were filed by Ted Bernstein, who is simultaneously acting as alleged Trustee of a Simon Bernstein Trust that would receive the insurance benefits if granted to the Estate. Ted Bernstein also filed actions in the Estate of Simon to block intervention, which were denied by Judge Martin Colin. The Court should note that Ted Bernstein stands to inherit a twenty percent interest in the policy if this lawsuit is successful and zero interest if the proceeds are paid to the Estate and then the trusts, as Ted and his sister Pamela, both Plaintiffs have been disinherited entirely and considered predeceased for all purposes of the Estate and Trusts of Simon Bernstein and Shirley Bernstein. This conflict of interest and adversity to the beneficiaries of the Estate and Trust should be sanctioned by this Court.

### **III. Trial**

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery, and is preparing to file a dispositive motion by March 6, 2015. Defendant Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

### **IV. Settlement and Referrals**

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. ~~There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will continue. (Strike as this is wholly untrue.)~~ The parties should be in a position to report on the status of that settlement at the next status hearing.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on \_\_\_\_\_, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.



**EXHIBIT C**

**EMAIL FROM A. SIMON TO HORAN**



**Eliot Ivan Bernstein**

---

**From:** Kevin Horan <KHoran@stamostrucco.com>  
**Sent:** Saturday, January 31, 2015 7:02 PM  
**To:** Adam Simon  
**Cc:** Eliot Bernstein; James J. Stamos  
**Subject:** RE: Estate of Bernstein: Joint Status Report

Adam:

I will edit the current draft and attempt to synthesize our respective positions. I will circulate a draft in advance of any conference we may have Monday morning. I would think we'd all agree that we'd prefer not to have a minority report.

Thanks,  
Kevin

Sent from my Verizon Wireless 4G LTE smartphone

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

From: Adam Simon <asimon21@att.net>  
Date: 01/31/2015 11:02 AM (GMT-06:00)  
To: Adam Simon <asimon21@att.net>, Kevin Horan <KHoran@stamostrucco.com>  
Cc: Eliot Bernstein <iviewit@iviewit.tv>, "James J. Stamos" <JStamos@stamostrucco.com>  
Subject: Re: Fwd: Estate of Bernstein: Joint Status Report

Kevin and Eliot:

I have looked over the changes suggested by Eliot. With his suggested modifications, the joint status report does not comport with the Court's template or its Order regarding the content and length of the report.

Also, on behalf of my client, there is simply no way we could consent to 90% of Eliot's suggested modifications. At this point, I would suggest two options:

- 1) Kevin you can attempt to include, based on what Eliot provided, a brief summary of the nature of his claims and relief requested, and recirculate for all to approve and then we can submit a joint report in accordance with the Court's order; or
- 2) Eliminate all of Eliot's suggested modifications, and then Plaintiff's and the Estate of Simon Bernstein can file a joint report indicating we could not come to agreement with Eliot on the content, and then Eliot can file a separate report. I will reserve my client's rights to seek to strike the report if it contains much of the substance that is contained in these modifications.

I can think of no other options that would result in our compliance with Judge Blakey's order. Let me know your thoughts.

*Adam M. Simon*  
**The Simon Law Firm**  
303 E. Wacker Drive



**EXHIBIT D**

**HORAN EMAIL TO ELIOT WITH A FINAL COPY OF THE STATUS REPORT**



**Eliot Ivan Bernstein**

---

**From:** Kevin Horan <KHoran@stamostrucco.com>  
**Sent:** Monday, February 2, 2015 5:33 PM  
**To:** Eliot Ivan Bernstein  
**Subject:** RE: Fwd: Estate of Bernstein: Joint Status Report  
**Attachments:** Joint Status Report.Agreed.pdf

Eliot,

I just saw that the attached Status Report was filed and served via ECF (our staff is much more efficient than I am, it seems). Attached is an un-stamped copy of the Report as agreed to by myself and Adam Simon. I will be sending courtesy copies of the attached, per the Court's standing orders, to Judge Blakey's chambers tomorrow. Please let me know if you'd like me to have your Status Report, once filed, delivered as well. In speaking with Adam this afternoon, he agreed to notice his Motion (for leave to file an Answer to our Complaint) for Tuesday the 17<sup>th</sup>.

Thank you for taking the time to speak with me this morning. I look forward to speaking with you in the future. In the meantime, should you have any questions or concerns, please feel free to contact me.

Best wishes,

Kevin

**Kevin P. Horan**  
Stamos & Trucco LLP  
One East Wacker Drive  
Third Floor  
Chicago, IL 60601  
[\(312\) 630-1208](tel:3126301208) Direct  
[\(312\) 630-7979](tel:3126307979) Main  
[\(312\) 630-1183](tel:3126301183) Fax  
[www.stamostrucco.com](http://www.stamostrucco.com)

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---

**From:** Eliot Ivan Bernstein [mailto:[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)]  
**Sent:** Monday, February 02, 2015 10:36 AM  
**To:** Kevin Horan  
**Subject:** RE: Fwd: Estate of Bernstein: Joint Status Report

Hi Kevin, I still have some concerns with the language and I think we can discuss first and then if you think necessary contact Adam or file separate responses. I am available now if you have a few minutes. eb

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

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

**Case No. 13 cv 3643**  
**Honorable John Robert Blakey**  
**Magistrate Mary M. Rowland**

**JOINT REASSIGNMENT  
STATUS REPORT**

**Filers:**

Brian O'Connell, as Personal  
Representative of the Estate of  
Simon L. Bernstein, Intervenor;

Simon Bernstein Irrevocable Insurance Trust  
Dtd. 6/21/95, Plaintiff;



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. )  
)  
BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )  
)  
Intervenor. )

**REASSIGNMENT STATUS REPORT**

**I. Nature of the Case**

**A. Attorneys of Record**

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: asimon@chicagolaw.com

**Attorney for:**

*Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, Pam Simon, Jill Iantoni, Lisa Friedstein, David Simon, The Simon Law Firm, STP Enterprises, Inc.*

James J. Stamos (#3128244)  
Kevin P. Horan (#6310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**Attorney for:**

*Brian O'Connell, Personal Representative of the Estate of Simon Bernstein, Intervenor*

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
*Pro Se*

**B. Basis for Federal Jurisdiction**

This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

**C. Nature of the Claims Asserted**

This matter involves a dispute over the proper disposition of proceeds of a life insurance policy (the "Policy") insuring the life of Simon L. Bernstein, who passed away in September of 2012. A claim for the insurance policy death benefit was filed on behalf of a purported trusted titled "Simon Bernstein Irrevocable Insurance Trust Dtd. 6/21/95." (the "1995 Trust"), as contingent beneficiary of the Policy. The death benefit claim was denied by the carrier when an executed trust document was not produced.

After the claim was denied, four out of five of Mr. Bernstein's adult children filed a Complaint in the Circuit Court of Cook County, with Ted Bernstein now acting as Trustee, claiming a right to the proceeds of the Policy as alleged beneficiaries under the 1995 Trust. Because (i) no executed original or executed copy of the 1995 Trust could be located, and (ii) Eliot I. Bernstein, the fifth adult child of Simon Bernstein and third party defendant/cross-plaintiff, objected to the claim, the Defendant insurance company, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company (the issuer of the Policy), removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a) in conjunction with its Answer to Plaintiff's Complaint. Heritage Union Life Insurance Company then deposited the Policy proceeds with the Registry of the Court and has since been dismissed from the suit. The Estate of Simon Bernstein, through its Curator (and later, Personal Representative), filed a Motion to Intervene and Complaint for Declaratory Judgment in June 2014; the Estate's Motion to Intervene was granted on July 28, 2014.

**D. Relief Sought by Parties**

1. Plaintiff seeks resolution of the competing claims in the Interpleader action and more specifically the court's finding that:

- a. The 1995 Trust is the beneficiary of the Policy Proceeds;
- b. The Trustee of the 1995 Trust is Ted Bernstein;
- c. The beneficiaries of the 1995 Trust are the five children of Simon Bernstein whom are: Ted Bernstein, Pam Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein; and
- d. That the Policy proceeds be distributed to the 1995 Trust as beneficiary of the Policy, and then distributed according to the terms of the 1995 Trust.

2. Intervenor seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to Simon L. Bernstein's Estate, currently pending in the Circuit Court of Palm Beach County, Florida. The

Estate's position is that no valid beneficiary of the Policy can be proven and the Estate therefore takes by default under applicable law. The Bernstein children have been unable to produce an executed 1995 Trust document under which they assert their rights. If the Policy proceeds are not distributed to the Bernstein children (Plaintiffs), they will be paid to other beneficiaries of the Estate, who include the grandchildren of Simon Bernstein.

3. Third Party Defendant/Cross-Plaintiff Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

## **II. Discovery and Pending Motions**

### **A. Pending Motions**

Intervenor's Complaint for Declaratory Judgment (Dkt. No. 112) was filed June 5, 2014. Plaintiff has filed a Motion for Leave to file Answer to Intervenor's Complaint (Dkt. No. 132). No briefing schedule has been entered.

### **B. Discovery**

Plaintiff has produced documents pursuant to Fed. R. Civ. P. 26(a)(1). In addition, Eliot I. Bernstein and now-discharged third-party defendants have produced documents pursuant to Rule 26(a)(1). Intervenor has reviewed production documents received from Plaintiff, Eliot I. Bernstein, and third-party defendants and has taken the deposition of David B. Simon. Intervenor anticipates conducting additional discovery, including likely five (5) additional depositions. A deadline of January 9, 2015 for fact discovery to be completed, and March 6, 2015 for the filing of dispositive motions, was set by the court by its order entered August 28, 2014 [Dkt. #123].

A status hearing scheduled for January 6, 2015 was postponed to January 20, 2015. The January 20, 2015 status hearing was postponed indefinitely upon reassignment to this Court's

docket. At the next status hearing, Intervenor will seek additional time in which to complete discovery; Plaintiff will oppose Intervenor's request.

**C. Substantive Rulings Issued to Date**

Please see chronology at I. C. *supra*. Please also note:

1. Eliot Bernstein's motion to disqualify Adam Simon as counsel and to strike pleadings was denied by the Court (Dkt. No. 56);
2. All of the Banking parties, i.e. JP Morgan, Bank of America, and others, as well as third-party defendants Robert Spallina, Donald Tescher, and Tescher & Spallina, P.A., have been dismissed and terminated from the litigation after either having not been found, or having been dismissed on a motion to dismiss, or by disclaiming their own interests. None of the Bank parties claimed an interest in the Policy proceeds.

**III. Trial**

There has been no jury demand and no trial date has been set. Intervenor will seek this Court's leave to conduct additional discovery, and additional time in which to do so, at the next status hearing. Plaintiff will oppose any motion for additional discovery and is preparing to file a dispositive motion by March 6, 2015. Eliot Bernstein will be seeking leave to amend his original complaint based on new information.

**IV. Settlement and Referrals**

The parties do not request a settlement conference at this time. A previous referral to Judge Rowland (Dkt. No. 36) was closed on January 24, 2014 (Dkt. No. 80). Intervenor consents to proceed before the assigned Magistrate Judge for purposes of conducting a settlement conference. Plaintiffs do not believe a settlement conference will be productive at this time. The parties to this suit are also involved in disputes before the probate court administering the Estate in Florida. There is pending before that court a proposed settlement which could materially affect the rights of the parties and whether Intervenor's involvement in this suit will



continue. The parties should be in a position to report on the status of that settlement at the next status hearing. Despite the efforts of counsel to file an agreed Joint Reassignment Status Report, a consensus could not be reached. Eliot I. Bernstein does not join in this Reassignment Status Report and will file a separate Status Report with the Court.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on February 2, 2015 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

Respectfully submitted,

/s/ Kevin P. Horan

One of the attorneys for Intervenor, Brian M. O'Connell, as Personal Representative of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
FACSIMILE: (312) 630-1183



**EXHIBIT E**

**EMAIL BETWEEN ATTORNEY AT LAW PETER FEAMAN, ESQ. AND THE  
PERSONAL REPRESENTATIVE/EXECUTOR OF THE ESTATE OF SIMON  
BERNSTEIN, BRIAN O'CONNELL, ESQ.**



**Eliot Ivan Bernstein**

---

**Subject:** FW: Bernstein Estate

---

Subject: Bernstein Estate  
Date: Tue, 16 Dec 2014 15:57:54 -0500  
From: [pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)  
To: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com)  
CC: [jroyer@feamanlaw.com](mailto:jroyer@feamanlaw.com)

Brian,

When you and I spoke last week you indicated that you were in favor of the settlement that Mr. Stansbury had signed and sent to you for signature.

You indicated that you had to work out funding with the trust.

Meanwhile, the Life insurance litigation in Chicago is moving forward.

Our attorneys are taking a deposition in Chicago the week after New Years of "Scooter" Bernstein. I think

They also want to depose Ted Bernstein and Robert Spallina in early January as well.

I offered my office as a locale for those depositions.

Deposing Ted Bernstein in the Chicago action poses some serious conflict of interest issues for Ted Bernstein and ethical issues for Mr. Rose as the Florida attorney for Mr. Ted Bernstein.

He is being deposed as a party Plaintiff in the Chicago action, the purpose of which is to direct \$1.7 million in life insurance to the 5 adult children of Simon Bernstein away from the Bernstein estate.

Yet Mr. Rose represents Ted Bernstein as Successor Trustee to the Simon Bernstein Trust, the beneficiaries of which are the GRANDCHILDREN OF Simon Bernstein, and the Trust is the beneficiary of the Simon Estate which is directly opposed to the position of Ted Bernstein as Plaintiff in the Chicago Life Insurance litigation.

Just as Ted Bernstein cannot wear both hats, it seems that Alan Rose cannot represent a client so conflicted.

Further, it would seem to me that the estate (you as Personal Representative) has an absolute duty to demand Ted's resignation as Successor Trustee, as his continued role as such imperils the interests of the grandchildren, to whom you owe a fiduciary duty as the Personal Representative.

The bottom line is that the more this drags on, the worse it is going to get for all concerned.

At some point, respectfully, I think you are going to have to take the bull by the horns and 1.) demand that Ted Bernstein resign as Successor Trustee and 2.) Take an active role in directing the attorneys in Chicago to push the case in order to bring it to a successful resolution on behalf of the estate, either by settlement or trial. This means taking over the responsibility for the litigation from Mr. Stansbury in light of the favorable position that the Estate is now in as a result of Mr. Stansbury's efforts.

I welcome your thoughts on this.

*Peter M. Feaman*

PETER M. FEAMAN, P.A.

3695 West Boynton Beach Boulevard

Suite 9

Boynton Beach, FL 33436

Telephone: 561-734-5552

Facsimile: 561-734-5554

[www.feamanlaw.com](http://www.feamanlaw.com)

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