

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,)
and ELIOT BERNSTEIN,)
)
Third-Party Defendants.)
)
ELIOT IVAN BERNSTEIN,)
)
Cross-Plaintiff)

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

**INTERVENOR'S RESPONSE TO
PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

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

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.)

**INTERVENOR'S LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFFS'
 STATEMENT OF UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C)
 STATEMENT OF ADDITIONAL FACTS REQUIRING THE DENIAL OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Intervenor, Brian M. O'Connell, Personal Representative of the Estate of
 Simon L. Bernstein ("Intervenor"), by his attorneys, James J. Stamos and Kevin P. Horan of

Stamos & Trucco, LLP, and for his Response to Plaintiffs' Statement of Undisputed Material Facts and Statement of Additional Facts pursuant to Local Rule 56.1(b)(3), states as follows:

THE PARTIES

1. Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the "Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counterdefendant to Eliot's Claims. The Bernstein Trust is represented by counsel, Adam M. Simon. (**Ex. 30, Aff. of Ted Bernstein, ¶21**)

ANSWER: The first sentence of Paragraph 1 is disputed in that Plaintiffs have failed to present any admissible evidence to demonstrate as a matter of law that the "Bernstein Trust" was executed and bore the terms they allege. Plaintiffs rely entirely on ¶ 21 of the Affidavit of Ted Bernstein to support the assertions in paragraph 1 that the Trust exists. Under Rule 56(c)(1)(b), Ted Bernstein's Affidavit cannot serve to demonstrate the absence of a disputed issue of material fact with respect to the existence of the Trust because Ted Bernstein has never seen an executed copy of the document. (*See* May 6, 2015 Deposition of Ted Bernstein, attached hereto as Intervenor's Exhibit A, p. 24:6-12) Ted Bernstein has no personal knowledge with regard to the creation of the Trust, its execution or its terms, as he testified at his deposition. (*See* Intervenor's Exhibit A, pp. 10:25 – 11:2; 12:19 – 13:6) He knows of the facts regarding the Trust only by having been told by David Simon. (*Id.* pp. 17:5 – 18:20; 27:23 – 28:4; 30:4-7)

In addition, the existence of the Trust is disputed by multiple items of evidence as more fully described in Intervenor's Response to Plaintiffs' SOF, ¶ 40.

2. Bank of America, N.A. ("Bank of America"), was named a party to Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014. (**Dkt. #97; Ex. 30, Aff. of Ted Bernstein, ¶22**)

ANSWER: Undisputed.

3. Eliot Bernstein (“Eliot”) was named a Party by virtue of Heritage’s counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well (“Eliot’s Claims”). Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter. **(Ex. 30, Aff. of Ted Bernstein, ¶23)**

ANSWER: Undisputed.

4. United Bank of Illinois, now known as PNC Bank, was named as a Third-Party Defendant in Heritage’s counterclaim for Interpleader. PNC Bank was served on August 5, 2013, and has never filed an appearance or answer. **(Dkt. #25; Ex. 30, Aff. of Ted Bernstein, ¶24)**

ANSWER: Undisputed.

5. “Simon Bernstein Trust, N.A.” was named a Party to Heritage’s counterclaim for interpleader. “Simon Bernstein Trust, N.A.”, however, is merely a misnomer by the Insurer as a result of a data entry error in the database of the Insurer. There is no evidence that any entity exists or was formed under the name “Simon Bernstein Trust, N.A.” No one submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named “Simon Bernstein Trust, N.A.” **(Ex. 29, Aff. of Don Sanders, ¶69 and ¶78)**

ANSWER: Disputed pursuant to Rule 56(c)(1)(b) in that the Affidavit of Don Sanders (Ex. 29) at paragraphs 69 and 78 does not demonstrate that a “misnomer” occurred. It does not address that topic.

6. Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff’s counsel and initiated the filing of this Action. Ted Bernstein, is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to Eliot’s Claims. Ted Bernstein is the eldest of the five adult children of Simon Bernstein. Ted Bernstein is represented by counsel, Adam M. Simon. **(Ex. 30, Aff. of Ted Bernstein, ¶25)**

ANSWER: Intervenor disputes the first sentence of paragraph 6 under Rule 56(c)(1)(b) in that the sole basis cited for the assertion that Ted Bernstein is “Trustee” of the “Bernstein Trust” is paragraph 25 of Ted Bernstein’s Affidavit. However, paragraph 25 states no factual basis for that assertion. It simply declares that he acted as Trustee when he initiated this action. At his deposition, Ted Bernstein confirmed that the only basis he had for believing himself to be the Trustee was that David Simon told him that he was to be the Trustee and that his name appears at page BT000020 of Plaintiffs’ Exhibit 16. (See Intervenor’s Exhibit A, pp. 12:19 – 13:6) That

document, however, is unsigned and the initial trustee was indicated to be “Shirley, David, [illegible]?” with the successor trustee indicated as “Pam, Ted.” Moreover at page BT000010 of Plaintiffs’ Exhibit 15, which is represented to be the more formalized version of Exhibit 16, the successor trustee to Shirley is specifically stated to be David Simon, not Ted Bernstein. At the very least, the document itself demonstrates a question of fact as to whether Ted was to be the successor trustee to Shirley. (*See* Plaintiffs’ Exhibits 15 and 16)

7. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage’s counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank’s alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (**Dkt. #44; see also JP Morgan Chase Bank at Par. 12 below; Ex. 30, Aff. of Ted Bernstein, ¶26**)

ANSWER: Undisputed.

8. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot’s Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon. (**Ex. 34, Aff. of Lisa Friedstein, ¶2, ¶3, ¶6 and ¶23**)

ANSWER: Undisputed.

9. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot’s Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon. (**Ex. 33, Aff. of Jill Iantoni, ¶2, ¶3, ¶6 and ¶23**)

ANSWER: Undisputed.

10. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot’s Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon. (**Ex. 31, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.**)

ANSWER: Undisputed.

11. Heritage is the successor Insurer to Capitol Banker [*sic*] Life Insurance Company that originally issued the Policy in 1982. Heritage was terminated as a party on February 18, 2014 when the court granted Heritage’s motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court pursuant to an Agreed

Order. The amount of the Policy Proceeds (plus interest) on deposit with the Registry exceeds \$1.7 million. (Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)

ANSWER: Undisputed.

12. J.P. Morgan Chase Bank, N.A., (“J.P. Morgan”) was named as a Third-Party Defendant by virtue of Heritage’s counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan, as a successor to First Arlington National Bank (described above). J.P. Morgan filed an appearance and answer to Heritage’s counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation, and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014. (Dkt. #105; Ex. 30, Aff. of Ted Bernstein, ¶31)

ANSWER: Undisputed.

13. William Stansbury filed a motion to intervene in this action, but his motion to intervene was denied, and he was terminated as a non-party intervenor on January 14, 2014. (Dkt. #74; Ex. 30, Aff. of Ted Bernstein, ¶32)

ANSWER: Undisputed.

14. Adam M. Simon is counsel for the Bernstein Trust and four of the five adult children of Simon Bernstein. Adam M. Simon is not counsel for the fifth adult child, Eliot Bernstein whom has chosen to represent himself *Pro Se* in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot’s Claims. Adam M. Simon is the brother-in-law of Pam Simon, and the brother of David B. Simon. (Ex. 30, Aff. of Ted Bernstein, ¶33);

ANSWER: Undisputed.

15. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. There is no record of Eliot having obtained service of process upon National Service Association, Inc. because it is dissolved and has been for over 7 years. (Ex. 30, Aff. of Ted Bernstein, ¶34; Ex. 21)

ANSWER: Undisputed.

16. Donald R. Tescher, Esq. was named a Third-Party Defendant to Eliot’s Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot’s claims on March 17, 2014. (Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶35)

ANSWER: Undisputed.

17. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims. **(Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶36)**

ANSWER: Undisputed.

18. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.

ANSWER: Undisputed.

19. David B. Simon is the husband of Pam Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon. **(Ex. 32, Aff. of David Simon, ¶20 and ¶29)**

ANSWER: Undisputed.

20. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was dissolved on April 3, 1998. **(Ex. 30, Aff. of Ted Bernstein ¶39; Ex. 35; Dep. of David Simon, p. 51:13-18 and Ex. 9)**

ANSWER: Undisputed.

21. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant by virtue of Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 concurrently with the dissolution of S.B. Lexington, Inc. **(Ex. 35, Dep. of David Simon, p. 51:13-18 and Ex. 9; Ex. 30, Aff. of Ted Bernstein, ¶40)**

ANSWER: Undisputed.

22. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014. **(Dkt. #106; Ex. 30, Aff. of Ted Bernstein, ¶41)**

ANSWER: Undisputed.

23. S.T.P. Enterprises, Inc. was named a Third-Party Defendant to Eliot's Claims. S.T.P. Enterprises, Inc. has filed an appearance and responsive pleading and is represented by counsel, Adam M. Simon. (Dkt. #47; Ex. 31, Aff. of Pam Simon, ¶25)

ANSWER: Undisputed.

24. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation formed by Simon L. Bernstein. National Service Association, Inc. (Florida) was named a Third-Party Defendant in Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) dissolved in 2012. (Ex. 30, Aff. of Ted Bernstein, ¶42; Ex. 22)

ANSWER: Undisputed.

25. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation. (Dkt. #121). Subsequently, Brian O'Connell as successor Curator and *Administrator Ad Litem* of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014. For purposes of this motion, Movants refer to this party as the "Estate of Simon Bernstein" or the "Estate". (Dkt. #126; Ex. 30, Aff. of Ted Bernstein ¶43-¶44)

ANSWER: Undisputed, except that Brian M. O'Connell substituted his appearance as Personal Representative of the Estate of Simon Bernstein as of November 3, 2014, not as Curator and Administrator *ad Litem*. (See Dkt. No. 126)

II. THE POLICY AND POLICY PROCEEDS

26. In 1982, Simon Bernstein, as Insured, applied for the purchase of a life insurance policy from Capitol Bankers Life Insurance Company, issued as Policy No. 1009208 (the "Policy"). A specimen policy and a copy of the Schedule Page of the Policy are included in Movant's Appendix to the Statement of Facts. (Ex. 29, Aff. of Don Sanders at ¶38, ¶39, ¶48, ¶52; Ex. 5). The amount of the Policy Proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (Dkt. #101 and Ex. 30, Aff. of Ted Bernstein, ¶30 and Ex. 2.)

ANSWER: Undisputed.

27. The Capitol Bankers Life Insurance Application, dated March 2, 1982 designates Simon Bernstein, as the Insured and lists S.B. Lexington as his employer. On page one of the Application, the Owner of the Policy is designated as follows:

"First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (Ex. 29, Aff. Don Sanders, ¶48; Ex. 3)

ANSWER: Undisputed.

28. Also, on page one of the Application the beneficiary was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3--Part 1 of application); and (ii) Premium notices were to be sent to S.B. Lexington Inc. Employee Death Benefit Plan and Trust c/o National Service Association, Inc., 9933 Lawler Ste. 210, Skokie, IL 60077; and (iii) Simon Bernstein's occupation was listed as an Executive with S.B. Lexington, Inc.; (iv) Simon Bernstein was the insured and on the application his residence address was in Glencoe, Illinois and he was a citizen of the state of Illinois; and (v) Simon Bernstein was the listed as the selling agent on the application; (vi) the application was signed in Illinois; and (vii) the Policy would have been delivered by the Insurer via its agent to the initial Policy Owner. (Ex. 29, Aff. Don Sanders, ¶48, Ex. 31; Aff. Pam Simon, ¶¶21-¶23; Ex. 3)

ANSWER: Undisputed.

III. THE S.B. LEXINGTON EMPLOYEE DEATH BENEFIT TRUST (THE "VEBA")

29. The S.B. Lexington Employee Death Benefit Trust was a Voluntary Employee Benefit Trust ("VEBA") established by S.B. Lexington, Inc. to provide death benefits to the beneficiaries of its employees. The Policy was purchased by the VEBA, with the VEBA listed as both owner and beneficiary of the Policy on the application. The Policy would have been delivered by the agent (Simon Bernstein) to the Owner at the offices of its Bank trustee in Illinois. (Ex. 3; Ex. 31, Aff. Pam Simon, ¶21-¶23); Ex. 30, Aff. Ted Bernstein, ¶56 and ¶57; Ex. 29, Aff. Don Sanders ¶48)

ANSWER: Disputed under Rule 56(c)(1)(b) in that the Affidavit paragraphs cited do not establish the facts asserted in paragraph 29.

30. Part 1 of the application for the Policy indicates that First Arlington National Bank, was acting as Trustee of the VEBA. As part of the application and underwriting process, a company named Equifax conducted an interview with Simon Bernstein about his application for the Policy. The Equifax report states that Simon Bernstein told the investigator the Policy would be owned by the VEBA, that (i) the insurance [benefits] would be paid to the VEBA, (ii) the VEBA would determine to whom the benefits are paid, and (iii) the benefits are normally paid to family members. (Ex. 29, Aff. Don Sanders ¶48, ¶74-¶75; Ex. 3 and Ex. 20)

ANSWER: Undisputed.

31. On June 5, 1992, Sandy Kapsa (an employee of S.B. Lexington and an affiliated company, National Service Association, Inc.) submitted a letter to Capitol Bankers Life Insurance Company informing them that LaSalle National Trust was being appointed successor trustee of the VEBA. On June 17, 1992, the Insurer acknowledged the change of trustee listing the owner of the Policy as LaSalle National Trust, N.A., as Successor Trustee. (Ex. 31, Aff. of Pam Simon, ¶31, and Ex. 7)

ANSWER: Undisputed.

32. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named the Bernstein Trust as the “person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and Adoption Form adopted by my Employer.” (Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)

ANSWER: Undisputed but Pam Simon asserts no basis to conclude that she has personal knowledge of the matters contained in paragraph 32.

33. On or about November 27, 1995, Capitol Bankers received a “Request Letter” signed by LaSalle National Trust, N.A. in their capacity as Trustee of the VEBA which owned the Policy, and the following policy changes were made a part of the Policy by way of endorsement issued by the Company: LaSalle National Trust, N.A. as Trustee (the “VEBA”) was designated as the Primary Beneficiary of the Policy; and The Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (the “Bernstein Trust”) was designated the contingent beneficiary. According to the Insurer’s records, the VEBA and the Bernstein Trust were the primary and contingent beneficiaries of record on the date of death of the Insured. (Ex. 29, Aff. of Don Sanders, ¶56, ¶64 and Ex. 8)

ANSWER: Undisputed.

34. On November 27, 1995, Capitol Bankers sent correspondence acknowledging the change in beneficiary referenced above in Par. 33, and that correspondence was sent to “LaSalle National Trust, N.A., as Successor Trustee”. (Ex. 29, Aff. of Don Sanders, ¶60 and Ex. 8)

ANSWER: Disputed. The face of the documents in Plaintiffs’ Exhibit 8 does not indicate that Capitol Bankers Life sent correspondence on November 27, 1995 (*See* Plaintiffs’ Exhibit 8)

35. The records above establish that First Arlington National Bank, N.A., and LaSalle National Trust, N.A. were original and successor trustees of the VEBA, respectively. This is confirmed by Pamela B. Simon who worked on the VEBA insurance program for both S.B. Lexington and NSA. (Ex. 31, Aff. of Pam Simon, ¶22 and ¶31)

ANSWER: Disputed under Rule 56(c)(1)(b) in that the Affidavit paragraphs cited do not address the matters asserted in paragraph 35.

36. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved by its shareholder(s), and the VEBA was likewise terminated at this time. (Ex. 9). As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, individually. (Ex. 31, Aff. of Pam Simon, ¶36; Ex. 9 and Ex. 10)

ANSWER: Undisputed.

37. Neither First Arlington National Bank nor LaSalle National Trust, N.A. have made any claim to the Policy proceeds. First Arlington National Bank's successor-in-interest, J.P. Morgan Bank, filed a responsive pleading and then a motion for judgment on the pleadings disclaiming any interest in the Policy Proceeds and requesting to be dismissed from the litigation. J.P. Morgan's motion was granted and it was dismissed as a party on March 12, 2014. (Dkts. #60 and 105)

ANSWER: Undisputed.

38. None of the Bank Parties whose names appear on the docket have tendered a claim to the Insurer for the Policy proceeds. (Ex. 29, Aff. of Don Sander, ¶77(b))

ANSWER: Undisputed.

39. The docket also reflects that none of the Bank Parties whose names appear on the docket in this matter have filed a claim in this litigation for the Policy Proceeds.

ANSWER: Undisputed.

IV. MOVANTS' CLAIMS TO THE POLICY PROCEEDS

40. On or about June 21, 1995, Simon Bernstein as Grantor formed the Simon Irrevocable Insurance Trust dtd 6/21/95. Simon Bernstein, appointed his wife, Shirley Bernstein, as Trustee of the Trust. (Ex. 32, Aff. of David B. Simon, ¶30; Ex. 19)

ANSWER: Disputed under Rule 56(c)(1)(a) and 56(c)(1)(b) as follows:

a. Plaintiffs cite only Paragraph 30 of Plaintiffs' Exhibit 32 (the Affidavit of David Simon) in support of this paragraph but that paragraph makes no reference whatsoever to the creation or formation of the Simon Bernstein Trust nor to the appointment of his wife, Shirley as Trustee. That paragraph addresses only the creation of an IRS SS-4 form, Plaintiffs' Exhibit 19.

b. The evidence Plaintiffs present for the assertion that Simon Bernstein executed a Trust with the terms reflected in Plaintiffs' Exhibits 15 and 16 is the Affidavit of David Simon at Paragraphs 23 through 27. (See Plaintiffs' Exhibit 32) However, these paragraphs are based entirely upon Mr. Simon's description of conversations he had with Simon Bernstein and things he observed Mr. Bernstein doing with respect to the creation of the alleged Trust. In Paragraph 23 he avers that he and his wife had used Hopkins & Sutter to create trusts for themselves. In

Paragraph 24 he then describes how Simon Bernstein came to him and said essentially that he wanted to do the same thing. Paragraph 25 describes David Simon creating a sample insurance trust for Simon Bernstein and reviewing it with him. It further describes conversations he had in which they agreed he would use Hopkins & Sutter to finalize and execute the insurance trust and where they discussed the purpose of the insurance trust, who would be a trustee and Mr. Simon's suggestion to Mr. Bernstein that Ted Bernstein act as the "next trustee." Paragraph 26 describes Simon Bernstein taking a copy of the draft trust and going to Hopkins & Sutter to execute it.¹ (See Plaintiffs' Exhibit 32 ¶¶ 23-27).

In Paragraph 27, David Simon then avers that he met again with Simon Bernstein and reviewed the executed Bernstein Trust Agreement and that he assisted him with preparing certain other forms. The testimony contained in these paragraphs is all the evidence Plaintiffs have to rely upon for the notion that Mr. Bernstein executed a trust document. All of this testimony is offered by an interested party which is barred by the Illinois Dead Man's Act, 735 ILCS 5/8-201 *et seq.*, because it relates conversations and events that took place solely in the presence of the Decedent.

c. Even if David Simon's testimony were admissible, his testimony could only be accepted if deemed credible by the trier of fact. Multiple facts exist that controvert his testimony and/or undermine the credibility of David Simon in this regard:

1. David Simon never witnessed Simon Bernstein draft or execute the purported Trust document as described in ¶ 30 of Plaintiffs' Exhibit 32 (See Plaintiffs' Exhibit 35, pp. 36:12 – 39:8; 39:17 – 40:16; 41:14 – 43:9). According to David Simon's

¹ It is undisputed that Hopkins & Sutter has no record of the 1995 Trust (See Plaintiffs' Exhibit 35, pp. 44:12 – 45:15; 46:15 – 47:21) and there has been no evidence explaining why it was that he needed to go to Hopkins & Sutter to "execute the document" when David Simon appears to be saying that he prepared the document.

testimony, Simon Bernstein left the Simon Law Firm with an unsigned draft of a document and returned with a signed document, which was not copied, scanned or otherwise saved in the files of the Simon Law Firm or Hopkins & Sutter. (*See* Plaintiffs' Exhibit 35, pp. 44:3 - 45:13);

2. David Simon states in his Affidavit (and in his deposition) that he recalls the exchanges with Simon Bernstein, including the assertion at Paragraph 25 of his Affidavit that he created the sample insurance trust (presumably Exhibit 15 which was retrieved from the computer hard drive). However, throughout the period of time from Simon's death in September of 2012 until the purported discovery of Plaintiffs' Exhibits 15 and 16 one year later, not a single email exchanged among the Plaintiffs, when they were discussing their attempts to locate the trust document, reflects anything about David's recollection of having created it on his computer. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1-5, 8-11, 14);

3. The emails among Simon Bernstein's children for the most part included Robert Spallina, Simon Bernstein's attorney, through whom they were attempting to obtain the proceeds of the insurance policy from Heritage. Again, none of those emails refers to David's recollection of having created the Trust on his word processor and providing it to Simon. There is also no evidence in that year-long string of emails that David thought to check his word processor for drafts of the document. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1-5; 8-11; 14-18);

4. Mr. Spallina apparently engaged in discussions with Heritage for the company to interplead the funds into the Court in Florida. (*See* Intervenor's Exhibit A, the Deposition of Ted Bernstein, at Exs. 1, 2, 4) However, at that point David Simon and

his brother, Adam Simon, the attorney currently representing Plaintiffs in this case, filed a lawsuit in Circuit Court of Cook County seeking to obtain the funds from Heritage. (*See* Intervenor's Exhibit A at Ex. 16) This resulted in a breach with Mr. Spallina, including a very angry exchange of emails and ultimate withdrawal of Mr. Spallina's lawfirm. (*See* Intervenor's Exhibit A at Exs. 16-17);

5. Simon Bernstein died on September 2012. His children, and David Simon, conducted a series of conversations, and exchanges of emails, in which they discussed strategies for obtaining the payout from the Heritage policy notwithstanding the inability to locate the 1995 Trust. (*See* Intervenor's Exhibit A, pp. 51:22-52:2; 53:22 – 54:11 and Exs. 2-4, 7, 11) This included considering the possibility of employing a different trust, called the "2000 Trust" which choice was rejected because it did not include Pam Simon as a beneficiary. (*See* Intervenor's Exhibit A, pp. 48:21 – 49:16; 52:15 – 53:6 and Exs. 1-2);

6. Notwithstanding the fact that David Simon now testifies to recalling the creation of the Trust in the office he shared with Simon Bernstein, the "discovery" he describes at paragraphs 28 and 29 of his Affidavit (Plaintiffs' Exhibit 32) occurred in September 2013, one year after Simon died. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶ 28-29);

7. Despite David Simon's averment that he recalls having created the Trust on his computer and having sent Mr. Bernstein off to the law firm of Hopkins and Sutter, the Complaint filed by Adam Simon on behalf of David Simon's wife and her other siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73 at ¶ 1);

8. Thereafter, despite there having allegedly been an “exhaustive search” prior to December of 2012 (*See* Intervenor’s Exhibit A, p. 55:1-11 and Dep. Ex. 3), David Simon for the first time purports to have located Plaintiffs’ Exhibits 15 and 16 on the computer and in the records at his law office on September 13, 2013, one year after Simon’s death, which he had previously shared with Simon Bernstein. (*See* Plaintiffs Exhibit 32 at ¶ 19);

9. Notwithstanding David’s testimony in his Affidavit at paragraphs 23 through 27 regarding his knowledge of the creation of the Trust, at no point over the course of that year did David ever report such knowledge to his wife or her siblings or to their attorney. (*See* Intervenor’s Exhibit A, p. 81:13-21);

10. Ted Bernstein testified that, despite David’s current assertions as described above, the recollections referenced in paragraphs 25-27 of his Affidavit were never related to the other family members during the interim between Simon’s death and the “discovery” of the documents. (*Id.*)

11. David Simon’s recollections of his conversations with Simon are inconsistent with Plaintiffs’ Exhibits 15 and 16 because, despite the parties’ current assertion that Ted Bernstein was to be the successor trustee to Shirley Bernstein under the 1995 Trust, Plaintiffs’ Exhibit 15, the most complete purported version of that Trust, indicates that David Simon was to be the Successor Trustee. (*See* Plaintiffs’ Exhibit 15, p. BT000010). No testimony or evidence is offered to explain how that can be consistent with David’s current assertion as to whom the successor trustee was to be.

41. On June 21, 1995, the date of the Trust Agreement, David Simon assisted Shirley Bernstein to obtain a tax identification number for the Bernstein Trust. The tax identification number for the Bernstein Trust is X5-XXXX916. In order to obtain the tax identification number David Simon completed an IRS SS-4 form. Shirley Bernstein is identified as trustee of the

Bernstein Trust and Shirley's signature, and the name of the Bernstein Trust also appear on this SS-4 form. (Ex. 32, Aff. of David Simon at ¶30; Ex. 19)

ANSWER: Intervenor disputes that Simon Bernstein formed the purported Simon Bernstein Irrevocable Insurance Trust on the bases described in its response to SOF ¶40, above. Intervenor disputes that Plaintiffs' Exhibit 32 complies with Fed. R. Civ. P. 56(c)(2), 56(c)(4), or 56(e) so as to be admissible for the purposes of Plaintiffs' Motion for Summary Judgment.

42. On August 26, 1995, Simon L. Bernstein, as a Member of the VEBA, named the Bernstein Trust as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and Adoption Form adopted by my Employer." Simon Bernstein's signature and the name of the Bernstein Trust appear on this document. (Ex. 31, Aff. of Pam Simon, ¶35; Ex. 30, Aff. of Ted Bernstein, ¶65-¶67; Ex. 4)

ANSWER: Undisputed.

43. As of August 26, 1995, the VEBA was the owner and primary beneficiary of the Policy, and on August 26, 1995, Simon Bernstein's execution of the VEBA Beneficiary Designation form evidenced his intent that the Policy proceeds flow through the VEBA to the Bernstein Trust. (Ex. 31, Aff. of Pam Simon, ¶32 and ¶35; Ex. 30, Aff. of Ted Bernstein; ¶65-¶67; Ex. 4)

ANSWER: This paragraph asserts a legal conclusion as to the intent of Simon Bernstein. Intervenor disputes that conclusion and the credibility and personal knowledge of the Affiants as well as their testimonial competence under the DMA.

44. The next Policy change in November of 1995, as described in Par. 32 above, again confirmed Simon Bernstein's intent with regard to the death benefit proceeds. The primary beneficiary he named was the VEBA and Simon Bernstein's beneficiary of the VEBA was the Bernstein Trust. In addition, the Bernstein Trust was designated as contingent beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 8). Movants have included a diagram, explained in the Aff. of Ted Bernstein illustrating Simon Bernstein's intent with regard to the ultimate beneficiaries of the Policy Proceeds. (Ex. 30, Aff. of Ted Bernstein ¶106; Ex. 17).

ANSWER: This paragraph asserts a legal conclusion as to the intent of Simon Bernstein. Intervenor disputes the credibility and personal knowledge of the Affiants, as well as their testimonial competence under the DMA. Further, no original or executed copy of the Policy has

been produced. (*See* Plaintiffs' Exhibit 29, Aff. of Don Sanders at ¶ 35) Moreover, Plaintiffs' diagram (Plaintiffs' Exhibit 17), is irrelevant, should be barred pursuant to 735 ILCS 5/8-201 *et seq.* and Fed. R. Civ. P. 56 as it is an inadmissible hearsay document created by an interested person purporting to show the intent of the Decedent.

45. The Policy Records indicate that on April 23, 2010, Heritage sent Simon Bernstein a letter in response to Simon Bernstein having contacted Heritage. (**Ex. P. 36**). The letter provides confirmation to Simon Bernstein that the primary beneficiary is the VEBA, listed as LaSalle National Trust as Trustee, and the letter states that the contingent beneficiary is "Simon Bernstein Trust, N.A."

ANSWER: Undisputed.

46. According to the Policy records as confirmed by the testimony of Don Sanders, the misnomer "Simon Bernstein Trust, N.A." was an error or abbreviation of the name of the actual Contingent Beneficiary, "Simon Bernstein Insurance Trust dated 6/21/95". Don Sanders also confirmed that there is no change of beneficiary in the Policy records that was submitted by an Owner designating Simon Bernstein Trust, N.A. as a primary or contingent beneficiary of the Policy. (**Aff. of Don Sanders, ¶71-¶72, and Ex. P. 36**)

ANSWER: Disputed in that the cited testimony of Don Sanders in his opinion, not an averment of fact based upon his personal knowledge.

47. In 2011, the Policy had lapsed for non-payment of premium, and Simon Bernstein executed the paperwork necessary and paid the required premium to the Insurer to reinstate the Policy without making any change to the beneficiary of the Policy. (**Ex. 29, Aff. of Don Sanders, ¶56, ¶57 and ¶62; Ex. 30, Aff. of Ted Bernstein, ¶91-¶93; Ex. 13 and Ex. 14**)

ANSWER: Undisputed.

48. That no party to this litigation, including movants and the Insurer, have been able to locate an executed original or copy of the Bernstein Trust Agreement. However, two unexecuted drafts of the Bernstein Trust have been located and produced by Movants in this litigation. (**Ex. 30, Aff. of Ted Bernstein, ¶97-¶98; Ex. 32, Aff. of David Simon, ¶28 and ¶29; Ex. 31, Aff. of Pam Simon, ¶37; Ex. 15 and Ex. 16**)

ANSWER: The first sentence is undisputed. The second sentence is disputed on the same basis as asserted in Intervenor's Response to SOF ¶40. Moreover, Plaintiffs' status as interested

parties renders them incompetent to testify on the matters stated in their Affidavits pursuant to the Illinois Dead Man's Act.

49. In 1995, David B. Simon, Ted S. Bernstein, Pam Simon, and Simon L. Bernstein all shared common office space at 600 West Jackson Blvd., Ste. 800, Chicago, IL 60606, and all were engaged in the life insurance business. Simon Bernstein was a licensed life insurance agent for at least 30 years and owned and operated several insurance brokerages. (Ex. 30, Aff. of Ted Bernstein, ¶88; Ex. 32, Aff. of David Simon, ¶19, ¶20, and ¶24; Ex. 31, Aff. of Pam Simon, ¶33)

ANSWER: Undisputed.

50. In 1995, David and Pamela Simon created irrevocable insurance trusts with the assistance of attorneys from the Chicago firm of Hopkins and Sutter. (Ex. 31, Aff. of Pam Simon, ¶34, Ex. 32, Aff. of David Simon, ¶23; Ex. 35, Dep. Of David Simon, p.41:7-41:10)

ANSWER: Disputed to the extent that Plaintiffs' Exhibit 32 ¶23 lists 1994, not 1995 as the year of creation of the insurance trusts with which Hopkins & Sutter purportedly assisted David and Pamela Simon and that the citation to Plaintiffs' Exhibit 35 does not support any fact asserted in paragraph 50.

51. David B. Simon and Simon Bernstein discussed Simon Bernstein's desire to form a similar irrevocable insurance trust to protect his family. (Ex. 32, Aff. of David Simon, ¶24)

ANSWER: Disputed. David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 24 of his Affidavit pursuant to the Illinois Dead Man's Act. (See Plaintiffs' Exhibit 35, pp. 58:9 – 59:4) The assertion contained in ¶ 24 of David Simon's Affidavit cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2).

52. One unexecuted draft of what would become The Simon Bernstein Irrevocable Trust dated 6/21/95 include [*sic*] David Simon's handwritten notations which he made to show Simon Bernstein where his name and others would go in the trust. According to David Simon, Simon Bernstein went to the firm of Hopkins and Sutter and executed the Bernstein Trust Agreement. (Ex. 32, Aff. of David Simon, ¶28; Ex. 35, Dep. Of David Simon, p.40:17-41:1, and Ex. 16)

ANSWER: Disputed. David Simon's status as an interested party renders him incompetent to testify to the matters stated in ¶ 28 of his Affidavit and at pages 40:17-41:1 of his deposition pursuant to the Illinois Dead Man's Act. (*See* Plaintiffs' Exhibit 35) The assertion contained in ¶ 28 of David Simon's Affidavit, together with his deposition testimony, cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2). Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). This paragraph is further disputed by the evidence cited in Intervenor's response to SOF ¶ 40.

53. According to the terms of this draft of the Bernstein Trust Agreement, the proceeds in the trust were to be split into as many separate Trusts as there were "children of mine who survive me and children of mine who predecease me leaving descendants who survive me." (**Ex. 32, Aff. of David Simon, ¶28; Ex. 16 at §7**)

ANSWER: Disputed. Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). Moreover, David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 28 of his Affidavit pursuant to the Illinois Dead Man's Act and as required by Rule 56(c)(4). This paragraph is further disputed by the evidence cited in response to SOF ¶ 40.

54. On David Simon's law firm database, David and Adam Simon located a computer file named "SITRUST" and the file date on the metadata for the file is June 21, 1995, the date of the Bernstein Trust. This draft contains virtually identical language to Ex. 16, and also directs that all proceeds be split by the surviving children of Simon Bernstein. (**Ex. 32, Aff. of David Simon, ¶29; Ex. 15 at §7**)

ANSWER: Intervenor disputes the first sentence of paragraph 54 under Rule 56(c)(1)(b) for the reason stated in its Response to SOF ¶ 40, referenced above with respect to the "discovery" of the document on the Simon Law Firm computer. In addition, the "metadata" is hearsay. Intervenor further disputes the credibility of David Simon regarding the cited testimony. Intervenor does not dispute the second sentence of paragraph 54.

55. On September 13, 2012, the date of Simon Bernstein's death, he had five adult children whom survived him, Ted S. Bernstein, Pamela B. Simon, Eliot I. Bernstein, Jill Iantoni, and Lisa Friedstein. (Ex. 30, Aff. of Ted Bernstein, ¶102)

ANSWER: Undisputed.

56. Simon Bernstein's five children had a total of ten children of their own, so Simon Bernstein had ten grandchildren that survived him, whose names and year of birth are set forth in Ted Bernstein's Affidavit. (Ex. 30, Aff. of Ted Bernstein, ¶103)

ANSWER: Undisputed.

57. In Ex. 16, Simon Bernstein names his wife Shirley Bernstein, as Trustee, and he was going to name either David Simon, or Ted Bernstein or Pam Simon as successor trustee. (Ex. 32, Aff. of David Simon, ¶25; Ex. 16)

ANSWER: Intervenor disputes paragraph 57 pursuant to Rule 56(c)(1)(a) and (b). Plaintiffs' Exhibit 16 is a hearsay document which cannot be presented in a form that would be admissible in evidence as required by Fed. R. Civ. P. 56(c)(2). David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 25 of his Affidavit pursuant to the Illinois Dead Man's Act. The assertion contained in ¶ 25 of David Simon's Affidavit, together with his deposition testimony, cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2).

In addition, Plaintiffs' Exhibit 16, referenced as the basis for the assertions of paragraph 57, is ambiguous regarding the identity of the trustee. At page BT 000013 of Plaintiffs' Exhibit 16, the name "Shirley" is handwritten as the Trustee but at page BT 000020, in the section which deals with the naming of successor trustees, the first blank line, which is intended to identify the original trustee, does not state "Shirley" but rather states "Shirley, David, [illegible]?". Moreover, in the second blank line where the successor trustee is to be named, the words "Pam, Ted" appear. This language is inconsistent with the Affidavit of David Simon, Plaintiffs' Exhibit 29 at ¶ 25, where he stated that Shirley was to be the trustee and that either he, Ted or Pam were

to be successor trustees. Notwithstanding the assertion in this Court that Ted Bernstein is the Successor Trustee, and Ted's testimony that his father told him he was to be the Trustee (*See* Intervenor's Exhibit A, pp. 23:2 – 25:3), Plaintiffs' Exhibit 15, at page BT 000010 purports to identify David Simon as the Successor Trustee in Article 11.

58. At a meeting in 1995 prior to Simon Bernstein executing the trust, David Simon recalls discussing the fact that for various reasons involving family dynamics, Ted Bernstein should be the first successor trustee to Shirley Bernstein rather than David Simon. (**Ex. 32, Aff. of David Simon, ¶25**)

ANSWER: Disputed. Paragraph 25 of David Simon's Affidavit does not support the averments in SOF ¶ 58. Moreover, David Simon's status as an interested party renders him incompetent to testify on the matters stated in ¶ 25 of his Affidavit pursuant to the Illinois Dead Man's Act. The assertion contained in ¶ 25 of David Simon's Affidavit cannot be presented in a form that would be admissible in evidence pursuant to Fed. R. Civ. P. 56(c)(2). Intervenor also disputes SOF ¶58 based upon the evidence presented in its Response to SOF ¶ 40 and SOF ¶ 57. Intervenor further disputes David Simon's credibility regarding the testimony in ¶ 25 of his Affidavit.

59. On or about June 21, 1995, David Simon assisted his mother-in-law, Shirley Bernstein, as Trustee of the Bernstein Trust, with obtaining a tax identification number from the Internal Revenue Service. Prior to obtaining the Tax Identification number, David Simon saw the executed Bernstein Trust Agreement with Simon Bernstein's signature on it. By this time, David Simon also confirmed that Shirley was the initial Trustee and Ted Bernstein was the successor trustee. I then completed an SS-4 form indicating the name of the trust, and the tax identification number issued by the Internal Revenue Service. The SS-4 document contains the signature of Shirley Bernstein, as trustee of the Bernstein Trust. (**Ex. 32, Aff. of David Simon, ¶30, Ex. 35, Dep. of David Simon, p.42:6-p.43:9, p. 88:17-89:22; Ex. 19**)

ANSWER: Intervenor disputes the averments of SOF ¶ 59 in that Intervenor disputes the credibility of David Simon with regard to cited testimony. Moreover, David Simon's testimony regarding his viewing the executed Trust in the presence of Simon Bernstein, in the midst of a conversation with Simon Bernstein, is barred by the Illinois Dead Man's Act. His description in

his deposition of having seen an executed trust in which Ted Bernstein was identified as a successor trustee is inconsistent with the terms of Exhibit 15, which designates David Simon as the successor trustee. This implies that whatever might have been contained in a purported executed trust had at least one change in it which his own testimony establishes. His testimony fails to establish what other changes would or would not have been made.

In addition, despite the fact that changes were made in the text of the trust according to David Simon's testimony, his investigation with the firm of Hopkins & Sutter, where the execution purportedly occurred, demonstrated that they had no evidence of a trust. (*See* Plaintiffs' Exhibit 35, pp44:17 – 45:13; 46:15 – 47:11) Moreover, while David Simon testifies at p. 43 of his deposition that he had Simon Bernstein execute several forms for submission to Lincoln Benefit, including the trust, he further testifies at p. 43 of his deposition that when he contacted Lincoln Benefit, they had no copy of the trust even though he believed that they would have. (*Id.* at pp. 43:10 – 44:2)

60. The executed Bernstein Trust Agreement like the drafts referenced above designated the five surviving children of Simon Bernstein as the beneficiaries to the Trust in equal shares. (Ex. 32, Aff. of David Simon, ¶25, ¶26, ¶28, ¶29 and ¶30; Ex. 15 at §7; Ex. 16 at §7).

ANSWER: Intervenor disputes the existence of an executed trust and the averments of SOF ¶ 57 for the reasons set forth in its Response to SOF ¶ 40, above.

61. Four of five of the adult children (the "Consenting Children") have executed Affidavits indicating their stipulation to the following:

- a. That Simon Bernstein formed the Bernstein Trust on June 21, 1995;
- b. That the five surviving children of Simon Bernstein were named as beneficiaries;
- c. That Ted S. Bernstein is authorized to act as Trustee of the Bernstein Trust, and with the assistance of counsel, Adam Simon, Ted Bernstein is authorized to cause the release and distribution of the Policy proceeds from the Registry of the Court for deposit to The Simon Law Firm, and to distribute the Policy proceeds (less legal fees and costs associated with this litigation) to the five adult children of Simon Bernstein in equal shares, and to obtain vouchers of receipt therefore;

ANSWER: Undisputed that four of the five adult children have executed affidavits indicating their respective stipulations, but disputed as to the foundation and admissibility of their assertions contained therein.

62. Prior to his death, Simon Bernstein was also the insured under a separate Policy of insurance issued by Lincoln Benefit Life Insurance Company, as Policy No. U0204204 (the "Lincoln Policy"). (Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶26-¶27)

ANSWER: Undisputed.

63. The Lincoln Policy lapsed in 2006 six years prior to Simon Bernstein's death. (Ex. 30, Aff. of Ted Bernstein, ¶108; Ex. 31, Aff. of Pam Simon, ¶27)

ANSWER: Undisputed.

64. While the Lincoln Policy was in force and less than two months after the formation of the Bernstein Trust, Simon Bernstein, as Lincoln Policy owner transferred his ownership interest in the Lincoln Policy to the Simon Bernstein Irrevocable Insurance Trust on August 8, 1995. This form contains the name of the Bernstein Trust, the same tax identification number that appears of the IRS Form SS-4 form signed by the trustee, the name and address of the trustee, Shirley Bernstein, and the signature of Simon Bernstein. (Ex. 31, Aff. of Pam Simon, ¶27; Ex. 18)

ANSWER: Undisputed.

V. ELIOT'S CLAIMS

65. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation the ("Eliot's Claims"). (Ex. 26)

ANSWER: Undisputed.

66. The pleading setting forth Eliot's Claims—not including exhibits—is seventy-two pages long and consists of one hundred and sixty-three separate paragraphs. (Ex. 26)

ANSWER: Undisputed.

67. No Owner of the Policy ever submitted any change of beneficiary forms which were received by the Insurer that designated Eliot, or any of Eliot's children as a beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶65-¶68)

ANSWER: Undisputed.

VI. INTEVENOR CLAIMS BY ESTATE OF SIMON BERNSTEIN

68. In its intervenor complaint, the Estate of Simon Bernstein, asserts that it has an interest in the policy because "Plaintiff cannot prove the existence of a Trust document; cannot prove that a trust was ever created; thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy Proceeds are payable to the Petitioner [Estate].....". (Ex. 26 at ¶12)

ANSWER: Undisputed, except that Intervenor's Complaint is attached as Exhibit 27 to Plaintiffs' Statement of Facts.

69. The Estate of Simon Bernstein produced no documents pursuant to Fed. R. Civ. P. 26 indicating that the Estate of Simon Bernstein was ever designated as a beneficiary of the Policy.

ANSWER: Undisputed.

70. The Policy Records contain no documents indicating that the Estate of Simon Bernstein was ever designated a beneficiary or contingent beneficiary of the Policy. (Ex. 29, Aff. of Don Sanders, ¶70)

ANSWER: Undisputed.

71. The Will of Simon L. Bernstein which was duly executed on July 25, 2012 and has been admitted to Probate in Palm Beach County, Florida. The Will of Simon L. Bernstein was filed in this action as an Exhibit to William Stansbury's motion to intervene (*See Dkt. #56-2*). A true and correct copy of the Will of Simon L. Bernstein is included in Movant's Appendix to their Statement of Undisputed facts as (Ex. 24.) A true and correct copy of the Palm Beach County Death Certificate for Simon Bernstein is included in Movant's Appendix of Exhibits. (Ex. 30, Aff. of Ted Bernstein, ¶96; Ex. 12)

ANSWER: Undisputed.

72. A copy of Plaintiff's Amended Complaint is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 25.)

ANSWER: Undisputed.

73. A copy of the Estate of Simon Bernstein's Intervenor Complaint is included in Movant's Appendix to its Statement of Undisputed Facts attached hereto as (Ex. 27.)

ANSWER: Undisputed.

74. A copy of Eliot's Counterclaims, Cross-claims and Third-Party Claims is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 26.)

ANSWER: Undisputed.

VII. THE INSURER'S INTERPLEADER ACTION

75. A copy of the Insurer's Interpleader Action is included in Movant's Appendix to its Statement of Undisputed Facts as (Ex. 28). In its Interpleader Action, the Insurer alleges that it failed to pay the Bernstein Trust's death claim because the claimants could not produce an original or copy of an executed trust agreement, and because the Insurer received a letter from Eliot setting forth a conflicting claim. (Ex. 28 at ¶22)

ANSWER: Undisputed.

LOCAL RULE 56.1(b)(3)(C) STATEMENT OF ADDITIONAL FACTS

1. Plaintiffs' and Intervenor's interests in the outcome of this action are diametrically opposed: the Policy proceeds will either be payable to the Plaintiffs or to the Estate, the beneficiaries of which are Simon Bernstein's grandchildren (Plaintiffs' children). (See Deposition of Ted Bernstein, attached hereto as Intervenor's Exhibit A, pp. 92:23 – 93:25)

Interested Parties

2. David and Pamela Simon are interested parties to this litigation. If Plaintiffs are successful, Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds. (See Deposition of David Simon, attached hereto as Intervenor's Exhibit B, pp. 58:9 – 59:4) David is Pamela's husband. (*Id.* at p. 7:9-10)

3. Ted Bernstein is an interested party to this litigation. If Plaintiffs prevail, he will receive over \$300,000, representing 20 percent of the Policy proceeds. (See Intervenor's Exhibit A, pp. 9:18 – 10:4; 118:17 – 118:14)

4. The remaining Plaintiffs (Jill Iantoni and Lisa Friedstein) are interested parties to this litigation. If Plaintiffs prevail, they will each receive over \$300,000, representing 20 percent of the Policy proceeds. (See Intervenor's Exhibit A, pp. 118:16 – 119:14; Plaintiffs' Exhibits 15 and 16)

Lack of Personal Knowledge

5. Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (*See* Intervenor's Exhibit A, p. 24:6-12) Ted Bernstein testified that he was informed by his father that he would be a trustee of the 1995 Trust in 1995 but did not recall his status as trustee until he was informed by David Simon after Simon Bernstein's death. (*See* Intervenor's Exhibit A, pp. 24:13 – 25:3)

The Purported 1995 Trust

6. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (*See* Dkt. No. 144 at ¶9; Intervenor's Exhibit A, p. 13:13-15; Plaintiffs' Exhibit 29 at ¶ 35, ¶ 37) No original or executed copy of the Policy has been produced by Plaintiffs to date. (*See* Plaintiffs' Exhibit 29 at ¶ 35)

7. While Ted asserts in his Affidavit that he was the Trustee of the Trust as of October 19, 2012, Robert Spallina, Simon Bernstein's lawyer, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust. (*See* Intervenor's Exhibit A, pp. 35:12 – 36:3 and Dep. Ex. 1) On October 19, 2012, Ted Bernstein sent an email to Robert Spallina suggesting that he had a "solution to the life insurance policy which provides the desired result" and that a conversation take place between he, Spallina, Pamela Simon and David Simon prior to any further overtures to the insurance company. (*See* Intervenor's Exhibit A, pp. 35:12 – 37:3; Dep. Ex. 1).

8. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement. (*See* Intervenor's Exhibit A, pp. 51:22 – 52:2; 53:22 – 54:4; Dep. Ex.2)

9. At least one “exhaustive search” for the 1995 Trust document had been conducted between September 13, 2012 and December 6, 2012, but it was not found. (*See* Intervenor’s Exhibit A, p. 55:1-11).

10. According to David Simon, the first attempt to locate the 1995 Trust took place in the winter of 2012-2013 (*See* Dep. of David Simon, p. 59:13-22). Foley & Lardner, the successor firm to Hopkins & Sutter, was contacted to see if they retained a copy of the 1995 Trust; but David Simon could not recall who contacted the law firm, which attorneys were contacted, or even if he or someone on his behalf made the effort to contact the law firm. (*See* Intervenor’s Exhibit B, pp. 44:12 – 45:15; 46:22 – 47:15)

11. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (*See* Intervenor’s Exhibit A, pp. 60:25 – 61:10; Dep. Ex. 10)

12. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid to Robert Spallina. (*See* Intervenor’s Exhibit A, pp. 62:16-63:3; Dep. Ex.2)

13. Mr. Spallina apparently engaged in discussions with Heritage making a plan for the company to interplead the funds into court in Florida. (*See* Intervenor’s Exhibit A, Dep. Exs. 1, 2, 4, 7, 11) However, at that point David Simon and his brother, Adam Simon, the attorney currently representing Plaintiffs in this case, abruptly filed a lawsuit in Circuit Court of Cook County on April 15, 2014 seeking to obtain the funds from Heritage. (*See* Intervenor’s Exhibit A, Dep. Ex. 16) This act resulted in a breach with Mr. Spallina, including a very angry exchange of emails. (*See* Intervenor’s Exhibit A, Dep. Exs. 16, 17)

14. Despite David Simon's averment that he recalls having created the trust on his computer and having seen it after execution, the Complaint filed by Adam Simon on behalf of David Simon's wife and her siblings makes no reference whatsoever to the execution of a written trust. It refers only to the existence of a "common law trust." (Dkt. No. 73 at ¶ 1) It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16.

15. As of August 30, 2013, the 1995 Trust (in any form) had not been located. (*See* Intervenor's Exhibit A, pp. 76:11 – 77:3)

16. David Simon claims to have located an unexecuted copy of the purported 1995 Trust on the computer system of the Simon Law Firm on September 13, 2013. (*See* Plaintiffs' Exhibit 15; Plaintiffs' Exhibit 32 at ¶¶ 28-29)

17. David Simon claims to have located an unexecuted copy of the purported 1995 Trust containing the handwriting of David Simon, in the stored files of the Simon Law Firm on or around September 13, 2013. (*See* Intervenor's Exhibit B, pp. 94:13 – 96:22)

18. According to David Simon, the persons who searched the offices of the Simon Law Firm to see whether a copy of the 1995 Trust could be found were David Simon (husband of Plaintiff Pamela Simon), Adam Simon (brother of David Simon), and Cheryl Sychowski (employee of STP Enterprises and The Simon Law Firm). (*See* Intervenor's Exhibit B, p. 47:17-21).

Subsequently Executed Estate Documents

19. Simon Bernstein executed a Will and Irrevocable Insurance Trust on August 15, 2000 (the "2000 Trust"). The Policy at issue in this litigation was listed as an asset of the 2000 Trust. That Trust document made no reference to a 1995 even though by definition it would have superseded it. (*See* Intervenor's Exhibit A at Dep. Ex. 23)

20. Pursuant to the terms of the 2000 Trust, Pamela Simon and her lineal descendants are considered “predeceased” and no inheritance was allocated for them “not out of lack of love or affection but because they have been adequately provided for.” (*See* Intervenor’s Exhibit A at Dep. Ex. 23, p. 19)

21. Simon Bernstein executed a Will and Trust Agreement on May 20, 2008 (the “2008 Trust”). Pursuant to the terms of the 2008 Trust, Pamela Simon and her lineal descendants, in addition to Ted Bernstein and his lineal descendants are considered “predeceased.” and no inheritance shall pass to them pursuant to the terms of the 2008 Trust (*See* Intervenor’s Exhibit A at Dep. Ex. 25, p. 7, ¶E. 1.; Dep. of David Simon, p. 55:2-17)

22. In May 2012, Plaintiff Pamela Simon wrote to her father, expressing her distress over his decision to disinherit her and her children, along with Plaintiff Ted Bernstein and his children. (*See* Intervenor’s Exhibit A at Dep. Ex. 25) Plaintiff Pamela Simon was passionate that Simon Bernstein’s estate plan did not, at that time, include several of his children, including Pamela Simon and Ted Bernstein. (*See* Intervenor’s Exhibit A, p. 91:13-25)

23. Simon Bernstein participated in a telephone conference with Plaintiffs and their spouses a few months prior to his death (Summer 2012) (*See* Intervenor’s Exhibit B, p. 53:1-19; Intervenor’s Exhibit A, p. 90:11-14) During this telephone conference, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children in an effort to quell some then-existing family acrimony. (*See* Intervenor’s Exhibit B, pp. 53:12 – 55:8; Intervenor’s Exhibit A, pp. 89:21 – 90:2; 90:15-18)

24. Simon Bernstein executed an Amended at Restated Trust Agreement on July 25, 2012 (the “2012 Trust”). This document amends and restates the May 20, 2008 Trust Agreement

in its entirety. (*See* Intervenor's Exhibit A at Dep. Ex. 24, p. 1) Pursuant to the terms of the 2012 Trust, Plaintiffs are deemed to have predeceased Simon Bernstein (*Id.* at p. 6) and all assets are directed to be passed in equal shares among Simon Bernstein's grandchildren. (*Id.* at p. 2, p. 16; Intervenor's Exhibit A, p. 89:2-15; pp. 118:17 – 119:14)

25. On September 7, 2012, six days prior to his death, Simon Bernstein executed a holographic will directing a \$100,000 bequest to Maritza Puccio from his current insurance policy and indicating that he would change the beneficiary on said policy to reflect his wishes. (*See* Intervenor's Exhibit C). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death, without interruption "from family or probate." (*Id.*) This document was not witnessed or notarized.

26. Simon Bernstein executed no other Wills or Trust Agreements which were witnessed and/or notarized between July 25, 2012 and September 13, 2012 (the date of his death).

Respectfully submitted,

By: /s/ James J. Stamos
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CERTIFICATE OF SERVICE

I hereby certify that on June 5, 2015, this Response to Plaintiffs' Rule 56.1 Statement of Undisputed Material Facts and Statement of Additional Facts pursuant to Rule 56.1(b)(3)(C) was filed electronically using the CM/ECF system and notice will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ James J. Stamos
James J. Stamos

EXHIBIT A

TED BERNSTEIN DEPOSITION

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.

Case No. 13 cv 3643

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, and
ELIOT BERNSTEIN

Third-Party Defendants.



1 ELIOT IVAN BERNSTEIN,
2 Cross-Plaintiff

3 v.

4 TED BERNSTEIN, individually and as
5 alleged Trustee of the Simon Bernstein
6 Irrevocable Insurance Trust Dtd
7 6/21/95,
8 Cross-Defendant

9 and,

10 PAMELA B. SIMON, DAVID B. SIMON, both
11 Professionally and Personally, ADAM
12 SIMON, both Professionally and Personally,
13 THE SIMON LAW FIRM, TESCHER & SPALLINA,
14 P.A., DONALD TESCHER, both Professionally
15 and Personally, ROBERT SPALLINA, both
16 Professionally and Personally, LISA
17 FRIEDSTEIN, JILL IANTONI, S.B. LEXINGTON,
18 INC. EMPLOYEE DEATH BENEFIT TRUST, S.T.P.
19 ENTERPRISES, INC., S.B. LEXINGTON, INC,
20 NATIONAL SERVICE ASSOCIATION (OF FLORIDA),
21 NATIONAL SERVICE ASSOCIATION (OF ILLINOIS),
22 AND JOHN AND JANE DOES

23 Third-Party Defendants.

24 _____/
25
26 DEPOSITION OF
27 TED BERNSTEIN

28 Taken on behalf of the Estate of Simon Bernstein

29
30 DATE TAKEN: May 6, 2015
31 TIME: 5:06 p.m. - 8:15 p.m.
32 PLACE: 2385 N.W. Executive Center Drive
33 Boca Raton, Florida

34 Stenographically Reported by:

35 Lisa Gropper, R.P.R., F.P.R.



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18 ALSO PRESENT: William Stansbury
19 Candice Bernstein (as noted)

20 - - -



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1 THE COURT REPORTER: Do you swear or affirm
2 that the testimony you're about to give will be the
3 truth, the whole truth, and nothing but the truth?

4 THE WITNESS: I do.

5 DIRECT EXAMINATION

6 BY MR. STAMOS:

7 Q State your name for the record, please.

8 A Ted Bernstein.

9 Q Where do you reside, Mr. Bernstein?

10 A 880 Berkeley Street, Boca Raton, Florida.

11 Q Where are you employed?

12 A In Boca Raton, Florida.

13 Q What's the entity that employs you?

14 A Life Insurance Concepts.

15 Q How long have you been in that business?

16 A Approximately 15, 16, 17 years.

17 Q Were you engaged in the insurance business
18 before working with Life Concepts?

19 A I was in the insurance business before.

20 Q With who?

21 A Primarily for myself.

22 Q Were you employed by yourself or were you an
23 employee of some other person or entity?

24 A I was employed by companies that I set up.

25 Q Can you just tell me generally -- I don't need



1 a lot of detail, but what was the nature of it? Was it
2 mostly life insurance?

3 A Yes, it was.

4 Q Do you hold a license of any kind in Florida?

5 A I do.

6 Q what kind of license do you hold?

7 A A life insurance license: Life, accident and
8 health insurance.

9 Q Do you hold a license in any other state?

10 A I believe I do.

11 Q what other state or states?

12 A I can't remember off the top of my head.

13 Q what are the candidates for states in which
14 you might hold a license?

15 MR. SIMON: Objection; speculation.

16 You can answer.

17 A I can't -- I really can't remember. There's a
18 lot of states, and at different times we will do
19 business in those states and get a nonresident license.
20 I really can't remember.

21 Q Let me ask you this: Did you ever have a
22 resident license in any other state?

23 A I did.

24 Q what state is that?

25 A Illinois.



1 Q Is that license still active?

2 A My resident license is not.

3 Q Okay. Has any license, resident or otherwise,
4 in any state ever been disciplined or restricted in any
5 way?

6 A I don't recall. I don't think so.

7 Q Can you tell me what status you now have with
8 respect to the Estate of Simon Bernstein.

9 MR. SIMON: Objection; vague.

10 Q Do you understand my question?

11 A I don't understand the word "status".

12 Q Well, do you have any official role in any
13 official capacity with regard to the estate itself or
14 any entities or structures that relate to the estate?

15 MR. SIMON: Objection; vague.

16 A I believe I do; as trustee.

17 Q Of what are you trustee?

18 A Simon Bernstein Trust.

19 Q What is the year of that trust?

20 A I don't recall.

21 Q You are also a plaintiff in the case that's
22 pending in Chicago; is that correct?

23 A Yes.

24 Q So have you perceived any divergence of
25 interest or any conflict of interest in having a role



1 with respect to the trust and the estate while
2 simultaneously being a plaintiff in the case in Chicago?

3 A I do not.

4 Q As the trustee of the trust, the Simon
5 Bernstein Trust, will the proceeds of the estate, once
6 they are disbursed, be disbursed to that trust of which
7 you are a trustee?

8 MR. SIMON: Objection; speculation.

9 Q To your knowledge, is that your understanding
10 of the mechanics of it?

11 A I do believe that that's correct.

12 Q And you agree that, if you are successful as a
13 plaintiff in the Chicago case, the amount of assets
14 available in the estate to be disbursed to the trust of
15 which are you a trustee will be reduced, correct?

16 A Could you -- could you ask me that in a
17 different way?

18 Q Yes. If you are successful as a plaintiff in
19 the Chicago case and the proceeds of the insurance
20 policy regarding which we are all litigating is
21 disbursed to the plaintiffs in the Chicago case, those
22 funds will not be disbursed to the estate. You
23 understand that?

24 A I do.

25 Q And, therefore, the estate will have less



1 funds to disburse to the trust of which you are a
2 trustee. Do you understand mechanically that's what
3 would happen in that circumstance?

4 A I -- I do.

5 Q So you don't perceive a conflict in those
6 roles?

7 A I do not.

8 Q Okay. Now, the date of your father's death
9 was September 13, 2012, correct?

10 A Yes.

11 Q Prior to the time that your father died, were
12 you aware of the existence of any trust with regard to
13 any life insurance policy?

14 MR. SIMON: Objection; vague.

15 A Can you define "existence"?

16 Q well, when did you first learn that -- well,
17 strike that.

18 In the lawsuit in Chicago, you're aware that
19 the plaintiffs are promoting the notion that there is a
20 1995 insurance trust which should receive the funds of
21 the insurance proceeds, correct?

22 A Correct.

23 Q When did you first become aware of the
24 existence of the trust that is being promoted as the
25 beneficiary in the Chicago case?



1 A I'm not sure that I can recall when I first
2 remembered when there was a trust.

3 Q Did you learn of it before or after your
4 father passed away?

5 A Before.

6 MR. STAMOS: I just want to get oriented
7 mechanically here. What we did was we have a bunch
8 of exhibits that we sent down, and the court
9 reporter was kind enough to break them into
10 exhibits so that we could use them with some ease.
11 I think there should be more than one set there I'm
12 hoping. And so we'll address those in a moment.
13 Among them would be the affidavit that was
14 submitted in support of the Motion for Summary
15 Judgment. I'm wondering if the court reporter
16 could give that to the witness now, and it is
17 Exhibit 19.

18 (Exhibit 19 was marked for identification.)

19 Q (By Mr. Stamos) Now, first of all,
20 Mr. Bernstein, can you tell me, who drafted this
21 affidavit?

22 A Can you explain -- help me with the term
23 "draft"?

24 Q Who wrote it? Who created it? I'm not sure
25 how to put it otherwise, but let's start with that.



1 A Counsel and -- and me, I guess.

2 Q Mr. Simon --

3 A Correct.

4 Q -- and you?

5 A Correct.

6 Q What did you understand the purpose of the
7 affidavit to be?

8 A To create a record of what my understanding
9 was of the questions being addressed here.

10 Q Now, if I could ask you, please, to look at --
11 I think it's the -- I don't know what page it is, but
12 it's -- I guess at the top it's Page 6 of 20, if you
13 look up there, and paragraph 25. Do you see that?

14 A I do.

15 Q Now, that paragraph says that, "I, Ted
16 Bernstein, as trustee of the Bernstein Trust, retained
17 plaintiff's counsel and initiated the filing of this
18 action."

19 Now, the first question I have for you is
20 what's the basis for your assertion that you are the
21 trustee of the Bernstein Trust?

22 A What is the basis of my understanding?

23 Q Yeah.

24 A I guess a couple of different things would be
25 the basis of my understanding.



1 Q what are they?

2 A David Simon told me I was the successor
3 trustee.

4 Q Okay.

5 A I've seen documents that would lead me to
6 believe that I was a successor trustee in some of the
7 notes that were in the documents that I've seen.

8 Q what documents are those?

9 A Trust documents.

10 Q which trust documents are you referring to?

11 A I'm referring to the trust document that owned
12 this trust. I mean owned this policy.

13 Q So do we share the understanding that no one
14 has located an executed copy of the 1995 trust?

15 A We do.

16 Q I have Exhibits 21 and 22. I would ask the
17 court reporter to give those to you.

18 (Exhibits 21 and 22 were marked for
19 identification.)

20 Q Looking at number 21, I understand this to
21 have been a draft of -- represented to be a draft of a
22 trust that was found on a computer in the Simon law
23 office. Have you seen this document before and is my
24 understanding correct as far as you know?

25 A 21?



1 Q Yeah.

2 (Pause.)

3 Q Does my question make sense or should I
4 restate it? It was kind of convoluted.

5 A Sure, please.

6 Q So looking at number 21, what do you
7 understand that to be?

8 A An unexecuted copy of the irrevocable trust
9 agreement.

10 Q I'll tell you what. When we're talking about
11 the '95 trust, how about if we both call it the '95
12 trust? That way we won't confuse ourselves. Because I
13 think I started by not doing that, and I don't want us
14 confused. Okay?

15 A The '95 trust, certainly.

16 Q Have you seen this before?

17 A Yes, I have.

18 Q Is this one of the documents you're referring
19 to as being one of the bases for your belief that you
20 are the trustee of the '95 trust?

21 A I believe so.

22 Q When I look at Page 10, BT10, paragraph A
23 refers to the appointment of a successor trustee and it
24 refers to David Simon, and I'm wondering what about this
25 document implies to you that you would be the successor



1 trustee.

2 A well, there's a couple of versions of this
3 document if my recollection is correct, and -- or maybe
4 not this document, but maybe forms of this document, and
5 in another one of the forms of this document I have seen
6 in this, what I believe would be the same or similar
7 section, some handwritten notes that listed me as a
8 successor trustee.

9 Q So, at least for our purposes, what I've shown
10 you as number 21 does not refer to you, correct?

11 A That's correct.

12 Q All right. We'll get back to 21.

13 Looking at 22 now, if you go to Page 20, I
14 understand, and tell me if you share this understanding,
15 that number 22 was a hard copy draft represented to be a
16 draft of the '95 trust that was found in a file
17 someplace in the Simon law office. Do you share that
18 understanding?

19 A I'm -- I'm not sure. Could you repeat that
20 for me, please?

21 Q well, have you seen this before?

22 A I have.

23 Q what do you understand it to be?

24 A A version, another version of the -- of the
25 trust document, of the '95 trust.



1 Q It is also unexecuted, correct?

2 A Yes, it is.

3 Q When you look at Page BT20, do you see that?

4 A I do.

5 Q When you look at paragraph A under article 11,
6 is that the handwriting you're talking about having
7 seen?

8 A Yes, it is.

9 Q It says, "If for any reason --," it looks like
10 it says, "Shirley dead," et cetera, question mark,
11 right?

12 A Yes.

13 Q Then it says, "Does not continue to act as
14 trustee," and then it looks like it says, "Pam, Ted,"
15 right?

16 A Yes.

17 Q Whose handwriting is that, do you know?

18 A I believe it to be David's.

19 Q Did David ever have a conversation with you
20 about either of these documents, 21 or 22?

21 A No.

22 Q Other than those two documents that I've just
23 shown you, Exhibits 21 and 22, are you aware of any
24 other documents that exist that constitute drafts of the
25 1995 trust?



1 A No.

2 Q So, as far as you know, these are the only
3 drafts that are in our communal possession, correct?

4 A I believe so.

5 Q Earlier, in beginning to answer one of my
6 questions, you said that David Simon was a source of
7 your knowledge that you were the trustee. Did you ever
8 have a conversation with David in that regard, or
9 conversations?

10 A About him telling me that I was the successor
11 trustee?

12 Q Yes.

13 A Yes.

14 Q When was the first time you and he talked
15 about that?

16 A It was sometime after Simon's death. I would
17 say after Simon's death.

18 Q Do you have a sense for how long after Simon's
19 death?

20 A No, I really don't.

21 Q Who was present for that conversation?

22 A Other than he and me, I don't know if anybody
23 was.

24 Q What did you say to him? What did he say to
25 you in that conversation?



1 A I don't have any idea.

2 Q well, did you talk about the '95 trust?

3 A Yes.

4 Q what did you say to him and what did he say to
5 you?

6 A I can't recall the specifics, but it was about
7 the fact that there was a trust that was unable to be
8 located and who the -- the trustees were, who the
9 successor trustees were.

10 I can't be more specific with you than --
11 than -- than that. I just don't recall, you know, the
12 specifics of the conversation at that point in time.

13 Q All right. At the point in time that you had
14 that conversation, did David have in his possession
15 either Exhibit Number 21 or Number 22, or had you seen
16 either of them by then?

17 A I don't believe so.

18 Q Is it fair to say that you didn't see 21 and
19 22 until sometime after your father died?

20 A That's correct.

21 Q Now, if you would go to -- looking back at
22 your exhibit now, which is number 19, if you would look
23 at paragraph 47. Do you see that?

24 A Yes.

25 Q Now, you describe there that you participated



1 in and conducted diligent searches of your father's
2 home, office and condominium, and some further activity
3 following that. Can you tell me when those searches
4 took place relative to his death?

5 A No, I can't.

6 Q Can you give me a time range? If you think
7 about the date of his death being in September, did you
8 do that search October, November, December?

9 A I really -- I don't know the dates.

10 Q Who else searched, or who searched with you,
11 if that's different?

12 A I don't believe that anybody else searched
13 with me.

14 Q Did anyone search separately for documents?

15 MR. SIMON: Object --

16 A No.

17 Q In paragraph 48 of Exhibit 19, it says, "I am
18 aware that the documents produced by Plaintiffs in this
19 matter also contain documents located by David Simon and
20 Pamela Simon in their offices in Chicago." Do you see
21 that there?

22 A I do.

23 Q When do you understand they performed a search
24 of their offices in Chicago for documents relative to
25 the dispute we're in now?



1 MR. SIMON: Objection; speculation.

2 A I have no idea.

3 Q Well, you said that you're aware. How were
4 you made aware of that fact?

5 A By learning of it probably from conversations.

6 Q Conversations with whom?

7 A With David Simon, I would imagine.

8 Q But you don't know the source -- you can't
9 tell me specifically the source of that information,
10 correct?

11 A Well, you're asking for dates or source?

12 Q Well, source is where I'm going now.

13 A Source, I think it was with -- with David
14 Simon.

15 Q What documents do you understand were located
16 and produced that were found in their offices?

17 MR. SIMON: Objection; speculation.

18 Q Well, now, let's make sure we're clear. I'm
19 never asking you to speculate -- there might be times
20 that I do ask you to speculate. Sometimes that's a
21 useful question to ask. So when Mr. Simon says,
22 "Objection; speculation," I'm asking you to tell me what
23 you know or you don't know or what you think. So I just
24 want you to be aware that I'm not asking you to take
25 wild guesses about things.



1 A Okay.

2 Q All right?

3 A Could you ask me that last question again,
4 please.

5 Q Now I forget my question.

6 MR. SIMON: Can you read the question?

7 MR. STAMOS: Why don't you read that question
8 back.

9 (Candice Bernstein enters the room.)

10 (Read back by the reporter.)

11 MR. SIMON: Same objection.

12 Let's just take a one-minute break.

13 (Recess taken.)

14 MR. STAMOS: Was there a question pending?

15 (Read back by the reporter.)

16 THE WITNESS: And -- other than these
17 documents, I would imagine, that you're asking me
18 about?

19 Q (By Mr. Stamos) Other than 21 and 22 you mean?

20 A Yes.

21 Q Yes.

22 A Other than 21 and 22. I believe there was a
23 document that was something to do with a filing to the
24 IRS concerning the trust. There might have been a -- a
25 w-9 or something. And I think that might be the extent



1 of it.

2 Q All right. So let's then go to number 88,
3 paragraph 88. That's page 13 of 20.

4 A 88?

5 Q Yes.

6 A Okay. It's on my Page 12, but okay.

7 Q Oh. If you look at the top, does the top say,
8 "13 of 20"?

9 A 13 of 20 on the top, it does.

10 Q Yeah, I'm sorry. I think actually we had
11 those numbered and sent to you, but the copy I had it
12 made from was never numbered. So we'll refer to it as
13 Page 12.

14 A Okay.

15 Q All right. So 88, it says here, "In 1995, I
16 was sharing office space with Simon Bernstein in
17 Chicago, as was your sister Pam and David."

18 Now, first of all, during what years did you
19 share office space with your father in Chicago?

20 A About these times, I'm going to say shared
21 office space in 1980 through 1995-ish.

22 Q In 1995, did you leave for Florida?

23 A Yes. I began --

24 Q Okay.

25 A Yes, I began going to Florida in 1995 back and



1 forth.

2 Q It says, "In the summer of 1995, Simon
3 Bernstein discussed with me that he was forming a life
4 insurance trust with a policy and that I would be named
5 one of the trustees for the life insurance trust."

6 Now, who was present for that conversation?

7 A Of course Simon Bernstein, my father, would
8 have been present, but other than that I can't remember.

9 Q After you and he talked about that in 1995,
10 what was the next time you had any information or
11 knowledge regarding the existence, creation, changes to,
12 et cetera, regarding a trust in 1995, dated 1995?

13 A I believe that would have been maybe a year, a
14 year and a half prior to my father's death when there
15 was a -- this -- the policy that was in this trust
16 lapsed and there was a reinstatement matter, and about
17 that time it would have -- it would have come up again.

18 Q When you say, "It would have come up again,"
19 did you have a conversation with anyone at that time
20 about the 1995 trust? In other words --

21 A No.

22 Q -- at the time that you were addressing the
23 reinstatement of the policy the year or two before he
24 died, did you have any conversation with him, not about
25 the reinstatement of the policy, but about the 1995



1 trust?

2 A No.

3 Q So any other time prior to his death that you
4 had conversations with anyone about the 1995 trust?

5 A No.

6 Q Now, it says here that he told you you were
7 going to be one of the trustees. I take it you never
8 saw an executed trust with you -- period, correct?

9 A Correct.

10 Q So, therefore, you never saw an executed trust
11 with your name on it as trustee, correct?

12 A Not -- not that I recall.

13 Q Well, when you had the conversation with David
14 Simon that you described earlier in which you learned
15 that you were the replacement -- the successor trustee,
16 did you remember this conversation with your father, or
17 was that a different topic because in '95 he said you
18 would be the trustee, not a successor trustee?

19 MR. SIMON: Objection; vague.

20 A So the conversation with David Simon would
21 have made perfect sense -- based on '88, would have made
22 perfect sense when he told me that I was, you know,
23 successor trustee.

24 Q Right. I mean, I know it would have made
25 perfect sense. What I'm asking you is: Did you hearken



1 back and say, "Oh, yeah, dad told me that," or something
2 like that?

3 A Oh. I don't recall. I can't remember.

4 Q Then if you would go, please, to paragraph 97,
5 it says, "Following the death of my father, my sister
6 Pamela and brother-in-law David conducted searches of
7 their office files and records and that's where they
8 located the unexecuted drafts." I take that to be 21
9 and 22, correct?

10 A Yes.

11 Q Now, referring to the metadata that is in the
12 last sentence of that paragraph, if you would please
13 look at Exhibit 21, let me tell you what I understand
14 the facts to be, and tell me if you share the
15 understanding. I always get a little confused about
16 metadata, but where it indicates, "Wednesday June 21,
17 1995," then says, "Modified," David's told us that's
18 actually the date the document was created. Does that
19 sound like your understanding?

20 MR. SIMON: Objection; speculation. This is
21 not his database. He knows nothing about it.

22 MR. STAMOS: Adam, if you've got an objection
23 as to form, you may do that, but I don't expect you
24 to give answers about what he knows or he doesn't
25 know, because the affidavit says it includes a



1 printout of metadata from the computer file for
2 this draft indicating it was last modified on
3 June 21st. So he's got some knowledge; otherwise,
4 he wouldn't have signed the affidavit. So please
5 don't tell him what he knows and doesn't know.

6 So I'm going to ask my question again.

7 Q (By Mr. Stamos) when you look at the metadata,
8 do you understand -- this is my understanding. Do you
9 understand that, where it says, "Modified Wednesday
10 June 21, 1995" -- David Simon has told us that's the day
11 that the document was created. Is that your
12 understanding of it?

13 MR. SIMON: Objection; speculation.

14 A I just want to make sure that -- could you
15 help me out and -- where do you want me to look at on
16 this document in reference to what you're asking me?

17 Q On the page you're looking at, is there --
18 Can you see this (indicating)?

19 Is there a little square box --

20 A Yes, there is.

21 Q -- rectangular box? Okay.

22 So you see those words there about -- on the
23 second half of it, so to speak, "Created, modified,
24 accessed"?

25 A Yes, I do now, yeah. Yes.



1 Q What I understand David has testified to, and
2 I believe it's on Page 90 of his deposition, is that
3 where it says, "Modified," that was the day it was put
4 in the computer; where it says, "September 3rd," that
5 was the day it was re-entered into a new database,
6 September 3, 2004; and where it says, "September 30,
7 2013 accessed," that's the day it was taken off of the
8 computer and ultimately printed so that we could see it.
9 Do you share that understanding?

10 MR. SIMON: Objection; speculation.

11 A I don't. I don't have any idea what this --
12 all this means.

13 Q Do you know what date it was that this
14 document, 21, was taken off of the computer?

15 A I don't.

16 Q Where paragraph 98 says, "The second draft of
17 the Bernstein trust was located as a hard copy inside a
18 file folder within the stored files of David Simon," do
19 you know when that was found?

20 A Back to this document (indicating)?

21 Q Back to Exhibit Number 22, yes.

22 A Okay. Could you ask me that again, please?

23 Q Yeah. If you look at -- do you know when
24 Exhibit Number 22 was found?

25 A I don't.



1 Q How did you learn it was found?

2 A I learned of it from conversations with David.
3 I learned of it reading these things. I -- that's, I
4 guess, the two ways I would have learned about it.

5 Q We're going to go through some emails in a
6 moment, but I imagine that the discovery of those two
7 drafts was considered to be an important step in this
8 case for you, correct?

9 MR. SIMON: Objection; speculation.

10 Q Was it important or not?

11 A I don't know.

12 Q Did you think it was a positive development
13 from the point of view of the lawsuit, you as a
14 plaintiff in the Chicago lawsuit, that these documents
15 were found?

16 MR. SIMON: Objection; relevance.

17 A I thought it was a positive development as a
18 layperson.

19 Q How did you come to possess them so that you
20 could look at them? Were they emailed to you from
21 Chicago?

22 A I don't recall.

23 Q Do you recall seeing them before today,
24 obviously?

25 A Yes.



1 Q Do you recall seeing him before the lawsuit
2 was filed in Chicago?

3 A I don't recall.

4 Q Now, a couple of more things about your
5 affidavit.

6 Some of these things that are in here -- I'd
7 like you, if you would, to look at paragraph 21, would
8 you, of Exhibit Number 19. Do you see paragraph 21?

9 A I do.

10 Q Now, the first sentence where it says, "The
11 Simon Bernstein Irrevocable Insurance Trust dated
12 6/21/95 is an irrevocable life insurance trust formed in
13 Illinois as further described below," does that assume
14 that the trust -- your statement that it is a trust, is
15 that based upon your understanding that it was executed?

16 A If I'm understanding your question correctly,
17 yes.

18 Q What's the basis for your understanding that
19 it was executed?

20 A That -- number one, that David told me that it
21 was; number two, that there were filings that had tax ID
22 number. I believe I -- there was a form that may have
23 been filled out for the insurance company that named the
24 beneficiary -- I mean -- yeah, that named the life
25 insurance trust as the beneficiary, and maybe there was



1 an Equifax reporting where I think Simon said --
2 mentioned that the contingent beneficiary of the life
3 insurance policy was an irrevocable trust, just --

4 Q But in terms of your father having signed the
5 document, the knowledge of that is based on what David
6 Simon told you, correct?

7 A Yes.

8 Q Look if you will, at paragraph 40, which is on
9 page -- I'm guessing 7 at the bottom.

10 A 40?

11 Q Yes, paragraph 40, the last line of that.
12 Do you see that?

13 A I do.

14 Q It says, "The vivo was dissolved in 1998 upon
15 dissolution of S.B. Lexington, Inc." How do you know
16 that?

17 A I know that from -- from David.

18 Q Where it says, paragraph 41, "Robert Spallina,
19 Esquire was named a third-party defendant to Eliot's
20 claims," how do you know that?

21 A I'm not sure how I know it. I just -- I'm not
22 exactly sure that I even understand that question.

23 Q You don't understand the question or the
24 assertion in 41?

25 A Your question of how I know something.



1 Q well, how did you become aware? How did you
2 become aware of the statement of the fact asserted in
3 paragraph 41, that Robert Spallina, Esquire was named a
4 third-party defendant to Eliot's claims? How do you
5 know that to be true?

6 A Probably from seeing documents where he was a
7 named defendant.

8 Q would that also be true with regard to the
9 succeeding paragraphs, 42, 43, 44?

10 A Okay. So I've read those subsequent
11 paragraphs. What is the question about them?

12 Q How do you know the facts asserted in those
13 paragraphs?

14 A well, they're all different paragraphs about
15 different things, so some --

16 Q well, we'll go through them one by one.
17 That's fine.

18 A Okay.

19 Q How do you know that National Services
20 Association was named as a third-party defendant to
21 Eliot's claim?

22 A From seeing documents or from -- and/or from
23 having conversations with David and counsel.

24 Q How about Benjamin Brown filed a motion to
25 intervene? How did you know that?



1 A From conversations with -- with counsel or
2 seeing documents.

3 Q Look at page 59 -- I'm sorry, paragraph 59 on
4 Page 9, please, and in that first sentence, it says,
5 "During the application process, the insurer conducted a
6 routine underwriting investigation of Simon Bernstein
7 prior to approving his policy." How do you know that?

8 A From conversations with counsel, and also
9 there were a lot of documents that the insurance company
10 sent over to me at the time that this policy was going
11 through the reinstatement process. So these are all
12 pretty common things for -- for me to see in -- in an
13 insurance company's document like that.

14 I'm -- I'm -- I think it would be also in
15 something about an application process that may have
16 been through the discovery of the documents that the
17 insurance company provided in that reinstatement
18 process.

19 Q Look at paragraph 70, please. It's on Page
20 10.

21 A Okay.

22 Q It says, "On or about June 5, 1992, a letter
23 was submitted on behalf of the policyholder informing
24 the insurer that LaSalle National Trust was being
25 appointed as successor trustee." Did you become aware



1 of that by reviewing documents in this case?

2 A Yes, I believe so.

3 Q Likewise, the June 17, 1992, acknowledgment by
4 the insurer is also something you learned long after
5 1992, correct?

6 A Yes.

7 Q That's all I want to talk to you about your
8 affidavit for now. I want to walk through the emails
9 with you, if we can. I think they've been numbered.
10 I'd like to begin with Exhibit Number 1.

11 (Exhibit 1 was marked for identification.)

12 Q Do you have that in front of you? I believe
13 it's marked Exhibit Number 1 with Bates numbers TS4965
14 to 4966. Do you see that?

15 A Yes, I do.

16 Q Now, this is dated -- it's a string that
17 begins, it looks like, on October 15th and ends on
18 October 19th, if I'm looking at that correctly. So we
19 have to read the second page first. Okay?

20 A Yes.

21 Q Now, as best I'm able to tell, this is the
22 earliest email that I have on the subject matter of
23 obtaining the life insurance proceeds that we're
24 addressing here. Do you know when the process began, if
25 this was the beginning of the process or was there



1 effort and discussion about that prior to October 15,
2 2012?

3 A I do not know.

4 Q What's the first conversation you recall with
5 anyone after your father's passing about the insurance
6 policy and the trust and so forth?

7 A My recollection would be with Robert Spallina
8 and/or Don Tescher.

9 Q If we're looking here at Exhibit Number 1,
10 Page 2 of that exhibit, on the 15th it looks like Pam
11 wrote, "Hi all. Do you have time for a status," to
12 which Spallina writes, "There are no updates at this
13 time." Does that imply to you that there must have been
14 communications before October 15th about the insurance
15 policy?

16 MR. SIMON: Objection; speculation.

17 A No, it doesn't.

18 Q It doesn't?

19 A No.

20 Q So, when he says there are no updates, would
21 that not imply to you that he knew there was something
22 to be updated and, therefore, would have been familiar
23 with the topic?

24 A I -- I'm not sure. There were a lot of things
25 going on about a lot of topics. So the question "Do you



1 have time for status --"

2 Q okay.

3 A -- I -- I can't be sure what led up to the --
4 to that question being asked without any more guiding
5 information in that sentence.

6 Q Did you have an understanding that
7 Mr. Spallina submitted a claim to the insurance company
8 representing himself to be the trustee of the '95 trust?

9 A Can you ask me that again? There was wind or
10 something.

11 Q I'm sorry. That's actually a train.

12 Do you understand that Mr. Spallina made
13 application to the insurance company for the proceeds of
14 the insurance stating that he was the trustee of the
15 trust?

16 A I do understand that, yes.

17 Q When is the first time you became aware that
18 Mr. Spallina was going to make an application
19 identifying himself as the trustee?

20 A I'm -- I will say after Simon's death
21 obviously, but other than that, I don't -- I can't tell
22 you what the time period was.

23 Q Did you ever have a -- were you aware he was
24 going to do that before he did it?

25 A I was not.



1 Q You were only aware of that after he was --
2 after he did it?

3 A After he did it.

4 Q How did you become aware of that?

5 A Through conversations with Robert Spallina.

6 Q Look, if you will, at the top of -- I'm sorry,
7 look at the middle, from Robert Spallina, October 19th,
8 to Pam Simon, copied to you. Do you see that?

9 A We're on Page 1 now?

10 Q Yes, we are.

11 A Page 1, and you want me to pick up where?

12 Q Where it says, right in the middle, "Pam, my
13 office is processing."

14 A Yeah.

15 Q Do you see that?

16 A Yes, I do.

17 Q And you were copied on this, correct?

18 A I was.

19 Q It says, "My office is processing --" this is
20 from Spallina. "My office is processing the claim as
21 your father was the owner of the policy and the proceeds
22 will likely be paid to the estate in the absence of
23 finding the trust."

24 Is it fair to say -- did you understand at
25 that point it was understood that the trust could not be



1 located, the '95 trust?

2 MR. SIMON: Objection; speculation, form.

3 A Yes.

4 Q Then he says, "As I mentioned previously,
5 there was a discussion with the carrier about possibly
6 using the 2000 trust (the one you are carved out of but
7 would be split five ways according to Ted), but I am not
8 sure that we will achieve that result." Do you see
9 that?

10 A I do.

11 Q What was the first conversation you had with
12 Mr. Spallina about the possibility of submitting the
13 claim to the insurance company using the 2000 trust?

14 A Around the same time that these discussions
15 were going on.

16 Q When did you become aware that the 2000 trust
17 existed?

18 A Around this same time period.

19 Q When you first had that conversation with
20 Mr. Spallina, what did you say to him and what did he
21 say to you about using the 2000 trust to submit a claim
22 to the insurance company?

23 MR. SIMON: Objection; privilege.

24 Don't answer.

25 MR. STAMOS: Privilege? Privilege of who for



1 whom?

2 MR. SIMON: Attorney-client. He was his
3 attorney. Spallina was his attorney. You're
4 asking about a conversation between him and his
5 attorney.

6 Q well, he was your attorney personally or as
7 trustee or what?

8 A He was my attorney as trustee.

9 Q Trustee of what?

10 A Shirley Bernstein Trust.

11 Q Did the Shirley Bernstein Trust have an
12 interest in the insurance policy that we're litigating
13 about?

14 A It did not.

15 Q So what did the conversation you had with him
16 about the 2000 trust have to do with your role as
17 trustee of Shirley's trust?

18 MR. SIMON: Same objection; privilege.

19 Don't answer.

20 MR. STAMOS: Well, I'm not asking for a
21 conversation. I'm trying to establish -- I think
22 that you're obligated to establish the basis of a
23 privilege objection, and I'm entitled to test the
24 existence of the privilege.

25 You've declared that Mr. Spallina was his



1 lawyer. He's now told me Mr. Spallina was his
2 lawyer as trustee of Shirley's trust, and he's now
3 established with me that Shirley's trust had no
4 interest in the subject matter of the insurance
5 policy, while we know that Mr. Bernstein has a
6 personal interest in the result of the insurance
7 policy. So I don't see how Mr. Spallina was his
8 lawyer with regard to this topic.

9 Do you have a basis for asserting that?

10 MR. SIMON: He consulted with him as an
11 attorney on this matter. That's my basis.

12 Q (By Mr. Stamos) Is that true, Mr. Bernstein.

13 THE WITNESS: Answer?

14 MR. SIMON: (Nonverbal response.)

15 A Is it true that I consulted with him about
16 this matter?

17 Q That you consulted with him about this matter
18 in a capacity other than as the trustee of Shirley's
19 trust.

20 And I don't mean to be disrespectful by saying
21 "Shirley's trust". I'm just shortening --

22 A Sure.

23 Q Is "sure" the answer to my question or
24 response to my comment there?

25 A Oh.



1 Q I'm sorry, I'm confused.

2 MR. ROSE: Do you want to confer about the
3 privilege issue if you're confused?

4 MR. STAMOS: I do. I do.

5 would you please recite the question again to
6 the witness leaving out my comment about Shirley.

7 MR. SIMON: We're going to take a minute and
8 confer on a privilege issue.

9 MR. STAMOS: That's a good idea.

10 (Recess taken.)

11 MR. STAMOS: All right. So can we read the
12 last question back to the witness without my
13 editorial comment at the end.

14 (Read back by the reporter.)

15 Q (By Mr. Stamos) Can you answer that, please.

16 THE WITNESS: Could you read it back to me
17 again, please.

18 Q Actually, you know what, let me stop there.
19 Let me ask a couple of more questions and I'll get back
20 to that.

21 would you agree with me that Exhibit Number 1
22 reflects an email by Mr. Spallina to yourself and to Pam
23 with regard to the subject matter of the potential use
24 of the 2000 trust?

25 A Yes.



1 Q And, likewise, the email from yourself at the
2 top to Mr. Spallina and to Pam is talking generally here
3 about making the application to the insurance company,
4 correct?

5 A Correct.

6 Q So you made Pam privy to your conversations
7 and your communications with Mr. Spallina with regard to
8 this topic, correct?

9 A Well, I don't know if I made her privy, but
10 this was a chain of people in -- in this email going,
11 you know, between two and three people.

12 Q Right. But you were the only one who was the
13 trustee of Shirley's trust, correct?

14 A Yes.

15 MR. STAMOS: All right. Well, let me just add
16 that, not only do I still not understand what the
17 basis for a privilege would be, but if there was a
18 privilege, it was waived by including Pam in these
19 communications. So do I need to establish that any
20 more, Adam, or can I ask more questions?

21 MR. SIMON: It depends what the question is.
22 If it's about these emails, that's fine. If it's
23 about conversations between Robert and him
24 personally, it's not fine. It's privileged.

25 MR. STAMOS: All right.



1 Q (By Mr. Stamos) were there any other
2 conversations in which you and Pam and he participated
3 with regard to the subject matter of the 2000 trust?

4 A No, not that I recall.

5 Q what was the notion behind the potential for
6 using the 2000 trust?

7 MR. SIMON: Objection; speculation.

8 A I don't know.

9 Q when Mr. Spallina made the application to the
10 company identifying himself as the trustee of the '95
11 trust, was he acting as your lawyer at that time?

12 MR. SIMON: Objection; form. I think you said
13 made an application to an insurance company?

14 Q I thought we established earlier that you were
15 aware that Mr. Spallina had applied to the insurance
16 company for distribution of the proceeds to the '95
17 trust and had done that representing himself to be the
18 trustee of the '95 trust. Did I hear that correctly?

19 A Yes.

20 Q Okay. when he did that, was he your lawyer
21 then?

22 A Yes.

23 Q So are you telling us that he submitted that
24 as your lawyer without your knowledge?

25 A I'm telling you that, if that's what he did as



1 my -- if that's what he did, he was doing it as my
2 attorney.

3 Q But you're telling me that he did it without
4 your knowledge?

5 A I'm telling you that, if he did it, he did it
6 as my attorney. Whether he did it with my knowledge or
7 not, that's something I think I've said I -- I don't
8 remember.

9 Q When you say he did it as your attorney, are
10 you saying he did it as your attorney in your capacity
11 as the trustee of Shirley's trust?

12 A All my --

13 MR. SIMON: Objection; speculation.

14 MR. STAMOS: Well, I mean, I'm not sure what's
15 speculative about that.

16 Q Can you answer that question?

17 MR. SIMON: Yeah, I can answer what's
18 speculative about it. He --

19 MR. STAMOS: No, no, no. I haven't asked you
20 any questions. I'm asking the witness. I'm not
21 asking you to explain to the witness now how to
22 calculate this as being speculative. I'm asking
23 the question.

24 I'm going to ask the court reporter to read
25 that question back.



1 (Read back by the reporter.)

2 A I'm saying that my conversations with Robert
3 Spallina, I viewed him as my counsel. In any
4 conversations I had with Robert Spallina, I expected
5 that the attorney-client privilege was there.

6 Q But what I'm trying to get at is, do you have
7 an understanding as to in what -- because you have --
8 you wear many hats apparently. Are you saying he was
9 your attorney in every hat you wore?

10 MR. SIMON: Object to form.

11 Q Do you understand my question?

12 A I believe I do.

13 Q Okay. Are you telling us that he was your
14 attorney in each of the capacities you have that relate
15 to the subject matter of this lawsuit?

16 A In these -- in these matters --

17 Q For your father's --

18 A Yes.

19 Q So that would include he was your attorney as
20 the trustee of Shirley's trust; he was your attorney as
21 the successor trustee of the '95 trust; and he was your
22 personal attorney?

23 A As everything that relates to these matters,
24 yes, I -- I viewed Robert as my attorney.

25 Q Did he ever disclose to you potential issues



1 of conflict that arose by virtue of the divergent roles
2 you have as I've just described, and perhaps there are
3 other roles?

4 MR. SIMON: Objection; privilege.

5 MR. STAMOS: Privilege for which attorney --

6 MR. SIMON: If that's not privileged, nothing
7 is.

8 MR. STAMOS: Well, we're going to have to
9 litigate about this, so I'm trying to figure out --

10 MR. SIMON: That's fine.

11 MR. STAMOS: -- a privilege in which
12 attorney-client relationship? The attorney-client
13 relationship of him to --

14 MR. SIMON: You just asked -- Jim, let me
15 answer your question. You just asked about a
16 conflict in many different capacities, correct?

17 MR. STAMOS: Yes.

18 MR. SIMON: So any of those capacities or all
19 of them, it's privileged, and that's --

20 MR. STAMOS: I understand conceptually. What
21 I'm asking you is, in which capacity are you saying
22 there was a conversation that resulted in a
23 privileged conversation?

24 MR. SIMON: In the capacity that he was the
25 client and Robert was the attorney, and we won't be



1 talking about conversations between them that are
2 privileged.

3 Q (By Mr. Stamos) Are you going to follow your
4 lawyer's instruction not to answer any questions about
5 conversations you had with Robert Spallina?

6 A I am.

7 Q will that extend to conversations that are
8 memorialized in the emails that we're going to be
9 reviewing here?

10 MR. SIMON: I will --

11 Is that for me or him?

12 MR. STAMOS: Well, that's for him, but I guess
13 I'm curious --

14 (Cross-talking. Interruption by the
15 reporter.)

16 MR. SIMON: We won't assert privilege where
17 there's a third party on the email or it's been
18 disclosed because we didn't assert the privilege.

19 MR. STAMOS: Okay. I just want to state that
20 my position, so to give you an opportunity to
21 modify yours, is that, by virtue of our having been
22 produced these emails, and we're going to go
23 through more, which themselves give us partial
24 information about conversations that took place and
25 communications that took place about the topics



1 we're addressing, such as the potential use of the
2 2000 trust, that the privilege was waived, that you
3 can't -- that's number one.

4 And, number 2, that these documents reflect
5 that the communications on these topics were not
6 conducted solely between Mr. Spallina, as
7 Mr. Bernstein's lawyer, and Mr. Bernstein, but were
8 conducted among Mr. Spallina and Mr. Bernstein and
9 others who did not have his capacities regarding
10 these matters and was waived in that way as well.

11 So that's my position, and I ask you to
12 reconsider yours. Otherwise, we'll have to have
13 the judge address it.

14 MR. SIMON: We'll likely have to have the
15 judge address it, but we'll consider it at a break.

16 MR. STAMOS: Okay.

17 Q (By Mr. Stamos) Did you personally make a
18 judgment or reach a conclusion as to whether the 2000
19 trust should be used as a beneficiary in making a
20 submission to the insurance company for proceeds of the
21 insurance policy?

22 A I did not.

23 Q Did you ever have a conversation with anyone
24 other than Mr. Spallina about the potential for using
25 the 2000 trust in making an application to the insurance



1 company?

2 A Possibly -- possibly Donald Tescher.

3 Q Did you ever have a conversation with your
4 sister who would not have received proceeds of the
5 policy if, in fact, the 2000 trust were employed?

6 A Not that I recall, no.

7 Q So this entire process was conducted, and at
8 no point did you discuss with your sister the fact that
9 if the 2000 trust were employed, in fact, she would be
10 cut out of the proceeds of the insurance policy?

11 MR. SIMON: Objection; asked and answered.

12 You can answer.

13 Q Is that correct? That's your testimony?

14 A That's correct.

15 Q Did you have a conversation with anyone else
16 other than maybe Spallina and maybe Tescher?

17 A About the 2000 trust document; is that the
18 question?

19 Q Yes.

20 A No, I don't believe so.

21 Q Where Mr. Spallina writes to Pam here in the
22 middle of Exhibit Number 1, Page 1, "As I mentioned
23 previously, there was a discussion with the carrier
24 about possibly using the 2000 trust, the one you are
25 carved out of but would be split five ways according to



1 Ted, but I'm not sure that we will achieve that result."

2 Are you familiar with what he's talking about there?

3 A Yes.

4 Q what's he talking about there?

5 A It looks like he's talking about the fact that
6 the 2000 document didn't include Pam, and he was
7 probably -- he -- it looks like he may have been
8 referencing, according to him, according to me, the --
9 the -- there would be a split five ways.

10 Q what was the basis for your belief that there
11 would be a split five ways?

12 A There were conversations going on at that
13 point in time about how to -- what to do with, you know,
14 this insurance policy, and splitting it five ways was
15 what -- my understanding was how the -- what the
16 proceeds of the policy -- of the trust were going to be.

17 Q The 2000 trust?

18 A No, not the -- I knew nothing about a 2000
19 trust.

20 Q Do you recall receiving this email where --
21 the last item in the string is from you, where
22 Mr. Spallina says, "As I mentioned previously, there was
23 a discussion with the carrier about possibly using the
24 2000 trust, the one you are carved out of but would be
25 split five ways according to Ted," doesn't that imply



1 that you were involved in a conversation about the 2000
2 trust?

3 A I didn't have conversations with the carrier.
4 Spallina had conversations with the carrier. I did not.

5 Q No, no. Doesn't this imply that you had a
6 conversation with Mr. Spallina in which he says, "But it
7 would be split five ways according to Ted"? I mean, how
8 would he know what Ted thought unless Ted told him, and
9 you're Ted?

10 A I -- I -- I can't help you there. I don't
11 know what Spallina was thinking.

12 Q In any event, so we've established that this
13 is a string of emails that you and Ted and Pam shared,
14 correct? You and Spallina and Pam shared, correct?

15 A Yes.

16 Q And you would have seen them at or about the
17 time they're dated, correct?

18 A Yes.

19 Q Let me then go to Exhibit Number 2, which is
20 TS4489 through 92.

21 (Exhibit 2 was marked for identification.)

22 Q Again, we have to go back to front, and this
23 is a string of emails -- am I correct, this is a string
24 of emails in which you participated, the last one being
25 from you to Mr. Spallina, Pam Simon, David Simon and --



1 I guess Pam Simon twice, right?

2 A Yes.

3 Q Okay. Going back to front, the first message
4 appears to be from Pam to Spallina and to you saying,
5 "Hi, Robert. Any word on the proceeds," asking whether
6 he needed help, correct?

7 A Yes.

8 Q Then the next item of the string is from
9 Spallina to Pam saying, "Heritage responded back that
10 they need a copy of the trust instrument. We do not
11 have a copy, and the only executed trust document that
12 we have in which the policy is listed as an asset is the
13 2000 trust prepared by Al Gortz." Do you see that?

14 A I do see that.

15 Q This is dated, it looks like, November 19,
16 2012. It is your email back. "Highly unlikely they
17 will use another trust. What is the SOP when a doc
18 can't be found?" That's from you, right?

19 A Yes, it is.

20 Q And it's dated November 19, 2012, right?

21 A Yes.

22 Q Am I correct, as I'm reading this, at least by
23 November 19, 2012, no one has located Exhibits 21 and 22
24 that we talked about earlier, the unsigned drafts of the
25 trust, correct?



1 MR. SIMON: Objection; speculation.

2 A You are right, correct.

3 Q When you then go to the next page, 4490, it
4 says, from Pam to you, copied to Spallina, "Please send
5 the executed trust document before you respond to
6 Heritage." Do you remember what Pam -- what trust
7 document she was talking about?

8 A I do not.

9 Q Is it fair to say the only executed document
10 you had that would be relevant at that point would have
11 been the 2000 trust document, correct?

12 MR. SIMON: Objection; speculation.

13 Q As far as you knew.

14 A Can you ask me that question again, please?

15 Q Yeah. Actually, it might help if I go above
16 that. When you look at Spallina's note to you then, a
17 little bit below the halfway point of page 4409, it
18 says, from Spallina, "We are not responding to them with
19 the document from 2000. We discussed that and you are
20 carved out under that document. We need to find the
21 1995 trust ASAP."

22 Do you understand that was him responding to
23 Pam where she said, "Please send the executed trust
24 document before you respond to Heritage"?

25 A I -- I do.



1 Q He must have been talking about the 2000
2 trust, and he's telling her we're not going to use that
3 trust because you're cut out, right?

4 A I can't say for sure, you know, why he's
5 saying that, but that's, you know, what -- what it looks
6 like from this document.

7 Q When you received this and saw it, is that
8 what you assumed, that he's telling her we're not going
9 to use the 2000 trust because you're cut out of it?

10 MR. SIMON: Objection; speculation.

11 MR. STAMOS: No. I'm not asking him to
12 speculate.

13 Q I'm asking your perception when you read this.

14 MR. SIMON: No. You asked him what he
15 assumed, is what you asked.

16 MR. STAMOS: Well, I'm not asking him to
17 speculate about what he assumed. I'm asking him to
18 tell me what he assumed, if he can remember.

19 A I can't remember, but according to this,
20 that's what it looks like Spallina is saying.

21 Q Okay. That's fine.

22 Then there's another letter -- there's another
23 note November 19th, the same date, from David Simon,
24 "May be able to achieve Sy's intended result through
25 waiver and settlement agreement." That was the attempt



1 that was made to get all five children to sign off, and
2 then you wouldn't need to worry about what the trust
3 said or didn't say, correct?

4 A I believe so, yes.

5 Q Okay, excellent. If you then look at Exhibit
6 Number 3, it looks to me -- if you just take a quick
7 look at this, it looks to me that this is an email from
8 Pam, and you are among those copied --

9 A I don't have it.

10 Q We don't have 3 yet.

11 MR. STAMOS: Oh, I'm sorry. I'm sorry. Could
12 the court reporter please give it to him.

13 (Exhibit 3 was marked for identification.)

14 Q I just have a simple question for you.
15 Looking at this, am I correct that this is a letter --
16 an email that Pam sent and that you were copied on which
17 attempted to circulate a settlement agreement among you
18 to try to get the proceeds without the need for
19 litigation or worrying about the trusts?

20 A That is what it looks like to me, yes.

21 Q And you recall that effort was made, correct?

22 A Yes.

23 Q And it was not successful because Eliot would
24 not agree, correct?

25 A I believe that's the reason why, yes.



1 Q If you could then --
2 I'm sorry, continue to look at that exhibit,
3 at 4519. It said there was -- at the bottom, that's
4 your email, correct, that says, "There was an exhaustive
5 search for the original trust document from 1995 which
6 is the beneficiary of the policy owned by dad. Since
7 we've have not been able to locate it," and then some
8 further text. Is it fair to say that as of December 6,
9 2012, the drafts of the trust, Numbers 21 and 22, had
10 still not been located?

11 A That is correct.

12 Q Thank you.

13 All right. If you could then look at Exhibit
14 4.

15 (Exhibit 4 was marked for identification.)

16 Q Now, reading bottom to top here, which I think
17 we need to do, on Page 69, this is from you -- I'm
18 sorry, this is from Spallina to you, correct?

19 A No.

20 on 67 or -- a different page?

21 Q I'm sorry.

22 Oh, you got 67. Okay, yeah, I'm sorry. I
23 have two sets of them.

24 when you're looking at Page 67, that's
25 Mr. Spallina writing to you, correct?



1 A Well, I'm copied.

2 Q You are one of those to whom this was
3 addressed, correct?

4 A Yes.

5 Q In it, Mr. Spallina was talking about options
6 and trying to deal -- dealing with the situation where
7 the agreement could not be achieved, right?

8 A Yes.

9 Q Among the things he said was, and this is in
10 the fourth line from the bottom, "As none of us can be
11 sure exactly what the 1995 trust said (although an
12 educated guess would point to the children in light of
13 the document prepared by Al Gortz in 2000), it is
14 important that we discuss further prior to spending more
15 money to pursue this option." As of that day, and this
16 was dated January 22, 2013, none of you could know for
17 sure what it said, correct?

18 A That's correct.

19 Q Am I correct, as of this date, Exhibits 21 and
20 22 had not been located, correct?

21 MR. SIMON: Objection; speculation, asked and
22 answered.

23 A That's correct.

24 MR. STAMOS: No, it hasn't been asked.

25 Q I'm sorry, what was the answer?



1 A Correct.

2 Q Thank you.

3 MR. STAMOS: Do you want to take a break now,
4 Adam?

5 MR. SIMON: Please.

6 MR. STAMOS: Okay.

7 (Recess taken.)

8 MR. STAMOS: So now we're on Exhibit 5.

9 (Exhibit 5 was marked for identification.)

10 Q (By Mr. Stamos) Now, I'm looking at Exhibit
11 Number 5. Do you have page 65? Is that the page number
12 at the bottom?

13 A Yes.

14 Q Looking at the message from Spallina, the
15 second one here - it looks like the top is from Lisa to
16 Spallina and Jill - where Spallina said, "I need to see
17 Pam's life insurance trust to answer the question," do
18 you know what question he was talking about?

19 MR. SIMON: Objection; speculation.

20 A I don't.

21 Q All right. Then I'm going to skip Number 6.

22 I'm just trying to cut this down so we can
23 move along. I'm saving time by wasting a little bit of
24 time.

25 I'm not going to talk to you about 7.



1 If you would then look at Exhibit Number 8,
2 please.

3 (Exhibit 8 was marked for identification.)

4 Q This is from Mr. Spallina to Eliot and
5 yourself and -- to Pam, carbon copied to Eliot and
6 yourself, Lisa, Jill and Christine, right?

7 A Correct.

8 Q See at the top there?

9 A Yes, you are correct.

10 Q Thank you. And I want to direct you to the
11 fourth paragraph up, the one that begins, "Let's stop
12 making." Do you see that?

13 A I do.

14 Q The second sentence says, "Pam saw him execute
15 the trust with the same attorney that prepared her own
16 trust, a copy of which I have and will offer up to fill
17 in the boilerplate provisions." Do you see that?

18 A Yes.

19 Q When you received this, did you understand
20 that to mean that Mr. Spallina understood that your
21 father's '95 trust was basically a mirror image of Pam's
22 and, therefore, he would use Pam's in order to fill in
23 the blanks with regard to boilerplate language?

24 MR. SIMON: Objection; speculation, form.

25 Q I'm asking if that's your understanding.



1 MR. SIMON: You said did he understand that he
2 understood. It's like two understandings removed.

3 MR. STAMOS: If that's what I did, let me fix
4 it.

5 Q when Mr. Spallina wrote that and you received
6 this and read it, was it your understanding that
7 Mr. Spallina had the understanding that the 1995 trust
8 was basically a copy, so to speak, of Pam's trust and,
9 therefore, he could use Pam's trust to fill in the
10 missing boilerplate language that might be necessary to
11 be filled in?

12 MR. SIMON: Same objections.

13 A You're using words like "mirror image" and
14 I -- I don't believe that he was looking at Pam's
15 document, according to this email, as a -- as a tool and
16 a mirror image. I think he was using Pam's document
17 maybe as -- more as a guide, because I think they were
18 prepared around the same time by the same firm. So --
19 but I can't honestly speculate what was in Spallina's
20 mind at the time he wrote this.

21 Q Have you ever seen Pam's trust?

22 A I have not.

23 Q Then let's go to -- looking now at Exhibit
24 Number 9.

25 (Exhibit 9 was marked for identification.)



1 Q We have number 9 in front of you. Page 51 and
2 52, do you see that?

3 A I do.

4 Q This looks to be, going back on Page 52, an
5 email that you drafted giving your analysis of the
6 Heritage payout situation, and looking at that document,
7 about seven lines down, as of that point the trust could
8 not be located still, correct?

9 A Correct.

10 Q I take it at that time Exhibits 21 and 22 were
11 still not located, because if they were, you would have
12 talked about them, correct?

13 MR. SIMON: Objection; speculation.

14 A Correct.

15 Q Then on Page 51, that's your email to your
16 siblings and Mr. Spallina in which -- in further
17 analysis -- this is actually to Eliot - I see - with
18 copies to your siblings responding to a prior email he
19 had written about what he thought the situation was,
20 correct?

21 A Yes, sir.

22 MR. STAMOS: Now, if we could go, please, to
23 Exhibit 10.

24 (Exhibit 10 was marked for identification.)

25 Q If you're looking at the bottom of Page 47,



1 this is part of a string that ends with Eliot writing on
2 February 9th to yourself and to Pam, copies to many
3 other people. Do you see that?

4 A Yes, I do.

5 Q Then when you look at the bottom, the first
6 email on that page where Pam says, on February 8, 2013,
7 "Yeah, bad news. We don't have copies of the policy.
8 Dad probably took it when he emptied his office.
9 Probably the trust, too." Do you see that?

10 A Yes, I do.

11 Q Do you have any understanding as to how it
12 came to be that a copy of the draft trust was located at
13 a later date even though a search had already been done
14 trying to find the trust document itself?

15 MR. SIMON: Objection; speculation.

16 A None.

17 Q When the trust documents -- strike that.
18 when the draft trust documents, Exhibits 21
19 and 22, were located, do you recall having any
20 conversation with anybody, Mr. Simon, your sister,
21 anything to the effect of, "How come you didn't find
22 these the first time you looked," or anything like that?

23 A No, nothing like that with me, no.

24 Q Did it strike you? Did you wonder? Whether
25 you had a conversation or not, did you wonder how it was



1 that they didn't find them the first time?

2 A No.

3 Q It didn't strike you as odd?

4 MR. SIMON: Objection; asked and answered.

5 A No, it didn't. Having searched for things
6 before in my life, you search once, you search again,
7 sometimes you come across things, especially old. No,
8 it didn't strike me as odd.

9 Q If you could look at Exhibit Number 11,
10 please.

11 (Exhibit 11 was marked for identification.)

12 Q This is another string here. Beginning at the
13 bottom, this is your brother Eliot telling you that he's
14 seeking independent counsel, correct, on February 13,
15 2013?

16 A Yes.

17 Q Then the next email up, on February 14th, is
18 you to Robert Spallina saying, "Please move forward as
19 we discussed in the last group phone call in which we
20 decided to have Heritage pay your trust account or a
21 trust that you would act as trustee. Heritage has
22 stated that they will pay based on a court order showing
23 that there's consensus among the 1995 trust
24 beneficiaries. Let's get this done."

25 My question about that is, as of that point,



1 was it your understanding that Eliot would agree to have
2 such a court order entered?

3 A I don't know.

4 Q This communication with Mr. Spallina includes
5 copies to all of your siblings as well as to Christine
6 Yates, who was Eliot's attorney, correct?

7 A I -- I believe so.

8 Q Is it your position that this was
9 attorney-client communication, as well, between you and
10 Mr. Spallina?

11 MR. SIMON: We didn't assert a privilege, if
12 that's what you're asking. I didn't object.

13 MR. STAMOS: Well, our position, for the
14 record, is that you may not selectively employ the
15 privilege.

16 Q So my question is, was this an attorney-client
17 communication, as far as you were concerned?

18 A In every communication I had with Robert
19 Spallina, I would expect that that privilege was there.

20 MR. ROSE: This is Alan Rose, just for the
21 record, since I'm Mr. Bernstein's personal counsel.
22 He's not asserting the privilege as to
23 communications of this nature as responded in your
24 email. He's asserting privilege to private
25 communications he had one-on-one with Robert



1 Spallina, who he considered to be his counsel.
2 That's the position for the record and that's why
3 the privilege is being asserted.

4 Continue.

5 MR. STAMOS: No, I understand that. It's just
6 that our position is that, if one has an
7 attorney-client relationship, in particular with
8 regard to discussions concerning a particular
9 topic, the privilege is waived when you do not
10 maintain the privilege with respect to certain
11 communications and you do with others, and that's
12 our position. So --

13 MR. ROSE: Okay. But for the record, since
14 you're going to argue this in Illinois potentially,
15 in every piece of litigation, certain things that
16 you communicate with your lawyer eventually find
17 their way into pleadings or communication with the
18 other side. That does not mean that private
19 communication you have one-on-one with your lawyer
20 about various things when you're seeking legal
21 advice on a confidential basis are not privileged.
22 That's the sole basis upon which the privilege is
23 being asserted and it's going to continue to be
24 asserted.

25 MR. STAMOS: Can we proceed?



1 MR. ROSE: Absolutely. Thanks.

2 MR. STAMOS: Got it.

3 Q (By Mr. Stamos) In any event, looking at
4 Exhibit 11, this was a -- whatever it says, this was an
5 email series of -- exchange between yourself and Eliot
6 and all the addressees, correct?

7 A It appears to be, yes.

8 Q Have you ever investigated to advise yourself
9 as to what took place within the insurance company, that
10 is to say the insurance company records, as to your
11 father's interactions or lack of interactions with them
12 about beneficiary changes or ownership changes?

13 A I -- I have not; did not do that.

14 Q I take it you, therefore, have no knowledge
15 about that, no personal knowledge about that?

16 A Can you tell me what "that" is again.

17 Q About beneficiary changes that your father
18 either did send or did not send to the insurance
19 company.

20 A Again, I'm going to go back to that time of
21 reinstatement where it was my understanding that the
22 beneficiary of this insurance policy was the trust,
23 so -- I think you stated something that wasn't entirely
24 accurate about that I didn't have any knowledge.

25 Q Okay. So your knowledge of it would have been



1 with regard -- I think we talked about that earlier.
2 You told us what your role was in that -- what you knew
3 about the reinstatement provision a couple of years
4 before he died, correct?

5 A Yes, that's right.

6 Q All right. We don't need to go over that
7 again. That, I understand.

8 Let's look, if we can, at Exhibit Number 14.
9 (Exhibit 14 was marked for identification.)

10 Q Looking at that document, it looks like a
11 string that ends with an email from Mr. Spallina to Pam
12 and copied to yourself and David, correct?

13 A Yes, that is correct.

14 Q Now that email -- the initial email in that
15 string is one from David Simon -- I'm guessing to
16 Mr. Spallina, although it's not clear, where it says,
17 "Last of the docs we could dig up." Do you see that?

18 A I do.

19 Q My assumption, although it's not clear from
20 the email, is that there was -- oh, yeah, I'm sorry. At
21 the bottom you can see there's a PDF attachment, a
22 Document 9 PDF. Do you see that on Page 6579?

23 A Yes.

24 Q Do you know what document he's referring to in
25 that email?



1 A I don't.

2 Q If you would look at Exhibit Number 15,
3 please.

4 (Exhibit 15 was marked for identification.)

5 Q This document, 6508 through 6512, is a string
6 of emails that ends with one from you to Robert Spallina
7 copied to several people, correct?

8 A It appears that way so far, yes.

9 Q Take your time. Is that what that is?

10 A Yes.

11 Q The last email in that string is one that you
12 sent, correct?

13 A Yes.

14 Q When you say, "I think one of my --" This is
15 to Robert: "Pam, Scooter, Jill, Lisa and I will be
16 discussing several related issues over the weekend," and
17 this is Saturday, March 16, 2013. "I think one of my
18 previous emails asked you to hold off doing anything
19 concerning the life insurance policy after a specific
20 date. Please continue to work with the insurance
21 company on our behalf."

22 what were you talking about there?

23 A I cannot remember.

24 Q If you would please look at 6510. It's the
25 third page of that exhibit.



1 A Okay.

2 Q Do you see the reference to March 15, 2013
3 there from Spallina?

4 A I see March 15, 2013.

5 Q Right. 7:07 a.m., in the middle of that page?

6 A Yes, I do.

7 Q And Mr. Spallina wrote in this email string
8 that ends with your last email, "There is a break in
9 title and beneficiary designation prior to getting where
10 the confirmation letters state where we are today, Sy as
11 owner and the trust as beneficiary." Do you know what
12 they're talking about?

13 A I believe that I do.

14 Q What did you understand Mr. Spallina was
15 conveying by that message?

16 A That there was a previous owner or an initial
17 owner of this policy and that I think he was learning
18 about the -- the chain of -- of ownership of the policy
19 from the very beginning and its iterations over time
20 when -- after speaking with the insurance company.

21 Q Did you understand this to be that
22 Mr. Spallina was told by the insurance company that
23 there was a break in title and beneficiary designation?

24 A Well, I -- I'm -- only because I'm reading
25 what he said. I don't know what he assumed that meant,



1 but I'm assuming from what I'm reading that he is saying
2 that there was some break there.

3 Q And this was in response to your email from --
4 it looks like --

5 well, it looks like the times are a little bit
6 odd there. I'm not sure why that is.

7 A Right.

8 Q I wonder if one is eastern time and one is
9 central time?

10 A Between me and Robert?

11 Q Yeah. Could that have been possible?

12 A Anything's possible, but unlikely, I think.

13 Q Well, in any event, when you received that,
14 did you understand what he was talking about?

15 A At the time, I probably did not.

16 Q Now, looking at Exhibit 16, please.

17 (Exhibit 16 was marked for identification.)

18 Q Do you know who Mr. Welling is, before I ask
19 you any questions about the document?

20 A I believe that he was someone connected to the
21 insurance company.

22 Q I'd like you, if you will, to take a moment
23 and read Exhibit Number 12 -- I'm sorry, Exhibit
24 Number 16, back to front, and then I want to ask you
25 some questions about it. It's not all that long.



1 A So you'd like me to read all the pages in the
2 email?

3 Q Yeah.

4 A Okay.

5 Q Just take a moment to read it. The messages
6 are actually pretty brief.

7 MR. ROSE: While he's looking at that, I'd
8 just state for the record that TS5253, at the
9 bottom, clearly supports the assertion of the
10 privilege.

11 MR. STAMOS: In as much as it includes Scott
12 Welling on it, I'd have a hard time understanding
13 how that supports the existence of a privilege,
14 but --

15 MR. ROSE: Okay.

16 Q (By Mr. Stamos) Have you had a chance to read
17 that yet, Mr. Bernstein?

18 A Yes. I'm -- yes, I have.

19 Q I bet you recall this email string, correct?

20 A Yes.

21 Q It ends with a message from Mr. Spallina to
22 you which would have included all the rest of it,
23 correct?

24 A Yes.

25 Q What's this about? What's the genesis of this



1 dispute that results in Mr. Spallina saying, "Ted, I'm
2 done with this matter"? what did you understand was
3 going to happen?

4 A The change in who was going to be handling the
5 life insurance policy at -- at around this time.

6 Q It was changed from whom to whom?

7 A From the Tescher & Spallina firm to Adam
8 Simon.

9 Q were there any discussions with the insurance
10 company about that prior to the lawsuit being filed in
11 Chicago?

12 MR. SIMON: Objection; speculation.

13 A I've -- I simply don't know.

14 Q You don't?

15 A I do not.

16 Q Now, when you then look at --

17 I'm sorry, we'll go to the next exhibit, which
18 is -- it looks like Exhibit 17.

19 (Exhibit 17 was marked for identification.)

20 Q Now, looking at Exhibit Number 17, where
21 Mr. Tescher writes, "I feel that we have serious
22 conflicts in continuing to represent you as trustee to
23 the life insurance trust and need to withdraw from
24 further representation," do you see that?

25 A I do.



1 Q Now, first, this document is an email string
2 that ends with Mr. Tescher sending an email to
3 Mr. Welling, Mr. Spallina and also to yourself, as well
4 as the Simons, correct?

5 A Yes.

6 Q You recall receiving this, do you?

7 A Now that I see it, I recall.

8 Q Now, where Mr. Tescher says that, "There's a
9 serious conflict continuing to represent you as trustee
10 of the life insurance trust," is he referring to the
11 1995 trust?

12 MR. SIMON: Objection; speculation.

13 A I believe that that's what he's referring to
14 here.

15 Q I take it that he withdraw from representing
16 you in that capacity as of this email?

17 A I -- I believe that to be the case.

18 Q Did they continue to represent you in any
19 other capacity after that date?

20 A Yes.

21 Q In what capacities did they continue to
22 represent you?

23 A As the -- counsel for the Shirley Bernstein
24 Trust.

25 Q Do they continue to be your attorney in that



1 capacity?

2 A Currently?

3 Q Yes.

4 A They are not.

5 Q when did they cease being your attorney in
6 that capacity?

7 A Early 2014 is my recollection.

8 Q what led to that?

9 A what led to that was --

10 MR. ROSE: Well, let me -- to the extent he's
11 discussing communications he had with his former
12 counsel, they would be privileged, and I would
13 instruct him not to answer based upon any
14 communications with his counsel.

15 MR. STAMOS: Okay.

16 Q I don't agree with that, but I assume you're
17 going to follow your attorney's instruction not to
18 answer that?

19 A Yes.

20 Q All right. We don't need to say anymore, but
21 we'll certify that.

22 Leaving aside conversations then with
23 Mr. Spallina or Mr. Tescher, what led to their ceasing
24 to be your attorneys?

25 A My recollection is that they withdrew.



1 Q okay.

2 A Again, we're going back quite a while, but I
3 believe what led to them not being my attorneys is that
4 they withdrew.

5 MR. ROSE: And just for the record, there are
6 aspects of that that are not privileged, but you
7 asked him about his -- I just advised him not to
8 disclose his private, confidential communication
9 with them while they were still his lawyers. That
10 does not foreclose your questioning.

11 MR. STAMOS: No, what I asked him was what
12 other circumstances led to that other than --
13 without reference to such conversations, and he
14 said they withdrew.

15 Q Do you know why they withdrew?

16 A I -- I do know why they withdrew. There were
17 some questions within their firm about documents and
18 irregular -- irregularity around documents, and they
19 withdrew because I felt it was best for them to
20 withdraw.

21 Q what documents were there -- with regard to
22 what documents were there irregularities, as far as you
23 knew?

24 A There was an amendment to a trust document.

25 Q which trust?



1 A Shirley Bernstein Trust.

2 Q And finally Exhibit Number 18.

3 (Exhibit 18 was marked for identification.)

4 Q Are you ready?

5 A Yes.

6 Q Let me just back up a second. The document
7 that you were talking about that there was a problem
8 with was a document which it appeared that the Tescher &
9 Spallina firm had participated in backdating a signature
10 by your father, correct? Is that your understanding of
11 it?

12 A Something along those lines. I'm not quite
13 sure that it's backdating or creation of a document.
14 I'm not sure that backdating would be the right way to
15 describe that.

16 Q It included a notarization that was not
17 authentic, correct?

18 A There were -- there were two issues that arose
19 out of that law firm that were highly irregular as far
20 as I'm concerned.

21 Q What were those?

22 A One was a -- was the signing of a notarized
23 document by a notary that was not proper, and the second
24 was the creation or fabrication of a document by
25 Mr. Spallina that -- that related to Shirley's trust



1 document. It was, I believe, in the amended trust
2 document, but I'm going now by complete recollection
3 of --

4 Q Do you recall what the purpose of that
5 document was, the second document you're talking about?

6 A The purpose was to make changes to the
7 original trust document.

8 Q Any particular change that you can recall?

9 A No, not -- not, you know, sitting here without
10 the document, no.

11 Q The last document that I've shown you, this
12 Exhibit Number 18, this is Mr. Tescher -- it looks like
13 he's writing to you and your siblings in particular
14 about billing, correct?

15 A Yes.

16 Q This is August 30, 2013, correct?

17 A Yes, it is.

18 Q As of this date, he's still referring to the
19 fact that your father's - looking at the second full
20 paragraph from the bottom - that your father's affairs
21 were not left in the best order and so forth, and also
22 some concern that Eliot's activity might be costing the
23 estate money, correct?

24 A That's what he says here, yes.

25 Q As of this time that this was written, you



1 still were not aware of the existence of Exhibits 21 and
2 22, the draft unsigned '95 trust, correct?

3 A I'm not sure.

4 Q Here's what I want to ask you: You're aware
5 that the 2000 trust is an insurance trust, correct?
6 It's for the purpose of receiving insurance proceeds,
7 correct?

8 MR. SIMON: Objection. Are you going to show
9 him the document?

10 MR. STAMOS: Yeah, I can. I was going to work
11 from memory, but we can.

12 That's Exhibit Number 23.

13 (Exhibit 23 was marked for identification.)

14 Q So, first, let me ask you this: I imagine
15 that your business, over the years that you've been
16 involved in selling life insurance, you've dealt with
17 many customers or clients who have had insurance trusts,
18 correct?

19 A That is correct.

20 Q This is not the first time you've ever looked
21 at an insurance trust, the one you've just looked at,
22 correct?

23 A Also correct, yeah.

24 Q In your experience, the lawyers who draft
25 trusts, for example this one, very often do what was



1 done here, which is they provide a first page indicating
2 who prepared it with the law firm's name on it, right?

3 MR. SIMON: Objection; speculation.

4 Q Is that your experience to see that?

5 A Yes.

6 Q If you look at Exhibit Number 24 and 25 --

7 Let's start with Number 24.

8 (Exhibits 24 and 25 were marked for
9 identification.)

10 Q Looking at 24, that's the trust dated July 25,
11 2012, correct?

12 A Yes, it is.

13 Q And number 25 is a trust dated May 20, 2008,
14 correct?

15 A Yes.

16 Q And those are both prepared by the Tescher &
17 Spallina firm, right?

18 A Yes.

19 Q The three trusts that we have, at least that
20 we know are executed, each one of them identifies the
21 law firms who prepared them, correct?

22 A Yes.

23 Q In your experience as a life insurance
24 professional, I'm sure you've had occasion over time to
25 be the first one advised that one of the insureds has



1 died and then you participated in helping to make a
2 claim, correct?

3 A Yes.

4 Q In doing that, I'm sure you've interacted with
5 attorneys, including those who have drafted trusts as
6 part of that process, right?

7 A Yes.

8 Q Is it your experience, what I believe to be
9 universal among estates and trusts lawyers, that they
10 maintain trusts that they have drafted or estate plans
11 they have created because they're aware that down the
12 line when someone dies, number one, they might need to
13 find those documents, and number 2, the lawyers hope to
14 get the business as part of the estate? Is that true in
15 your experience?

16 MR. SIMON: Objection; speculation, form.

17 MR. STAMOS: I'm asking for his experience.

18 MR. SIMON: He's not an attorney.

19 A That, I don't know. I mean, what their intent
20 is for drafting the documents and -- I can't say in
21 general terms --

22 Q Okay. But in your experience, have you ever
23 gone to a firm that drafted a trust and they didn't have
24 a copy of it?

25 A I don't know.



1 Q Here, do you know if efforts were made to
2 contact the attorneys who are purported to have drafted
3 the 1995 trust to see if they had a copy of it?

4 A I believe that efforts were made to do that,
5 yes.

6 Q Did you learn what the results of that
7 investigation were?

8 A My recollection was the firm was absorbed by
9 another firm, or maybe there were two, you know,
10 iterations of this, but the firm is no longer in
11 existence and that they didn't keep the records or they
12 may have sent out something about records.

13 I'm just going by memory, so I can't be -- you
14 know, give you anything more than that.

15 Q Do you remember who told you that?

16 A I do believe that was Robert Spallina. I
17 think he was making those inquiries to the other firm.
18 It may have been David in Chicago.

19 Q Now, David has testified that -- I'm speaking
20 roughly, but I believe accurately in describing his
21 testimony, which is that he -- that when Simon created
22 the '95 trust, that David assisted him in preparing it
23 on the computer actually and Simon then took that
24 version and took it over to Hopkins & Sutter, the law
25 firm that they say prepared it, and that was the basis



1 for the trust ultimately that Simon executed. Does that
2 sound familiar to you?

3 A It doesn't. It does not sound familiar that
4 Scooter was -- that David was creating a document on
5 a -- on a -- on a computer.

6 Q We now know that David testifies that there
7 was a document on the computer, correct, because that's
8 what Exhibit Number 21 is, right?

9 A Okay.

10 Q Okay? I mean, do you agree with me, that's
11 what we understand that to be?

12 A I do.

13 Q So the question I have for you is, did you
14 ever have a conversation with David in which he said --
15 when these communications were taking place with
16 Mr. Spallina about how do we approach, we can't find the
17 '95 trust and so forth, did David ever say anything to
18 you like, "You know, I put it on my computer to begin
19 with. Maybe I should check there"? Do you ever
20 remember any such conversation?

21 A I do not.

22 Q When you look at Exhibit Number 23, if you
23 would look at that, please, the first page indicates
24 that the 2000 trust is to receive the proceeds --
25 looking at the very first paragraph, the first sentence



1 actually, was to receive the proceeds of some insurance
2 policies listed on Exhibit A, correct?

3 A Okay. I'm with you now. You want me looking
4 at 23?

5 Q Yup. And look at the first page of it, which
6 is 3893, the first text page.

7 A Okay. I'm with you.

8 Q This trust provides that the insurance
9 policies set forth in schedule A, the proceeds of those
10 policies are going to be paid to the trust, right?

11 MR. SIMON: Objection; the document speaks for
12 itself.

13 MR. STAMOS: I'm asking if that's his
14 understanding of it.

15 MR. SIMON: Same objection.

16 A I mean, the document says what it says.
17 Right?

18 Q It says that it transfers to the trustees of
19 this 2008 trust the life insurance policies set forth in
20 schedule A, right?

21 MR. ROSE: Wait. Which one are you looking
22 at?

23 MR. SIMON: Objection as to form of question.
24 That's not what it says.

25 MR. ROSE: Which document are you looking at?



1 Don't tell me the number.

2 MR. STAMOS: I'm looking --

3 MR. ROSE: What does it say on the front?

4 MR. STAMOS: Let's start again.

5 MR. ELIOT BERNSTEIN: Proskauer Rose trust.

6 MR. STAMOS: I'm looking at Exhibit 23. The
7 very first page indicates it was prepared by the
8 Proskauer firm. Do we all have that document in
9 front of us?

10 MR. SIMON: Yes.

11 THE WITNESS: Yes.

12 Q (By Mr. Stamos) All right. If you flip that
13 first page and go to TS3893, paragraph number 1, do we
14 agree that it says, "As and for a gift, the settlor
15 hereby assigns and transfers to the trustees and their
16 successors (together "the trustees"), the life insurance
17 policies set forth in Schedule A."

18 MR. SIMON: Continue.

19 Q Do you see that?

20 MR. SIMON: Continue.

21 Q Well, it says other things as well, but -- you
22 can read as much as you -- read as much of it as you
23 want and then tell me whether you've read it.

24 MR. SIMON: Into the record. Read the whole
25 thing into the record.



1 Q okay? You see that, correct?

2 A I see it.

3 Q All right. And then Schedule A includes in it
4 the life insurance policy with regard to which we are
5 currently litigating, right?

6 MR. SIMON: I'm going to object as to form,
7 because again you've misstated what paragraph 1
8 said.

9 A Yeah. I'm going to read it. "The life
10 insurance policies set forth in Schedule A annexed
11 hereto, and the settlor agrees to execute all such
12 assignments and changes of beneficiary and to do such
13 other acts and things as may be necessary in order to
14 make the trustees irrevocable absolute assignees of said
15 life insurance policies. The trustee shall hold said
16 policies together with any other property which may be
17 received by them in trust upon the terms and conditions
18 set forth herein. This trust shall be known as the
19 Simon Bernstein 2000 Insurance Trust."

20 And I don't believe this policy ever
21 received -- this trust ever received the policy, but
22 okay.

23 Q I just want to establish first what it says,
24 see if we could agree what it says. I agree that's what
25 it -- you accurately read it. I agree with you.



1 A okay.

2 Q Listed on schedule A then, as being subject to
3 the words that you just read, is included the insurance
4 policy that we're litigating about, correct?

5 A Let me go to sub 2A.

6 Q okay.

7 THE WITNESS: Do you have schedule A?

8 MR. SIMON: It's the last page, I think.

9 Q It's the last page of that exhibit.

10 A Got it.

11 Q All right?

12 A I missed it at the top.

13 Q That's okay. And that includes the life
14 insurance policy that we are litigating about in this
15 case, correct?

16 A That is correct.

17 Q Do you agree with me that this trust document
18 does not reference the existence of a prior trust that
19 had any interest in that insurance policy or any prior
20 trust at all, right?

21 MR. SIMON: I'm going to have to ask him to
22 read the entire document.

23 THE WITNESS: Yeah, I can't answer --

24 MR. SIMON: Go ahead.

25 A I can't answer that question without reading



1 the whole document.

2 MR. SIMON: Go ahead.

3 Q well, it speaks for itself.

4 Let me ask you this: Are you aware of whether
5 it does without reading it? Are you aware of whether it
6 references any 1995 trust or any other trust?

7 MR. SIMON: Objection; speculation. Not
8 allowing him to read it.

9 MR. STAMOS: No, no. I'm just asking if he's
10 aware of it without reading it. It says what it
11 says. His reading is not going to change what it
12 says. I'm asking his state of mind.

13 Q Are you aware of whether or not that document
14 references the 1995 trust without having read it?

15 MR. SIMON: Objection; relevance.

16 Go ahead.

17 Q Do you know?

18 A I'm not -- I'm not aware.

19 Q Do you think that if this document did
20 reference the 1995 trust, that Mr. Spallina would have
21 commented on that?

22 MR. SIMON: Objection; speculation.

23 Q Would you have expected him to tell you that
24 it did?

25 A Can you ask me that question again?



1 Q Yeah. If this document said, for example,
2 "I'm replacing the '95 trust with this 2000 trust,"
3 would you have expected that Mr. Spallina would have
4 given you advice with regard to that fact, if it were a
5 fact?

6 MR. ROSE: I'm going to object, instruct him
7 not to answer based on communications he had with
8 Mr. Spallina, but you can ask the question with
9 regard to information that Spallina disseminated to
10 third parties or --

11 Q Well, other than conversations that just
12 involved you and Mr. Spallina, but not excluding
13 communications that involved your siblings, like so many
14 of these emails did, would you have expected in such
15 communications when you and he were talking about
16 whether we're going to use the 2000 trust and so forth,
17 if the 2000 trust had referenced the existence of a
18 prior trust, do you not think he would have brought that
19 to your attention so that you could decide what impact
20 that had on your view that the '95 trust still applied?

21 MR. SIMON: Objection; form.

22 A Honestly, I'm not sure. I can't, you know,
23 tell you or speculate as to what Spallina -- what the
24 expectations were of what was in this document.
25 Honestly, I -- I can't.



1 MR. STAMOS: If you can give me just one
2 second, I want to confer with Mr. Horan for a
3 second.

4 (Recess taken.)

5 Q (By Mr. Stamos) If you would look at Exhibit
6 24, please.

7 A Okay.

8 Q Is it your understanding that this document,
9 the Simon L. Bernstein Trust -- I'm sorry, let me start
10 again.

11 This document is dated July 25, 2012, correct?

12 A Yes. It's hard to read, but yes.

13 Q You understand this document treats all of
14 Simon's children as predeceasing for the purpose of its
15 distribution, correct?

16 A I have not read this document, but -- so I
17 can't -- you know, I can't tell you that I agree with
18 you.

19 Q Are you aware, being one of those children, as
20 to whether you are a beneficiary or are entitled to any
21 distribution from the 2012 trust?

22 MR. SIMON: Objection; the document speaks for
23 itself.

24 A Do you want me to read the whole document? If
25 that's what it says, then that's what it says. If not,



1 then --

2 Q No, I don't -- that's not what I'm asking you.
3 There's a reasonable amount of money involved here, and
4 what I'm asking you is, as one of Simon's children, are
5 you aware, personally aware -- not did you read this
6 just now and what is it saying, but are you aware of
7 whether you are a beneficiary of a trust that he left
8 when he died?

9 A I am -- I am aware of the trust when he died
10 and I'm aware that I'm not a beneficiary.

11 Q Okay. That's what 2012 talks about, correct?

12 A Correct.

13 Q Not only are you not a beneficiary, none of
14 your siblings are beneficiaries, correct?

15 A You are correct.

16 Q Was there a dispute in the family when you all
17 learned that your father was going to, in effect,
18 disinherit his singling? I'm sorry, the siblings?

19 MR. ROSE: What time was that? Did you --

20 MR. STAMOS: Let me start again.

21 Q Prior to his death, you became aware that it
22 was his plan that he was not going to leave money to his
23 children, correct?

24 A I did -- I'm aware of that.

25 Q And that lead to some discord in the family,



1 correct?

2 A It did.

3 Q Was there a call in which he participated, as
4 did the siblings, in which you attempted to get him to
5 change his mind or explain why his plan was not
6 appropriate?

7 A No.

8 Q There was no such call?

9 A There was no such call based on what you just
10 said that call was about.

11 Q Was there a call prior to his death that
12 involved inheritance, that involved the siblings and
13 your father?

14 A Yes.

15 Q Who said what to whom in that conference?

16 A Robert Spallina explained that my father was
17 going to leave the -- his assets to ten grandchildren
18 equally.

19 Q When -- I ask you to -- if you could pick up
20 Exhibit Number 26, please.

21 (Exhibit 26 was marked for identification.)

22 Q Exhibit Number 26 was one of the documents
23 produced by the Tescher & Spallina firm. Have you seen
24 it before?

25 A Yes.



1 Q The third page is a transcription so that we
2 could read what it actually said. Do you see that?

3 A Do I see what the third page is?

4 Q Yeah.

5 A Yes, I do.

6 Q What was the genesis of the facts surrounding
7 Pam writing this note?

8 MR. SIMON: Objection; speculation.

9 Q I'm asking what you know, not what you're
10 speculating about.

11 A Can you ask me the -- what -- the question
12 again, or what you're specifically asking me?

13 Q What do you understand to have been the
14 circumstances of the facts that led to Pam writing this
15 note to your father? Why did she write it, as far as
16 you know?

17 MR. SIMON: Objection.

18 A As far as I know, she read it -- she wrote it
19 because she was -- she was passionate about the fact
20 that the document -- that the estate plan did not
21 include some of Sy's beneficiaries.

22 Q Meaning several of the siblings, right?

23 A Some of his children. Some of my siblings.

24 Q Did it exclude you as well?

25 A It did.



1 Q Did you encourage her to write that, or did
2 you know she was going to write that note when she wrote
3 it?

4 A I did not.

5 Q Did you take any view on the subject matter?

6 MR. SIMON: Objection.

7 Q The subject of the disinheritance.

8 MR. SIMON: Objection; relevance.

9 Q You may answer.

10 A Did I take any view to who?

11 Q Did you have a view internally as to the
12 appropriateness of your father's plan to disinherit some
13 of his children?

14 A Appropriateness, no. I encouraged --

15 Q You didn't have any --

16 A -- my father --

17 Q Oh, go ahead, I'm sorry.

18 A I encouraged my father to go speak with his
19 counsel about the fact that he received this and what he
20 should contemplate doing in receipt of it and how he was
21 feeling about it, and I encouraged him to talk to
22 counsel about it.

23 Q Ultimately, he left the estate plan in place
24 so that upon his death none of his estate passed to the
25 siblings, correct?



1 MR. ROSE: Object to the form.

2 Oh, that's your objection.

3 A He left the -- he left it in place.

4 Q Meaning that each of you and your siblings was
5 deemed to have been predeceased for the purpose of his
6 estate planning?

7 MR. SIMON: Objection; form.

8 Q Is that your understanding? If it's not, tell
9 me. I mean, I don't -- I'm not going to --

10 MR. SIMON: Well, the first time you said
11 "estate" and the second time you said "estate
12 planning", which is much more general.

13 MR. STAMOS: I didn't mean a distinction.

14 Q I just want to establish, upon his death, no
15 money as a consequence of his death passed or will have
16 passed to you and your siblings if the '95 trust is
17 never enforced and receives money through the insurance
18 policy, right?

19 A Correct.

20 Q But the money will otherwise pass to all of
21 your children, correct?

22 A To all of his grandchildren.

23 Q All of Simon's grandchildren, including your
24 children as well, correct?

25 A Correct.



1 MR. STAMOS: Give me just one second.

2 THE WITNESS: Sure.

3 Q This is my final question, or just about:
4 when you learned that Mr. Spallina had filed a claim
5 identifying himself as trustee of the '95 trust, did you
6 ever report to anyone in the insurance company or any
7 authority that he, in fact, was never the trustee of the
8 '95 trust?

9 A I did not.

10 Q Did you ever instruct him to take steps to
11 correct any misimpression he might have caused others to
12 form as a result of him having made that claim?

13 A I'm not sure he caused misimpressions in
14 anybody, so I don't know, and I didn't have any
15 conversations with insurance companies.

16 MR. STAMOS: All right. That's all I have.

17 Thank you.

18 THE WITNESS: You're welcome.

19 MR. ELIOT BERNSTEIN: Okay. I have a few
20 questions.

21 CROSS-EXAMINATION

22 BY MR. ELIOT BERNSTEIN:

23 Q Ted, are you aware of a holographic will
24 leaving some of the insurance proceeds to Maritza
25 Puccio?



1 A I don't know what a holographic will is.

2 Q It's a document that was written to leave
3 Maritza a portion of the death benefit that Rachel
4 walker --

5 Did she give you documents at the hospital the
6 night he died?

7 MR. SIMON: Objection; form. What's the
8 question? Did she give you documents?

9 Q Did Rachel -- do you know Rachel walker?

10 A I do.

11 Q On the night your father died, did she bring
12 documents to you at the hospital?

13 A I believe she did.

14 Q Was one of those documents a document with a
15 check and a letter regarding Maritza Puccio?

16 A No.

17 Q What documents did she bring you?

18 A My recollection is she brought me something --
19 things pertaining to living wills. I'm not using
20 correct legal terms I'm sure, but DNRs and things like
21 that.

22 Q On the day your dad died, did you contact the
23 sheriff?

24 A No.

25 Q On the day after he died, did you contact the



1 sheriff?

2 A I don't recall.

3 Q Did you file a sheriff's report at all after
4 your father died?

5 A I don't recall.

6 Q Did you make any claims that Maritza Puccio,
7 his girlfriend, might have poisoned him?

8 A No.

9 Q You gave no statement to the sheriff?

10 MR. SIMON: Objection; asked and answered.
11 Don't answer.

12 Q Did you file a coroner's -- did you order a
13 coroner inquiry on the day your father died?

14 A I did not.

15 Q At any time?

16 A I did not.

17 Q Do you know anybody who did?

18 A I believe the Palm Beach County did.

19 Q Palm Beach County who?

20 A The County.

21 Q The County ordered a coroner's --

22 MR. SIMON: Asked and answered.

23 Q -- investigation?

24 MR. SIMON: Asked and answered.

25 Q Okay. Why did they order it?



1 MR. SIMON: Objection; speculation.

2 Q Have you seen the report?

3 A I believe so.

4 Q On the day after your -- on the morning after
5 your father died -- or actually that morning, did you go
6 to your father's house?

7 A What date are you asking me about?

8 Q September 13th.

9 A You know, it's a blurry time. I -- shortly
10 after dad died, I -- I went to his house.

11 Q Were there sheriffs there?

12 A I believe some -- somebody from a law
13 enforcement agency showed up one of those days shortly
14 after dad died.

15 Q Did you speak with those sheriffs?

16 A I did.

17 Q What did you talk to them about?

18 A Not a lot of recollection, but they were
19 asking me questions about things.

20 Q Like?

21 A Medication, what -- what amounts of
22 medication, if I knew what kind of medication he took or
23 was taking or things like that.

24 Q Why were they there?

25 MR. SIMON: Objection; speculation.



1 Q well, you met with the sheriff. Didn't you
2 wonder why he was at your father's house on the day he
3 died and you were giving statements to him?

4 MR. SIMON: Same objection.

5 A You -- did you ask me why were they there?

6 Q Yeah.

7 A I don't know. I can't remember why they were
8 there.

9 Q And you had no involvement in the call. Did
10 your attorney have any involvement in the call to the
11 sheriff that you're aware of?

12 A I don't -- I can't -- I don't think so. I
13 don't think so.

14 Q So you, to the best of your recollection, you
15 don't know who called the sheriff or contacted them?

16 MR. SIMON: Objection; form.

17 Q Are you aware the night your father died that
18 a call had been made to the hospital claiming that he
19 had been poisoned?

20 A I'm not -- I'm not aware of a call that was
21 made where -- where it was claimed that he was poisoned.

22 Q You weren't aware of that?

23 A (Nonverbal response.)

24 Q Okay.

25 MR. ROSE: Can you hear this okay in Chicago?



1 I can't tell if you're acting like you're not able
2 to hear.

3 MR. STAMOS: No, we can hear. We got it.

4 MR. ROSE: Okay.

5 MR. STAMOS: Thank you.

6 MR. ROSE: You're welcome. I just saw your
7 face, so...

8 MR. STAMOS: Thanks.

9 Q (By Mr. Eliot Bernstein) So you became aware
10 at some point that there was a coroner's inquiry and you
11 were aware that there was claims about his medication,
12 correct?

13 MR. SIMON: Objection; form.

14 Q That if he had been --

15 MR. ELIOT BERNSTEIN: Oh, okay. I'll skip
16 that for a second.

17 Q If this 1995 trust is lost and is not valid by
18 the court, you get no benefits whatsoever, correct?

19 MR. SIMON: Objection; speculation, and calls
20 for a legal conclusion.

21 Q Can you look at the trust document, either one
22 of those trust documents that were exhibited, and tell
23 me who the law firm is on that trust document.

24 A Tescher & Spallina's law firm?

25 Q No, the two 1995 trusts that you're claiming



1 you're the trustee of. Who's the law firm that prepared
2 that document?

3 MR. STAMOS: Those are Exhibit 21 and 22.

4 THE WITNESS: Oh, thank you, Jim.

5 21 and 22? Of course I kept everything in
6 order except 21 and 22.

7 Do you have it? He's looking for the law
8 firm's name? Is this 21 and 22?

9 MR. SIMON: Yeah, these are 21 and 22. You
10 can just look at it.

11 A Are you asking me for the law firm on 21 and
12 22?

13 Q Yes.

14 A I don't see a law firm.

15 Q You don't see a law firm on the trust
16 document?

17 A I don't.

18 Q Anywhere on the document, does it say who
19 prepared it?

20 MR. SIMON: Objection; asked and answered.

21 MR. ELIOT BERNSTEIN: Well, I'm asking him
22 is -- anywhere on the document, is there a
23 reference to a law firm.

24 MR. SIMON: Asked and answered.

25 A Not -- not that I see.



1 Q Are you aware of any claim that your father
2 had been poisoned by anybody? Have you ever heard that
3 claim in the course of these proceedings?

4 A I -- I have heard things about dad being
5 poisoned.

6 Q Did you report those things to the insurance
7 company?

8 MR. SIMON: Objection; relevance.

9 MR. ELIOT BERNSTEIN: Well, there's a death
10 benefit claim, and I think it would be pretty
11 relevant, if somebody was murdered, who the
12 beneficiaries would be and how it would be paid and
13 if the insurance company should seek an
14 investigation.

15 MR. SIMON: You can ask the question.

16 MR. ELIOT BERNSTEIN: So --

17 Q Go right ahead.

18 A Can you ask me the question again?

19 Q Did you report to the insurance company that
20 you had information that your father might have been
21 poisoned?

22 A I did not.

23 Q Did you report it to the federal court that
24 your father might have been poisoned?

25 A I have -- I have not.



1 Q When you filed the lawsuit, did you notify
2 anybody that your father might have been poisoned?

3 A Which lawsuit?

4 Q The 1995 trust.

5 A I did not.

6 Q When you became trustee -- Robert Spallina
7 filed that original claim. When you became trustee, who
8 did you notify? Did you send out anything to the
9 beneficiaries?

10 A When I became the trustee of --

11 Q The successor trustee of this lost trust that
12 doesn't exist legally.

13 A Did I send anything to anybody?

14 Q Yeah.

15 MR. SIMON: Objection as to form.

16 Q Did you contact the beneficiaries by sending
17 them proper notice that you were trustee?

18 MR. SIMON: Objection as to form.

19 A I think all the beneficiaries were in
20 discussions, but I didn't.

21 Q Are you familiar with the laws regarding
22 successor trustees?

23 MR. SIMON: Objection; vague, asking for legal
24 conclusions.

25 MR. ELIOT BERNSTEIN: Okay.



1 Q Is Adam Simon related to you?

2 MR. SIMON: It's an easy question. No.

3 A I don't think so, no.

4 Q Is he related to your sister's husband?

5 A He is.

6 Q He is. And does your sister stand to lose all
7 of her benefit if this trust can't be proven and the
8 money gets paid to the estate?

9 MR. SIMON: Objection; speculation, calls for
10 a legal conclusion.

11 A No -- no idea.

12 Q So you know that if the trust doesn't succeed
13 and the money's paid to the estate, you, because you're
14 considered predeceased, don't get benefit, but you're
15 not sure about your sister who's also considered
16 predeceased?

17 MR. SIMON: Objection as to form; makes a
18 legal conclusion that's not necessarily correct.

19 I wouldn't even answer that one.

20 Continue.

21 MR. ELIOT BERNSTEIN: Okay. So we'll certify
22 that to take up with the judge.

23 MR. SIMON: Please.

24 MR. ELIOT BERNSTEIN: Okay.

25 Q Do you think that notifying an insurance



1 company of a potential claim that the insured was
2 murdered is appropriate in your experience as an
3 insurance agent?

4 MR. SIMON: Objection; speculation, form.
5 You can try to answer.

6 A I think you're asking me, if I knew that
7 somebody was murdered -- would I notify an insurance
8 company if I knew that somebody was murdered.

9 Q If you thought somebody was murdered.

10 A Would I notify an insurance company if I had
11 reason to be involved in that situation, I think what
12 you're asking me is, if I had that knowledge, I would
13 notify an insurance company.

14 Q when you filed this lawsuit, you filed a
15 breach of contract lawsuit, correct?

16 A I'm not sure.

17 Q well, you're the plaintiff. You filed the
18 lawsuit --

19 MR. SIMON: Show him the Complaint. That's
20 what it's for.

21 Q So you're not sure --

22 MR. SIMON: Show him the Complaint, Mr.
23 Bernstein.

24 MR. ELIOT BERNSTEIN: That's a good enough
25 answer.



1 Q what type of lawsuit did you file with the
2 federal court?

3 MR. SIMON: Objection. Show him the
4 Complaint, please.

5 Q I'm just asking based on your knowledge.

6 A And I'm -- and I'm not a lawyer, and I don't
7 have the document, and the type of lawsuit that was
8 filed, without looking at something, I can't tell you.

9 Q So you're the trustee of this trust and you
10 filed as a plaintiff a lawsuit and you don't know what
11 kind of lawsuit?

12 MR. SIMON: Objection; speculation,
13 argumentative. We've asked you several times to
14 give him the complaint which would give you the
15 answer you're looking for, Mr. Bernstein, so please
16 continue.

17 MR. ELIOT BERNSTEIN: I'm just asking for his
18 knowledge.

19 MR. SIMON: I'm just asking you to continue.
20 We'll just stop. We can just stop.

21 MR. ELIOT BERNSTEIN: I'm just asking for his
22 knowledge.

23 MR. SIMON: Then go ahead.

24 Q So, based on your knowledge, you are claiming
25 that you have no idea how you filed this lawsuit?



1 MR. SIMON: Objection. That's not what
2 he's -- you're testifying for him. Ask him a
3 question.

4 Q Did you deliver the documents that you got
5 from Rachel walker at the hospital to any party?

6 A Other than the hospital?

7 Q Yeah.

8 A Deliver them? I don't recall, Eliot.

9 Q Where are those documents?

10 A I don't recall that either.

11 Q Well, Rachel walker, you sent her to get
12 documents from the home of Simon after he died, correct?

13 A I believe I did.

14 Q And they were estate documents, correct?

15 A I think I understand what you're asking me,
16 and, yes, they were -- they were documents that were
17 part of his estate planning.

18 Q And I'm asking you if you know where they are.

19 A I think I answered. I don't recall right now
20 where they are.

21 Q Were you in custody of Simon's personal
22 property and possessions after he died?

23 MR. SIMON: Objection; relevance.

24 A Was I in custody? Can you clarify "custody"
25 for me?



1 Q well, were you in charge of Simon's personal
2 property to remove documents off the estate when he
3 died?

4 MR. SIMON: Objection; relevance.

5 A I don't understand the question.

6 Q well, we have missing documents, Ted --

7 A Yes.

8 Q -- as you're aware, estate documents, trusts.
9 Rachel came with --

10 How many documents did she give you that
11 night?

12 MR. SIMON: Objection; form. That's not
13 even --

14 Q Approximately how many documents did she bring
15 to you that were estate planning documents?

16 A A couple.

17 Q And then you have no idea where you have those
18 documents?

19 A No. At this time, I don't.

20 Q In those documents, you weren't aware of any
21 documents that were supposed to be tendered back to the
22 estate?

23 MR. SIMON: Objection.

24 Q You removed property from the estate or had
25 someone remove it on your behalf. Did you have it



1 returned to the estate?

2 MR. SIMON: Objection; form. Didn't let him
3 answer. Compound questions.

4 Q Were you requested by any parties to turn
5 those documents over to them?

6 A I don't believe so.

7 MR. ELIOT BERNSTEIN: I'd like to submit this
8 as an exhibit. Can we get a copy of that real
9 quick.

10 (Recess taken.)

11 (Exhibit A was marked for identification.)

12 MR. STAMOS: Can you describe that for us? We
13 don't have a copy.

14 Q (By Mr. Eliot Bernstein) Ted, could you
15 describe that document.

16 MR. ROSE: (Indicating.)

17 MR. STAMOS: Is that the police report
18 document?

19 MR. ELIOT BERNSTEIN: Yes.

20 MR. STAMOS: Yeah, we have that. I think we
21 have that.

22 MR. ROSE: I'm just trying to be helpful.

23 MR. STAMOS: Thank you.

24 Is that topped by the February 11, 2014 fax
25 number -- fax legend?



1 MR. ROSE: This one says January 31, '13.

2 MR. STAMOS: Oh.

3 MR. ROSE: The report entry though is --
4 starts with the words "On 9/13/12 at 12:11 hours."

5 MR. STAMOS: Oh, okay. We don't have that
6 one. All right.

7 THE WITNESS: Okay.

8 Q (By Mr. Eliot Bernstein) You were talking to
9 the sheriff's department on this day, correct?

10 A Yes, I was.

11 Q And that's the day your father died, right?

12 A Yes.

13 Q Did you advise the sheriff's department that
14 your father might have been overdosed or the likes by
15 his girlfriend?

16 A No.

17 Q No?

18 A No.

19 Q Okay. Were you advised by anybody that your
20 father could have been overdosed?

21 A Yes.

22 Q That's good. So now you're remembering that
23 you did talk to the sheriff's department that day?

24 MR. SIMON: Objection; move to strike,
25 argumentative.



1 Q Did you voice concerns to Delray Hospital that
2 your father might have been overdosed or taken too much
3 medication?

4 MR. SIMON: Objection; asked and answered.

5 Q Okay. Can you read in the 11th line.

6 A What is the first word?

7 Q It will be at the end of that sentence. "He,"
8 being you, Ted, "said," can you read that?

9 A "He said he voiced his concerns to the doctors
10 at Delray Community Hospital but they advised there did
11 not appear to be any suspicious circumstances
12 surrounding Simon's death and they would not be
13 conducting an autopsy."

14 Q Can you keep reading the next sentence,
15 please.

16 A "Ted contacted both a private company and the
17 Palm Beach County Medical Examiner's Office regarding
18 having an autopsy conducted."

19 Q Would you like to change your prior statement?

20 MR. SIMON: Objection; argumentative, form.

21 Q Does that say you contacted the private
22 autopsy firm?

23 MR. SIMON: Objection.

24 A It says, "Regarding."

25 MR. SIMON: Document says what it says.



1 Q Did you contact a private company regarding
2 doing an autopsy?

3 A I believe that I did.

4 Q Oh, now you did, okay.

5 MR. SIMON: Objection; move to strike,
6 argumentative.

7 Q Did you contact the Palm Beach County Medical
8 Examiner's Office about having an autopsy?

9 A I can't recall.

10 Q Well, read the next line. Did you tell a
11 sheriff's deputy that?

12 A Which line are you asking me to read?

13 Q The one that is -- I think it's like 14. Hold
14 on.

15 MR. SIMON: Eliot, I'm going to give you two
16 more questions, and then we're going to do my
17 questions, and then I'm going to stop.

18 MR. ELIOT BERNSTEIN: I've got a few more
19 questions.

20 MR. SIMON: You've got two.

21 MR. ELIOT BERNSTEIN: And these are very
22 serious questions, so please. This could have --
23 you know, potential murder of my father. I know
24 you're concerned because my father spoonfed you his
25 whole life.



1 MR. SIMON: Nobody from the insurance
2 department --

3 Q Ted, on Line 15 --

4 MR. SIMON: We're done now.

5 Q -- Ted contacted -- it starts with "Ted
6 contacted." Could you read that into the record,
7 please.

8 MR. SIMON: You can read that.

9 Q Three lines up from the bottom of the first
10 paragraph.

11 A "Ted contacted both the private company and
12 the Palm Beach County Medical Examiner's Office
13 regarding having an autopsy conducted. Both advised he
14 should contact the Palm Beach County Sheriff's Office."

15 Q Did you contact the Palm Beach County
16 sheriff's office?

17 A I don't remember.

18 MR. SIMON: We're done.

19 Q You don't recall that you're --

20 MR. ELIOT BERNSTEIN: I'm not done. I have
21 questions.

22 MR. SIMON: You're done. We agreed to five to
23 eight. I'm going to ask him two questions and then
24 we're out of here.

25 MR. ELIOT BERNSTEIN: Then you're out of time.



1 MR. SIMON: Come on.

2 Okay.

3 MR. ELIOT BERNSTEIN: Yeah.

4 (Mr. Simon and Mr. Ted Bernstein exit the
5 room.)

6 MR. ROSE: We're temporarily off the record.

7 (Recess taken.)

8 MR. SIMON: This is Adam Simon. I just have
9 two or three questions.

10 MR. ELIOT BERNSTEIN: Well -- so you're
11 interrupting my line of questioning? I was
12 questioning. So we should take this up with the
13 judge to give me more time?

14 MR. SIMON: Please do.

15 MR. ELIOT BERNSTEIN: Okay, we will.

16 MR. SIMON: Please do. Please. Please do.
17 Yeah, the judge has been so --

18 (Cross-talking. Interruption by the
19 reporter.)

20 MR. ELIOT BERNSTEIN: Your father would be
21 ashamed.

22 MR. SIMON: All right. You guys ready?

23 MR. STAMOS: We're ready.

24 CROSS-EXAMINATION

25 BY MR. SIMON:



1 Q Ted, we talked about the 2000 insurance trust,
2 correct?

3 A Yes.

4 Q Have you seen any documents produced by anyone
5 that assigned the ownership of the Capital Bankers
6 policy to the 2000 trust?

7 A No, I haven't. It's my understanding that
8 that -- that trust never received any assets, didn't
9 receive the insurance policy, was never named as a
10 beneficiary.

11 Q Never named as a beneficiary or an owner,
12 correct?

13 A Or an owner.

14 Q Around the time of the reinstatement of the
15 policy that you discussed, did you have any
16 conversations with your father regarding the beneficiary
17 of the policy and the purpose of the policy?

18 A I did.

19 Q And can you describe that conversation.

20 A So we were having conversations at that time
21 about a buy/sell agreement, you know, buying each other
22 out of the business as he was winding things down in his
23 career, and I wanted a life insurance policy because we
24 were partners in that business and I, you know, was
25 hoping that we would get a life insurance policy, but he



1 made it, you know, emphatically clear, and I knew it
2 from the reinstatement process, and I also just knew it
3 from his medical history, that there was really little
4 chance or no chance of getting another life insurance
5 policy on his life. So I thought it might be easy to
6 use existing life insurance and just change the
7 beneficiary portion of the policy to take care of the
8 needs that we would have needed in the buy/sell
9 agreement discussions, but he was unwilling to do that.
10 I guess he was unwilling to do that because he felt it
11 was part of his overall plan to have those life
12 insurance policies, you know, do other things to be left
13 obviously for his children through the trust.

14 MR. SIMON: I have nothing further.

15 MR. ELIOT BERNSTEIN: I'd like to ask you a
16 question on that.

17 RE CROSS EXAMINATION

18 BY MR. ELIOT BERNSTEIN:

19 Q You mentioned the policy. You're the trustee
20 of this lost trust. Do you have possession of the
21 policy?

22 A I think I have a copy of the policy.

23 Q A fully executed life insurance policy?

24 MR. SIMON: Objection; relevance.

25 Q Have you produced that policy to the court?



1 MR. SIMON: Objection; relevance. The
2 policy's been paid out by the carrier.

3 Q The policy, do you have a copy of the actual
4 policy from the carrier?

5 A A copy of the policy? I think so.

6 Q Fully executed?

7 MR. SIMON: Objection.

8 A I don't know what that means.

9 Q A policy that has all the pages to it that's a
10 complete policy, that's got the beneficiaries, the death
11 benefits, all that listed out. A copy of the policy.

12 MR. SIMON: Objection; form --

13 Q Do you have possession of that?

14 MR. SIMON: Objection; form. Objection;
15 foundation.

16 Q Do you have the policy?

17 MR. SIMON: Objection, relevance.

18 A I believe I have a copy of what the insurance
19 company sent during this time of reinstatement. I
20 believe I have a copy of the insurance policy. Whether
21 executed, I -- I don't know what they deem executed.

22 Q You have a copy of the insurance policy, okay.
23 Have you given that in your production?

24 MR. SIMON: Objection; misstated his answer.

25 Q I asked you did you put it in production. You



1 haven't answered.

2 MR. SIMON: He said he saw it in production.

3 He said what was produced.

4 Q No. I asked you, did you put your copy of the
5 policy in production. You were supposed to --

6 MR. SIMON: No, you didn't.

7 Q -- put all your documents.

8 MR. SIMON: That's not what you said. That's
9 not what he said. He said he found the documents
10 through production.

11 Q Did you put the policy in with your production
12 documents?

13 A I'm not sure.

14 Q You were asked by the court to produce
15 documents. Did you produce all your documents?

16 A I don't know if I was asked by a court to
17 produce documents, but...

18 Q Okay. We had to do a Rule 26 document
19 request. You're the plaintiff. You produced documents.

20 MR. SIMON: I'm going to object to this line
21 of questioning. He has answered about the policy.
22 He believes he had a copy. He's not sure if --

23 Q You believe you had a copy --

24 (Cross-talking. Interruption by the
25 reporter.)



1 Q Did you put the copy of the policy you claim
2 to have with your production to the court when you
3 produced?

4 A I'm not sure.

5 MR. SIMON: Jim, we're ten minutes over the
6 agreed time. Do you have anything further?

7 MR. STAMOS: I just have one additional
8 question, if you don't mind.

9 REDIRECT EXAMINATION

10 BY MR. STAMOS:

11 Q You described this conversation you had with
12 your father a moment ago about the trust, how it related
13 to the buy/sell and so forth. Do you recall that
14 question and answer you just gave?

15 A Yes, I do.

16 Q And apropos of that conversation and any
17 other -- apropos of that conversation, you understand
18 that if the court recognizes the '95 trust as being the
19 appropriate beneficiary for the policy, that you will
20 receive 20 percent of the proceeds, and that if the
21 court doesn't recognize the '98 [sic] trust as the
22 beneficiary of the insurance policy in question, you
23 will receive none of the proceeds of that policy,
24 correct?

25 MR. SIMON: Objection; it's a legal conclusion



1 which is probably inaccurate.

2 Q I'm asking your understanding.

3 MR. SIMON: Relevance. His understanding is
4 not going to determine that.

5 A It's my understanding that if the trust is
6 determined not to be the beneficiary of the insurance
7 policy, that I will not receive whatever it was I was
8 supposed to receive. That's my -- what I understand.
9 Anything else, I don't -- I don't know.

10 Q Just one last -- but the corollary of that is
11 your notion that if the court does recognize the trust
12 as being the beneficiary, you'll receive something;
13 you're just not sure what it is?

14 A That's correct.

15 MR. STAMOS: Okay. Thanks. That's all I
16 have.

17 MR. SIMON: I just have one more.

18 RE CROSS EXAMINATION

19 BY MR. SIMON:

20 Q Do you understand that there is a third
21 possibility, that even if the trust is not acknowledged,
22 it may not go to the estate? It could possibly be
23 decided to go somewhere else by the judge? Do you
24 understand that?

25 A I do understand that.



1 MR. ELIOT BERNSTEIN: Okay. I have one last
2 question.

3 MR. STAMOS: Let me ask -- let me follow that
4 up.

5 REDIRECT EXAMINATION

6 BY MR. STAMOS:

7 Q Where do you understand to be the third
8 possibility as the destination for the proceeds of the
9 policy?

10 A So there's, you know, all kinds of
11 possibilities of where insurance proceeds can go when
12 they're up for grabs like that and --

13 MR. SIMON: And I'm going to object, because
14 this is all legal conclusion for the judge to
15 decide.

16 MR. STAMOS: I'm just following up your
17 question. You asked him was there a third
18 possibility; he said yes. I'm just trying to find
19 out what third possibility he understands that
20 there is.

21 MR. SIMON: I said third possibility that the
22 judge would determine. That was my question.

23 MR. STAMOS: Yeah. Well, Adam, I'm just
24 asking what he understands. If he has no
25 understanding, he can tell me that and we can go



1 home.

2 A I understand that there's infinite
3 possibilities of where it could go in the event that a
4 judge makes a ruling on where they go.

5 MR. ELIOT BERNSTEIN: Okay. I have one last
6 question.

7 RECROSS EXAMINATION

8 BY MR. ELIOT BERNSTEIN:

9 Q Ted, what's the primary beneficiary on the
10 policy that you possess?

11 A The primary beneficiary, if I recall, was a --
12 was a -- I think it was a voluntary employee benefit
13 plan.

14 Q Would that happen to be LaSalle National
15 Trust?

16 A Oh, boy, I -- I don't know.

17 Q You don't know who the primary beneficiary on
18 the policy that you're the trustee for is?

19 MR. SIMON: Objection; asked and answered,
20 argumentative.

21 We're done. Let's go.

22 Q One more question.

23 MR. SIMON: No. We're done.

24 Q Who's the contingent beneficiary named on it?
25 Are you aware your father -- of his heavy



1 metal poison test, Ted? Ted?

2 MR. ROSE: I think Adam's terminated the
3 deposition, so --

4 MR. SIMON: Yeah. We're way past --

5 MR. ROSE: You have no further questions in
6 Chicago, right?

7 MR. SIMON: Way past.

8 MR. STAMOS: No, we're all set.

9 MR. ROSE: Have a good night, guys.

10 (Mr. Simon and Mr. Ted Bernstein exit the
11 room.)

12 (Deposition concluded at 8:15 p.m.)
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ERRATA-SIGNATURE PAGE
SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE UNION
LIFE INSURANCE
Case No. 13 CV 3643
DEPOSITION TAKEN May 6, 2015

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Page _____ Line _____:
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Under penalties of perjury, I declare that I have read the foregoing transcript and that the facts stated in it are true.

Date

TED BERNSTEIN



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CERTIFICATE OF OATH

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, Lisa Gropper, Registered Professional Reporter,
Florida Professional Reporter, Notary Public, State of
Florida, certify that TED BERNSTEIN personally appeared
before me on the 6th day of May, 2015 and was duly
sworn.

WITNESS MY HAND AND OFFICIAL SEAL this 19th day of
May, 2015.

LISA GROPPER, RPR, FPR
Notary Public, State of Florida
My Commission No.: EE136111
My Commission Expires: 11/18/2015



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CERTIFICATE OF REPORTER

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

I, LISA GROPPER, Registered Professional Reporter,
Florida Professional Reporter, do hereby certify that I
was authorized to and did stenographically report the
deposition of TED BERNSTEIN; that a review of the
transcript was requested; and that the foregoing
transcript is a true record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative,
employee, or counsel of any of the parties, nor am I a
relative or employee of any of the parties' attorney or
counsel connected with the action, nor am I financially
interested in the action.

Dated this 19th day of May, 2015.

Lisa Gropper, R.P.R., F.P.R.



1 McCorkle Litigation Services, Inc.
2 200 N. LaSalle Street - suite 2900
3 Chicago, Illinois 60601
4 (312) 263-0052

5
6 May 19, 2015

7 The Simon Law Firm
8 303 East Wacker Drive
9 Suite 2725
10 Chicago, Illinois 60601
11 ATTN: Adam M. Simon, Esq.

12 RE: SIMON BERNSTEIN IRREVOCABLE TRUST VS. HERITAGE
13 UNION LIFE INSURANCE

14 Dear Mr. Simon,

15 Enclosed please find the deposition transcript of
16 TED BERNSTEIN in the above-captioned case taken on
17 May 6, 2015.

18 Please have Mr. Bernstein read your transcript copy
19 and sign the attached errata sheet. Make a copy of the
20 errata sheet to attach to your copy of the transcript,
21 and then please forward the original errata sheet back
22 to our office.

23 Please make arrangements to have this accomplished
24 as soon as possible. The failure to read and sign the
25 deposition could be constituted as a waiver if not
26 accomplished within a reasonable period of time.

27 Your attention to this matter is appreciated.

28 Sincerely,

29
30 Lisa Gropper, RPR, FPR



<p>Exhibits</p> <p>T. Bernstein Exhibit 1 33:10,11,13 34:9 40:21 48:22</p> <p>T. Bernstein Exhibit 10 60:23,24</p> <p>T. Bernstein Exhibit 11 62:9,11 65:4</p> <p>T. Bernstein Exhibit 14 66:8,9</p> <p>T. Bernstein Exhibit 15 67:2,4</p> <p>T. Bernstein Exhibit 16 69:16,17,23,24</p> <p>T. Bernstein Exhibit 17 71:18,19,20</p> <p>T. Bernstein Exhibit 18 75:2,3 76:12</p> <p>T. Bernstein Exhibit 19 11:17,18 19:17 29:8</p> <p>T. Bernstein Exhibit 2 50:19,21</p> <p>T. Bernstein Exhibit 21 18:15 25:13 81:8 100:3</p> <p>T. Bernstein Exhibit 22 27:21,24</p> <p>T. Bernstein Exhibit 23 77:12,13 81:22 83:6</p> <p>T. Bernstein Exhibit 24 78:6 88:5,6</p> <p>T. Bernstein Exhibit 25 32:22 33:3,5</p> <p>T. Bernstein Exhibit 26 90:20,21,22</p> <p>T. Bernstein Exhibit 3 54:5,6,13</p> <p>T. Bernstein Exhibit 4 55:13,14,15</p>	<p>T. Bernstein Exhibit 5 57:8,9,10,11</p> <p>T. Bernstein Exhibit 8 58:1,3</p> <p>T. Bernstein Exhibit 9 59:23,24,25</p> <p>T. 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OFFENSE REPORT CASE NO. 12121312
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOPSY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOPSY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE, WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ON TO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF. THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM

Δ π EXHIBIT A
Deponent T. Bernstein
Date 5/6/15 Rpt. LG
www.DEPOBOOK.COM

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Friday, October 19, 2012 12:32 PM
To: Robert Spallina; Pam Simon
Subject: RE: Update

Robert,

We believe we have a solution to the life insurance policy which provides the desired result. We would like to discuss this with you at your earliest convenience. Until we have this conversation, please do not process anything further with the insurance company as we would like to avoid any unnecessary confusion for them. Pam, her husband Scooter, and I would like to have this initial conversation with you.

Let me know what is good for you and I can coordinate with Pam and Scooter.

Take care...

-----Original Message-----

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Friday, October 19, 2012 7:19 AM
To: Pam Simon
Cc: Ted Bernstein
Subject: Re: Update

Pam - My office is processing the claim as your father was the owner of the policy and the proceeds will likely be paid to the estate in the absence of finding the trust. As I mentioned previously there was a discussion with the carrier about possibly using the 2000 trust (the one you are carved out of but would be split 5 ways according to Ted) but I'm not sure that we will achieve that result. 11:00 on Tuesday your time is my lunch hour. I am out of the office all day and will reach out to you on Monday as my calendar is fairly packed next week and a status call will have to be later in the day sometime next week. Have a nice weekend.

Sent from my iPhone

On Oct 19, 2012, at 6:32 AM, "Pam Simon" <pambsimon@me.com> wrote:

> Hi Robert - I have the ss4 on the 1995 irrevocable trust so we should be able to take care of getting the payment. If you already have the death claim package from the carrier can you overnight it to me and we will take care of the payout? If you don't have the package, can you send me an original death certificate and I will request it from the carrier?

> Also, we would like to do a family status call Tuesday at 11 am
> chicago time. Pls let us know if that works for you? Have a nice
> weekend - Pam Simon

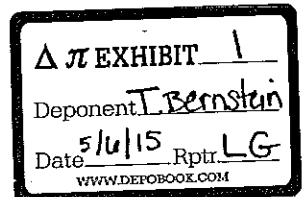
>
> Thanks
> Pam

> On Oct 15, 2012, at 10:12 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

>> Call me now

>> -----Original Message-----

>> From: Pam Simon [mailto:pambsimon@me.com]



>> Sent: Monday, October 15, 2012 11:11 AM
>> To: Robert Spallina
>> Subject: Re: Call 10/ 16/12 Tuesday 3:30 pm Chicago time
>>
>> I have some on the trust - should only be a few minutes
>>
>> On Oct 15, 2012, at 8:36 AM, Robert Spallina
>> <rspallina@tescherspallina.com> wrote:
>>
>>> There are no updates at this time
>>>
>>> Sent from my iPhone
>>>
>>> On Oct 15, 2012, at 8:40 AM, "Pam Simon" <pambsimon@me.com> wrote:
>>>
>>>> Hi all - do you have time for status?

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Wednesday, December 05, 2012 6:01 PM
To: Robert Spallina; Pam Simon
Cc: Simon David Scooter; Simon Pam
Subject: RE: Proceeds

OK Robert, we understand and I will distribute the document to each of my siblings this evening if I can get to it, otherwise tomorrow morning for sure.

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Wednesday, December 05, 2012 10:24 AM
To: Pam Simon
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: RE: Proceeds

Eliot is represented and I can send nothing to him directly. If you all want to send it to him then by all means do so. Keep in mind that he is likely to send it to his attorney anyway. I will leave it to your discretion.

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Wednesday, December 05, 2012 9:58 AM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert Did you send to Eliot yet - prob a good start.

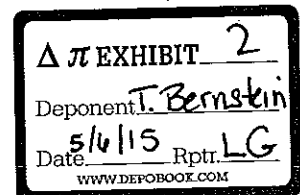
On Dec 3, 2012, at 1:35 PM, Robert Spallina <rspallina@tescherspallina.com> wrote:

Yes – but Eliot’s counsel will probably hold things up

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Monday, December 03, 2012 12:12 PM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert - scooter will send you but can you send out for signatures? Thanks

On Dec 3, 2012, at 9:48 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:



Please have him send me the document for my review and copy all. I want to make sure we have an agreement among all before I speak to the carrier.

From: Pam Simon [<mailto:pambsimon@icloud.com>]
Sent: Sunday, December 02, 2012 7:39 AM
To: Robert Spallina
Cc: Ted Bernstein; Simon David Scooter; Simon Pam
Subject: Re: Proceeds

Hi Robert - can you call Scooter as he has a copy of the document you can circulate for signatures to release the proceeds. 312-909-0369 Thx

On Nov 19, 2012, at 12:14 PM, "David (Scooter) Simon"
<dsimon@stpcorp.com> wrote:

May be available to achieve Si's intended results through waiver and settlement agreement.

Please have Mr. Spallina call my cell phone 312 909 0369

On Nov 19, 2012, at 1:11 PM, "Pam Simon"
<pambsimon@icloud.com> wrote:

Is the 2000 trust an irrevocable trust?

On Nov 19, 2012, at 11:57 AM, Robert Spallina
<rspallina@tescherspallina.com> wrote:

We are not responding to them with the document from 2000. We discussed that and you are carved out under that document. We need to find the 1995 trust ASAP

From: Pam Simon
[\[mailto:pambsimon@icloud.com\]](mailto:pambsimon@icloud.com)
Sent: Monday, November 19, 2012 12:56 PM
To: Ted Bernstein
Cc: Robert Spallina
Subject: Re: Proceeds

Pls send the executed trust document before u respond to heritage

On Nov 19, 2012, at 9:13 AM, Ted Bernstein
Bernstein
<tbernstein@lifeinsuranceconcepts.com> wrote:

Highly unlikely they will use another trust - what is SOP when doc can't be found?

Ted Bernstein
561-988-8984

Sent from my Samsung Galaxy Note™

----- Original message -----
Subject: RE: Proceeds
From: Robert Spallina <rspallina@tescherspallina.com>
To: Pam Simon <pambsimon@icloud.com>
CC: RE: Proceeds

Heritage responded back that they need a copy of the trust instrument. We do not have a copy and the only executed trust document that we have in which the policy is listed as an asset is the 2000 trust prepared by Al Gortz.

-----Original Message-----

From: Pam Simon
[\[mailto:pambsimon@icloud.com\]](mailto:pambsimon@icloud.com)
Sent: Friday,
November 16, 2012
2:35 PM
To: Robert Spallina
Cc: Bernstein Ted
Subject: Proceeds

Hi Robert - any word
on the proceeds?
Need help? Pam

Hi > his address is:

TESCHER & SPALLINA, P.A.
Boca Village
Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, Florida 33431

From: Pam Simon [mailto:psimon@stpecorp.com]
Sent: Thursday, December 06, 2012 10:52 AM
To: Jill Iantoni
Cc: Ted Bernstein; lisa.friedstein@gmail.com; iviewit@gmail.com; iviewit@iviewit.tv
Subject: Re: Life Insurance - agreement

Thanks theo - will email u signed one today and fed x spallina - do u have his address?

On Dec 6, 2012, at 10:00 AM, "Jill Iantoni" <jilliantoni@gmail.com> wrote:

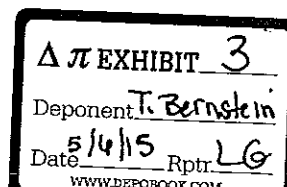
Great. Thanks Ted for handling this!!

Jill

On Thu, Dec 6, 2012 at 8:58 AM, Ted Bernstein <tbernstein@lifeinsuranceconcepts.com> wrote:

Hello,

Good news; the Heritage Union Life Insurance company is ready to make payment on the policy that insured Dad. There was an exhaustive search for the original trust document from 1995, which is the beneficiary of the policy owned by Dad. Since we have not been able to locate it, the attached agreement will permit the insurance company to make payment to a Trust account that will then distribute the proceeds in equal parts to the 5 of us. Robert Spallina recommended that I distribute this document so it can be reviewed by each of you, signed and then it can be submitted to the carrier. Please sign the document where applicable. Then email to me the signature page and Fedex the original to Robert Spallina's office. Once we have all signatures, the carrier should release proceeds quickly.



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release is made and entered into this _____ day of _____, 2012, at Chicago, Illinois by and between each of the following defined entities and individuals.

PARTIES DEFINED

"TED", as defined herein, refers to and means Ted S. Bernstein an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"PAM", as defined herein, refers to and means Pamela B. Simon an individual residing in Chicago, Illinois, her heirs, successors and/or assigns.

"ELIOT" as defined herein, refers to and means Eliot L. Bernstein, an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"JILL" as defined herein, refers to and means Jill M. Iantoni, an individual residing in Highland Park, Illinois, her heirs, successors and/or assigns.

"LISA" as defined herein, refers to and means Lisa S. Friedstein residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"ALLY" as defined herein, refers to and means Alexandra L. Bernstein residing in White Plains, New York, an individual, her heirs, successors and/or assigns.

"ERIC" as defined herein, refers to and means Eric D. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MICHAEL" as defined herein, refers to and means Michael A. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MOLLY" as defined herein, refers to and means Molly N. Simon residing in Chicago Illinois, an individual, her heirs, successors and/or assigns.

"THE ELIOT CHILDREN" as defined herein, refers to and means Joshua, Jacob and Daniel Bernstein residing in Boca Raton, Florida, all individual(s), their heirs, successors and/or assigns.

"THE JILL CHILD" as defined herein, refers to and means Julia Iantoni residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"THE LISA CHILDREN" as defined herein, refers to and means Max and Carley Friedstein residing in Highland Park, Illinois, an individual(s), both heirs, successors and/or assigns.

DEFINITIONS

"Agreement", as defined herein, refers to and means, this Settlement Agreement and Mutual Release.

"Party" or "Parties", shall refer to and mean an individual defined above whom shall sign on and be bound by this Settlement Agreement, and Parties shall refer to the individuals collectively.

"Trust", as defined herein refers to and means the Simon L. Bernstein Irrevocable Insurance Trust dtd 6/21/95.

RECITALS

WHEREAS, the Parties are all of the children and grandchildren of the marriage of Simon L. Bernstein and Shirley Bernstein;

WHEREAS, Simon L. Bernstein established the Trust in 1995 for the benefit of his wife,

Shirley Bernstein, and their children, the Parties;

WHEREAS, Shirley Bernstein predeceased Simon L. Bernstein, and Simon L. Bernstein passed away on September 13, 2012;

WHEREAS, after a diligent search by the Parties, an executed copy of the Trust can not be found;

WHEREAS, the Trust is the beneficiary of life insurance policy number 1009208 issued by Heritage Union Life Insurance Company (the "Insurer") on the life of Simon L. Bernstein (the "Policy");

WHEREAS, the Parties desire to achieve the intent of Simon L. Bernstein on or about the date of the Trust and resolve any and all disputes and controversies that have arisen or may arise regarding the distribution of the death benefit proceeds of the Policy.

WITNESSETH

NOW THEREFORE, in consideration of the following covenants, promises and obligations, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged; it is agreed by and between the Parties as follows:

COVENANTS

1. TED is appointed and hereby accepts the appointment to act as Trustee of the Trust.
2. That TED, as Trustee, shall open a bank account in the name of the Trust (the "Trust Account").
3. That TED, as Trustee shall deposit or direct the Insurer to deposit the death benefit proceeds of the Policy into the Trust Account.
4. That TED, as Trustee, shall pay expenses of the Trust including the cost of filing a tax return from the proceeds in the Trust Account.
5. That TED, as Trustee, shall distribute all remaining proceeds in the Trust Account equally (in 20% shares) to each of TED, PAM, ELIOT, JILL and LISA.

6. That TED, as Trustee, upon completing the distribution in ¶5 above and the filing of the tax return contemplated in ¶4 above shall close the Trust Account.
7. Upon receipt of the Settlement Agreement executed by all Parties and upon fulfillment of all of the covenants and obligations contained in ¶1 through ¶6 above, TED, PAM, ELIOT, JILL, AND LISA, ALLY, ERIC, MICHAEL, MOLLY, THE ELIOT CHILDREN, THE JILL CHILD AND THE LISA CHILDREN and each of them in their own individual capacity, shall respectively acquit, release, and forever discharge TED, both individually and as Trustee, and each and every other Party from any and all claims, demands, liabilities, obligations, causes and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected by each of them, which each of them now owns or holds or at any time heretofore owned or held as against each other arising out of any matter related to or associated with the Policy and/or the Trust, and without limiting the generality of the foregoing, all claims, demands, liabilities, obligations, causes and causes of action arising out of or in any way connected with: a) the receipt of the death benefit proceeds of the Policy by the Trust; b) arising out of or in any way connected to the operation and management of the Trust, or the actual terms of the Trust in the event it should be located subsequent to the date of this Agreement regardless as to whether all of the covenants and obligations of this Agreement have been executed to completion.
8. All demands and notices given hereunder shall be sent by mail addressed to the respective Parties with a copy to David B. Simon, The Simon Law Firm, 303 E. Wacker Dr., Suite 210, Chicago, IL 60601-5210.
9. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder. All Parties further represent that this Settlement Agreement has been duly executed and delivered.
10. This Settlement Agreement embodies the entire understanding of the Parties. All prior correspondence, conversations, memoranda and agreements have been merged into and replaced by this Settlement Agreement.
11. If a Party breaches this Settlement Agreement, the breaching Party shall reimburse the non-breaching Parties for all reasonable costs, attorney's fees, and expenses incurred by them in enforcing the terms and provisions of the Settlement Agreement.
12. This Settlement Agreement shall (i) be governed and construed in accordance with the laws of the State of Illinois and all claims or controversies arising out of this Settlement Agreement shall be brought within the exclusive jurisdiction of the State of Illinois; (ii) inure to the benefit of and be binding upon the Parties themselves, as well as their respective heirs, executors, predecessors, successors and assigns.
13. All Parties have been represented by counsel, or have had the opportunity to seek the advice of counsel, and if they have sought counsel then such counsel has reviewed this Settlement Agreement and recommended that their respective clients enter into it.
14. This Settlement Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute an original. Facsimile signatures of the Parties shall as valid and binding as original signatures.

15. Should any provision contained in this Agreement be deemed illegal or unenforceable as a matter of law, the remainder of this Agreement shall remain binding and continue in full force and effect.
16. The signatories state that they have read and understand this Settlement Agreement and that they intend to be legally bound by the same.

Agreed and accepted this date and year first written above.

TED S. BERNSTEIN

Witness: _____
Address: _____

PAMELA B. SIMON

Witness: _____
Address: _____

LISA S. FRIEDSTEIN

Witness: _____
Address: _____

ERIC BERNSTEIN

Witness: _____
Address: _____

MOLLY N. SIMON

Witness: _____
Address: _____

THE JILL CHILD

Jill Iantoni, Parent

Guy Iantoni, Parent

Address: _____

ELIOT I. BERNSTEIN

Witness: _____
Address: _____

JILL M. IANTONI

Witness: _____
Address: _____

ALEXANDRA L. BERNSTEIN

Witness: _____
Address: _____

MICHAEL BERNSTEIN

Witness: _____
Address: _____

THE ELIOT CHILDREN

Eliot I. Bernstein, Parent

Candace Bernstein, Parent

Address: _____

THE LISA CHILDREN

Lisa Friedstein, Parent

Jeffrey Friedstein, Parent

Address: _____

Robert Spallina

From: Robert Spallina
Sent: Tuesday, January 22, 2013 12:38 PM
To: 'Jill Iantoni'
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: RE: Heritage Policy

We can discuss on Thursday but yes and no

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Tuesday, January 22, 2013 12:36 PM
To: Robert Spallina
Cc: Ted Bernstein; Lisa Friedstein; Pam Simon; Christine Yates; Kimberly Moran
Subject: Re: Heritage Policy

That time works for me/Jill.

Robert, if the proceeds go to the estate/grandchildren's share, is there a chance that creditors could get this money AND would this amount of 1.7 Million put the estate over 5.1 Million, where it would be taxed?

Thanks
Jill

On Tue, Jan 22, 2013 at 11:16 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

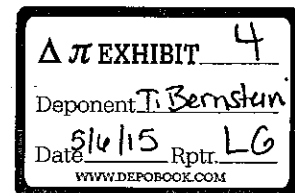
4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

Mail: rspallina@tescherspallina.com



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

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Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Tuesday, January 22, 2013 1:34 PM
To: Robert Spallina; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: RE: Heritage Policy

Robert,

We are in the midst of arranging a phone call between myself, Pam, Elliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Tuesday, January 22, 2013 12:16 PM
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates
Cc: Kimberly Moran
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by AJ Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

phone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

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

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Robert Spallina

From: lisa.friedstein@gmail.com on behalf of lisa friedstein (lisa@friedsteins.com)
Sent: Friday, January 25, 2013 11:22 AM
To: Robert Spallina; JILL Iantoni
Subject: Re: Bernstein Estate 1/24/2013

Robert

I am not sure I am being understood...can you please call for a brief moment to discuss.. thank you.
Please call Jill at 3128042318 she then will call me.

Thank you.
Lisa

On Jan 25, 2013 8:11 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:
I need to see Pam's life insurance trust to answer the question.

Sent from my iPhone

On Jan 25, 2013, at 8:51 AM, "lisa friedstein" <lisa@friedsteins.com> wrote:

Robert

What are the details/provisions of how the 10 grand kids inheritance works. For example...can the parents of the minors spend the money for any reason in any way ...who watches over this?

If the court order is that the money goes to the Gran kids out of the estate can the parents of the minor kids spend the money in any way or are their provisions for how and when they use this money?

Please answer as soon as you can as it will help us make our decision for Monday.

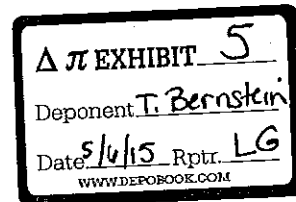
Thank you

Jill

On Jan 24, 2013 3:22 PM, "Jill Iantoni" <jilliantoni@gmail.com> wrote:

----- Forwarded message -----

From: Robert Spallina <rspallina@tescherspallina.com>
Date: Thu, Jan 24, 2013 at 2:57 PM
Subject: RE: Bernstein Estate 1/24/2013
To: Jill Iantoni <jilliantoni@gmail.com>



Lisa - You need the decision to be unanimous or moving forward is not going to be possible. If money goes to the estate it is subject to creditor claims and cannot be distributed until we close the estate after creditors are paid. Any legal fees incurred by a beneficiary are their own and not the estate's fees. Stansbury is trying to substitute the estate for your father. That hearing is next week. Hope this helps

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Thursday, January 24, 2013 3:12 PM
To: Robert Spallina
Cc: Jill Iantoni
Subject: Bernstein Estate 1/24/2013

Hi Robert,

thanks for todays call. Three questions.

One, if the 5 kids do NOT all agree that we should split the insurance proceeds amongst the 5 of us, what happens to the insurance proceeds? Can 4 out of 5 (or whatever the number is) over rule and move forward with the court hearing requesting that the insurance proceeds get paid out to the 5 children? If that is a NO, do the proceeds go directly to the estate? If the answer is the 10 grandchildren, will that be subject to creditors or would that money get paid out quickly (just as it would to the 5 of us) and avoid any potential law suit/creditors?

Two, if any of the 5 children have personal counsel representing them, are they allowed to have their bills sent to you/Estate for payment? If yes, is there a provision that the others can put in place that regulates the amount/or a provision that states it come out of their child(ren) portion of the estate?

Can you also clarify, that based on the conversation today, there is a chance that Bill S. case will be null and void and even if it is not, it is not towards Si Bernstein or his estate? Did I understand that correctly?

Thanks so much,

Jill

Robert Spallina

From: Robert Spallina
Sent: Friday, February 08, 2013 8:41 PM
To: Pam Simon
Cc: Eliot Bernstein, Ted Bernstein, Lisa Sue Friedstein, Jill Iantoni, Jill M. Iantoni, Christine P. Yates - Director @ Tripp Scott
Subject: Re: Heritage Policy

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

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

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

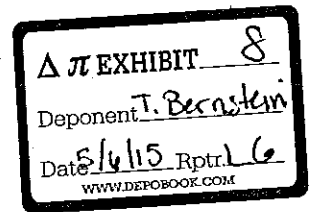
The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <psimon@stpcorp.com> wrote:



BT000048

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust tool. The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <iviewit@gmail.com> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.

Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.

Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web-site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely

what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Wednesday, February 06, 2013 3:49 PM
To: Eliot Bernstein (lviewit@gmail.com)
Cc: 'Pam Simon'; Jill Iantoni; Lisa Friedstein (lisa.friedstein@gmail.com); Robert Spallina
Subject: Heritage policy
Attachments: image001.jpg

Eliot,

I have pasted your analysis re the Heritage policy below. The email did not get to me, not sure why.

The problem with your analysis is that it is not factually correct and therefore, you are drawing conclusions that are incorrect.

Dad's desires concerning the policy are crystal clear. There has never been a question concerning his desire. He named his irrevocable trust as beneficiary of the policy and he never changed that. He was the owner. He could have changed it as often as he wanted. He never did, not ever.

In 1995, Dad did not have 10 grandchildren. Therefore, it was never his intent, concerning this policy, to leave it to all of his grandchildren.

He chose Robert Spallina and Don Tescher to be his estate and tax attorneys as well as his personal representatives. Robert Spallina has told us on several occasions what Dad's wishes were for this policy. Dad was well aware of this policy. He was intimately aware of who owned it and who he named as beneficiary. When he was considering a life settlement, all of this information was part of those discussions.

As Robert has stated, Heritage's policy when it comes to a lost irrevocable trust, is to not pay the proceeds to the estate. What you are saying here is not correct: *"Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under (Article IV 2j) and (Article III) of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts"*

You are drawing conclusions for Heritage when you say, "nothing short of the actual 1995 trust document may be sufficient to Heritage." Why don't we let Heritage speak for Heritage, which I believe has already been done?

There is no fraudulent conveyance. These proceeds are not part of Dad's estate, they never were and Heritage has stated they do not intend to pay these proceeds to the estate of a person who clearly did not want them in his estate.

In late July of 2012, Dad executed his planning documents. He could have easily changed the beneficiary of the Heritage policy to be included in his estate. He was the owner, he could have done that with one change form. He did not. If he did not want to be bothered to do it himself, he could have asked Robert, his PR, to do it. People do this every day. Dad did not. Therefore, the proceeds remaining OUT of his estate, NOT payable to his grandchildren (who received everything else), is consistent with Dad's wishes. This policy is not in the domain of his will and trust agreement. To bring proceeds of a life insurance policy into the estate of a man who sold life insurance his entire career would go against everything Dad told every client he ever sold life insurance to during his career. It is unimaginable.

Therefore, the economic analysis is not correct. It simply is not necessary to address as it was never an option in this scenario.

needs to be brought to resolution. Not only is it simple, it is black and white. Is your counsel involved in this matter you? If so, has she spoken with Robert and communicated what you have said?

Δ π EXHIBIT 9	
Deponent	T. Bernstein
Date	5/6/15 Rptr. LG
WWW.DEPONOR.COM	

BT000051

We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim. We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage. Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under (Article IV 2j) and (Article III) of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme. Regards,

Ted Bernstein - President

Life Insurance Concepts
950 Peninsula Corporate Circle, Suite 3010
Boca Raton, FL 33487
Tel: 561.988.8984
Toll Free: 866.395.8984
Fax: 561.988.0833
E: Tbernstein@lifeinsuranceconcepts.com
www.LifeInsuranceConcepts.com

Robert Spallina

From: Eliot Bernstein [iviewit@gmail.com]
Sent: Saturday, February 09, 2013 5:40 PM
To: 'Pam Simon'; 'Ted Bernstein'
Cc: 'Lisa Sue Friedstein'; 'Jill Iantoni'; 'Jill M. Iantoni'; Robert Spallina; 'Christine P. Yates ~ Director @ Tripp Scott'; 'Irina Roach'
Subject: RE: Heritage Policy

What meeting and for what? I am not doing anything with the insurance until I receive a copy of the policy from the carrier. Who at the carrier can I contact to have the policy sent to me on Monday and what is the number? eb

From: Pam Simon [mailto:psimon@stpcorp.com]
Sent: Saturday, February 9, 2013 5:35 PM
To: Ted Bernstein
Cc: Eliot Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Christine P. Yates ~ Director @ Tripp Scott; Irina Roach
Subject: Re: Heritage Policy

I'm good 10 am chicago time Sunday

On Feb 9, 2013, at 10:22 AM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Eliot - we do have the letter from Heritage that you refer to below. They will pay with an order from the court which is based on the agreement, among us, to pay the trust. It's not only easy, we already have the letter from them.

Why don't the 5 of us get on a call in the next day or two? There are a bunch of things to cover other than this policy, such as the property in the house.

Time suggestions??

Ted
561-988-8984
tbernstein@lifeinsuranceconcepts.com

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <psimon@stpcorp.com> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off.
Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <iviewit@gmail.com> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's

Δ π EXHIBIT <u>10</u>	
Deponent _____	
Date _____	Rptr. _____
WWW.DEPOBOOK.COM	

Robert Spallina

From: Eliot Ivan Bernstein [viewit@viewit.tv]
Sent: Thursday, February 14, 2013 10:40 AM
To: 'Ted Bernstein'; Robert Spallina; 'Pamela Beth Simon'; 'JILL BERNSTEIN IANTONI'; 'Jill M. Iantoni'; 'Lisa S. Friedstein'; 'Christine P. Yates - Director @ Tripp Scott'
Subject: RE: Eliot Representation

Please notify me of any probate court hearings so that I may attend and any actions by the carrier, as I have not consented to anything at this point or at the last group meeting I attended. Eliot

From: Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]
Sent: Thursday, February 14, 2013 8:33 AM
To: 'Eliot Ivan Bernstein'; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott
Subject: RE: Eliot Representation

Robert,



Please move forward as we discussed in the last group phone call in which we decided to have Heritage pay your trust account or a trust that you would act as Trustee. Heritage has stated that they will pay based on a court order showing that there is consensus among the 1995 Trust beneficiaries. Let's get this done.

Ted

From: Eliot Ivan Bernstein [mailto:iviewit@viewit.tv]
Sent: Wednesday, February 13, 2013 8:52 AM
To: Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Ted Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott
Subject: Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



I  VIEW  IT TECHNOLOGIES, INC.
Surf with Vision

Δ π EXHIBIT 11
Deponent: T. Bernstein
Date: 5/6/15 Rpt: LG
WWW.DEFOBOOK.COM

Eliot I. Bernstein

Robert Spallina

From: Eliot Ivan Bernstein [iviewit@iviewit.tv]
Sent: Wednesday, February 13, 2013 8:52 AM
To: Robert Spallina; Theodore S. Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; JIM M. Iantoni; Lisa S. Friedstein; Christine P. Yates - Director @ Tripp Scott
Subject: Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



I VIEW IT TECHNOLOGIES, INC.
Surf with Vision

Eliot I. Bernstein
Inventor
Iviewit Holdings, Inc. - DL
Iviewit Holdings, Inc. - DL (yes, two identically named)
Iviewit Holdings, Inc. - FL
Iviewit Technologies, Inc. - DL
Uviewit Holdings, Inc. - DL
Uview.com, Inc. - DL
Iviewit.com, Inc. - FL
Iviewit.com, Inc. - DL
I.C., Inc. - FL
Iviewit.com LLC - DL
Iviewit LLC - DL
Iviewit Corporation - FL
Iviewit, Inc. - FL
Iviewit, Inc. - DL
Iviewit Corporation
2753 N.W. 34th St.
Boca Raton, Florida 33434-3459
(561) 245.8588 (o)
(561) 886.7628 (o)
(561) 245-8644 (f)
iviewit@iviewit.tv
<http://www.iviewit.tv>
<http://iviewit.tv/inventor/index.htm>
<http://iviewit.tv/wordpress>
<http://www.facebook.com/#!/iviewit>
<http://www.myspace.com/iviewit>

Kimberly Moran

From: Peter M. Feaman [pfeaman@feamanlaw.com]
Sent: Monday, February 04, 2013 3:59 PM
Subject: Read: Estate of Simon Bernstein

Your message

To: pfeaman@feamanlaw.com
Subject:

was read on 2/4/2013 3:59 PM.

Robert Spallina

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

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

Sent from my iPhone

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

Next step? By who? Or is it whom?

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

Thanks.

Sent from my iPhone

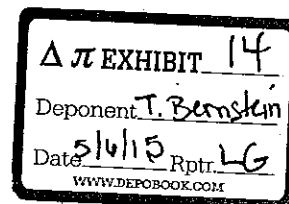
On Mar 13, 2013, at 6:02 PM, "David (Scooter) Simon" <dsimon@stpcorp.com> wrote:

last of the docs we can dig up.

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

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

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

<DOC (9).PDF>

Robert Spallina

From: Ted Bernstein [tbernstein@lifeinsuranceconcepts.com]
Sent: Saturday, March 16, 2013 5:26 PM
To: Robert Spallina
Cc: Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni
Subject: RE: Simon Bernstein Trust - Policy #1009208

Robert > Pam, Scooter, Jill, Lisa and I will be discussing several related issues over the weekend. I think one of my previous emails asked you to hold off doing anything concerning the life insurance policy after a specific date. Please continue to work with the insurance company on our behalf.

Thank you,

Ted

From: Robert Spallina [mailto:rspallina@tescherspallina.com]
Sent: Friday, March 15, 2013 1:30 PM
To: Ted Bernstein
Cc: Pam Simon; David (Scooter) Simon; lisa.friedstein@gmail.com; Donald Tescher; Jill Iantoni
Subject: RE: Simon Bernstein Trust - Policy #1009208

Ted – please respond to Jill’s inquiry. There still seems to be some confusion on what the course of action is despite our conversations last Friday and Monday this week, and the emails I forwarded from the carrier last Friday and yesterday.

From: Jill Iantoni [mailto:jilliantoni@gmail.com]
Sent: Friday, March 15, 2013 1:11 PM
To: Robert Spallina
Cc: Pam Simon; David (Scooter) Simon; Ted Bernstein; lisa.friedstein@gmail.com; Donald Tescher
Subject: Re: Simon Bernstein Trust - Policy #1009208

Robert,

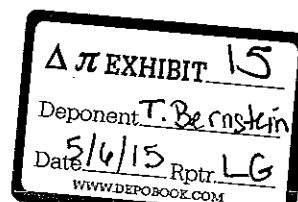
what do you mean in your email that we will be using your trust account? Are you referring to where the proceeds get paid out?

Thank you,

Jill

On Fri, Mar 15, 2013 at 11:03 AM, Robert Spallina <rspallina@tescherspallina.com> wrote:

All - The carrier is in control of things at this point. When title/beneficiary designation is cleared then we can discuss venue. Having said that, we have had discussions with Ted on Friday last week and Monday of this



week and he would like for things to continue as discussed here in Palm Beach County and using our trust account.

Ted - please confirm by reply email our conversation regarding the above and your desire to have us continue handling this matter until resolution in light of the email you sent us last Wednesday night on behalf of you and your siblings.

Regards,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

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

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From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Friday, March 15, 2013 9:09 AM
To: David (Scooter) Simon
Cc: Robert Spallina; Ted Bernstein; Jill Iantoni; lisa.friedstein@gmail.com

Subject: Re: Simon Bernstein Trust - Policy #1009208

Ok - who decides this?

On Mar 15, 2013, at 8:04 AM, "David (Scooter) Simon" <dsimon@stpcorp.com> wrote:

My only concern is forum. We should make sure we pick the venue for an inter pleader action. Lets also decide a time frame for the carrier.

On Mar 15, 2013, at 7:07 AM, "Robert Spallina" <rspallina@tescherspallina.com> wrote:

There is a break in title and beneficiary designation prior to getting where the confirmation letters state where we are today - Si as owner and the trust as beneficiary. They do not want to name every owner and beneficiary in a pleading and inter plead the funds as it will be costly and timely for them and everyone involved. Let's hope they are are able to piece it together.

Sent from my iPhone

On Mar 15, 2013, at 7:59 AM, "Ted Bernstein" <tbernstein@lifeinsuranceconcepts.com> wrote:

Robert > Do we know exactly what he is trying to accomplish? If we know that, maybe we can be more helpful.

From: Pam Simon [mailto:pambsimon@icloud.com]
Sent: Thursday, March 14, 2013 10:35 PM
To: Robert Spallina
Cc: Ted Bernstein; Jill Iantoni; lisa.friedstein@gmail.com; dsimon@stpcorp.com
Subject: Re: Simon Bernstein Trust - Policy #1009208

Is this after you sent the info scooter sent you Robert? Thx

On Mar 14, 2013, at 3:01 PM, Robert Spallina
<rspallina@tescherspallina.com> wrote:

FYI – this is from legal on the status of their search
to clear up title on the policy

From: Welling, Scott
[mailto:scott.welling@jackson.com]
Sent: Thursday, March 14, 2013 1:10 PM
To: Robert Spallina
Subject: RE: Simon Bernstein Trust - Policy
#1009208

Hey Bob,

Haven't forgotten about you. Am out tomorrow but
will touch base early next week. So far we have not
found much that is helpful.

From: Robert Spallina
[mailto:rspallina@tescherspallina.com]
Sent: Wednesday, March 06, 2013 5:32 PM
To: Welling, Scott
Subject: Simon Bernstein Trust - Policy #1009208

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

Thanks,

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: rspallina@tescherspallina.com

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

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Robert Spallina

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

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

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

That will get you absolutely nowhere SIR.

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

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

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

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

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

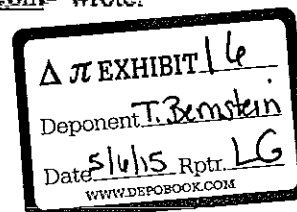
Please explain what prevents Heritage or you from filing in Florida before we dismiss our action in Illinois?

Thank you.

Adam Simon

Sent from my iPhone

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



TS005252

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

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

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

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7000
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

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

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

Robert L. Spallina, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, Florida 33431
Telephone: 561-997-7000
Facsimile: 561-997-7308
E-mail: rspallina@tescherspallina.com

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

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

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

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

Mr. Welling:

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

Adam Simon

Robert Spallina

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

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

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

That will get you absolutely nowhere SIR.

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

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

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

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

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

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

Thank you.

Adam Simon

Sent from my iPhone

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

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

From: Robert Spallina
Sent: Friday, April 12, 2013 11:22 AM

Bernstein - Life Ins.

Donald Tescher

From: Donald Tescher
Sent: Friday, April 19, 2013 6:01 PM
To: 'Welling, Scott'; Robert Spallina
Cc: 'asimon21@att.net'; 'David (Scooter) Simon'; Ted Bernstein
Subject: RE: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013LD03498

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

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

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

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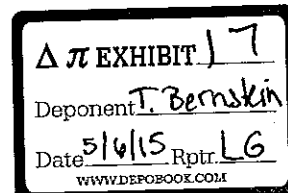
From: Welling, Scott [mailto:scott.welling@jackson.com]
Sent: Friday, April 19, 2013 5:26 PM
To: Robert Spallina; Donald Tescher
Subject: FW: Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95 v. Heritage Union Life Insurance Company- Case Number 2013LD03498

Gentlemen,

Can you advise on the below...?

From: adam simon [mailto:asimon21@att.net]

4/19/2013



TS006547

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

To: Welling, Scott

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

Mr. Welling:

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

Thank you,
Adam Simon

Sent from my iPhone

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

Dear Mr. Simon,

Thank you for your correspondence.

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

I have briefly discussed this matter with Cook County counsel.

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

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

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

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

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

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

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

4/19/2013

TS005548

Please give this matter your prompt attention.

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

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

To: Welling, Scott

Cc: dtescher@tescherspalina.com; Adam Simon; Adam Simon

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

Mr. Welling,

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

Thank you,

Cheryl Sychowski

The Simon Law Firm

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

P: (312) 819-0730

F: (312) 819-0773

E: cheryl@stpcorp.com

4/19/2013

TS006549

Robert Spallina

From: Donald Tescher
Sent: Friday, August 30, 2013 9:25 AM
To: Ted Bernstein; Pam Simon; Jill Iantoni; Lisa
Cc: Robert Spallina
Subject: Estates and Trusts of Shirley & Simon Bernstein and Related Entities

All -

Sorry for the delay in getting this to you as I had promised when I participated on our recent conference call. It takes me a little longer to turn around matters as I work from Cape Cod in the Summer.

In reviewing our billings to date, which encompass virtually a year, over the year we have billed your father's estate and trust a total of \$105,000 from Sep 2012 thru Aug 2013. For this purpose, the estate and trust includes unreimbursed fees on the Shirley Trust (approximately \$ 15-20K), the 1995 Insurance Trust (approximately \$20-25K) and Bernstein Family Realty, LLC (\$10,000). As a result, our fees on Si's estate and trust matters over the last year have been approximately \$50K-\$60K. In that regard we have opened the estate and filed the relevant documents, have consulted and met with outside counsel on the Stansbury litigation (and Eliot matters) and on another claim in litigation, dealt with Eliot and his counsel on all of his matters, worked with the accountants on tax return matters and related items, worked with JP Morgan on the asset management and loan matters, dealt with creditor issues, dealt with appraisers and potential purchaser of the jewelry, and communicated with Ted on a very regular basis as liaison for all of you in addition to our conference calls and individual calls over the last year. Unfortunately, your father's affairs were not left in the best order and the business litigation has spilled over to the trusts and estate making normal administration more difficult. Furthermore, his decision to by-pass you children in favor of his grandchildren has exasperated the issues in trying to deal with Eliot which has become a continuing, ongoing process with no resolution in site. I believe that we have adequately expressed our concerns in this regard to you.

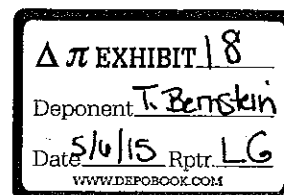
As we discussed, under normal circumstances the Shirley Trust assets would have already been distributed to the Grandchildren's Trusts created under Si's Trust (based upon the exercise of his power of appointment under his will) but for the fact that the Shirley Trust is still a party in the Stansbury litigation and as to distributions to trusts for Eliot's children, we have advised Ted that the trustee of those trusts needs to sign off on a Receipt, Release and Refunding Agreement (or alternatively, Ted needs to prepare a formal accounting and serve it on all to commence the running of the 6 month statute of limitations to cut off a beneficiary's right to sue him).

It is not our usual practice to serve as fiduciaries for our clients; however, in certain limited situations we have undertaken that role. Under the Florida Statutes, an attorney serving as a Personal Representative or Trustee can be compensated for both legal and fiduciary fees. We have not, nor do we intend to bill for Personal Representative fees or Trustee fees and have been conservative in our billing of the estate out of respect for your parents with whom we enjoyed a very nice relationship, and have attempted to minimize duplication of Robert's and my time. At the appropriate time we will provide a complete accounting of our fees and all estate expenses to date.

Having said that, we need to reign your brother in before he single handedly depletes the estate and trust assets with all of his nonsense. The amount of time, energy and effort that he is expending and the lies he is telling are incredible. We don't necessarily have an answer for this yet but we hope that somehow that one or more of you is able to reason with him and put an end to this. Your parents would certainly not appreciate the mockery he has made of their estates.

Again, sorry for the delay in getting this information to you. Going forward we will provide you with monthly bills so there is no further misunderstanding and better transparency.

Donald R. Tescher, Esq.
TESCHER & SPALLINA, P.A.
4855 Technology Way, Suite 720
Boca Raton, FL 33431
Telephone: 561-997-7005
Facsimile: 561-987-7308
dtescher@tescherspallina.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,)
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.)

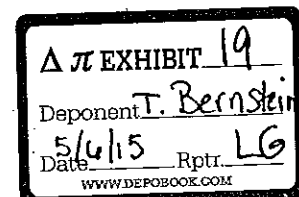
SIMON BERNSTEIN IRREVOCABLE)
TRUST DTD 6/21/95)

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)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

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



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 TED BERNSTEIN

I, Ted Bernstein, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Boca Raton, County of Palm Beach, State of Florida and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My legal name is Ted Stuart Bernstein. I most often go by the name Ted Bernstein. I am also known as Ted S. Bernstein. I have also been referred to by the nickname "Theo" by friends and family.
3. I have been employed in the life insurance industry since 1980. I have been a licensed life insurance agent in Illinois since at least 1980, and in Florida since 2000.
4. When I use the term "Affidavit of Don Sanders" I mean that certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.

13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.
14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I am currently employed as President of Life Insurance Concepts, Inc. ("LIC"), a life insurance brokerage based in Boca Raton, FL.
19. I have been employed by LIC (or its predecessor) for the past 15 years, and have been employed in the life insurance industry for approximately 30 years.
20. From 2001 to 2012, my father, Simon Bernstein and I worked together at LIC, and shared office space in Boca Raton, FL.
21. Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 ("Bernstein Trust"), is an irrevocable life insurance trust formed in Illinois as further described below. The Bernstein Trust is the original Plaintiff that first filed this action in the Circuit Court of Cook County. The Insurer then filed a notice of removal to the Northern District of Illinois. The Bernstein Trust has also been named as a Counter-defendant to the EB Claims. The Bernstein Trust is represented by counsel, Adam M. Simon.
22. Bank of America, N.A. ("Bank of America"), was named a party by virtue of Heritage's counterclaim for Interpleader. Bank of America was terminated as a co-Plaintiff on January 13, 2014, and the Insurer voluntarily dismissed Bank of America as a Third-Party Defendant on February 14, 2014.
23. Eliot Bernstein ("Eliot") was named a Party by virtue of Heritage's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties described herein making Eliot a Third-Party Plaintiff as well. Eliot is the third adult child of Simon Bernstein. Eliot is representing himself, and/or his children, pro se in this matter.

24. United Bank of Illinois, was named as a Third-Party Defendant in Heritage's counterclaim for Interpleader. United Bank of Illinois has never filed an appearance or answer.
25. I, Ted Bernstein, as Trustee, of the Bernstein Trust retained Plaintiff's counsel and initiated the filing of this Action. I am is also a co-Plaintiff, individually, and has been named as a Third-Party Defendant to the Eliot's Claims. I am the eldest of the five adult children of Simon Bernstein. I am represented by counsel, Adam M. Simon.
26. First Arlington National Bank was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. First Arlington National Bank was never served by Heritage, and instead Heritage served JP Morgan Chase Bank as First Arlington Bank's alleged successor and JPMorgan Chase Bank was substituted as a party in place of First Arlington National Bank on 10/16/2013. (See ¶31 below).
27. Lisa Sue Friedstein is a co-Plaintiff and has been named as a Third-Party Defendant to the Eliot's Claims. Lisa Sue Friedstein is the fifth adult child of Simon Bernstein. Lisa Sue Friedstein is represented by counsel, Adam M. Simon.
28. Jill Marla Iantoni is a co-Plaintiff and has been named as a Third-Party Defendant to Eliot's Claims. Jill Marla Iantoni is the fourth adult child of Simon Bernstein. Jill Marla Iantoni is represented by counsel, Adam M. Simon.
29. Pamela Beth Simon is a co-Plaintiff and has been named as a Third-Party Defendant to the EB Claims. Pamela Beth Simon is the second adult child of Simon Bernstein. Pamela Beth Simon is represented by counsel, Adam M. Simon.
30. Heritage is an Insurer as defined above. Heritage was terminated as a party on 2/18/2014 when the court granted Heritage's motion to dismiss itself from the Interpleader litigation after having deposited the Policy Proceeds with the Registry of the Court.
31. J.P. Morgan Chase Bank, N.A., ("J.P. Morgan") was named as a Third-Party Defendant by virtue of Heritage's counterclaim for Interpleader. In its claim for Interpleader, Heritage named J.P. Morgan Chase Bank, N.A., as a successor to First Arlington National Bank (described above). J.P. Morgan Chase Bank, N.A. filed an answer to Heritage's counterclaim for Interpleader in which it disclaimed any interest in the Policy Proceeds. J.P. Morgan then filed a motion for judgment on the pleadings to have itself dismissed from the litigation as party and the court granted the motion. As a result, J.P. Morgan was terminated as a party on March 12, 2014.

32. William Stansbury filed a motion to intervene in this action, but his Motion to Intervene was denied and he was terminated as a non-party intervenor on January 14, 2014.
33. Adam M. Simon is counsel for the Bernstein Trust and the Consenting Children as defined below. Adam M. Simon is not counsel for Eliot Bernstein whom has chosen to represent himself Pro Se in this matter. Adam M. Simon was named a Third-Party Defendant to Eliot's Claims, and represents himself with regard to Eliot's claims. Adam M. Simon is the brother-in-law of Pamela Beth Simon, and the brother of David B. Simon.
34. National Service Association, Inc. (of Illinois) was a corporation owned by the decedent, Simon Bernstein and was named a Third-Party Defendant to Eliot's Claims. According to the public records of the Secretary of State of Illinois, National Service Association, Inc. (of Illinois) was dissolved in October of 2006. (See Ex. 21)
35. Donald R. Tescher, Esq. was named a Third-Party Defendant by virtue of the EB Claims. Donald R. Tescher is a partner of in the firm of Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
36. Tescher and Spallina, P.A. is a law firm whose principal offices are in Palm Beach County, FL. Tescher and Spallina, P.A. was named a Third-Party Defendant to Eliot's Claims. Tescher & Spallina, P.A. Donald R. Tescher was terminated as a party to this matter when the court granted his motion to dismiss as to the Eliot's Claims on March 17, 2014.
37. The Simon Law Firm was named a Third-Party Defendant to Eliot's Claims. The Simon Law Firm is being represented by counsel, Adam M. Simon.
38. David B. Simon is the husband of Pamela Beth Simon, and the brother of counsel, Adam M. Simon and was named a Third-Party Defendant to Eliot's Claims. David B. Simon is being represented by counsel, Adam M. Simon.
39. S.B. Lexington, Inc. was a corporation formed by Simon Bernstein. According to the records of the Secretary of State of Illinois, S.B. Lexington, Inc. was voluntarily dissolved on April 3, 1998. (See Ex. 9).

40. S.B. Lexington, Inc. Employee Death Benefit Trust (the "VEBA Trust") was named a Third-Party Defendant to Eliot's Claims, and was a Trust formed by Simon Bernstein in his role as principal of S.B. Lexington, Inc. The VEBA Trust was formed pursuant to I.R.S. Code Sec. 501(c)(9) as a qualified Employee Benefit Plan designed to provide a death benefit to certain key employees of S.B. Lexington, Inc. The VEBA was dissolved in 1998 upon dissolution of S.B. Lexington, Inc.
41. Robert Spallina, Esq. was named a Third-Party Defendant to Eliot's Claims. Robert Spallina is a partner of in the firm of Tescher & Spallina, P.A. Robert Spallina was terminated as a party to this matter when the court granted his motion to dismiss as to Eliot's Claims on March 17, 2014.
42. National Service Association, Inc. (Florida) was named a Third-Party Defendant to Eliot's Claims. According to the records of the Secretary of State of Florida, National Service Association, Inc. (Florida) was a Florida corporation and was dissolved in 2012. (See Ex. 22)
43. Benjamin Brown as Curator of The Estate of Simon Bernstein filed a motion to intervene in this litigation. The court granted the motion to intervene on July 28, 2014, and as a result the Estate became a third-party claimant in the litigation.
44. Subsequently, Brian O'Connell as successor Curator and Administrator Ad Litem of the Estate of Simon Bernstein filed a motion to substitute for Benjamin Brown, and the court granted the motion November 3, 2014.
45. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
46. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
47. Following the death of Simon Bernstein, I participated in and conducted diligent searches of Simon Bernstein's home, office and condominium all located in Palm Beach County, Florida. All of the records I located pertaining to the Policy and/or Bernstein Trust were turned over to Simon Bernstein's attorneys, whose names are Robert Spallina and Donald Tescher.
48. I am aware that the documents produced by Plaintiffs in this matter also contain documents located by David Simon and Pamela Simon in their offices in Chicago, Illinois.

49. As of the date of this Affidavit, no documents that I am aware of have been located and/or produced in this Litigation by any Party that appear to be the original Policy contract.
50. As of the date of this Affidavit, no documents that I am aware of have been produced in this Litigation by any Party that appear to be executed originals or executed copies of:
- (a) 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."
51. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million. (See Ex. 5 at Schedule Page, bates no. JCK001021).
52. The Insurer produced a document that is titled "Financial Activity from Issue" and references the Policy number. (See Ex. 1.)
53. The financial activity report produced by Insurer indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00. (See Ex. 1, at bates no. JCK0010201).
54. Plaintiffs have submitted a copy of the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry") which reflects a deposit of the Policy Proceeds, a total of \$1,703,567.09 deposited by the Insurer on June 26, 2013. (See Ex. 2).
55. According to the receipt, 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. I concur with the calculation of the Policy Proceeds and that the amount reflected on the receipt evidences the Insurers payment of the Policy proceeds pursuant to its Interpleader Action. (See Ex. 2)
56. According to the Part I of the application for the Policy, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
57. According to Part I of the application, the beneficiary at issuance was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust". (See Ex. 3)
58. 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. (See Ex. 3)

59. During the application process, the Insurer conducted a routine underwriting investigation of Simon Bernstein prior to approving his policy. Part of that investigation was conducted by a company called Equifax, which is a company widely used in the insurance industry for underwriting investigations. In the Equifax report, the purpose of the insurance being provided by the Policy was stated as follows: "The beneficiary of this policy is the First Arlington National Bank, trustee of the 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." (See Ex. 20)
60. In 1982, the year the Policy was issued, I shared office space with Simon Bernstein in Chicago, IL and can confirm that at that time, Simon Bernstein was employed by S.B. Lexington, Inc., which was a life insurance brokerage located in Chicago, IL.
61. In the early 1980's, while I was sharing office space with Simon Bernstein and S.B. Lexington, Inc., I was a licensed insurance agent and participated in the marketing of qualified employee benefit plans for closely held corporations. The plans were qualified as Voluntary Employee Benefit Associations under I.R.S. Code Sec. 501(c)(9). The S.B. Lexington VEBA was designed to insure the lives of S.B. Lexington employees and the ultimate beneficiaries of the death benefit was each insured employee's designated beneficiary.
62. Simon Bernstein whom was also a licensed insurance agent also marketed the VEBA Plans on behalf of S.B. Lexington, Inc.
63. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer to the insurance agent whom would then deliver it to the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
64. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.

65. A document produced by Plaintiffs is a copy of a form entitled S.B. Lexington, Inc. Employee Death Benefit Plan and Trust Beneficiary Designation for plan member, Simon Bernstein (the "VEBA Beneficiary Designation"). (See Ex. 4)
66. Having worked for my father and with my father for many years, I have seen his signature on a multitude of occasions and am very familiar with it. I recognize the two signatures on Ex. 4 as the signatures of my father, Simon Bernstein.
67. The VEBA Beneficiary Designation form is dated "8-26-95", and in it Simon Bernstein designates the "Simon Bernstein Irrevocable Insurance Trust" as his beneficiary to receive the death benefit under the VEBA. (See Ex. 4)
68. A document bearing bates no. JCK1098-JCK1117 produced by the Insurer is a specimen policy form for the Policy. On page JCK001099, the specimen policy includes the product name "CURRENT VALUE LIFE". A document produced by the Insurer bearing bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million. (See Ex. 5).
69. A document produced by the Insurer bearing 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. (See Ex. 6).
70. On or about June 5, 1992, a letter was 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. (See Ex. 7).
71. The Policy records indicate that 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. (See Ex. 8)

72. Though the name of the Trust on the Request Letter was set forth as stated in Par. 69(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (See Ex. 8)
73. On November 27, 1995, Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries. (See Ex. 8)
74. On April 3, 1998, S.B. Lexington was voluntarily dissolved. (See Ex. 9)
75. Upon the dissolution of S.B. Lexington, Inc., the VEBA was also dissolved and the ownership of the Policy was changed in April of 1998. According to the Policy Records and the Aff. of Don Sanders, 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. (See Aff. of Don Sanders at ¶61 and Ex. 10)
76. After reviewing the Policy Records, and the Affidavit of Don Sanders, I concur with Don Sanders 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. (See Ex. 8 and Aff. of Don Sanders, ¶56)
77. According to the Insurer's pleading of its Interpleader Action, following the death of Simon Bernstein, the Insurer received conflicting claims to the death benefit proceeds. The Insurer received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a conflicting claim in the form of a letter from Eliot Bernstein. (See Ex. 25 at p. 3)
78. Eliot Bernstein's wife is named Candice Bernstein, and they have three children named Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein.
79. According to the Policy Records and Aff. of Don Sanders, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶65)
80. According to the Policy Records and Aff. of Don Sanders, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶66)
81. According to the Policy Records and Aff. of Don Sanders, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶67)

82. According to the Policy Records and Aff. of Don Sanders, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy. (Aff. of Don Sanders at ¶68)
83. According to the Policy Records and Aff. of Don Sanders, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy. (Aff. of Don Sanders at ¶69).
84. According to the Policy Records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate", "the Estate of Simon Bernstein" or "the Estate" as beneficiary.
85. 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 Aff. of Don Sanders at ¶72 and Ex. 8 all 4 pages).
86. According to the Policy Records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (See Aff. of Don Sanders and Ex. 11).
87. According to the Policy Records and the Aff. of Don Sanders, the Insurer received no notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any of the Bank Trustees of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

(See Aff. of Don Sanders at ¶77).

88. In 1995, I was sharing office space with Simon Bernstein in Chicago, IL. My sister, Pam Simon, and brother-in-law, David Simon also shared office space with us. In the summer of 1995, Simon Bernstein discussed with me that he was forming a life insurance trust for the Policy, and that I would be named one of the trustees for the life insurance trust. He also indicated that my mother, Shirley Bernstein would be named the initial trustee.

89. Prior to Shirley Bernstein's passing on December 8, 2010, I had never been asked to exercise any powers on behalf of the Bernstein Trust as Trustee, and I believed that Shirley Bernstein was then acting as Trustee.
90. My father, Simon Bernstein, passed away less than two years after my mother, and during that time prior to Simon Bernstein's passing, I was not asked or required to exercise any powers as Trustee of the Bernstein Trust.
91. A copy of the Death Certificate of Simon Bernstein is attached hereto. (*See Ex. 12*).
92. In 2011, the Policy lapsed due to a missed premium payment.
93. In 2011, I assisted my father with completing the necessary paperwork and underwriting required by the Insurer to reinstate the Policy. (*See Ex. 13*).
94. Approximately one year before his death, my father took the necessary administrative steps and paid the required premium, and the Policy was reinstated by the Insurer. (*See Ex. 14*).
95. During the reinstatement process in 2011, my father reinstated the Policy without making any changes to the Owner and Beneficiary of the Policy.
96. On or about July 25, 2012, my father executed his last Will which has been filed and is being administered in Probate Court in Palm Beach County, Florida. A true and accurate copy of the Will as filed with the Clerk of the Court in Palm Beach County is included in Movant's Appendix to its Statement of Undisputed Facts. In his Will at ¶9, Simon Bernstein expressly reaffirmed his beneficiary designations made under any insurance contract. (*See Ex. 24 at ¶9*).
97. Following the death of my father, my sister, Pamela Simon, and brother-in-law, David Simon conducted searches of their office files and records, and David Simon located two unexecuted drafts of the Bernstein Trust in their offices. One of the unexecuted drafts was found on David Simon's computer database which dates back to 1990's when David Simon, Pamela Simon, and Simon Bernstein shared office space in Chicago, Illinois. *Ex. 15* includes a printout of metadata from the computer file for this draft of the Bernstein Trust indicating it was last modified on June 21, 1995. (*See Ex. 15 and Aff. of D. Simon*).
98. A second draft of the Bernstein Trust was located as a hard copy inside a file folder within the stored files of David Simon. (*See Ex. 16 and Aff. of D. Simon*).

99. According to the drafts of the Bernstein Trust, and the facts surrounding the execution of the Bernstein Trust by Simon Bernstein, as told to me by David Simon, I was appointed as successor trustee of the Bernstein Trust. (See Ex. 15, and Ex. 16, and Aff. of D. Simon.)

100. I am willing and competent and have been acting as Trustee of the Bernstein Trust in accordance with the intent of the Grantor, Simon Bernstein and with the authorization and consent of the Consenting Children.

101. Both drafts of the Bernstein Trust at Article Seven have virtually identical provisions regarding the distribution of the Policy Proceeds upon the death of Simon Bernstein. Both drafts of the Bernstein Trust provide as follows: "Upon my death, the Trustee shall divide the property of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These trusts shall be designated respectively by the names of my children." One of the drafts goes on to identify the five children by name. (See Ex. 15 and Ex. 16 at Article Seven)

102. Simon Bernstein had five children, and all of them survived him. The five adult children of Simon Bernstein are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein.

103. The Five Children had a total of ten children, and as a result Simon Bernstein had ten grandchildren whose names, year of birth, and parent are as follows:

	<u>D.O.B.</u>	<u>PARENT</u>
i) Alexandra Bernstein	1988	Ted
ii) Eric Bernstein	1989	Ted
iii) Molly Simon	1990	Pam
iv) Michael Bernstein	1992	Ted
v) Max Friedstein	1996	Lisa
vi) Joshua Bernstein	1997	Eliot
vii) Carly Friedstein	1998	Lisa
viii) Jacob Bernstein	1999	Eliot
ix) Julia Iantoni	2001	Jill
x) Daniel Bernstein	2002	Eliot

104. In the draft of the Bernstein Trust attached hereto as Ex. 15, at Article Eight, the Five Children are each identified by name. None of the ten grandchildren's names appear in the document.

105. I have attached a diagram that illustrates Simon Bernstein's intention and plan to ensure that the Policy Proceeds were ultimately for the benefit of the Bernstein Trust. The diagram (Ex. 17) illustrates that in Option A had the Primary Beneficiary continued to exist at the time of Simon Bernstein's death, then by virtue of the VEBA Beneficiary Designation Simon Bernstein executed which named the Bernstein Trust as beneficiary of the VEBA Trust (Ex. 4), the Policy proceeds would have been paid from the Insurer to the VEBA Trust and distributed by the VEBA Trustee to the Bernstein Trust. (See Ex. 17)
106. In this case, as explained in ¶71 and ¶72 above, the VEBA ceased to exist in 1998, long before Simon Bernstein passed away. As a result there was no primary beneficiary in existence at the time the Insured's death. At the time of Simon Bernstein's death, the contingent beneficiary of the Policy was the Bernstein Trust. By naming the Bernstein Trust as Contingent Beneficiary, Simon Bernstein ensured that the Policy Proceeds would be paid to the Bernstein Trust whether or not the VEBA continued to exist. (See Option B on Ex. 17).
107. In addition to records relating to the Policy at issue, my sister Pamela Simon, located records relating to another life insurance policy issued by Lincoln Benefit Life on the life of Simon Bernstein in 1994 (the "Lincoln Policy"). This Policy was purchased through a life insurance brokerage known as STP Enterprises, Inc. which in the 1990's was co-owned by Simon Bernstein, Pamela Simon and David Simon.
108. This second policy was issued by Lincoln Benefit Life as policy no. U0204204 in June of 1994 with Simon Bernstein as the initial owner and insured (the "Lincoln Policy"). In August of 1995, the ownership of the Lincoln Policy was changed by Simon Bernstein to the Bernstein Trust. The Lincoln Benefit Life policy lapsed several years prior to Simon Bernstein's death. The transfer of ownership form contained the name of the Bernstein Trust and its tax identification number, identified Shirley Bernstein as trustee, and also contains the *witnessed signature* of Simon Bernstein. The Lincoln Policy lapsed in 2006 for non-payment of premium approximately six years prior to my father's passing.
109. The Consenting Children are all in agreement regarding the following facts, and the intent of our father, Simon Bernstein, with regard to the Policy and Policy proceeds:
- a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
 - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment affirming Ted Bernstein's role as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children--Ted, Pam, Eliot, Jill and Lisa--to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:
- "The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995";
- l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:
- i) First to the payment of attorney Adam M. Simon's fees and costs;
 - ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional

expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares;

- iii) The balance to be split equally among the five adult children of Simon Bernstein;
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received; and
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

110. Plaintiffs, the Bernstein Trust, Ted Bernstein as Trustee and the Consenting Children submit the following evidence of the existence and terms of the trust:

- a) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and the signature of the initial trustee, Shirley Bernstein. (See Ex. 19);
- b) The VEBA Beneficiary designation form containing the name of the Bernstein Trust and the signature of the grantor, Simon Bernstein. (See Ex. 4);
- c) The Policy beneficiary designation form designating the Bernstein Trust as the contingent beneficiary. (See Ex. 8);
- d) A copy of two unexecuted drafts of the Bernstein Trust Agreement (See Ex. 15 and Ex. 16).
- e) My Affidavit and the Affidavits of David Simon, and each of the four consenting children.
- f) The Affidavit provided by the Insurer, of Don Sanders, also references Policy records that confirm the designation of the Bernstein Trust as contingent beneficiary of the Policy.

g) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

h) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VBBA, and then as stated in the inspection report, "normally those benefits are paid to family members." (See Ex. 20).

111. Plaintiffs submit the following evidence of the terms of the Bernstein Trust, including its designated beneficiaries and trustees:

a) The two unexecuted copies (one of which contains contemporaneous handwritten notes) of the Bernstein Trust Agreement;

b) The Lincoln Benefit Life change of ownership form for the second policy transferring the ownership of the Lincoln Benefit Life policy from Simon Bernstein to the Bernstein Trust. This form contains the name of the Bernstein Trust, identifies Shirley Bernstein as Trustee, and has a *witnessed signature* of Simon Bernstein. (See Ex. 18).

c) The SS-4 Form containing the name of the Bernstein Trust, the tax identification number of the Bernstein Trust, and identifying the initial trustee, Shirley Bernstein. (See Ex. 19);

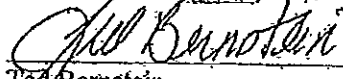
d) Declarations or Affidavits of Ted Bernstein, David Simon, Pam Simon, Jill Iantoni, and Lisa Friedstein.

e) The Equifax investigation report from 1982 which indicates that at the time of issuance the benefits of the insurance policy would be paid to the VEBA, and then as stated in the inspection report of Simon Bernstein, "normally those benefits are paid to family members." (See Ex. 20).

112, I agree to waive and do not claim any compensation for acting as Trustee of the Bernstein Trust, but I do reserve the right to claim reimbursement for any costs I incur such as legal, or accounting fees in connection with the final distribution.

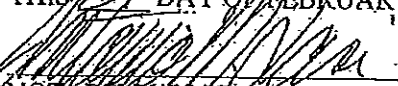
FURTHER AFFIANT SAYETH NAUGHT.

Dated: February 27th, 2015



Ted Bernstein

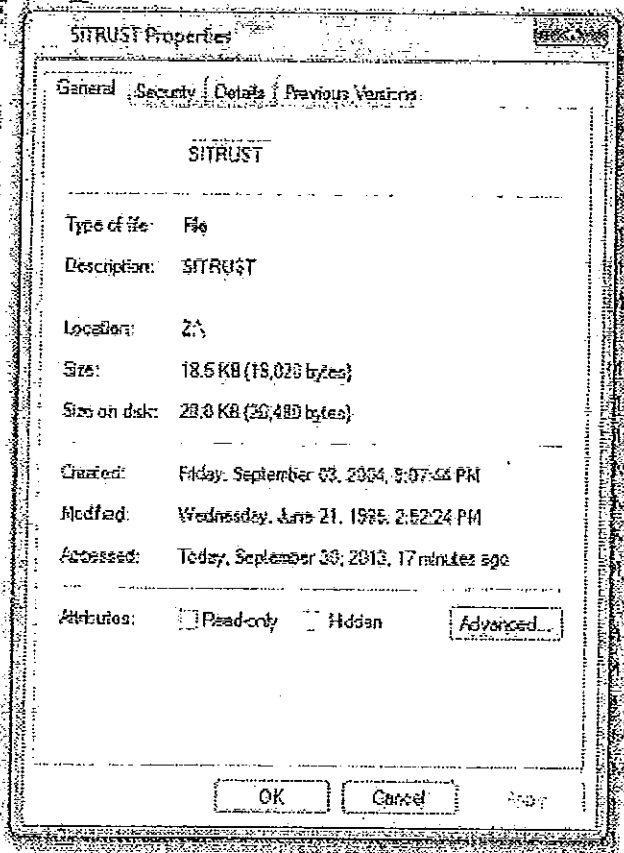
SUBSCRIBED AND SWORN TO BEFORE ME
THIS 27th DAY OF FEBRUARY, 2015.



NOTARY PUBLIC

County of Palm Beach, FL





SITRUST 6/21/1995 2:52 PM File 18 KB

SITRUST Date modified: 6/21/1995 2:52 PM Date created: 9/3/2004 9:07:46 PM Offline status: Online
 File Size: 18.5 KB Offline availability: Not available



EXHIBIT 21
 Deponent: T. Bernstein
 Date: 5/4/15 Rptr: LG
 WWW.DEPOBOOK.COM

BT000002

IRREVOCABLE TRUST AGREEMENT

I, Simon L. Bernstein, am entering into this Agreement at Boca Raton, Florida on June 1, 1995 with my wife, Shirley Bernstein, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

BT000003

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

BT000004

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

BT000005

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

BT000006

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have five children living, namely: Ted S. Bernstein, Pamela B. Simon, Jill Bernstein, Lisa Bernstein Friedstein, and Eliot Bernstein.

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had

BT000007

collected after the termination of such interest. The Trustee may charge any such income with any accrued taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000008

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$10,000.00 in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign

BT000009

the policies for such purposes;

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Bernstein does not continue to act as Trustee, David B. Simon is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital.

BT000010

surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

Subscribed and Sworn to before
me this ___ day of _____, 199__.

Notary Public

BT000012

IRREVOCABLE TRUST AGREEMENT

I, S., am entering into this Agreement at _____ on _____, 199_ with my wife, Shirley, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "S. Irrevocable Insurance Trust, dated _____, 199_". It is therefore agreed as hereinafter provided.

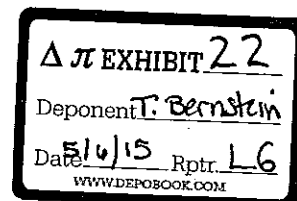
ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.



BT000013

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

BT000014

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

BT000015

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

BT000016

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have _____ children living, namely:

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had collected after the termination of such interest. The Trustee may charge any such income with any accrued

BT000017

taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000018

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$_____ in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign the policies for such purposes;

BT000019

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Donald, 2nd does not continue to act as Trustee, Henry Fred is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital, surplus and undivided profits of at least fifty million dollars.

BT000020

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

Subscribed and Sworn to before
me this ___ day of _____, 199_.

Notary Public

BT000021

SIMON BERNSTEIN
2000 INSURANCE TRUST

DATED *August 15, 2000*

PROSKAUER ROSE LLP

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

TS003892

$\Delta \pi$ EXHIBIT *23*
Deponent *T. Bernstein*
Date *5/6/15* Rptr. *LG*
WWW.DEPOBOOK.COM

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

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

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

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

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PROSKAUER ROSE LLP
2255 GLADES ROAD
BOCA RATON, FLORIDA 33431

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

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

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

(A) the lesser of,

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

or,

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

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

and

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

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

(A) the lesser of,

(i) an amount equal to,

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

reduced by,

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

divided by,

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

or,

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

and

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

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

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

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

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

reduced (but not below zero) by,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) This Agreement shall be irrevocable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The Trustees hereby accept the trust herein and

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

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

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

George Karisjanian
GEORGE D. KARISJANIAN

[Signature] (L.S.)
SIMON BERNSTEIN, Settlor


Print Name 33 S.W. 20TH STREET

Address BOCA RATON, FLORIDA 33486

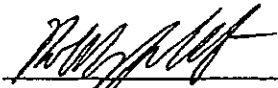
[Signature]
Robert Jacobowitz
Print Name
2415 NW 32nd St.
Address
Boca Raton, FL

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

George D. Karibjanian
GEORGE D. KARIBJANIAN

 (L.S.)
SHIRLEY BERNSTEIN, Trustee

Print Name 1133 S.W. 20TH STREET
Address BOCA RATON, FLORIDA 33486

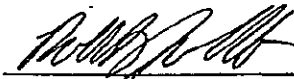

Robert Jacobowitz
Print Name 2415 NW 32nd St
Address Boca Raton, FL

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

George D. Karibjanian
GEORGE D. KARIBJANIAN

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

Print Name 1133 S.W. 20TH STREET
Address BOCA RATON, FLORIDA 33486

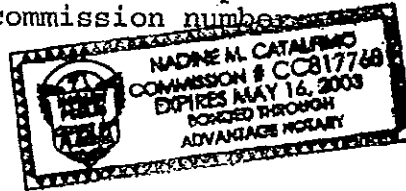

Robert Jacobowitz
Print Name 2415 NW 32nd St
Address Boca Raton, FL

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

The foregoing instrument was acknowledged before me this 15th day of August, 2000 by SIMON BERNSTEIN, who is personally known to me or has produced _____ as identification.

Nadine M. Catalano

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

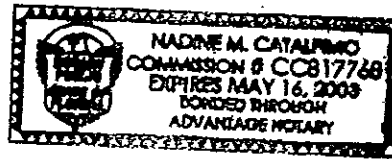


STATE OF FLORIDA)
)
) SS.:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15th day of August, 2000 by SHIRLEY BERNSTEIN, who is personally known to me or has produced _____ as identification.

Nadine M. Catalano

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

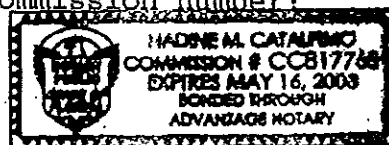


STATE OF FLORIDA)
)
) SS.:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 15th day of August, 2000 by ALBERT W. GORTZ, who is personally known to me or has produced _____ as identification.

Nadine M. Catalano

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



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

The following life insurance policies:

Lincoln Benefit Life Company, Policy No.: U0204204

Capitol Bankers Life Insurance Company,
Policy No.: 1009208

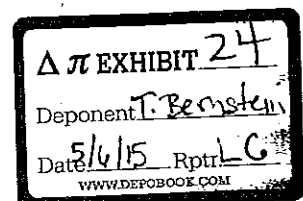
SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
4855 Technology Way, Suite 720, Boca Raton, Florida 33431
(561) 997-7008
www.tescherspallina.com

LAW OFFICES
TESCHER & SPALLINA, P.A.



TS007361

SIMON L. BERNSTEIN

AMENDED AND RESTATED TRUST AGREEMENT

This Amended and Restated Trust Agreement is dated this 20 day of July, 2012, and is between SIMON L. BERNSTEIN, of Palm Beach County, Florida referred to in the first person, as settlor, and SIMON L. BERNSTEIN, of Palm Beach County, Florida and SIMON L. BERNSTEIN's successors, as trustee (referred to as the "Trustee," which term more particularly refers to all individuals and entities serving as trustee of a trust created hereunder during the time of such service, whether alone or as co-trustees, and whether originally serving or as a successor trustee).

WHEREAS, on May 20, 2008, I created and funded the SIMON L. BERNSTEIN TRUST AGREEMENT (the "Trust Agreement," which reference includes any subsequent amendments of said trust agreement);

WHEREAS, Paragraph A. of Article I. of said Trust Agreement provides, inter alia, that during my lifetime I shall have the right at any time and from time to time by an instrument, in writing, delivered to the Trustee to amend or revoke said Trust Agreement, in whole or in part.

NOW, THEREFORE, I hereby amend and restate the Trust Agreement in its entirety and the Trustee accepts and agrees to perform its duties and obligations in accordance with the following amended provisions. Notwithstanding any deficiencies in execution or other issues in regard to whether any prior version of this Trust Agreement was a valid and binding agreement or otherwise created an effective trust, this amended and restated agreement shall constitute a valid, binding and effective trust agreement and shall amend and succeed all prior versions described above or otherwise predating this amended and restated Trust Agreement.

ARTICLE I DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

B. Payments During My Life. If income producing property is held in the trust during my life, the Trustee shall pay the net income of the trust to me or as I may direct. However, during any periods while I am Disabled, the Trustee shall pay to me or on my behalf such amounts of the net income and principal of the trust as is proper for my Welfare. Any income not so paid shall be added to principal.

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C. Upon My Death. Upon my death the Trustee shall collect and add to the trust all amounts due to the trust under any insurance policy on my life or under any death benefit plan and all property added to the trust by my Will or otherwise. After paying or providing for the payment from the augmented trust of all current charges and any amounts payable under the later paragraph captioned "Death Costs," the Trustee shall hold the trust according to the following provisions.

ARTICLE II. AFTER MY DEATH

A. Disposition of Tangible Personal Property. If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such items shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

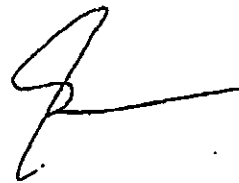
B. Disposition of Trust Upon My Death. Upon my death, the remaining assets in this trust shall be divided among and held in separate Trusts for my then living grandchildren. Each of my grandchildren for whom a separate trust is held hereunder shall hereinafter be referred to as a "beneficiary" with the separate Trusts to be administered as provided in Subparagraph II.C.

C. Trusts for Beneficiaries. The Trustee shall pay to the beneficiary and the beneficiary's children, such amounts of the net income and principal of such beneficiary's trust as is proper for the Welfare of such individuals. Any income not so paid shall be added to principal each year. After a beneficiary has reached any one or more of the following birthdays, the beneficiary may withdraw the principal of his or her separate trust at any time or times, not to exceed in the aggregate 1/3 in value after the beneficiary's 25th birthday, 1/2 in value (after deducting any amount previously subject to withdrawal but not actually withdrawn) after the beneficiary's 30th birthday, and the balance after the beneficiary's 35th birthday, provided that the withdrawal powers described in this sentence shall not apply to any grandchild of mine as beneficiary of a separate trust. The value of each trust shall be its value as of the first exercise of each withdrawal right, plus the value of any subsequent addition as of the date of addition. The right of withdrawal shall be a privilege which may be exercised only voluntarily and shall not include an involuntary exercise. If a beneficiary dies with assets remaining in his or her separate trust, upon the beneficiary's death the beneficiary may appoint his or her trust to or for the benefit of one or more of any of my lineal descendants (excluding from said class, however, such beneficiary and such beneficiary's creditors, estate, and creditors of such beneficiary's estate). Any part of his or her trust such beneficiary does not effectively appoint shall upon his or her death be divided among and held in separate Trusts for the following persons:

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1. for his or her lineal descendants then living, *per stirpes*, or
2. if he or she leaves no lineal descendant then living, *per stirpes* for the lineal descendants then living of his or her nearest ancestor (among me and my lineal descendants) with a lineal descendant then living.

A trust for a lineal descendant of mine shall be held under this paragraph, or if a trust is then so held, shall be added to such trust.

D. Termination of Small Trust. If at any time after my death in the opinion of the Trustee a separate trust holds assets of a value of less than \$50,000.00 and is too small to justify the expense of its retention, and termination of such trust is in the best interests of its current income beneficiary, the Trustee in its discretion may terminate such trust and pay it to said beneficiary.

E. Contingent Gift. If at any time property of these Trusts is not disposed of under the other provisions of this Agreement, it shall be paid, as a gift made hereunder, to such persons and in such shares as such property would be distributed if I had then owned such property and had then died solvent, unmarried and intestate domiciled in the State of Florida, according to the laws of inheritance of the State of Florida then in effect.

F. Protective Provision. No beneficiary of any trust herein created shall have any right or power to anticipate, transfer, pledge, sell, alienate, assign or encumber in any way his or her interest in the income or principal of such trust. Furthermore, no creditor shall have the right to attach, lien, seize or levy upon the interest of a beneficiary in this trust (other than myself) and such interest shall not be liable for or subject to the debts, liabilities or obligations of any such beneficiary or any claims against such beneficiary (whether voluntarily or involuntarily created), and the Trustee shall pay directly to or for the use or benefit of such beneficiary all income and principal to which such beneficiary is entitled, notwithstanding that such beneficiary has executed a pledge, assignment, encumbrance or in any other manner alienated or transferred his or her beneficial interest in the trust to another. This paragraph shall not preclude the effective exercise of any power of appointment granted herein or the exercise of any disclaimer.


G. Maximum Duration. Regardless of anything in this Agreement to the contrary, no trust interest herein created shall continue beyond three hundred sixty (360) years after the date of creation of this Agreement, nor shall any power of appointment be exercised in such manner so as to delay vesting of any trust beyond such period. Immediately prior to the expiration of such period, all such trusts then in existence shall terminate, and the assets thereof shall be distributed outright and in fee to then beneficiaries of the current income and in the proportions in which such persons are the beneficiaries, and if such proportions cannot be ascertained, then equally among such beneficiaries.

ARTICLE III. GENERAL

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A. Disability. Subject to the following Subparagraph captioned "Subchapter S Stock," while any beneficiary is Disabled, the Trustee shall pay to him or her only such portion of the income to which he or she is otherwise entitled as is proper for his or her Welfare, and any income not so paid shall be added to the principal from which derived. While any beneficiary is Disabled, income or principal payable to him or her may, in the discretion of the Trustee, be paid directly to him or her, without the intervention of a guardian, directly to his or her creditors or others for his or her sole benefit or to an adult person or an eligible institution (including the Trustee) selected by the Trustee as custodian for a minor beneficiary under the Uniform Transfers to Minors Act or similar law. The receipt of such payee is a complete release to the Trustee.

B. Timing of Income Distributions. The Trustee shall make required payments of income at least quarterly.

C. Substance Abuse.

1. In General. If the Trustee reasonably believes that a beneficiary (other than myself) of any trust:

a. routinely or frequently uses or consumes any illegal substance so as to be physically or psychologically dependent upon that substance, or

b. is clinically dependent upon the use or consumption of alcohol or any other legal drug or chemical substance that is not prescribed by a board certified medical doctor or psychiatrist in a current program of treatment supervised by such doctor or psychiatrist,

and if the Trustee reasonably believes that as a result the beneficiary is unable to care for himself or herself, or is unable to manage his or her financial affairs, all mandatory distributions (including distributions upon termination of the trust) to the beneficiary, all of the beneficiary's withdrawal rights, and all of the beneficiary's rights to participate in decisions concerning the removal and appointment of Trustees will be suspended. In that event, the following provisions of this Subparagraph III.C will apply.

2. Testing. The Trustee may request the beneficiary to submit to one or more examinations (including laboratory tests of bodily fluids) determined to be appropriate by a board certified medical doctor and to consent to full disclosure to the Trustee of the results of all such examinations. The Trustee shall maintain strict confidentiality of those results and shall not disclose those results to any person other than the beneficiary without the prior written permission of the beneficiary. The Trustee may totally or partially suspend all distributions otherwise required or permitted to be made to that beneficiary until the beneficiary consents to the examination and disclosure to the Trustee.

3. Treatment. If, in the opinion of the examining doctor, the examination indicates current or recent use of a drug or substance as described above, the examining doctor will determine an appropriate method of treatment for the beneficiary (for example, counseling or treatment on an

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in-patient basis in a rehabilitation facility) that is acceptable to the Trustee. If the beneficiary consents to the treatment, the Trustee shall pay the costs of treatment directly to the provider of those services from the distributions suspended under this Subparagraph III.C.

4. Resumption of Distributions. The Trustee may resume other distributions to the beneficiary (and the beneficiary's other suspended rights will be restored) when, in the case of use or consumption of an illegal substance, examinations indicate no such use for 12 months and, in all cases, when the Trustee in its discretion determines that the beneficiary is able to care for himself or herself and is able to manage his or her financial affairs.

5. Disposition of Suspended Amounts. When other distributions to the beneficiary are resumed, the remaining balance, if any, of distributions that were suspended may be distributed to the beneficiary at that time. If the beneficiary dies before distribution of those suspended amounts, the Trustee shall distribute the balance of the suspended amounts to the persons who would be the alternate takers of that beneficiary's share (or takers through the exercise of a power of appointment) as otherwise provided in this Trust Agreement.

6. Exoneration. No Trustee (or any doctor retained by the Trustee) will be responsible or liable to anyone for a beneficiary's actions or welfare. The Trustee has no duty to inquire whether a beneficiary uses drugs or other substances as described in this Subparagraph III.C. The Trustee (and any doctor retained by the Trustee) is to be indemnified from the trust estate and held harmless from any liability of any nature in exercising its judgment and authority under this Subparagraph III.C, including any failure to request a beneficiary to submit to medical examination, and including a decision to distribute suspended amounts to a beneficiary.

7. Tax Savings Provision. Despite the provisions of this Subparagraph III.C, the Trustee cannot suspend any mandatory distributions or withdrawal rights that are required for that trust to become or remain a Qualified Subchapter S Trust (unless the Trustee elects for the trust to be an Electing Small Business Trust), or to qualify for any federal transfer tax exemption, deduction, or exclusion allowable with respect to that trust.

D. Income on Death of Beneficiary. Subject to the later paragraph captioned "Subchapter S Stock," and except as otherwise explicitly provided herein, upon the death of any beneficiary, all accrued or undistributed income of such deceased beneficiary's trust shall pass with the principal of his or her trust but shall remain income for trust accounting purposes.

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "*child*," "*children*," "*grandchild*," "*grandchildren*" and "*lineal descendant*" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is

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raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime.

2. Code. "Code" means the Internal Revenue Code of 1986, as amended, and in referring to any particular provision of the Code, includes a reference to any equivalent or successor provision of a successor federal tax law.

3. Disabled. "Disabled" or being under "Disability" means, as to any applicable individual: (1) being under the age of 21 years, (2) having been adjudicated by a court of competent jurisdiction as mentally or physically incompetent or unable to manage his or her own property or personal affairs (or a substantially similar finding under applicable state or national law), or (3) being unable to properly manage his or her personal or financial affairs, or a trust estate hereunder as to a Trustee hereunder, because of a mental or physical impairment (whether temporary or permanent in nature). A written certificate executed by an individual's attending physician or attending psychiatrist confirming that person's impairment will be sufficient evidence of Disability under item (3) above, and all persons may rely conclusively on such a certificate.

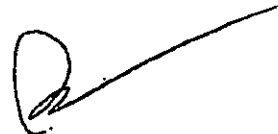
4. Education. The term "education" herein means vocational, primary, secondary, preparatory, theological, college and professional education, including post-graduate courses of study, at educational institutions or elsewhere, and expenses relating directly thereto, including tuition, books and supplies, room and board, and travel from and to home during school vacations. It is intended that the Trustee liberally construe and interpret references to "education," so that the beneficiaries entitled to distributions hereunder for education obtain the best possible education commensurate with their abilities and desires.

5. Needs and Welfare Distributions. Payments to be made for a person's "Needs" means payments necessary for such person's health (including lifetime residential or nursing home care), education, maintenance and support. Payments to be made for a person's "Welfare" means discretionary payments by the Trustee, from time to time, for such person's Needs and also for such person's advancement in life (including assistance in the purchase of a home or establishment or development of any business or professional enterprise which the Trustee believes to be reasonably sound), happiness and general well-being. However, the Trustee, based upon information reasonably available to it, shall make such payments for a person's Needs or Welfare only to the extent such person's income, and funds available from others obligated to supply funds for such purposes (including, without limitation, pursuant to child support orders and agreements), are insufficient in its opinion for such purposes, and shall take into account such person's accustomed manner of living, age, health, marital status and any other factor it considers important. Income or principal to be paid for a person's Needs or Welfare may be paid to

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such individual or applied by the Trustee directly for the benefit of such person. The Trustee may make a distribution or application authorized for a person's Needs or Welfare even if such distribution or application substantially depletes or exhausts such person's trust, without any duty upon the Trustee to retain it for future use or for other persons who might otherwise benefit from such trust.

6. Per Stirpes. In a division "*per stirpes*" each generation shall be represented and counted whether or not it has a living member.

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

8. Spouse. A person's "*spouse*" includes only a spouse then married to and living as husband and wife with him or her, or a spouse who was married to and living as husband and wife with him or her at his or her death. The following rules apply to each person who is a beneficiary or a permissible appointee under this Trust Agreement and who is married to a descendant of mine. Such a person will cease to be a beneficiary and will be excluded from the class of permissible appointees upon:

- a. the legal termination of the marriage to my descendant (whether before or after my death), or
- b. the death of my descendant if a dissolution of marriage proceeding was pending when he or she died.

The trust will be administered as if that person had died upon the happening of the terminating event described above.

9. Gender, Number. Where appropriate, words of any gender include all genders and the singular and plural are interchangeable.

F. Powers of Appointment. Property subject to a power of appointment shall be paid to, or retained by the Trustee or paid to any trustee under any will or trust agreement for the benefit of, such one or more permissible appointees, in such amounts and proportions, granting such interests, powers and powers of appointment, and upon such conditions including spendthrift provisions as the holder of such power (i) in the case of a power exercisable upon the death of such holder, appoints in his or her will or in a trust agreement revocable by him or her until his or her death, or (ii) in the case of a power exercisable during the life of such holder, appoints in a written instrument signed by such holder, two witnesses and a notary public, but in either case only if such will, trust agreement, or instrument specifically refers to such power.

G. Limitations on Powers of Trustee. Regardless of anything herein to the contrary, no Trustee shall make or participate in making any distribution of income or principal of a trust to or for the benefit of a beneficiary which would directly or indirectly discharge any legal obligation of such

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Trustee or a donor of such trust (as an individual, and other than myself as donor) to support such beneficiary; and no Trustee (other than myself) shall make or participate in making any discretionary distribution of income or principal to or for the benefit of himself or herself other than for his or her Needs, including by reason of a determination to terminate a trust described herein. For example, if a Trustee (other than myself) has the power to distribute income or principal to himself or herself for his or her own Welfare, such Trustee (the "restricted Trustee") shall only have the power to make or participate in making a distribution of income or principal to the restricted Trustee for the restricted Trustee's Needs, although any co-Trustee who is not also a restricted Trustee may make or participate in making a distribution of income or principal to the restricted Trustee for such restricted Trustee's Welfare without the participation or consent of said restricted Trustee.

H. Presumption of Survivorship. If any person shall be required to survive another person in order to take any interest under this Agreement, the former person shall be deemed to have predeceased the latter person, if such persons die under circumstances which make it difficult or impracticable to determine which one died first.

I. Governing Law. This Agreement is governed by the law of the State of Florida.

J. Other Beneficiary Designations. Except as otherwise explicitly and with particularity provided herein, (a) no provision of this trust 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 of such assets which would otherwise pass pursuant to this trust 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 and in the manner provided in such designation which is incorporated herein by this reference.

K. Release of Medical Information.

1. Disability of Beneficiary. Upon the written request of a Trustee (with or without the concurrence of co-Trustees) issued to any current income or principal beneficiary (including discretionary beneficiaries and myself if a beneficiary) for whom a determination of Disability is relevant to the administration of a trust hereunder and for whom a Trustee (with or without the concurrence of co-Trustees) desires to make such a determination, such beneficiary shall issue to all Trustees (who shall be identified thereon both by name to the extent known and by class description) a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested beneficiary to release protected health information of the requested beneficiary to all Trustees that is relevant to the determination of the Disability of the requested beneficiary as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death of the requested

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beneficiary). If such beneficiary (or his or her legal representative if such beneficiary is a minor or legally disabled) refuses within thirty days of receipt of the request to provide a valid authorization, or at any time revokes an authorization within its term, the Trustee shall treat such beneficiary as Disabled hereunder until such valid authorization is delivered.

2. Disability of Trustee. Upon the request to a Trustee that is an individual by (a) a co-Trustee, or if none, (b) the person or entity next designated to serve as a successor Trustee not under legal incapacity, or if none, (c) any adult current income or principal beneficiary not under legal incapacity, or in any event and at any time (d) a court of competent jurisdiction, such Trustee shall issue to such person and all persons, courts of competent jurisdiction, and entities (who shall be identified thereon both by name to the extent known and by class description), with authority hereunder to determine such requested Trustee's Disability, a valid authorization under the Health Insurance Portability and Accountability Act of 1996 and any other applicable or successor law authorizing all health care providers and all medical sources of such requested Trustee to release protected health information of the requested Trustee to such persons, courts and entities, that is relevant to the determination of the Disability of the requested Trustee as Disability is defined hereunder. The period of each such valid authorization shall be for six months (or the earlier death or resignation of the requested Trustee). If such requested Trustee refuses within thirty days of receipt of the request to deliver a valid authorization, or at any time revokes an authorization within its term, such requested Trustee shall thereupon be treated as having resigned as Trustee hereunder.

3. Ability to Amend or Revoke. The foregoing provisions of this paragraph shall not constitute a restriction on myself to amend or revoke the terms of this trust instrument under paragraph LA hereof, provided I otherwise have legal capacity to do so.

4. Authorization to Issue Certificate. All required authorizations under this paragraph shall include the power of a physician or psychiatrist to issue a written certificate to the appropriate persons or entities as provided in Subparagraph III.E.3 hereof.

ARTICLE IV. FIDUCIARIES

A. Powers of the Trustee. During my life except while I am Disabled, the Trustee shall exercise all powers provided by law and the following powers, other than the power to retain assets, only with my written approval. While I am Disabled and after my death, the Trustee shall exercise said powers without approval, provided that the Trustee shall exercise all powers in a fiduciary capacity.

1. Investments. To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of the trust estate (the "estate"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of any trust herein created or subsequently acquired, even if the Trustee is personally interested in such property, and without liability for any

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decline in the value thereof; all without limitation by any statutes or judicial decisions whenever enacted or announced, regulating investments or requiring diversification of investments, it being my intention to give the broadest investment powers and discretion to the Trustee. Any bank, trust company, or other corporate trustee serving hereunder as Trustee is authorized to invest in its own common trust funds.

2. Special Investments. The Trustee is expressly authorized (but not directed) to retain, make, hold, and dispose of investments not regarded as traditional for trusts, including interests or investments in privately held business and investment entities and enterprises, including without limitation stock in closely held corporations, limited partnership interests, joint venture interests, mutual funds, business trust interests, and limited liability company membership interests, notwithstanding (a) any applicable prudent investor rule or variation thereof, (b) common law or statutory diversification requirements (it being my intent that no such duty to diversify shall exist) (c) a lack of current cash flow therefrom, (d) the presence of any risk or speculative elements as compared to other available investments (it being my intent that the Trustee have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy), (e) lack of a reasonable rate of return, (f) risks to the preservation of principal, (g) violation of a Trustee's duty of impartiality as to different beneficiaries (it being my intent that no such duty exists for this purpose), and (h) similar limitations on investment under this Agreement or under law pertaining to investments that may or should be made by a Trustee (including without limitation the provisions of Fla. Stats. §518.11 and successor provisions thereto that would characterize such investments as forbidden, imprudent, improper or unlawful). The Trustee shall not be responsible to any trust created hereunder or the beneficiaries thereof for any loss resulting from any such authorized investment, including without limitation loss engendered by the higher risk element of that particular entity, investment, or enterprise, the failure to invest in more conservative investments, the failure to diversify trust assets, the prudent investor rule or variant thereof. Notwithstanding any provisions for distributions to beneficiaries hereunder, if the Trustee determines that the future potential investment return from any illiquid or closely held investment asset warrants the retention of that investment asset or that sufficient value could not be obtained from the sale or other disposition of an illiquid or closely held investment asset, the Trustee is authorized to retain that asset and if necessary reduce the distributions to beneficiaries due to lack of sufficient liquid or marketable assets. However, the preceding provisions of this Subparagraph shall not be exercised in a manner as to jeopardize the availability of the estate tax marital deduction for assets passing to or held in the a trust for my surviving spouse or that would otherwise qualify for the estate tax marital deduction but for such provisions, shall not override any express powers hereunder of my surviving spouse to demand conversion of unproductive property to productive property, or reduce any income distributions otherwise required hereunder for a trust held for the benefit of my surviving spouse or a "qualified subchapter S trust" as that term is defined in Code Section 1361(d)(3).

3. Distributions. To make any division or distribution pro rata or non-pro rata, in cash or in kind, and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares.

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4. Management. To manage, develop, improve, partition or change the character of an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

5. Borrowing. To borrow money from anyone on commercially reasonable terms, including entities owned in whole or in part by the trust, a Trustee, beneficiaries and other persons who may have a direct or indirect interest in a Trust; and to mortgage, margin, encumber and pledge real and personal property of a trust as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the trust and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from a Trustee may be with or without interest, and may be secured with a lien on trust assets.

6. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of a trust and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

7. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to a trust. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

8. Real Property Matters. To subdivide, develop or partition real estate; to purchase or sell real property and to enter into contracts to do the same; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as the fiduciaries may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks; and to protect and conserve, or to lease, or to encumber, or otherwise to manage and dispose of real property to the extent such power is not otherwise granted herein or otherwise restricted herein.


9. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against a trust.

10. Business Entities. To deal with any business entity or enterprise even if a Trustee is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole

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proprietorship, or other form (all of which business entities and enterprises are referred to herein as "Business Entities"). I vest the Trustee with the following powers and authority in regard to Business Entities:

- a. To retain and continue to operate a Business Entity for such period as the Trustee deems advisable;
- b. To control, direct and manage the Business Entities. In this connection, the Trustee, in its sole discretion, shall determine the manner and extent of its active participation in the operation and may delegate all or any part of its power to supervise and operate to such person or persons as the Trustee may select; including any associate, partner, officer or employee of the Business Entity;
- c. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the Trustee may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;
- d. To invest funds in the Business Entities, to pledge other assets of a trust as security for loans made to the Business Entities, and to lend funds from a trust to the Business Entities;
- e. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the Trustee may deem advisable;
- f. To treat Business Entities as separate from a trust. In a Trustee's accounting to any beneficiary, the Trustee shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;
- g. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the Trustee may deem advisable in conformity with sound business practice;
- h. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the Trustee may determine. My Trustee is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and
- i. To guaranty the obligations of the Business Entities, or pledge assets of a trust to secure such a guaranty.

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11. Principal and Income. To allocate items of income or expense between income and principal as permitted or provided by the laws of the State of Florida but without limiting the availability of the estate tax marital deduction, provided, unless otherwise provided in this instrument, the Trustee shall establish out of income and credit to principal reasonable reserves for depreciation, obsolescence and depletion, determined to be equitable and fair in accordance with some recognized reasonable and preferably uncomplicated trust accounting principle and; provided, further that the Trustee shall not be required to provide a rate of return on unproductive property unless otherwise provided in this instrument.

12. Life Insurance. With respect to any life insurance policies constituting an asset of a trust, to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance, including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the Trust; and in general, to exercise all other options, benefits, rights and privileges under such policies.

13. Continuing Power. To continue to have or exercise, after the termination of a trust, in whole or in part, and until final distribution thereof, all title, power, discretions, rights and duties conferred or imposed upon the Trustee by law or by this Agreement or during the existence of the trust.

14. Exoneration. To provide for the exoneration of the Trustee from any personal liability on account of any arrangement or contract entered into in a fiduciary capacity.

15. Agreements. To comply with, amend, modify or rescind any agreement made during my lifetime, including those regarding the disposition, management or continuation of any closely held unincorporated business, corporation, partnership or joint venture, and including the power to complete contracts to purchase and sell real estate.

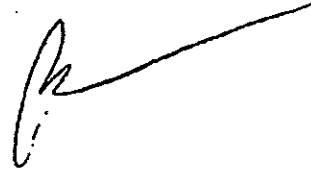
16. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

17. Combination of Shares. To hold the several shares of a trust or several Trusts as a common fund, dividing the income proportionately among them, to assign undivided interests to the several shares or Trusts, and to make joint investments of the funds belonging to them. For such purposes and insofar as may be practicable, the Trustee, to the extent that division of the trust estate is directed hereby, may administer the trust estate physically undivided until actual division thereof becomes necessary to make distributions. The Trustee may hold, manage, invest and account for whole or fractional trust shares as a single estate, making the division thereof by appropriate entries in the books of account only, and may allocate to each whole or fractional trust share its proportionate part of all receipts and expenses; provided, however, this carrying of several Trusts as a single estate shall not defer the vesting in possession of any whole or fractional share of a trust for the beneficiaries thereof at the times specified herein.

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18. Reimbursement. To reimburse itself from a trust for reasonable expenses incurred in the administration thereof.

19. Reliance Upon Communication. To rely, in acting under a trust, upon any letter, notice, certificate, report, statement, document or other paper, or upon any telephone, telegraph, cable, wireless or radio message, if believed by the Trustee to be genuine, and to be signed, sealed, acknowledged, presented, sent, delivered or given by or on behalf of the proper person, firm or corporation, without incurring liability for any action or inaction based thereon.

20. Assumptions. To assume, in the absence of written notice to the contrary from the person or persons concerned, that a fact or an event, by reason of which an interest or estate under a trust shall commence or terminate, does not exist or has not occurred, without incurring liability for any action or inaction based upon such assumption.

21. Service as Custodian. To serve as successor custodian for any beneficiary of any gifts that I may have made under any Transfer to Minors Act, if at the time of my death no custodian is named in the instrument creating the gift.

22. Removal of Assets. The Trustee may remove from the domiciliary state during the entire duration of a trust or for such lesser period as it may deem advisable, any cash, securities or other property at any time in its hands whether principal or not, and to take and keep the same outside the domiciliary state and at such place or places within or outside the borders of the United States as it may determine, without in any event being chargeable for any loss or depreciation to the trust which may result therefrom.

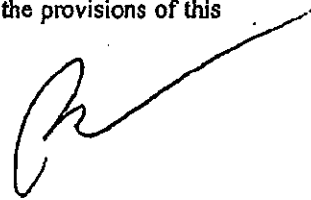
23. Change of Situs. The situs and/or applicable law of any trust created hereunder may be transferred to such other place as the Trustee may deem to be for the best interests of the trust estate. In so doing, the Trustee may resign and appoint a successor Trustee, but may remove such successor Trustee so appointed and appoint others. Each successor Trustee may delegate any and all fiduciary powers, discretionary and ministerial, to the appointing Trustee as its agent.

24. Fiduciary Outside Domiciliary State. In the event the Trustee shall not be able and willing to act as Trustee with respect to any property located outside the domiciliary state, the Trustee, without order of court, may appoint another individual or corporation (including any employee or agent of any appointing Trustee) to act as Trustee with respect to such property. Such appointed Trustee shall have all of the powers and discretions with respect to such property as are herein given to the appointing Trustee with respect to the remaining trust assets. The appointing Trustee may remove such appointed Trustee and appoint another upon ten (10) days notice in writing. All income from such property, and if such property is sold, exchanged or otherwise disposed of, the proceeds thereof, shall be remitted to the appointing Trustee, to be held and administered by it as Trustee hereunder. Such appointed Trustee may employ the appointing Trustee as agent in the administration of such property. No surety shall be required on the bond of the Trustee or agent acting under the provisions of this

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paragraph. No periodic court accounting shall be required of such appointed Trustee, it being my intention to excuse any statutory accounting which may ordinarily be required.

25. Additions. To receive and accept additions to the Trusts in cash or in kind from donors, executors, administrators, Trustee or attorneys in fact, including additions of my property by the Trustee or others as my attorneys in fact.

26. Title and Possession. To have title to and possession of all real or personal property held in the Trusts, and to register or hold title to such property in its own name or in the name of its nominee, without disclosing its fiduciary capacity, or in bearer form.

27. Dealing with Estates. To use principal of the Trusts to make loans to my estate, with or without interest, and to make purchases from my estate.

28. Agents. To employ persons, including attorneys, auditors, investment advisers, and agents, even if they are the Trustee or associated with the Trustee, to advise or assist the Trustee in the performance of its administrative duties and to pay compensation and costs incurred in connection with such employment from the assets of the Trust; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

29. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at its discretion, without compensating adjustments or reimbursements between any of the Trusts or any of the trust accounts or any beneficiaries.

B. Resignation. A Trustee may resign with or without cause, by giving no less than 30 days advance written notice, specifying the effective date of such resignation, to its successor Trustee and to the persons required and in the manner provided under Fla.Stats. §§736.0705(1)(a) and 736.0109. As to any required recipient, deficiencies in fulfilling the foregoing resignation requirements may be waived in a writing signed by such recipient. Upon the resignation of a Trustee, such Trustee shall be entitled to reimbursement from the trust for all reasonable expenses incurred in the settlement of accounts and in the transfer of assets to his or her successor.

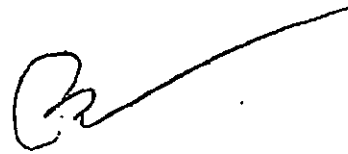
C. Appointment of Successor Trustee.

1. Appointment. Upon a Trustee's resignation, or if a Trustee becomes Disabled or for any reason ceases to serve as Trustee, I may appoint any person or persons as successor Trustee, and in default of such appointment by me, ROBERT L. SPALLINA and DONALD R. TESCHER shall serve together as successor co-Trustees, or either of them alone as Trustee if either of them is unable to serve. Notwithstanding the foregoing, if a named Trustee is not a U.S. citizen or resident at the time of commencement of his term as Trustee, such Trustee should give due consideration to declining to serve to avoid potential adverse U.S. income tax consequences by reason of the characterization of a trust

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hereunder as a foreign trust under the Code, but shall not be construed to have any duty to so decline if such Trustee desires to serve.

2. Specific Trusts. Notwithstanding the preceding provisions of this Subparagraph IV.C, subsequent to my death I specifically appoint the following person or persons as Trustee of the following Trusts under the following described circumstances provided that the foregoing appointments shall apply when and to the extent that no effective appointment is made below:

a. Trustee of Separate Trusts for My Grandchildren. Each grandchild of mine shall serve as co-Trustee with the immediate parent of such grandchild which parent is also a child of mine as to all separate trusts under which such grandchild is the sole current mandatory or discretionary income beneficiary upon attaining the age of twenty-five (25) years, and shall serve as sole Trustee of such trusts upon attaining the age of thirty-five (35) years. While serving alone as Trustee, a grandchild of mine may designate a co-Trustee that is not a Related or Subordinate Party to serve with such grandchild and such grandchild may remove and/or replace such co-Trustee with another that is not a Related or Subordinate Party from time to time.

b. Trustee of Separate Trusts for My Lineal Descendants Other Than My Grandchildren. In regard to a separate trust held for a lineal descendant of mine other than a grandchild of mine which lineal descendant is the sole current mandatory or discretionary income beneficiary, each such lineal descendant shall serve as co-Trustee, or sole Trustee if the preceding described Trustees cease or are unable to serve or to continue to serve, of his or her separate trust upon attaining age twenty-five (25) years. While serving alone as Trustee, a lineal descendant of mine other than a grandchild of mine may designate a co-Trustee to serve with such lineal descendant and such lineal descendant may remove and/or replace such co-Trustee with another from time to time.

3. Successor Trustees Not Provided For. Whenever a successor Trustee or co-Trustee is required and no successor or other functioning mechanism for succession is provided for under the terms of this Trust Agreement, the last serving Trustee or the last person or entity designated to serve as Trustee of the applicable trust may appoint his or her successor, and if none is so appointed, the following persons shall appoint a successor Trustee (who may be one of the persons making the appointment):

- a. The remaining Trustees, if any; otherwise,
- b. A majority of the permissible current mandatory or discretionary income beneficiaries, including the natural or legal guardians of any beneficiaries who are Disabled.

A successor Trustee appointed under this subparagraph shall not be a Related or Subordinate Party of the trust. The appointment will be by a written document executed by such person in the presence of two witnesses and acknowledged before a notary public delivered to the appointed Trustee and to me if I am living and not Disabled or in a valid last Will. Notwithstanding the foregoing, a designation under this Subparagraph of a successor trustee to a corporate or entity trustee shall be limited to a corporate or

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entity trustee authorized to serve as such under Florida law with assets under trust management of no less than one billion dollars.

4. Power to Remove Trustee. Subsequent to my death, the age 35 or older permissible current mandatory or discretionary income beneficiaries from time to time of any trust established hereunder shall have the power to unanimously remove a Trustee of such trust at any time with or without cause, other than a named Trustee or successor Trustee designated hereunder, or a Trustee appointed by me during my lifetime or under my Will or otherwise at the time of my death, with the successor Trustee to be determined in accordance with the foregoing provisions.

D. Method of Appointment of Trustee. Any such appointment of a successor Trustee by a person shall be made in a written instrument executed by such person in the presence of two witnesses and acknowledged before a notary public which is delivered to such appointed Trustee during the lifetime of the person making such appointment, or any such appointment of a successor Trustee by a person may be made under the last Will of such person.

E. Limitations on Removal and Replacement Power. Any power to remove and/or replace a trustee hereunder that is granted to an individual (including such power when reserved to me) is personal to that individual and may not be exercised by a guardian, power of attorney holder, or other legal representative or agent.

F. Successor Fiduciaries. No Trustee is responsible for, nor has any duty to inquire into, the administration, acts or omissions of any executor, administrator, Personal Representative, or trustee or attorney-in-fact adding property to these Trusts, or of any predecessor Trustee. Each successor Trustee has all the powers, privileges, immunities, rights and title (without the execution of any instrument of transfer or any other act by any retiring Trustee) and all the duties of all predecessors.

G. Liability and Indemnification of Trustee.

1. Liability in General. No individual Trustee (that is, a Trustee that is not a corporation or other entity) shall be liable for any of his or her actions or failures to act as Trustee, even if the individual Trustee is found by a court to have been negligent or in breach of fiduciary duty, except for liability caused by his or her actions or failures to act done in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. Each Trustee that is a corporation or other entity will be liable for its actions or failures to act that are negligent or that breach its fiduciary duty, without contribution by any individual Trustee.

2. Indemnification of Trustee. Except in regard to liabilities imposed on a Trustee under Subparagraph IV.G.1., each Trustee shall be held harmless and indemnified from the assets of the trust for any liability, damages, attorney's fees, expenses, and costs incurred as a result of its service as Trustee. A Trustee who ceases to serve for any reason will be entitled to receive reasonable security from the assets of the trust to protect it from liability, and may enforce these provisions for indemnification against the current Trustee or against any assets held in the trust, or if the former Trustee is an individual

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and not a corporation or other entity, against any beneficiary to the extent of distributions received by that beneficiary. This indemnification right extends to the estate, personal representatives, legal successors and assigns of a Trustee.

3. Indemnification of Trustee - Additional Provisions. I recognize that if a beneficiary accuses a Trustee of wrongdoing or breach of fiduciary duty, the Trustee may have a conflict of interest that ordinarily would prevent it from paying legal fees and costs from the trust estate to defend itself. I do not want to put a financial burden on any individual named to serve as a Trustee. Just as important, I do not want an individual who has been selected to serve as a Trustee to be reluctant to accept the position, or while serving to be intimidated in the performance of the Trustee's duties because of the threats of lawsuits that might force the Trustee to pay fees and costs from the Trustee's personal resources. For this reason, I deliberately and intentionally waive any such conflict of interest with respect to any individual serving as Trustee so that he or she can hire counsel to defend himself or herself against allegations of wrongdoing or if sued for any reason (whether by a beneficiary or by someone else) and pay all fees and costs for his or her defense from the trust estate until the dispute is resolved. I understand and agree that a court may award, disallow or allocate fees and costs in whole or in part after the dispute is resolved, as provided by law. The Trustee will account for all such fees and costs paid by it as provided by law. This provision shall not apply to any Trustee that is a corporation or other entity.

H. Compensation, Bond. Each Trustee is entitled to be paid reasonable compensation for services rendered in the administration of the trust. Reasonable compensation for a non-individual Trustee will be its published fee schedule in effect when its services are rendered unless otherwise agreed in writing, and except as follows. Any fees paid to a non-individual Trustee for making principal distributions, for termination of the trust, and upon termination of its services must be based solely on the value of its services rendered, not on the value of the trust principal. During my lifetime the Trustee's fees are to be charged wholly against income (to the extent sufficient), unless directed otherwise by me in writing. Each Trustee shall serve without bond.

I. Maintenance of Records. The Trustee shall maintain accurate accounts and records. It shall render annual statements of the receipts and disbursements of income and principal of a trust upon the written request of any adult vested beneficiary of such trust or the guardian of the person of any vested beneficiary and the approval of such beneficiary shall be binding upon all persons then or thereafter interested in such trust as to the matters and transactions shown on such statement. The Trustee may at any time apply for a judicial settlement of any account. No Trustee shall be required to file any statutory or other periodic accountings of the administration of a trust.

J. Interested Trustee. The Trustee may act under this Agreement even if interested in these Trusts in an individual capacity, as a fiduciary of another trust or estate (including my estate) or in any other capacity. The Trustee may in good faith enter into a sale, encumbrance, or other transaction involving the investment or management of trust property for the Trustee's own personal account or which is otherwise affected by a conflict between the Trustee's fiduciary and personal interests, without liability and without being voidable by a beneficiary. The Trustee is specifically authorized to make loans to, to receive loans from, or to sell, purchase or exchange assets in a transaction with (i) the



Trustee's spouse, (ii) the Trustee's children or grandchildren, siblings, parents, or spouses of such persons, (iii) an officer, director, employee, agent, or attorney of the Trustee, or (iv) a corporation, partnership, limited liability company, or other business entity in which the Trustee has a financial interest, provided that in any transaction the trusts hereunder receive fair and adequate consideration in money or money's worth. The Trustee may renounce any interest or expectancy of a trust in, or an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the Trustee. Such renunciation shall not prohibit the Trustee from participating in the Trustee's individual capacity in such opportunity or expectancy.

K. Third Parties. No one dealing with the Trustee need inquire into its authority or its application of property.

L. Merger of Trusts. If the Trustee is also trustee of a trust established by myself or another person by will or trust agreement, the beneficiaries to whom income and principal may then be paid and then operative terms of which are substantially the same as those of a trust held under this Agreement, the Trustee in its discretion may merge either such trust into the other trust. The Trustee, in exercising its discretion, shall consider economy of administration, convenience to the beneficiaries, tax consequences and any other factor it considers important. If it is later necessary to reestablish the merged trust as separate trusts, it shall be divided proportionately to the value of each trust at the time of merger.

M. Multiple Trustees. If two Trustees are serving at any time, any power or discretion of the Trustees may be exercised only by their joint agreement. Either Trustee may delegate to the other Trustee the authority to act on behalf of both Trustees and to exercise any power held by the Trustees. If more than two Trustees are serving at any time, and unless unanimous agreement is specifically required by the terms of this Trust Agreement, any power or discretion of the Trustees may be exercised only by a majority. The Trustees may delegate to any one or more of themselves the authority to act on behalf of all the Trustees and to exercise any power held by the Trustees. Trustees who consent to the delegation of authority to other Trustees will be liable for the consequences of the actions of those other Trustees as if the consenting Trustees had joined the other Trustees in performing those actions. A dissenting Trustee who did not consent to the delegation of authority to another Trustee and who has not joined in the exercise of a power or discretion cannot be held liable for the consequences of the exercise. A dissenting Trustee who joins only at the direction of the majority will not be liable for the consequences of the exercise if the dissent is expressed in writing delivered to any of the other Trustees before the exercise of that power or discretion.

ARTICLE V. ADDITIONAL TAX AND RELATED MATTERS

A. GST Trusts. I direct (a) that the Trustee shall divide any trust to which there is allocated any GST exemption into two separate Trusts (each subject to the provisions hereof) so that the generation-skipping tax inclusion ratio of one such trust is zero, (b) any property exempt from generation-skipping taxation shall be divided as otherwise provided herein and held for the same persons

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designated in Trusts separate from any property then also so divided which is not exempt from generation-skipping taxation, and (c) if upon the death of a beneficiary a taxable termination would otherwise occur with respect to any property held in trust for him or her with an inclusion ratio greater than zero, such beneficiary shall have with respect only to such property a power to appoint such fractional share thereof which if included in such beneficiary's gross estate for federal estate tax purposes (without allowing any deduction with respect to such share) would not be taxed at the highest federal estate tax rate and such fractional share of such property shall be distributed to such persons including only such beneficiary's estate, spouse, and issue, as such beneficiary may appoint, and any part of a trust such beneficiary does not effectively appoint shall be treated as otherwise provided for disposition upon his or her death, provided, if upon his or her death two or more Trusts for his or her benefit are directed to be divided among and held or distributed for the same persons and the generation-skipping tax inclusion ratio of any such trust is zero, the amount of any other such Trust to which there is allocated any of such beneficiary's GST exemption shall be added to the Trusts with generation-skipping tax inclusion ratios of zero in equal shares. For purposes of funding any pecuniary payment to which there is allocated any GST exemption, such payment shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such distribution could be made, and any pecuniary payment made before a residual transfer of property to which any GST exemption is allocated shall be satisfied with cash or property which fairly represents appreciation and depreciation (occurring between the valuation date and the date of distribution) in all of the assets from which such pecuniary payment could be satisfied and shall be allocated a pro rata share of income earned by all such assets between the valuation date and the date of payment. Except as otherwise expressly provided herein, the valuation date with respect to any property shall be the date as of which its value is determined for federal estate tax purposes with respect to the transferor thereof, and subject to the foregoing, property distributed in kind in satisfaction of any pecuniary payment shall be selected on the basis of the value of such property on the valuation date. All terms used in this paragraph which are defined or explained in Chapter 13 of the Code or the regulations thereunder shall have the same meaning when used herein. I request (but do not require) that if two or more Trusts are held hereunder for any person, no principal be paid to such person from the Trusts with the lower inclusion ratios for generation-skipping tax purposes unless the trust with the highest inclusion ratio has been exhausted by use, consumption, distribution or otherwise or is not reasonably available. The Trustee is authorized and directed to comply with the provisions of the Treasury Regulations interpreting the generation skipping tax provisions of the Code in severing or combining any trust, creating or combining separate trust shares, allocating GST exemption, or otherwise, as necessary to best accomplish the foregoing allocations, inclusion ratios, combinations, and divisions, including, without limitation, the payment of "appropriate interest" as determined by the Trustee as that term is applied and used in said Regulations.

B. Individual Retirement Accounts. In the event that this trust or any trust created under this Agreement is the beneficiary of an Individual retirement account established and maintained under Code Section 408 or a qualified pension, profit sharing or stock bonus plan established and maintained under Code Section 401 (referred to in this paragraph as "IRA"), the following provisions shall apply to such trust:

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1. I intend that the beneficiaries of such trust shall be beneficiaries within the meaning of Code Section 401(a)(9) and the Treasury Regulations thereunder. All provisions of such trust shall be construed consistent with such intent. Accordingly, the following provisions shall apply to such trust:

a. No benefits from any IRA may be used or applied for the payment of any debts, taxes or other claims against my estate as set forth in the later paragraph captioned "Taxes", unless other assets of this trust are not available for such payment.

b. In the event that a beneficiary of any trust created under this Agreement has a testamentary general power of appointment or a limited power of appointment over all or any portion of any trust established under this Agreement, and if such trust is the beneficiary of any benefits from any IRA, the beneficiary shall not appoint any part of such trust to a charitable organization or to a lineal descendant of mine (or a spouse of a lineal descendant of mine) who is older than the beneficiary whose life expectancy is being used to calculate distributions from such IRA.

2. The Trustee shall deliver a copy of this Agreement to the custodian of any IRA of which this trust or any trust created under this Agreement is the named beneficiary within the time period prescribed Code Section 401(a)(9) and the Treasury Regulations thereunder, along with such additional items required thereunder. If the custodian of the IRA changes after a copy of this Agreement has been provided pursuant to the preceding sentence, the Trustee shall immediately provide a copy of this Agreement to the new custodian. The Trustee shall request each custodian to complete a receipt of the Agreement and shall attach such receipt to this Agreement. The Trustee shall provide a copy of each amendment of this Agreement to the custodian and shall obtain a receipt of such amendment.

C. Gift Transfers Made From Trust During My Lifetime. I direct that all gift transfers made from the trust during my lifetime be treated for all purposes as if the gift property had been first withdrawn by (or distributed to) me and then transferred by me to the donees involved. Thus, in each instance, even where title to the gift property is transferred directly from the name of the trust (or its nominee) into the name of the donee, such transfer shall be treated for all purposes as first a withdrawal by (or distribution of the property to) me followed by a gift transfer of the property to the donee by me as donor, the Trustee making the actual transfer in my behalf acting as my attorney in fact, this paragraph being, to that extent, a power of attorney from me to the Trustee to make such transfer, which power of attorney shall not be affected by my Disability, incompetence, or incapacity.

D. Gifts. If I am Disabled, I authorize the Trustee to make gifts from trust property during my lifetime for estate planning purposes, or to distribute amounts to my legally appointed guardian or to my attorney-in-fact for those purposes, subject to the following limitations:

1. Recipients. The gifts may be made only to my lineal descendants or to trusts primarily for their benefit, and in aggregate annual amounts to any one such recipient that do not exceed the exclusion amount provided for under Code Section 2503(b).

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2. Trustee Limited. When a person eligible to receive gifts is serving as Trustee, the aggregate of all gifts to that person during the calendar year allowable under the preceding subparagraph I. shall thereafter not exceed the greater of Five Thousand Dollars (\$5,000), or five percent (5%) of the aggregate value of the trust estate. However, gifts completed prior to a recipient's commencing to serve as Trustee shall not be affected by this limitation.

3. Charitable Pledges. The Trustee may pay any charitable pledges I made while I was not Disabled (even if not yet due).

E. Death Costs. If upon my death the Trustee hold any United States bonds which may be redeemed at par in payment of federal estate tax, the Trustee shall pay the federal estate tax due because of my death up to the amount of the par value of such bonds and interest accrued thereon at the time of payment. The Trustee shall also pay from the trust all of my following death costs, but if there is an acting executor, administrator or Personal Representative of my estate my Trustee shall pay only such amounts of such costs as such executor, administrator or Personal Representative directs:

1. my debts which are allowed as claims against my estate,
2. my funeral expenses without regard to legal limitations,
3. the expenses of administering my estate,
4. the balance of the estate, inheritance and other death taxes (excluding generation-skipping transfer taxes unless arising from direct skips), and interest and penalties thereon, due because of my death with respect to all property whether or not passing under my Will or this Agreement (other than property over which I have a power of appointment granted to me by another person, and qualified terminable interest property which is not held in a trust that was subject to an election under Code Section 2652(a)(3) at or about the time of its funding) and life insurance proceeds on policies insuring my life which proceeds are not held under this trust or my probate estate at or by reason of my death), and
5. any gifts made in my Will or any Codicil thereto.

The Trustee may make any such payment either to my executor, administrator or Personal Representative or directly to the proper party. The Trustee shall not be reimbursed for any such payment, and is not responsible for the correctness or application of the amounts so paid at the direction of my executor, administrator, or Personal Representative. The Trustee shall not pay any of such death costs with any asset which would not otherwise be included in my gross estate for federal or state estate or inheritance tax purposes, or with any asset which otherwise cannot be so used, such as property received under a limited power of appointment which prohibits such use. Further, no payment of any such death costs shall be charged against or paid from the tangible personal property disposed of pursuant to the prior paragraph captioned "Disposition of Tangible Personal Property."

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F. Subchapter S Stock. Regardless of anything herein to the contrary, in the event that after my death the principal of a trust includes stock in a corporation for which there is a valid election to be treated under the provisions of Subchapter S of the Code, the income beneficiary of such a trust is a U.S. citizen or U.S. resident for federal income tax purposes, and such trust is not an "electing small business trust" under Code Section 1361(e)(1) in regard to that corporation, the Trustee shall (a) hold such stock as a substantially separate and independent share of such trust within the meaning of Code Section 663(c), which share shall otherwise be subject to all of the terms of this Agreement, (b) distribute all of the income of such share to the one income beneficiary thereof in annual or more frequent installments, (c) upon such beneficiary's death, pay all accrued or undistributed income of such share to the beneficiary's estate, (d) distribute principal from such share during the lifetime of the income beneficiary only to such beneficiary, notwithstanding any powers of appointment granted to any person including the income beneficiary, and (e) otherwise administer such share in a manner that qualifies it as a "qualified Subchapter S trust" as that term is defined in Code Section 1361(d)(3), and shall otherwise manage and administer such share as provided under this Agreement to the extent not inconsistent with the foregoing provisions of this paragraph.

G. Residence as Homestead. I reserve the right to reside upon any real property placed in this trust as my permanent residence during my life, it being the intent of this provision to retain for myself the requisite beneficial interest and possessory right in and to such real property to comply with Section 196.041 of the Florida Statutes such that said beneficial interest and possessory right constitute in all respects "equitable title to real estate" as that term is used in Section 6, Article VII of the Constitution of the State of Florida. Notwithstanding anything contained in this trust to the contrary, for purposes of the homestead exemption under the laws of the State of Florida, my interest in any real property in which I reside pursuant to the provisions of this trust shall be deemed to be an interest in real property and not personalty and shall be deemed my homestead.

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SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-23-

LAW OFFICES
TESCHER & SPALLINA, P.A.

TS007384

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

SETTLOR and TRUSTEE:

[Handwritten signature of Simon L. Bernstein]

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

[Handwritten signature of Robert L. Spallina]
Print Name: ROBERT L. SPALLINA
Address: 7387 WISTERIA AVENUE
PARKLAND, FL 33076

[Handwritten signature of Kimberly Moran]
Print Name: Kimberly Moran
Address: 6362 Las Flores Drive
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

[Handwritten signature of Lindsay Baxley]
Signature - Notary Public - State of Florida

[Seal with Commission Expiration Date]

NOTARY PUBLIC STATE OF FLORIDA
Lindsay Baxley
Commission # EE092282
Expires: MAY 10, 2015
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley
Print, type or stamp name of Notary Public

Personally Known _____ or Produced Identification _____
Type of Identification Produced _____

SIMON L. BERNSTEIN
AMENDED AND RESTATED TRUST AGREEMENT

-24-

LAW OFFICES
TESCHER & SPALLINA, P.A.

SIMON L. BERNSTEIN
IRREVOCABLE TRUST AGREEMENT

Prepared by:

Tescher & Spallina, P.A.
2101 Corporate Blvd., Suite 107, Boca Raton, Florida 33431
(561) 998-7847
www.tescherlaw.com

TESCHER & SPALLINA, P.A.

$\Delta \pi$ EXHIBIT	25
Deponent	T. Bernstein
Date	5/6/15 Rptr. LG
WWW.DEPOBOOK.COM	

SIMON L. BERNSTEIN

IRREVOCABLE TRUST AGREEMENT

THIS AGREEMENT, made this 2nd day of May, 2008, between SIMON L. BERNSTEIN, of Palm Beach County, Florida hereafter called "Trustor," and WILMINGTON TRUST COMPANY, a Delaware corporation, hereafter called "Trustee," WITNESSETH:

WHEREAS, Trustor desires to establish a trust of the property described in the attached "Schedule A" and other property which may be added from time to time, all of which is hereafter called the "trust fund;" and

WHEREAS, Trustee accepts such trust and agrees to administer it in accordance with the terms and conditions of this agreement;

NOW, THEREFORE, Trustor hereby gives Trustee the property described in "Schedule A," in trust, for the following purposes:

SECTION 1: DISTRIBUTION.

A. During Trustor's Lifetime. During Trustor's lifetime, Trustee may, from time to time and subject to Subsection D of this Section 1, distribute all, some, or none, of the net income and principal to Trustor and Trustor's wife, SHIRLEY BERNSTEIN, as Trustee deems appropriate. Trustee shall take into account other sources of funds available to them. Trustee shall accumulate any net income not so distributed and add it to principal, to be disposed of as a part of it.

B. On Trustor's Death. On Trustor's death, Trustee shall distribute the trust fund to such person or persons, other than Trustor, Trustor's creditors, Trustor's estate, and the creditors of Trustor's estate, in such manner and amounts, and on such terms, whether in trust or otherwise, as Trustor effectively appoints by specific reference hereto in his Will. However, Trustor may, from time to time, release this special power of appointment, in whole or in part, by a written instrument delivered to Trustee during his lifetime. On Trustor's death, Trustee shall distribute the remaining assets of this Trust to the then serving Trustee of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 13, 2008, as may be amended and restated from time to time, to be held and administered as provided thereunder.

C. Contingent Gift. If at any time Trustee holds any portion of the principal of any trust not disposed of effectively under the previous provisions, then at such time Trustee shall distribute such principal, free from trust, to such then living person or persons as are then determined to be Trustor's distributees by the application of the intestacy laws of the State of Delaware governing the distribution of intestate personal property then in effect, as though Trustor had died at that particular time, intestate, a resident of the State of Delaware and owning such property then so distributable.

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D. Distribution Adviser. Trustee shall exercise its discretionary power to distribute income and/or principal to Trustor's wife pursuant to Subsection A of this Section 1 only with the written consent of the distribution adviser who shall be Trustor, so long as he is willing and able to act in such capacity. If at any time there is no distribution adviser, or if such adviser fails to express in writing to Trustee consent or disapproval as to the exercise of any discretionary power within fifteen (15) calendar days after Trustee has sent a written request for such consent to such adviser's last known address by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), Trustee may act in the matter as it deems appropriate. The distribution adviser shall act in a fiduciary capacity and conform to the purposes of this agreement. Such adviser shall have no duty to inquire into or see to the performance by Trustee of its duties under this agreement. The distribution adviser shall receive no compensation and shall not be reimbursed for expenses incurred while acting as such adviser.

SECTION 2: MERGER WITH SIMILAR TRUSTS.

If at any time a trust is set aside for any person or persons under the terms of this agreement which is substantially the same as any other trust established for that person or persons by Trustor or Trustor's wife, Trustee may, in its sole discretion, merge the trust created hereunder with the other trust for such person or persons, and the two trusts shall thereafter be held, administered, and distributed as one.

SECTION 3: ALTERNATIVE METHODS OF DISTRIBUTION.

Trustee may take any reasonable steps to disburse funds to or for a beneficiary, including: (i) distribution, either by hand or mail, to the beneficiary or the guardian of the person or property (whether the guardian is formally appointed or a natural guardian), (ii) distribution to a custodian for the beneficiary under the Uniform Transfers to Minors Act (or similar statute) of any state, (iii) deposit to the account of the beneficiary in any federally insured depository, or (iv) direct application for the benefit of the beneficiary.

SECTION 4: SPENDTHRIFT PROVISION.

No beneficiary (including Trustor) may alienate or in any other manner, whether voluntary or involuntary, assign, transfer, pledge, or mortgage his or her interest in any trust hereunder, and no one (including a spouse or former spouse) may attach or otherwise reach any interest of any beneficiary hereunder to satisfy a claim against that beneficiary, whether the claim is legal or equitable in origin. The provisions of this Section shall not limit or otherwise affect any power of appointment conferred upon a beneficiary or the right of a beneficiary to disclaim or release any interest created hereunder. This Section constitutes a restriction on the transfer of Trustor's beneficial interest in the trust fund that is enforceable under applicable non-bankruptcy laws within the meaning of Section 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any other similar or successor statute.

3
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SECTION 5: PAYMENT OF DEATH TAXES, DEBTS, AND EXPENSES OF ADMINISTRATION.

On the death of the Trustor, Trustee shall, unless otherwise directed by the beneficiary's Will or Revocable Trust Agreement, distribute to the Personal Representative of the beneficiary's estate an amount equal to the sum of all additional transfer taxes and costs of administration payable by such Personal Representative as a result of the inclusion of the trust in the Trustor's estate. Certification of such Personal Representative as to the amount of such additional taxes and costs will be determinative for all purposes. Trustee shall make such distributions directly to the appropriate payee, if so directed by such Personal Representative.

SECTION 6: TRUSTEE'S POWERS.

In addition to those powers granted by law, Trustee is specifically authorized and empowered, in its sole discretion, but subject to the provisions of Section 7:

A. To sell at public or private sale, exchange for like or unlike property, convey, lease for terms longer or shorter than the trust, and otherwise dispose of any or all property held hereunder, for such price and upon such terms and credits as it deems proper.

B. To invest in any kind of property, real, personal, or mixed, regardless of the laws governing investments by fiduciaries, without any duty to diversify investments.

C. Unless otherwise directed by the investment adviser named in Section 7 hereof, to execute securities transactions, without necessity of providing written confirmation thereof to such adviser at the time of settlement, and to execute securities transactions through any brokerage service, whether discount or full service, including Wilmington Brokerage Services at its normal rates of compensation, without diminution of compensation otherwise payable to Trustee, even if Wilmington Trust Company is serving as Trustee.

D. To vote directly or by proxy at any election or stockholders' meeting any shares of stock, excluding stock of Wilmington Trust Corporation.

E. To participate in any plan or proceeding, including any voting trust plan for liquidating, protecting, or enforcing any interest in any property, or for reorganizing, consolidating, merging, or adjusting the finances of any corporation issuing any such interest; to accept in lieu thereof any new or substituted stocks, bonds, notes, or securities, whether of the same or a different kind or class, or with different priorities, rights, or privileges; to pay any assessment or any expense incident thereto; and to do any other act or thing that it deems necessary or advisable in connection therewith.

F. To deposit, or arrange for the deposit of, securities at Depository Trust Company (DTC) and/or at any other securities depository or clearing corporation.

4
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G. To make any division or distribution in cash or in kind, or partly in cash and partly in kind; and to elect to recognize taxable gain or loss resulting from a distribution. Trustee may consider the income tax basis of the property then available for division or distribution, as well as the circumstances of the beneficiaries, and need not make division or distribution on a pro rata, asset-by-asset basis. Trustee shall not adjust the interest of any beneficiary as a result of any action taken or forbore under the provisions of this Subsection G.

H. To make loans, against adequate collateral, to any person including the Personal Representative of the estate of Trustor or any beneficiary and/or to purchase any property at its then fair market value from any person including such Personal Representative.

I. To borrow money from any person or corporation, including Trustee, and to pledge or mortgage as security any real or personal property.

J. To litigate, submit to arbitration, compromise, or settle any claim in favor of or against any trust hereunder, and to execute all agreements, deeds, and releases necessary or proper in connection therewith.

K. To retain attorneys-at-law, accountants, investment counsel, agents, and other advisers without diminution of compensation otherwise payable to Trustee.

L. To pay the taxes and expenses of maintaining, repairing, improving, and insuring any real property held hereunder.

M. To receipt for the proceeds of any life insurance made payable to Trustee, to institute any suit or proceedings, and to take any action necessary to collect such proceeds. However, Trustee need not institute any suit or proceeding unless its expenses, including counsel fees and costs, are available in the trust fund or are advanced or guaranteed in an amount and in a manner reasonably satisfactory to it.

N. To renounce, in whole or in part, any property or interest in property which may become payable to any trust hereunder, except to the extent that the distribution of such property resulting from such renunciation is fundamentally inconsistent with the provisions of this agreement.

O. To divide any trust hereunder into separate trusts if the purposes for which the trust was created are better served thereby.

P. To consider gains from the sale of capital assets in the trust to be part of a mandatory or discretionary distribution of principal to a beneficiary.

SECTION 7: INVESTMENT ADVISER.

Trustee shall exercise the powers hereinbefore granted to it in Subsections A, B,

5
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D, E, H and I of Section 6 with respect to each trust hereunder only with the written consent or on the written direction of the investment adviser of such trust, provided that: (i) Trustee shall sell any Wilmington Trust Corporation stock held by it hereunder unless specifically directed to do otherwise by such adviser; (ii) the purchase, sale, and voting of Wilmington Trust Corporation stock shall be solely on the direction of the investment adviser; (iii) Trustee shall manage and invest the otherwise uninvested cash in each such trust in its sole discretion; (iv) the investment adviser may at any time, or from time to time, delegate to Trustee the authority to exercise in its sole discretion the power to buy or sell any property (or, having delegated the authority to do so, revoke such authority); and (v) if at any time during the continuance of any such trust there shall be no investment adviser of such trust, or if the investment adviser of such trust shall fail to communicate in writing to Trustee his or her consent, disapproval, or direction as to the exercise of any of the aforesaid powers for which exercise the consent or direction of such adviser shall be necessary, within twenty (20) days after Trustee shall have sent to such adviser, by certified mail (or by any other means for which the sender shall have evidence of receipt by the addressee), at his or her last known address, a written request for such consent or direction (notwithstanding that Trustee shall be under no obligation to request any such direction), then Trustee is hereby authorized and empowered to take such action in the premises as it, in its sole discretion, shall deem to be for the best interest of the beneficiaries of such trust. The investment adviser hereunder shall be Trustor and Trustor's wife, in the order named, while willing and able to act in such capacity. Initially, Trustee shall exercise such powers on the direction of the investment adviser, but the investment adviser may establish from time to time whether the Trustee shall exercise such powers with the consent or on the direction of such adviser. To qualify, any person appointed investment adviser of a trust hereunder shall deliver a written instrument to Trustee indicating acceptance and agreement that all powers conferred upon such adviser will be exercised in a fiduciary capacity for the exclusive interest of the beneficiaries. The investment adviser need not inquire into the Trustee's performance of its duties and shall not be held liable for any loss whatsoever to any trust hereunder, unless it results from actions taken in bad faith. The investment adviser shall serve without compensation, but the investment adviser (other than Trustor) may be reimbursed for out-of-pocket expenses, including investment counsel fees.

SECTION 8: ADDITIONS TO THE TRUST FUND.

With the consent of Trustee, any person may add property to any trust hereunder, and such property shall thereafter be held by Trustee as a part thereof.

SECTION 9: IRREVOCABILITY.

This trust shall be irrevocable and not subject to amendment by Trustor or any other person. However, Trustee is authorized to modify or amend the provisions of this agreement to ensure that this agreement is a qualified disposition under the Act. Trustee may rely upon the advice of counsel in taking any action pursuant to the authority given to Trustee, and Trustee shall be without liability therefor.

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SECTION 10: PAYMENT OF INCOME.

Except where otherwise provided, the payment of the net income of any trust hereunder shall be made at such times as are convenient to the beneficiary and agreed to by Trustee.

SECTION 11: NON-ACCRUAL OF INCOME.

Notwithstanding any statute or rule of law to the contrary, any income accrued or on hand and not actually distributed to a beneficiary upon the termination of his or her interest shall be treated as though it had, in fact, accrued thereafter. Any income accrued upon shares of stock or interest-bearing property when delivered to Trustee shall be treated as though such income had, in fact, accrued after such delivery.

SECTION 12: THIRD PARTIES NOT OBLIGED TO FOLLOW FUNDS.

No person or corporation dealing with Trustee shall be obliged to see to the application of money paid or property delivered to Trustee, to inquire into the propriety of Trustee's exercising its powers, or to determine the existence of any fact upon which Trustee's power to perform any act hereunder may be conditioned.

SECTION 13: TRUSTEE'S COMPENSATION.

Trustee shall receive compensation for its services hereunder from time to time in accordance with the current rates then charged by it for trusts of similar size and character. If Trustee renders any extraordinary services, it may receive additional compensation therefor.

SECTION 14: RESIGNATION AND REMOVAL OF TRUSTEE.

At any time during the remainder of Trustor's life, Trustee may resign by written notice delivered to Trustor, and WILLIAM E. STANSBURY may remove Trustee by written notice delivered to it. In either case, WILLIAM E. STANSBURY may appoint another bank or trust company that is described in Section 3570(9) of the Act, as successor Trustee by written notice delivered to Trustee. During Trustor's lifetime, Trustee shall be deemed to have resigned on the date on which: (i) it ceases to be a Trustee described in Section 3570(9) of the Act; or (ii) a court takes any action whereby such court declines to apply Delaware law in determining the validity, construction, or administration of any trust hereunder or of the effect of the spendthrift provision hereunder in any action brought against trustee. Unless objections are filed as provided below, Trustee shall, within ninety (90) days after it resigns or is removed, deliver any assets held hereunder to the successor Trustee. If WILLIAM E. STANSBURY does not appoint such a successor Trustee, Trustee may petition the appropriate court to appoint such a successor Trustee. Upon resignation or removal, Trustee shall deliver a statement of its activities to the

TESCHER & SPALLINA, P.A.

date of such resignation or removal for which it has not reported to the person to whom Trustee was directed to give notice of resignation or who was authorized to remove Trustee. Such person shall have sixty (60) days from receipt of such statement to file with Trustee any objections to its actions as Trustee. If no such objections are filed, Trustee shall be without any further liability or responsibility to any past, present, or future beneficiaries. No successor Trustee shall be required to examine into the acts of its predecessor Trustee, and each successor Trustee shall have responsibility only with respect to the property actually delivered to it by its predecessor Trustee.

SECTION 15: SIMULTANEOUS DEATH.

If Trustor and Trustor's wife die under circumstances where the order of deaths cannot be determined, and if any of the principal is includable in Trustor's estate for transfer tax purposes, then for the purposes of this agreement with respect to such principal, Trustor's wife shall be deemed to have survived Trustor and died immediately thereafter.

SECTION 16: TRUST SITUS.

This agreement creates a Delaware trust, and all matters pertaining to the validity, construction, and application of this agreement or to the administration of the trusts created by it shall be governed by Delaware law.

SECTION 17: DEFINITIONS.

A. "Trustor's wife" refers to SHIRLEY BERNSTEIN.

B. "Code" means the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the date of this agreement. A reference to a specific section of the Code refers not only to that section but also to any corresponding provision of any federal tax statute enacted after the date of this agreement, as in effect on the date of application.

C. "Transfer taxes" means all applicable federal estate taxes (except additional estate taxes imposed under Section 2032A of the IRC), state estate or inheritance taxes, and generation-skipping transfer taxes imposed on any "direct skip" (as defined in Chapter 13 of the Code) other than a direct skip from a trust or resulting from a disclaimer, and any interest and penalties thereon. The term does not include federal or state gift taxes, generation-skipping transfer taxes imposed on a "taxable termination," a "taxable distribution," or a "direct skip" from a trust or resulting from a disclaimer, income taxes, real estate transfer taxes, or any tax or duty imposed by a foreign country or political subdivision thereof. In addition, the term does not include any tax imposed by Section 2056A of the Code or any corresponding provision of applicable state law.

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D. "Act" means the Delaware Qualified Dispositions in Trust Act (12 Delaware Code Section 3570, et seq.), as amended, or any corresponding Delaware statute enacted after the date of this agreement. A reference to a specific section of the Act refers not only to that section but also to any corresponding provision of any Delaware statute enacted after the date of this agreement, as in effect on the date of application.

E. Use of any gender in this agreement includes the masculine, feminine and neuter genders as appropriate. Use of the singular number includes the plural and vice versa unless the context clearly requires otherwise.

F. "Personal Representative" means the executor or administrator of a decedent's estate and shall include all persons serving in such capacity from time to time.

G. Use of the verb "shall" in this agreement indicates a mandatory direction, and use of the verb "may" indicates authorization to take action.

H. Captions, headings and sub-headings, as used herein, are for convenience only and have no legal or dispositive effect.

IN WITNESS WHEREOF, SIMON L. BERNSTEIN, Trustor, has set his Hand and Seal the 10 day of July, 2008, and WILMINGTON TRUST COMPANY, Trustee, has caused this agreement to be signed in its name by one of its Vice Presidents and its corporate seal to be affixed by one of its Assistant Secretaries, the ____ day of _____, 2008, all done in duplicate as of the date of execution by Trustor, which date shall be the effective date of this instrument.

WITNESS:




SIMON L. BERNSTEIN, Trustor (SEAL)

WILMINGTON TRUST COMPANY, Trustee

By: _____
Vice President

Attest: _____
Assistant Secretary

TESCHER & SPALLINA, P.A.

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

The foregoing instrument was acknowledged before me this ^{on} 12th day of

May, 2008, by SIMON L. BERNSTEIN.

NOTARY PUBLIC-STATE OF FLORIDA
Kimberly Moran
Commission # DD766470
Expires: APR. 28, 2018
BORNED THRU ATLANTIC BANCING CO., INC.

Kimberly Moran
Notary Public

STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by _____, a Vice President of Wilmington Trust Company, a Delaware corporation, on behalf of the corporation.

Notary Public

"SCHEDULE A"

Consisting of One Page

of

SIMON L. BERNSTEIN

Irrevocable Trust Agreement

Dated May 20, 2008

Between

SIMON L. BERNSTEIN

and

WILMINGTON TRUST COMPANY

* * *

CASH in the amount of One Dollar (\$1.00)

* * *

TESCHER & ¹¹ SPALLINA, P.A.

TEXT OF PAM'S NOTES 1 & 2

January 2012

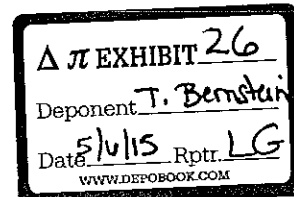
Dear Dad,

Please read the attached letter and information. I am hopeful that you truly just don't know how much cutting me, Scoot (David Simon, Esq. proper name), Molly and Ted's family out of your will hurts us. It has nothing to do with money. In fact, I think you need to take care of ELIOT, using a trustee, first and foremost.

The act of disinheriting a child is unheard of and unimaginable. It is outrageous and considered psychologically violent. I am hopeful you are not aware of this and that you will make the changes necessary.

Love Pam

TS006239



000900SL

January 2012 |

Dear Dad:
 Please read the attached
 letter and inform me. I am
 hopeful that you truly just
 don't know how much cutting
 we, Scott, Mickey, and Ted's
 family out of you will hurt
 US. ~~It has nothing to do with~~
 mercy. In fact, I think you need

TS006307

to take care of Elliot, using a healthy
Aunt and Kenneth.

. Threat of diminishing a child's
welfare of and unmanageable. It is
extraneous and considered psych. logically
violent. I am hopeful you are not
aware of this and that you will
make the changes necessary.

Love,

[Signature]

EXHIBIT B

DAVID SIMON DEPOSITION

THE UNITED STATES DISTRICT COURT
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,)

)
vs.) No. 13 CV 3643

)
HERITAGE UNION LIFE)
INSURANCE COMPANY,)
)
Defendant.)

The deposition of DAVID SIMON, called for examination pursuant to the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Vicki L. D'Antonio, a certified shorthand reporter of the State of Illinois, at One East Wacker Drive, Chicago, Illinois, on the 5th day of January, 2015, at the hour of 2:18 p.m.

Reported by: Vicki L. D'Antonio, CSR, RPR
License No. 084-004344

1 APPEARANCES:

2

3 STAMOS & TRUCCO, LLP, by
4 MR. JAMES J. STAMOS
5 MR. KEVIN P. HORAN
6 One East Wacker Drive
7 Third Floor
8 Chicago, Illinois 60601
9 (312) 630-7979
10 jstamos@stamostrucco.com
11 khoran@stamostrucco.com

12

Representing the Plaintiff;

13

14 THE SIMON LAW FIRM, by
15 MR. ADAM M. SIMON
16 203 East Wacker Drive
17 Suite 2725
18 Chicago, Illinois 60601
19 (312) 819-0730
20 asimon21@att.net

21

Representing the Defendant.

22

23 ALSO PRESENT VIA TELEPHONE:

24

Ms. Joielle Foglietta
Mr. Bill Stansbury
Mr. Eliot Bernstein
Honorable Amy J. St. Eve

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I N D E X

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NOTE: Exhibits retained by Mr. Adam Simon.

1 (Whereupon, the witness was duly
2 sworn.)

3 DAVID SIMON,
4 having been first duly sworn, was examined and
5 testified as follows:

6 EXAMINATION

7 BY MR. STAMOS:

8 Q. Will you state your name, please.

9 A. David Bruce Simon.

10 Q. Have you been deposed before?

11 A. I have.

12 Q. And how many times?

13 A. I believe one or two.

14 Q. The first one that comes to mind -- the
15 first one that -- bringing to mind the first
16 deposition you can remember, what was it -- what
17 did it involve?

18 A. I think I was deposed in a case
19 revolving around a suit for disparagement in
20 Kentucky.

21 Q. What was the name of the case?

22 A. Ernie -- David Simon and S.T.P.
23 Enterprises versus Ernie Sampson and Kentucky
24 Financial, I think, is the -- something like

1 that.

2 Q. What year was that?

3 A. I want to say the late '80s, early

4 '90s.

5 Q. Someone had said something unpleasant
6 about you and you sued them?

7 A. Not about me, no.

8 Q. About the company?

9 A. About the program.

10 Q. Was that litigation resolved?

11 A. It was.

12 Q. And how was it resolved?

13 A. Well, we lost at summary judgment, we
14 appealed, we lost, and then we entered into an
15 agreement with the individual to correct his
16 misassumptions about the program.

17 Q. Okay. When you said the program, what
18 are you referring to?

19 A. The Arbitrage Life Payment System.

20 Q. Is that something that still continues?

21 A. It does.

22 Q. And how -- who is it administered or
23 offered by?

24 A. S.T.P. Enterprises, Inc.

1 Q. There was a second deposition, was
2 there?

3 A. ING -- Security Life of Denver.

4 Q. There was a lawsuit involving Security
5 Life of Denver?

6 A. Correct.

7 Q. Who was the plaintiff and who was the
8 defendant?

9 A. Life Plans, Inc. is the plaintiff.
10 Security Life of Denver is the defendant.

11 Q. Is it a pending litigation?

12 A. It is.

13 Q. Where is it pending?

14 A. Northern District of Illinois.

15 Q. What is the nature of that case?

16 A. Breach of contract and tortious
17 interference.

18 Q. Who is the plaintiff?

19 A. Life Plans.

20 Q. How are you related to Life Plans?

21 A. I'm on their board.

22 Q. And you're a party or you're just a
23 member -- as a person with knowledge, you were
24 deposed?

1 A. I'm also the general counsel. I don't
2 own any of the company, though.

3 Q. Where are you currently employed?

4 A. S.T.P. Enterprises, Inc.

5 Q. Who owns that?

6 A. Fifty percent of it is owned by a trust
7 that I control. Fifty percent of it is owned by
8 a trust that Pam Simon controls.

9 Q. Pam Simon is who?

10 A. My wife.

11 Q. How long have you had that interest,
12 the 50 percent interest that you control in
13 S.T.P.?

14 A. I believe 2000.

15 Q. All right. And how did you come to
16 possess that interest?

17 A. Bought it.

18 Q. From whom?

19 A. Which part?

20 Q. You tell me.

21 A. The first part was bought in from Dov
22 Kahana, and the second part was bought from
23 Simon Bernstein.

24 Q. 25 percent each part? I want to

1 know -- I'll back up.

2 The 50 percent that you control, was
3 that -- was that obtained at the same time that
4 Pam control -- obtained her 50 percent?

5 A. Yes.

6 Q. And each of you obtained what portion
7 of your 50 percent from which of those people?

8 A. Half of it from Dov Kahana, half of it
9 from Simon Bernstein.

10 Q. And what was the compensation paid for
11 it?

12 A. For Dov Kahana?

13 Q. Okay.

14 MR. SIMON: I'm going to object as relevance.

15 THE WITNESS: I don't know the exact numbers,
16 but it was six figures and release from any
17 debts and obligations.

18 BY MR. STAMOS:

19 Q. How about to Mr. Bernstein?

20 MR. SIMON: Same objection.

21 THE WITNESS: Several million dollars.

22 BY MR. STAMOS:

23 Q. All right. When did you first start
24 working with Mr. Bernstein?

1 A. In what capacity? Do you mean with --

2 Q. Any. Any capacity.

3 Okay. So did you -- at one point, were
4 you in business with Simon Bernstein in any
5 capacity?

6 A. Yes.

7 Q. When was the first time you were in any
8 way associated with him?

9 A. Well, associated with him the first
10 time was -- I don't know what you mean by
11 associated, but the first time I was associated
12 with him was that his daughter sold my father
13 life insurance in, I believe, 1978. I was --

14 Q. His daughter Pam?

15 A. Yes.

16 Q. Okay.

17 A. When she updated the life insurance
18 plan, that's the first time I met Simon
19 Bernstein.

20 Q. Were you employed elsewhere at that
21 time?

22 A. I was.

23 Q. Where were you employed?

24 A. I was employed at that -- I was

1 self-employed.

2 Q. Doing what?

3 A. Law.

4 Q. When did you graduate law school?

5 A. 1984.

6 Q. And what did you do following

7 graduation from law school?

8 A. Law.

9 Q. Where did you law [sic]?

10 A. First in California, and then within

11 about six months, Illinois.

12 Q. All right. When you came to work as a

13 lawyer in Illinois, where did you work?

14 A. For myself.

15 Q. What kind of law did you practice?

16 A. General corporate, mostly litigation.

17 Q. And have you ever been associated as a

18 lawyer with other lawyers?

19 A. When I first started in California,

20 yes.

21 Q. Other than that, have you always been

22 on your own?

23 A. I've had other lawyers work with me and

24 for me, but yes.

1 Q. Do you continue to practice law today?

2 A. I do.

3 Q. What kind of law do you practice?

4 A. Mostly, I would say I -- my practice is
5 structured finance. However, I also service a
6 handful of clients in whatever their needs are.
7 I will maybe find another attorney to partner
8 with if their expertise is needed or will handle
9 it in-house.

10 Q. Are you on any boards of directors?

11 A. Yes.

12 Q. What boards of directors are you on?

13 A. For-profit companies?

14 Q. Any boards.

15 A. S.T.P. Enterprises, Life Plans, Inc.,
16 Intervivos Foundation, Institutional Longevity
17 Assets.

18 Q. What's that?

19 A. It's a limited liability company.
20 And Institutional Pooled Benefits.

21 Q. The last one, what does that company
22 do?

23 A. That owns a patent that pools death
24 benefit.

1 Q. The entity you named before, that --
2 the LLC, what does that company do?

3 A. That's the asset that promotes that
4 pooling.

5 Q. And the company that was in litigation
6 that you were on the board of, which one was it?

7 A. Life Plans?

8 Q. That's the last one you mentioned? Had
9 you mentioned that in the list of boards? I
10 didn't -- I didn't catch it. Okay.

11 A. Yes.

12 Q. What is its business, Life Plans?

13 A. Insurance agency.

14 Q. How much of your time do you currently
15 spend practicing law as opposed to the other
16 ventures in which you're involved?

17 A. The Simon Law Firm, I probably spend
18 now probably 25 percent of my time.

19 Q. Did there come a time when you became
20 professionally associated with Simon Bernstein?

21 A. As his attorney? Yes.

22 Q. I don't -- I don't -- I'm not sure what
23 you're intending to leave out, but in any
24 capacity, when is the first time you became

1 associated professionally with Simon Bernstein
2 in any way?

3 A. 1986.

4 Q. And what was -- in what capacity was
5 that?

6 A. Attorney.

7 Q. And how long did you serve as his
8 attorney?

9 A. About ten years.

10 Q. So that would be about to '96?

11 A. Yes.

12 Q. At some point, did you become involved
13 with him in the insurance business?

14 A. Yes.

15 Q. When was that?

16 A. 1987.

17 Q. In what capacity did you become
18 involved with him in the insurance business in
19 1987?

20 A. I wrote a documentation for a life
21 insurance sales concept that had been originated
22 by his brother.

23 Q. Who was his brother?

24 A. Norman Bernstein.

1 Q. Were they in business together at the
2 time?

3 A. I believe they did share one common
4 business.

5 Q. At some point, I take it you married
6 his daughter?

7 A. I did.

8 Q. When was that?

9 A. July 3, 1988.

10 MR. STAMOS: Let's go off the record for a
11 second.

12 (Whereupon, a discussion was had
13 off the record.)

14 BY MR. STAMOS:

15 Q. All right. We were talking about his
16 brother Norman, I guess, when he was -- you --
17 you assisted him in preparing a document that
18 defined a product he was going to offer? Is
19 that what that was?

20 A. I prepared some transactional documents
21 for a unique program to sell life insurance and
22 a manner to pay for it.

23 Q. And did there come a time when you
24 became involved in the actual life insurance or

1 insurance business as opposed to simply serving
2 as a lawyer for his business?

3 A. Yes.

4 Q. When was that?

5 A. 1988.

6 Q. In what -- in what capacity did you --
7 did you participate?

8 A. Owner of S.T.P. Enterprises.

9 Q. Right. What does that do? What do you
10 do as the owner of S.T.P.?

11 A. Promote the Arbitrage Life Payment
12 System as well as general life insurance
13 brokerage.

14 Q. Can you describe for me this Arbitrage
15 program you're talking about?

16 MR. SIMON: Object, relevance and --

17 BY MR. STAMOS:

18 Q. I don't need a long explanation. I
19 just want to -- when you say it, I want to know
20 what you're talking about.

21 A. It's a way to pay for life insurance
22 using leverage.

23 Q. Okay. For example?

24 A. Borrow from a bank to pay the premiums.

1 Q. I see.

2 A. Although the individual doesn't borrow
3 and there's some nuances to the program that are
4 unique compared to standard premium finance.

5 Q. Now, in the course of your association
6 with Mr. Bernstein, I know we're here talking
7 about this life insurance policy. I want to
8 designate it correctly so we don't get ourselves
9 confused.

10 The Capitol -- was originally the
11 Capitol Bankers Life policy, you know what
12 I'm -- you know what policy I'm talking about,
13 correct?

14 A. I do.

15 Q. Are you aware of any other insurance
16 policies that ever existed that insured the life
17 of Simon Bernstein or his wife?

18 A. I am.

19 Q. Okay. Tell me what other policies
20 you're aware of.

21 A. Lincoln Benefit Life, Inter-Ocean Life.

22 Q. And were benefits paid on those two
23 policies after his death?

24 A. Not to my knowledge.

1 Q. Were they in force at the time of his
2 death?

3 A. Not to my knowledge.

4 Q. And how are you aware that they
5 existed?

6 A. The Lincoln Benefit Life was paid for
7 through the Arbitrage Life Payment System, so I
8 participated in the closing of that policy.

9 Q. What was the benefit on that?

10 A. I believe \$200,000.

11 Q. And the Ocean, Inter-Ocean Life policy,
12 how were you aware of its existence?

13 A. From Simon.

14 Q. He told you it existed?

15 A. Yes.

16 Q. What was the -- what was the benefit on
17 that policy?

18 A. I'm not a hundred percent sure, but it
19 is my belief that it was a million dollars.

20 Q. And what years -- what year was it
21 initiated?

22 A. I don't know. Sometime in the '70s or
23 early '80s, I believe.

24 Q. Was it a term policy?

1 A. I don't know.

2 Q. How did you come to learn about it?

3 A. Discussing with him his life insurance.

4 Q. When did you first become aware of the

5 Capitol life policy?

6 MR. SIMON: Objection just to form. I think

7 we need to --

8 BY MR. STAMOS:

9 Q. Capitol Bankers Life policy. I'm

10 sorry.

11 I'll restate the question.

12 When did you first become aware of the

13 Capitol Bankers Life policy?

14 A. I believe sometime in the mid '80s.

15 Q. Do you know what year it was initiated?

16 A. The policy?

17 Q. Yeah.

18 A. I know only from looking at records.

19 Q. And so what do you know from looking at

20 records?

21 A. 1982.

22 Q. Okay. What -- when was the first time

23 you ever discussed that policy with Simon?

24 A. I don't know if a first time I remember

1 discussing it with Simon is so much as learning
2 about the VEBA, because one of the things that
3 was done was file the 5500s for the death
4 benefit VEBA at S.B. Lexington, and so sometime
5 in the mid '80s, I became aware of the 5500, and
6 that it had to do with the policy, I believe I
7 learned through Richard Klink, who was Simon
8 Bernstein's partner in S.B. Lexington.

9 Q. Tell me what the 5500 is.

10 A. It's a form, tax filing form.

11 Q. And that's filed in order to obtain the
12 tax benefits that relate to the VEBA?

13 A. It's a -- yes, in part.

14 Q. What is it --

15 A. It's some -- it's a -- you know, just
16 like any benefit plan. You file a 5500.

17 Q. I'm not asking very good questions.

18 What was your role in dealing with that
19 is, I guess, what I'm trying to get at. Why did
20 you -- why did you become aware of it?

21 A. Mr. Klink showed it to me, told me
22 about the process he went through to file the
23 form. My father's company also had to do the
24 same thing for his policy.

1 Q. Was your father's company in any way
2 related to Mr. Bernstein's companies?

3 A. Not at all.

4 Q. What did you learn about the policy at
5 that time when you first learned its existence
6 when Mr. Klink showed you the 5500?

7 A. It was a policy on Simon's life, owned
8 by the VEBA, and the beneficiary was the VEBA.

9 Q. What's the next thing you -- strike
10 that.

11 After being told about its existence by
12 Mr. Klink, what's the next time you ever
13 conversed with anyone about it?

14 A. Well, probably conversed annually about
15 the policy because we would get annual
16 statements.

17 Q. What was the face policy -- I'm sorry.

18 What was the face amount of the policy?

19 A. When originally applied for?

20 Q. Yeah.

21 A. I believe \$2 million.

22 Q. Did it ever change?

23 A. There was borrowings against the
24 policy, so the death benefit was reduced.

1 Q. Did the face amount ever -- ever
2 change?

3 A. Face amount changes.

4 (Whereupon, a discussion was had
5 off the record.)

6 THE COURT: Let's go on the record, then, so
7 this is clear.

8 So Mr. Simon, what is the basis of your
9 objection to having Mr. Stansbury present? Is
10 he physically present or listening in?

11 MR. SIMON: This is Adam Simon. Our
12 objection is he's a nonparty to this case and
13 he's a potential witness, and I believe under
14 the witness exclusion rules, I think it's 615,
15 he should not be permitted to listen in on this
16 deposition, much less participate.

17 THE COURT: And is he physically there or
18 listening in on the phone?

19 MR. STAMOS: Listening in, Judge.

20 THE COURT: Okay.

21 MR. STAMOS: Yeah. Actually, what we -- what
22 we did was we asked him if we could exclude him,
23 pending your call, which we've done, so he
24 hasn't -- he hasn't heard any of the deposition.

1 THE COURT: Okay.

2 MR. STAMOS: And he -- if I may say, Judge,
3 he became involved because he asked the -- my
4 client, the estate, if he could attend, and they
5 were willing to have him attend, and I don't
6 think that witness exclusion rules would apply
7 to a -- to a deposition, which, of course, he
8 could read when it's done anyway, so I don't --
9 I don't think that there are any rules that
10 would prevent him from listening, and he
11 certainly may not participate. We don't -- we
12 don't -- he won't be allowed to participate.

13 THE COURT: And Mr. Simon, what's the
14 prejudice of having him present?

15 THE WITNESS: I just don't believe he's
16 entitled to be present, and from my quick
17 reading online, the witness exclusion rules do
18 apply to depositions, and I don't want his
19 testimony to be tainted by listening in or
20 possibly, you know, participating with counsel's
21 questioning of our witness.

22 THE COURT: If that's the basis of your
23 objection, that is overruled because the witness
24 exclusion under Rule 615 does not apply to

1 depositions. Rule 30C specifically says that.
2 It provides that deposition testimony should
3 proceed as if at trial, and the Federal Rules of
4 Evidence apply except for Rules 103 and 615, so
5 Rule 615 does not apply.

6 Your objection is overruled and he may
7 be present. He, of course, may not participate.
8 I will accept your representation with that, but
9 he may be present, listening in on the
10 deposition.

11 MR. SIMON: Okay.

12 THE COURT: So you should proceed forward and
13 he can listen in.

14 MR. SIMON: Thank you, your Honor.

15 MR. STAMOS: Thanks, your Honor.

16 THE COURT: Thank you.

17 MR. STAMOS: Appreciate it.

18 THE COURT: Bye.

19 (Whereupon, a discussion was had
20 off the record.)

21 BY MR. STAMOS:

22 Q. What I'm asking is the -- I understand
23 that the -- maybe I'm not using the terminology
24 correctly.

1 Was there ever a time that the stated
2 benefit of the policy was other than \$2 million?
3 I understand that the amount to be paid would
4 have varied based upon loans, but was there ever
5 a time that it was other than \$2 million or
6 greater than \$2 million?

7 A. I don't think I can answer the
8 question.

9 Q. Why not?

10 A. Because I don't understand what you're
11 saying.

12 Q. Okay. I buy an insurance policy. It
13 says a million dollars on it, a million dollars
14 of life insurance. I understand that there are
15 instances in which the payment of a million upon
16 someone's death might be reduced due to
17 intervening events, but the million -- piece of
18 paper still says a million on it, right?

19 Okay. Now, my question is: With
20 regard to the policy of '82, which is policy
21 No. 1009208, I think we can all agree that's
22 what it is, was there ever a time that the face
23 amount of that policy was ever greater than
24 2 million?

1 A. Not to my knowledge.

2 Q. All right. Are you aware at any point
3 at which an application was made to increase the
4 benefit amount from 2 million to 3 million?

5 A. Not to my knowledge.

6 Q. All right. So back to the -- you said
7 that there would be a discussion, likely
8 annually, about the -- about the policy. I take
9 it that would be because you'd have to file an
10 annual 5500?

11 A. Yes.

12 Q. All right. Other than that, when is
13 the next time you recall a -- strike that.

14 When was the first time you talked to
15 Simon Bernstein about the existence of that
16 policy, other than Mr. Klink?

17 A. 1987.

18 Q. All right. Who was present for that
19 conversation?

20 A. Dov Kahana, myself, and Mr. Bernstein.

21 Q. And Dov Kahana was Mr. Bernstein's
22 business partner?

23 A. In one of his businesses, yes.

24 Q. Okay. In which business?

1 A. Cambridge Associates.

2 Q. What was the business of Cambridge
3 Associates?

4 A. General insurance brokerage, I believe.

5 Q. Okay. What was the occasion for
6 discussing the 1982 policy?

7 A. Simon Bernstein was significantly in
8 debt and did not have the money to pay the
9 premium.

10 Q. Okay. What was the premium? Do you
11 recall?

12 A. No.

13 Q. And who said what to who in that
14 conversation about that topic?

15 A. Simon said to Dov we have to pay the
16 premium.

17 Q. Anyone else say anything in that
18 conversation?

19 A. I'm sure, but that was the gist of the
20 conversation.

21 Q. All right. What -- what came from
22 that?

23 A. I believe either the premium was paid
24 or they started to borrow against the cash value

1 to pay the premium.

2 MR. STAMOS: Bill, is that you?

3 MR. STANSBURY: I'm here.

4 MR. STAMOS: Got it.

5 MR. STANSBURY: Thank you.

6 BY MR. STAMOS:

7 Q. And at that time when you first spoke
8 to him -- Mr. Bernstein about it, were you aware
9 of who the beneficiary was? Was it still the
10 VEBA as far as you knew?

11 A. Yes.

12 Q. Did you become aware at any point of a
13 change in beneficiary?

14 A. Yes.

15 Q. When was that?

16 A. Sometime around 1995.

17 Q. And from whom and to whom was the
18 beneficiary changed?

19 A. Beneficiary was still the VEBA and a
20 contingent beneficiary was named as the
21 irrevocable life insurance trust.

22 Q. How did you become aware of that in
23 1995?

24 A. Saw the change of beneficiary forms,

1 helped Mr. Bernstein design the trust, and
2 signed off on the change of forms.

3 Q. Do you do trust work? Do you prepare
4 trusts?

5 A. I have. I don't regularly, no.

6 Q. All right. You're aware that there was
7 a -- that the claim here is that a 1995 trust
8 existed, correct?

9 A. I know a 1995 trust existed.

10 Q. Did Mr. -- prior to the -- to 1995 or
11 prior to the date designated as the date of the
12 reported trust of '95, did Mr. Bernstein ever
13 have another trust, prior trust?

14 A. Yes.

15 Q. Okay. What year was that trust?

16 A. The VEBA trust was, I believe, in the
17 early '80s.

18 Q. Did he ever have any other trusts that
19 you're aware of?

20 A. Subsequent to that or prior?

21 Q. Prior to 1995.

22 A. Not that I'm aware of.

23 Q. Tell me the first time you ever had a
24 conversation with Mr. Bernstein about a trust in

1 1995.

2 A. We discussed his making application for
3 additional death benefit. My wife and I had
4 just completed our own irrevocable life
5 insurance trusts and made applications to
6 Lincoln Benefit. He wished to get more
7 insurance. That was the first time.

8 Q. Okay. And when you say more insurance,
9 what insurance are you talking about? Are you
10 talking about adding the Lincoln Benefit policy?

11 A. More death benefit.

12 Q. On the Capitol Bank -- Bankers policy?

13 A. No. No, a new policy. More death
14 benefit for himself --

15 Q. Okay.

16 A. -- for -- on his life.

17 Q. All right. Did he do that?

18 A. Yes.

19 Q. And what company did he obtain that
20 insurance from?

21 A. Lincoln Benefit Life.

22 Q. Okay. That's the one you told me about
23 earlier?

24 A. Yes.

1 Q. Okay. And that's -- when you say he
2 owned another policy, you're saying that's a
3 policy that he -- that he initiated in 1995?

4 A. I believe that's the date.

5 Q. All right. And that's the policy that
6 you believed was not in force at the time of his
7 death?

8 A. I believe that's correct.

9 Q. And you think he added \$200,000 to the
10 death benefit?

11 A. I think the policy had a face amount of
12 \$200,000.

13 Q. Okay. Why did he want -- if he had a
14 policy that paid 2 million, why did he -- why
15 did he want 10 percent more?

16 MR. SIMON: Objection for speculation.

17 BY MR. STAMOS:

18 Q. Why?

19 A. I know he was trying to get as much
20 death benefit as he could. He was uninsurable
21 up until that point, and I believe this was a
22 highly rated policy also.

23 Q. All right. So tell me the first time
24 you and Mr. Bernstein had a conversation about

1 the trust. What did you say to him and what did
2 he say to you?

3 MR. SIMON: Can I just make a general point?

4 MR. STAMOS: Yeah.

5 MR. SIMON: There's -- there's so many
6 Mr. Bernsteins here that I think it's best if
7 you --

8 MR. STAMOS: That's fine.

9 MR. SIMON: Yeah.

10 MR. STAMOS: I have no problem.

11 BY MR. STAMOS:

12 Q. With regard to the 1995 trust that is
13 referred to in the complaint, in your complaint,
14 when was the first time you ever had a
15 conversation with Simon Bernstein about that?

16 A. 1995.

17 Q. And what did you say to him and what
18 did he say to you in the course of that
19 conversation?

20 A. It's privileged. I was acting as his
21 attorney at that time.

22 Q. So you were acting as his attorney with
23 regard to the trust?

24 A. In the first conversation, yes.

1 Q. Now, wait a minute.

2 A. Subsequently, I do not, but --

3 Q. Now, wait a minute. Let's get
4 organized here.

5 There's a complaint that's filed
6 describing your interactions with Mr. Bernstein
7 about that trust, which I assume you plan to
8 testify about?

9 A. Absolutely.

10 Q. But you're going to not testify about
11 the start of those conversation -- the first of
12 those conversations?

13 A. You know, in general, you asked me very
14 specific questions about what did he say and
15 what did I say.

16 Q. Right.

17 A. So in the first conversation, yes, he
18 came to me as an attorney, so I -- it's
19 privileged conversation.

20 Q. When did it stop being privileged?

21 A. Right after the first conversation.

22 Q. What made it stop being privileged?

23 A. I said I wouldn't act as his attorney
24 regarding the trust.

1 Q. Isn't what you told me just now
2 privileged?

3 A. No.

4 Q. Why not?

5 A. Because I said it after we discussed
6 it.

7 Q. Who else was present for this
8 conversation?

9 A. Just himself and I.

10 Q. Well, I take it you're going to refuse
11 to answer questions with regard to that
12 conversation, based upon privilege?

13 A. The first conversation.

14 Q. I'm sorry, I don't mean to be clever,
15 but explain to me again how that remains
16 privileged and -- and --

17 A. It's where I'm not acting as an
18 attorney for him, it's not privilege. It's his
19 privilege to assert.

20 Q. Does it -- does it survive his death?

21 A. As far as I understand, it does.

22 Q. And it can be waived by the estate?

23 A. Don't know.

24 MR. STAMOS: Does the estate have an

1 objection to Mr. Simon testifying about that
2 conversation?

3 MS. FOGLIETTA: Can you repeat that? It's a
4 little hard to hear.

5 MR. STAMOS: Yes. I've asked Mr. Simon about
6 the first conversation he had with Simon
7 Bernstein about the trust alleged to exist in
8 the complaint, and Mr. Simon has asserted a
9 privilege based upon -- an attorney-client
10 privilege with Mr. Bernstein regarding that
11 first conversation.

12 I don't frankly remember the law on
13 whether that privilege survives his death, but
14 assuming that it does, I believe the estate can
15 waive it, the estate controls it, so I asked
16 whether the estate has an objection to his
17 testimony about that first conversation.

18 MS. FOGLIETTA: No, no objection.

19 MR. SIMON: I will sus- -- or reassert the
20 objection, based on privilege. It's my
21 understanding that privilege does survive when
22 it is involved with an individual but not a
23 corporation. I don't think the estate has the
24 right to waive that privilege. I think

1 Mr. Simon has a duty to assert the privilege up
2 to the point where he was no longer acting as
3 the attorney with regard to the trust, and from
4 a practical standpoint -- well, I'll just leave
5 it at that.

6 MR. STAMOS: But who does control the
7 privilege if not the estate?

8 MR. SIMON: It just survives.

9 MR. STAMOS: Well, but I mean, it can't be
10 waived by anybody?

11 MR. SIMON: I don't believe it can.

12 MR. STAMOS: Well, I certainly think it can,
13 and the estate -- if the estate doesn't control
14 it, nobody controls it. It's not a -- it
15 doesn't -- I know --

16 MS. FOGLIETTA: I agree, and the estate
17 controls it.

18 MR. STAMOS: Yeah. So based upon the estate
19 having waived the privilege with regard to that
20 answer, I ask you to answer the question.

21 MR. SIMON: Could we go off the record for a
22 moment?

23 MR. STAMOS: Sure.

24

1 (Whereupon, a discussion was had
2 off the record.)

3 MR. STAMOS: Back on the record.

4 So we'll certify the question, deal
5 with it at a later time.

6 BY MR. STAMOS:

7 Q. Let's move on to the -- so following
8 this conversation with Mr. Bernstein that you
9 don't contend was privileged, what's the next
10 conversation or the continuation of that
11 interaction about the trust?

12 A. So I showed him the trust that I
13 received from Hopkins & Sutter. We discussed
14 how he would want that trust changed for him. I
15 mocked one up. I gave it to him and told him he
16 had to go to Hopkins & Sutter to have it
17 executed.

18 Q. All right. So when you say you showed
19 him the ones from -- the one from Hopkins &
20 Sutter, is that the one Hopkins & Sutter had
21 prepared for you?

22 A. Yes.

23 Q. And when you say you mocked it up, how
24 was that not practicing law for him?

1 A. I was not doing it as his attorney. I
2 was filling it in almost as a secretary for him
3 to change some of the names.

4 Q. Who was the lawyer at Hopkins & Sutter?

5 A. Jim Hammond, I believe.

6 Q. Say what?

7 A. James Hammond.

8 Q. James Hammond?

9 A. Yeah.

10 Q. Is he still -- I know Hop- -- I know
11 Hopkins is no longer in existence, but is he
12 still practicing?

13 A. No, he does not.

14 Q. How do you know?

15 A. He died.

16 Q. All right. Who is the lawyer at
17 Hopkins & Sutter -- strike that.

18 Did you -- did -- to your knowledge,
19 did Simon then -- Mr. Bernstein then interact
20 with Hopkins & Sutter?

21 A. I believe so.

22 Q. With whom?

23 A. I don't know.

24 Q. Was it Mr. Hammond?

1 A. I don't know.

2 Q. To your knowledge, was Hopkins & Sutter
3 involved in the execution of his trust?

4 A. I believe so.

5 Q. What makes you believe that?

6 A. Si said that Hopkins & Sutter or an
7 attorney at Hopkins & Sutter helped him execute
8 the will -- I mean the trust.

9 Q. Well, we'll get to that conversation in
10 a second, okay, and -- but you never learned who
11 it was there?

12 A. No.

13 Q. Did you ever tell Mr. Hammond I'm
14 sending over my father-in-law to do for him what
15 you did for me?

16 A. I did not. Simon had his own
17 relationships at Hopkins & Sutter.

18 Q. And with whom did he have
19 relationships?

20 A. Several folks.

21 Q. Who?

22 A. Henry Lawrie.

23 Q. Is Henry still alive?

24 A. I believe so.

1 Q. Okay. Who else?

2 A. Brad Ferguson.

3 Q. Okay. Who else?

4 A. I don't know.

5 Q. And of that -- of those two, do you
6 believe either of them participated with him in
7 creating this trust you talked about?

8 A. Be pure speculation.

9 MR. STAMOS: Off the record for a second.

10 (Whereupon, a discussion was had
11 off the record and a short
12 break was taken.)

13 MR. STAMOS: All right. We're back on.

14 BY MR. STAMOS:

15 Q. Well, in the declaratory judgment
16 portion of your complaint, it states that --
17 Paragraph 29: On or about June 21, 1995, David
18 Simon -- that's you, right? -- an attorney, and
19 Simon Bernstein's son-in-law met with Simon
20 Bernstein before Simon Bernstein went to the law
21 offices of Hopkins & Sutter in Chicago, Illinois
22 to finalize and execute the Bernstein trust
23 agreement.

24 You're familiar with that allegation?

1 A. I am.

2 Q. All right. Tell me what the facts are
3 surrounding the allegations in that
4 Paragraph 29.

5 A. Gave him a draft of the document to go
6 to Hopkins & Sutter to have it finalized and
7 executed.

8 Q. All right. And this is a document that
9 you had taken, the one that had been prepared
10 for you, and changed it to give effect to what
11 Simon -- for Simon. That's your testimony?

12 A. Yes.

13 Q. And was it in final form?

14 A. No.

15 Q. In what form was it?

16 A. Near final form.

17 Q. All right. And tell me what you and
18 Simon said to each other on the 21st before he
19 went to this meeting.

20 A. I believe I spoke to him the day before
21 and said I would make changes. I took notes on
22 another draft of the document and then utilized
23 those notes to have the document modified to
24 reflect those additional desires, and I handed

1 it to him.

2 Q. What was it that Mr. Simon told you
3 what he wanted the trust to do?

4 MR. SIMON: Strike -- objection on form.

5 MR. STAMOS: I'm sorry. You're right.

6 BY MR. STAMOS:

7 Q. What was it that Mr. Bernstein told you
8 he wanted the trust to do in that conversation
9 the day before the 21st?

10 A. Take care of his wife and children.

11 Q. And did you draft terms that would do
12 that, to the best of your ability?

13 A. Yes.

14 Q. Any other conversation you had with
15 Mr. Bernstein?

16 A. Yes.

17 Q. What did you say to him and what did he
18 say to you?

19 A. He asked me to be the trustee after
20 Shirley, and at first, I said yes, but at that
21 night, I thought about it and asked him to
22 remove me as trustee, and instead, replace it
23 sequentially with his children.

24 Q. And did you make changes to the form of

1 it at that point to give effect to that change?

2 A. No.

3 Q. What happened about that?

4 A. He took the draft that I had given him

5 and left.

6 Q. And then in Paragraph 30, it says after

7 the meeting, you reviewed the final version.

8 You recall those -- that allegation?

9 I'm paraphrasing, but that's what it says,

10 correct?

11 A. Yes.

12 Q. Was it that day?

13 A. I believe the day I reviewed it was the

14 day of the 21st, but it could have been the

15 22nd.

16 Q. All right. What did you say to him and

17 what did he say to you after that -- after that

18 meeting? Did you have -- strike that.

19 Did you have a conversation with him

20 after the meeting took place, whenever you first

21 had occasion to converse with, him about the

22 trust?

23 A. Thank you, and thank you for removing

24 me and replacing me with Ted, sign these forms

1 here and this form here and this form here.

2 Q. So when he brought it back to you, it
3 was not yet signed?

4 A. His was signed. I'm talking about the
5 change of owner -- I mean the change of
6 beneficiary forms that we would submit, as well
7 as the change of beneficiary forms for Lincoln
8 Benefit as -- and any other form that would need
9 to be submitted to the insurance carriers.

10 Q. So if we got the records of Lincoln
11 Benefit, we would see a beneficiary form
12 indicating that funds from that policy were to
13 be paid to a 1995 trust?

14 MR. SIMON: Objection, assumes facts not in
15 evidence, form.

16 THE WITNESS: I believe so.

17 BY MR. STAMOS:

18 Q. Have you ever tried to do that? Has
19 anyone on behalf of your family ever undertaken
20 to do that, to investigate the records of
21 Lincoln?

22 A. I know we called and asked to see if
23 they had a copy of the trust, but that's all
24 that I'm -- believe we've done.

1 Q. Did they have a copy of the trust?

2 A. Not to my knowledge.

3 Q. Now, what other documents -- strike
4 that.

5 He had already -- so when he came back
6 from Hopkins & Sutter, he had a signed document,
7 correct?

8 A. Correct.

9 Q. And he'd obviously left a copy with
10 Hopkins & Sutter, correct?

11 A. No idea.

12 Q. Now, we're both lawyers. We've both
13 been in the business a long time. I've never,
14 ever, ever heard of a -- of a firm that drafts a
15 trust and doesn't keep a copy, in the word
16 processor, if no place else, but executed copy.

17 Did you call Hopkins & Sutter to see
18 whether there's a -- there's a document -- a
19 copy of this document in their files?

20 A. Well, Hopkins & Sutter no longer
21 exists, but we did follow up with their
22 successor firm, as well as some of the attorneys
23 who broke away from Hopkins & Sutter and started
24 their own firm.

1 Q. Okay. And what did you find?

2 A. Neither had a copy of the executed
3 trust.

4 Q. Who did you talk to? And who did the
5 talking for you if not you?

6 A. Yeah, I don't know.

7 Q. You don't know who you talked to -- I'm
8 sorry.

9 You don't know who was spoken to at --
10 for those lawyers?

11 A. Right.

12 Q. Who made the contact with them?

13 A. I'm not sure. I'd have to look.

14 Q. What are the -- what are the choices?

15 A. Anybody in our offices.

16 Q. Well, probably not anybody in your
17 office.

18 I mean, who do you think are the likely
19 candidates to have done the investigation to
20 determine whether the trust existed?

21 MR. SIMON: Objection, asked and answered.

22 THE WITNESS: Could be anyone that's in our
23 office that was just assigned to make the phone
24 call. I mean, I don't know.

1 BY MR. STAMOS:

2 Q. Who asked them to do it?

3 A. Might have been Pam, might have been
4 me, might have been Adam.

5 Q. So when the complaint says -- refers
6 to the -- let me see if I can pull up the
7 correct page here.

8 MR. SIMON: Can we get a copy of the
9 complaint?

10 MR. STAMOS: I don't know if we have a copy
11 here. I don't -- I don't intend to make it an
12 exhibit, but I could make you a copy if you need
13 to.

14 BY MR. STAMOS:

15 Q. So where the complaint says in
16 Paragraph 35, as diligent searches were made of
17 Ted Bernstein and the other Bernstein family
18 members; of Simon Bernstein's home and business;
19 the law offices of Tescher & Spallina; the
20 offices of Foley & Lardner, successor to
21 Hopkins & Sutter; and the office of the Simon
22 Law Firm, who -- who is it who investigated,
23 first of all, with respect to the offices of
24 Foley & Lardner?

1 A. I don't know the person's name off the
2 top of my head. I'd have to look.

3 Q. I don't mean to be clever, but that
4 sounds like an awful important issue for this
5 whole litigation. I find it kind of astonishing
6 that it could have been a secretary that called
7 and gave -- came up with the answer. I mean, is
8 that really what might have happened?

9 A. I don't find it astonishing. We work
10 in the business, so it's not a big deal to make
11 a phone call, so it's very possible.

12 Q. Okay. But you don't know who was
13 spoken to at the -- at Foley & Lardner?

14 MR. SIMON: Objection, asked and answered.

15 THE WITNESS: Not as I sit here today.

16 BY MR. STAMOS:

17 Q. Okay. Who made the -- who investigated
18 the -- in the offices of the Simon Law Firm to
19 see whether a copy existed?

20 A. Myself, Adam Simon, and Cheryl
21 Sychowski.

22 Q. And the law offices of Tescher &
23 Spallina, who investigated there?

24 A. I don't know.

1 Q. And how about Ted Bernstein -- about
2 Ted Bernstein and Simon Bernstein's home and
3 business office?

4 A. I don't know.

5 Q. Who would I -- whose deposition would I
6 take to find out about that, to find out the
7 answers to those questions?

8 A. I don't know.

9 Q. So nobody might know?

10 A. Well, I would -- I would assume that in
11 Tescher & Spallina, you would ask Tescher &
12 Spallina --

13 Q. That's the easy way.

14 A. -- and Ted Bernstein, you would ask Ted
15 Bernstein, and for Simon Bernstein, you would
16 probably ask Tescher & Spallina.

17 Q. All right. And after you have this
18 conversation with Mr. -- with Simon Bernstein
19 when he came back from the office, what's the
20 next time you had a conversation with him about
21 his -- about that trust?

22 A. After we changed the beneficiaries, I
23 don't believe I had a subsequent conversation
24 until he mentioned it in 2012.

1 Q. Okay.

2 A. Actually, he didn't mention the trust.

3 He mentioned the insurance policy.

4 Q. All right. We'll get to that in just a
5 second.

6 At the time that -- in 1995, were you
7 and he working in the same office, physically?

8 A. He had an office there. He seldom came
9 to Chicago. He was living in Florida.

10 Q. Okay. Was there a time when he stopped
11 coming to Chicago?

12 A. He no longer had an office in Chicago
13 in 1996, but he has family here.

14 Q. You've seen this 2000 trust, correct?

15 MR. SIMON: Objection. You're referring to
16 some other trust. We'd like to see it.

17 MR. STAMOS: Do you have a copy?

18 MS. FOGLIETTA: It's a little hard to hear.

19 Would you mind speaking up a little?

20 MR. STAMOS: Yeah, I will.

21 BY MR. STAMOS:

22 Q. Well, before I show that to him, let --

23 let me ask you this: Did you have any

24 conver- -- when's the next -- after 1995,

1 this -- the June 1995 event we've been
2 discussing, what's the next time you had a
3 conversation with Simon Bernstein about any
4 trust?

5 A. Well, I don't know how long it took to
6 complete the change of beneficiary forms and
7 have them come back, but after that process?

8 Q. Yes.

9 A. I don't believe I spoke to him about
10 the trust again.

11 Q. Okay.

12 A. Until the 2012, and again, the
13 reference was more to the policy and not the
14 trust.

15 Q. Okay. So let's talk about that, then.
16 So if we're thinking about two -- two concepts,
17 the existence of the insurance policy that we're
18 all litigating about and the existence of the
19 trust, what you're telling me is, after whatever
20 took place in this -- 1995 took place with
21 regard to a new beneficiary and so forth, you
22 never had a conversation with him about either
23 thing until 2012, and at that time, you had a
24 conversation about the insurance policy?

1 A. Did have a conversation with him about
2 the policy, yes.

3 Q. Okay. And when in 2012?

4 A. No, no. In 1998.

5 Q. Oh.

6 A. But I didn't have another conversation
7 about...

8 Q. All right. '98's a new year for us, so
9 let's talk about that.

10 What -- who was present for the
11 conversation in 1998?

12 A. Myself and Mr. Bernstein.

13 Q. And what did you say to him and what
14 did he say to you?

15 A. Let's voluntarily dissolve the S.B.
16 Lexington VEBA and S.B. Lexington Corporation.

17 Q. Okay.

18 A. And I voluntarily dissolved them.

19 Q. All right. Was there a discussion
20 about the wisdom of that or why do it? Why do
21 it?

22 A. There was a discussion about the wisdom
23 of that.

24 Q. Okay. I'd like you to tell me what you

1 said to him and what he said to you in that
2 conversation.

3 A. I said let's dissolve S.B. Lexington
4 and you've got a lot of tax issues that you need
5 to bury, and the quicker we do it, the better.

6 Q. Okay. Did he agree to that?

7 A. Yes.

8 Q. All right. What did he say to you in
9 that conversation?

10 A. Dissolve the corporation.

11 Q. Did you perform the work necessary to
12 achieve that?

13 A. I did.

14 Q. And other than discussing the
15 dissolution of the VEBA, what other conversation
16 was there, if any, about the insurance policy?

17 A. That the death benefit would now go to
18 the contingent beneficiary, which is the 1995
19 irrevocable life insurance trust.

20 Q. And was there any other discussion at
21 that time?

22 A. No.

23 Q. Was there ever another discussion about
24 the insurance policy before he died?

1 A. 2012.

2 Q. All right. And where did that
3 conversation take place?

4 A. I was on the telephone.

5 Q. And did you call him or did he call
6 you?

7 A. I believe he arranged a conference
8 call. I don't remember if everyone was called
9 or we called in to a number, but there was a
10 conference call amongst the children, some of
11 the spouses, Mr. Spallina, and Simon Bernstein.

12 Q. Okay. And what -- who said what to
13 whom in that conference call?

14 I'm sorry. Let me interrupt myself for
15 a second.

16 What was the date of that call, the
17 best you can recall?

18 A. A few months before he died. I don't
19 know.

20 Q. All right. And he was in Florida at
21 that time?

22 A. I wasn't there, but I believe he was in
23 Florida.

24 Q. Okay.

1 A. He was on the phone, so I can't tell
2 you really where he was.

3 Q. Okay. And tell me what everybody said
4 in that conversation to the best you can recall.

5 A. The gist of it was that Simon was going
6 to change his will and estate to leave his
7 estate and trust to the ten grandchildren, that
8 the life insurance policy proceeds would go to
9 the five children, and that he hoped this would
10 end some of the acrimony within the family.

11 Mr. Spallina introduced Simon and
12 introduced the reason for the call, then each of
13 the children were asked to agree, and each of
14 the children agreed, even though, in my mind,
15 they didn't have to agree anyway.

16 Q. When you say that he was referring to
17 disputes in the family, what was that about?

18 A. He felt that there was a lot of
19 acrimony within the family.

20 Q. About what?

21 A. A whole number of things, as far as I
22 know. His girlfriend, his treatment of some of
23 the children and grandchildren.

24 Q. In what way treatment? Financially?

1 MR. SIMON: Object, relevance.

2 THE WITNESS: You're asking my opinion? I
3 would say emotionally, but financially, if, you
4 know, if you mean two of the children had a
5 clause inside of a trust that if in certain
6 instances, they would be disinherited, and that
7 translated down to the lineal descendants of the
8 two.

9 BY MR. STAMOS:

10 Q. And who were the children who would
11 have been disinherited?

12 A. In this narrow exception, it would have
13 been Pam and Ted and their children.

14 Q. And what would have -- what was the
15 narrow exception?

16 A. All for distributions made under a
17 trust.

18 Q. Was there any further discussion in
19 that conversation about the insurance policy
20 beyond what you've described?

21 A. Just that it was left to the five
22 children.

23 Q. At the time that you were involved in
24 that conversation, were you aware of whatever

1 trusts existed at that time?

2 A. I was aware of the 1995 trust. I was
3 not aware of any other trusts.

4 Q. When did you become --

5 A. Other than -- you're talking about
6 Simon's life in- -- are you talking about life
7 insurance trusts?

8 Q. No, no. Just trusts.

9 A. I was aware -- I was aware of Shirley's
10 trust.

11 Q. You've since learned of a series of
12 trusts that Simon Bernstein executed, correct?

13 A. Some. I don't know if I'd call it a
14 series, but --

15 Q. Well, you're aware that he -- that
16 after 19 -- that after the year 1995, his
17 signature appears on trusts in a number of
18 successive -- succeeding years, not in -- not
19 years in a row, but a number of years -- start
20 again.

21 After the year 1995, you're aware
22 that -- you are now aware that there are trusts
23 dated in various years between 2000 and 2012,
24 right?

1 MR. SIMON: Object, speculation.

2 THE WITNESS: I'm aware of one other trust,
3 yes.

4 BY MR. STAMOS:

5 Q. Which other trust are you aware of?

6 A. I saw it in the litigation. I think it
7 was drafted by somebody at Proskauer Rose.

8 Q. And what year was that trust?

9 A. I'd have to see it. If you showed it
10 to me, I would --

11 Q. Okay. I guess what I'm asking is: Are
12 you currently aware, beyond the trust that was
13 drafted by the Proskauer firm, are you aware
14 today of any other trusts that Mr. -- that Simon
15 Bernstein executed prior to his death?

16 A. Yes. There is the Simon Bernstein
17 Trust that has to do with his, you know, last
18 will and trust.

19 Q. All right. Are you aware of any
20 intervening trusts before then -- between 1995
21 and before the trust that you believe you're
22 aware of?

23 A. And the 2000 one I spoke about?

24 Q. Right. Any others?

1 A. No.

2 Q. All right. What's your understanding
3 of the significance of the -- of the trust the
4 Proskauer firm prepared?

5 MR. SIMON: Objection, calls for speculation.

6 THE WITNESS: I'm not aware of any
7 significance.

8 BY MR. STAMOS:

9 Q. Have you ever made any analysis of its
10 relevance to this litigation or to your position
11 or your family's position in this litigation?

12 A. No.

13 Q. Am I correct, if you're successful in
14 this litigation, your wife will receive
15 roughly a -- a fifth of whatever the proceeds
16 are that are -- have been paid into court,
17 correct?

18 A. Yes.

19 Q. What does that calculate out to about,
20 350,000, 300,000, something like that?

21 MR. SIMON: Object, speculation.

22 MR. STAMOS: Well, it's math. It's
23 arithmetic.

24

1 BY MR. STAMOS:

2 Q. Have you ever done the math? I've got
3 334,000. Does that sound about right?

4 A. It could be correct, yes.

5 Q. All right. That's all I'm asking.

6 But that's how much she would receive,
7 correct?

8 MR. SIMON: Object to speculation.

9 THE WITNESS: Pre-fees, yes, I believe so.

10 BY MR. STAMOS:

11 Q. Okay. All right. Now, have you ever
12 had conversations with -- well, strike that.

13 When did you first become -- when was
14 the first attempt made to locate the 1995 trust
15 document?

16 A. I believe some times in the winter of
17 2012, 2013.

18 Q. And what was the first steps taken to
19 locate it?

20 A. I don't believe I took the first steps.
21 I believe --

22 Q. Who did?

23 A. Whoever had Si's documents and
24 materials. Somebody in Florida.

1 Q. Who?

2 A. I don't know, but I -- you know, I
3 would guess Donald Tescher and Robert Spallina.

4 Q. Okay. And do you recall being advised
5 that they were unable to locate such a document?

6 A. Yes.

7 Q. When did Spallina first become aware
8 that there was a -- that there was purportedly a
9 1995 document?

10 A. I don't know.

11 Q. He must have -- according to your
12 testimony, he must have been aware of that prior
13 to the conversation or certainly during the
14 conversation, the conference call you described,
15 correct?

16 A. I assume, but I don't know when that
17 happened. He may have become aware of it in
18 2005 or 2000 --

19 Q. Truly.

20 A. I have no idea.

21 Q. Truly. But certainly no later -- when
22 that conversation started, it wasn't your
23 impression that as Simon Bernstein was
24 describing the policy that that was the first

1 time Spallina ever heard about it, correct?

2 A. I was unaware if it was under that
3 trust or any other trust during that
4 conversation.

5 Q. I see. So at that point, that
6 conversation, you would have been unaware
7 whether the trust that Simon Bernstein was
8 referring to as being the beneficiary for the
9 policy would have been a 1995 trust or some
10 other trust?

11 MR. SIMON: Objection. It's facts not in
12 evidence.

13 MR. STAMOS: That's a speaking objection.
14 There aren't facts in evidence because we're
15 talking -- we're getting the evidence now here,
16 so --

17 THE WITNESS: But I don't believe I said what
18 you said. I --

19 BY MR. STAMOS:

20 Q. I misunderstood you, then.

21 A. Yeah. I don't think he referred to a
22 trust in the phone conversation. I think he
23 referred to the proceeds of the policy.

24 Q. Okay. And when is -- to your

1 knowledge, when is the first time that
2 Mr. Spallina would have become aware that there
3 was a purported 1995 trust?

4 MR. SIMON: Objection, speculation.

5 THE WITNESS: No idea.

6 BY MR. STAMOS:

7 Q. Who was the principal contact with
8 Mr. Spallina after Simon Bernstein died, on
9 behalf of the family?

10 A. I assume Ted Bernstein, but I don't
11 know for sure.

12 Q. Did you have any conversations with
13 Mr. Spallina?

14 A. Right after his death, no. Have I had
15 conversations with Mr. Spallina, yes.

16 Q. And did Mr. Spallina ever -- did you
17 ever have conversations with him about the trust
18 itself?

19 A. Yes.

20 Q. And about its creation?

21 A. I believe so.

22 Q. When was the first time you had such a
23 conversation?

24 A. Be the winter of '12-'13.

1 Q. Was there ever a discussion with him
2 about this trust that was executed in 2000 --

3 MR. STAMOS: What's the date of that trust?

4 MR. HORAN: August 15th.

5 MR. STAMOS: Of what year?

6 MR. HORAN: 2000.

7 BY MR. STAMOS:

8 Q. Did you ever have a conversation with
9 Mr. Spallina about a trust that was executed by
10 Mr. Simon Bernstein in August of 2000 --
11 August 15th of 2000?

12 A. I'm not sure.

13 Q. When did you first become aware that
14 such a document might exist?

15 A. During the course of the litigation.

16 Q. And did you have any conversations with
17 Mr. Spallina once you learned of its existence?

18 A. I'm not sure it was Mr. Spallina.

19 Q. Who did you talk to?

20 A. I believe it was Alan Rose.

21 Q. Who's Alan Rose?

22 A. He's an attorney.

23 Q. With who?

24 A. I don't remember the firm.

1 Q. Why Mr. Rose?

2 A. Oh, he was representing Ted Bernstein,
3 and during the course of the conversation, Eliot
4 Bernstein had brought up the 2000 trust in one
5 of his pleadings, and Mr. Rose said it was
6 unfunded, and it's very possible Mr. Spallina
7 echoed that sentiment.

8 Q. Unfunded in what sense?

9 A. That there's no res in the trust.

10 Q. Were there any -- was there ever any
11 discussion of the fact that that trust had
12 indicated that one of its assets was a -- the
13 1982 insurance policy?

14 A. I think that was the conversation I
15 just referred to.

16 Q. Right. And did anyone -- I mean, it
17 wasn't funded, but did anyone discuss the
18 significance or the relevance of the
19 relationship of that trust to the proceeds of
20 the '82 policy?

21 A. Just that it was to be ignored.

22 Q. Because -- because it had never been
23 made a beneficiary of the -- of the policy?

24 A. Because it was unfunded.

1 Q. I don't know what that means.

2 A. No race.

3 Q. I know that. That wasn't my question,
4 though.

5 There would be a race if the proceeds
6 of the policy were paid into it, correct?

7 MR. SIMON: Objection, facts not in evidence.

8 THE WITNESS: Not necessarily. Probably it
9 would have been held in constructive trust for
10 the beneficiary, but because it was never named
11 a beneficiary of the policy, it was --

12 BY MR. STAMOS:

13 Q. That's what I'm getting at. All I'm
14 trying to -- I'm not trying to be tricky. All
15 I'm -- my only point is your understanding was
16 the 2000 trust was not relevant here because it
17 had never been made a beneficiary of the policy
18 from '82?

19 A. And that Simon didn't wish it to be.

20 Q. How did you conclude that?

21 A. That's what I was told.

22 Q. By whom?

23 A. I believe either Mr. Rose or
24 Mr. Spallina.

1 Q. They told you that Mr. Simon had told
2 them something about the -- about the -- his
3 desires about the 2000 trust?

4 A. Correct.

5 Q. Had he told them that he had intended
6 it to be paid to the '95 trust?

7 A. To the five children.

8 Q. So just so we're clear, at no point --
9 I think this is what you're telling me: At no
10 point did Mr. Spallina say Simon Bernstein told
11 me that the proceeds of the '82 policy would be
12 paid to a '95 trust. He never said that,
13 correct?

14 A. I don't know.

15 Q. Well, you don't -- you don't remember
16 him saying that, do you?

17 A. I remember him saying something like
18 that he talked about Mr. Bernstein contemplating
19 changing the beneficiary to his girlfriend at
20 the time, and that instead, he decided to leave
21 it as the five children through the trust, but I
22 don't know that he used the word 1995 at that
23 point.

24 Q. All right. Because if Mr. Bernstein --

1 if Mr. Spallina had been aware of the existence
2 of a 1995 trust, you would agree with me a
3 prudent attorney would have asked to obtain a
4 copy of that trust, correct?

5 A. I believe he did.

6 Q. He asked Mr. Bernstein for that?

7 A. It's my understanding.

8 Q. And what -- and what became of that?

9 A. I don't know.

10 Q. He never received it, though, did he?

11 A. I assume not, but I don't know because
12 he didn't produce it.

13 Q. Who are you aware heard Mr. Spallina
14 say anything that referred to the existence of a
15 1995 trust?

16 A. All of the children.

17 Q. In what conversation?

18 A. Discussing how to have the proceeds of
19 the trust paid to the --

20 Q. This was after death?

21 A. Pardon me?

22 Q. Was this after Simon's death?

23 A. Yes.

24 Q. Okay. Go on. I'm sorry. I wasn't --

1 A. That's the winter of '12-'13.

2 Q. Right. But --

3 A. He died in September, so all the
4 conversations I'm talking about --

5 Q. Are all after death.

6 A. -- are all during that period.

7 Q. But just to revisit it, prior to Simon
8 Bernstein's death -- I don't usually get --
9 sound so formal, Simon Bernstein, but just to
10 keep it clear, I'm going to do that.

11 Prior to Simon Bernstein's death, you
12 are unaware of any conversation in which
13 Mr. Spallina reported or said anything that
14 implied that he was aware that a 1995 trust
15 existed; am I correct?

16 A. Just the conversation that I referred
17 to in the preceding months.

18 Q. Okay. But I don't think -- but I
19 think -- I thought I understood you to say in
20 that conversation you don't remember him saying
21 the word "trust"?

22 A. Correct.

23 Q. All right. Now, you're aware, I take
24 it, that the 2000 trust, the terms of that

1 trust, if it were given effect, would have
2 excluded your wife, correct?

3 A. I have not read the trust.

4 Q. Why not?

5 A. No reason to read it.

6 Q. Why not?

7 A. There's just no reason to read it.

8 Q. Okay. Let's go to a different topic.

9 Do you know Don Sanders?

10 A. Don Sanders?

11 Q. Yes.

12 A. No, I do not.

13 Q. Okay. And how -- do you know how it
14 came to be his affidavit was prepared?

15 A. I do know, yes.

16 Q. How?

17 A. Attorney representing the trust sought
18 to seek the deposition of someone from the
19 servicer for the insurance company and served a
20 notice of deposition and that in the course of
21 negotiating that deposition, they agreed to
22 provide an affidavit.

23 Q. Who drafted the affidavit?

24 A. I don't know.

1 Q. Who do you think drafted the affidavit?

2 MR. SIMON: Objection, speculation.

3 BY MR. STAMOS:

4 Q. I'm not asking you to speculate, but do
5 you have a -- you have a -- did you ever talk to
6 find out any --

7 MR. SIMON: He said he didn't know -- and he
8 said he didn't know, and then you said who do
9 you think. You're definitely asking him to
10 speculate. He doesn't know.

11 MR. STAMOS: No. There are all sorts of
12 things I think things about that aren't
13 speculation, but I also don't know. I mean,
14 there are gradations to knowledge.

15 THE WITNESS: I would be guessing, but
16 there's --

17 MR. SIMON: Don't guess.

18 BY MR. STAMOS:

19 Q. Okay. Let's see. Aside from
20 discussions regarding a trust in 1995, did you
21 do any other -- did you assist Simon Bernstein
22 in any other way in his personal affairs from
23 1995 forward?

24 A. Yes.

1 Q. Like what?

2 A. Bill paying, litigation, day-to-day
3 operation of his companies, and occasionally
4 purchasing gifts for some of his family members,
5 and tickets for himself.

6 Q. Did you practice law for him after
7 1995? Obviously litigation. I assume that
8 would be practicing law for him.

9 A. Yes.

10 Q. What kind of litigation would you help
11 him with?

12 A. Depends what came up. Litigation
13 mostly with 1995 would be ex-business partner.

14 Q. Who was that?

15 A. Joseph Flanagan.

16 Q. Was that just litigation over payouts
17 from the business or was there some other issue
18 involved? Money out of the business?

19 A. Yes.

20 Q. Were you aware of the handwritten will
21 that Simon Bernstein prepared?

22 A. No.

23 Q. You're not aware of that now?

24 A. Nope.

1 Q. Have you had occasion to review the
2 records of that -- that were produced by the
3 insurance company in this case? Have you seen
4 any of them?

5 A. I might have.

6 Q. Do you think you did?

7 A. I think so.

8 Q. Did you ever assist -- other than 1995
9 as you've described, was there ever another
10 occasion in which you were aware of another
11 beneficiary designation form being sent to or
12 from the insurance company regarding the 1982
13 policy?

14 MR. SIMON: Objection as to form.

15 THE WITNESS: I'm not sure I understand what
16 you asked just now.

17 BY MR. STAMOS:

18 Q. Well, if a policy is going to have a
19 beneficiary change, there's usually a form that
20 has to be filled out, correct?

21 A. Correct.

22 Q. And where someone requests to change a
23 beneficiary, the insurance company might send
24 out the form to them to fill out, correct? To

1 prepare?

2 A. Sure. I guess.

3 Q. And likewise, if someone wants to
4 effect a change of beneficiary and they have the
5 form, they fill it out and send it to the
6 insurance company. That's one of the things
7 they could do, correct?

8 A. Sure.

9 Q. All right. Are you aware of any such
10 communications between the insurance company and
11 Mr. Bernstein about the 1982 policy following
12 1995?

13 A. Other than the 1998 dissolution of the
14 VEBA trust, I'm not aware of any other forms.

15 Q. And I take it that you -- were you
16 aware that there were a number of instances in
17 which the policy lapsed and had to be revived,
18 so to speak, reinstated?

19 A. I'm aware of one.

20 Q. Did you participate in any of the
21 documentation with regard to any instance of
22 reinstatement?

23 A. I did not.

24 Q. Who did?

1 A. I don't know. I assume Mr. Bernstein,
2 Simon Bernstein.

3 Q. When -- which reinstatement were you
4 aware of?

5 A. I don't know. I didn't know there was
6 multiple. I'm only aware of one, so I can't
7 tell you --

8 Q. Well, but I mean, which -- what year
9 was that?

10 A. Oh, I don't know when it was. I just
11 knew that it had lapsed once, then needed to be
12 reinstated.

13 Q. Do you know where the insurance company
14 would send forms or communications regarding the
15 policy -- well, strike that.

16 To your knowledge, would the -- would
17 the insurance company send communications about
18 the insurance policy to your office at any time?

19 A. Up until 1996, I believe so.

20 Q. Okay. How about after that?

21 A. Probably not.

22 Q. If a communication were sent by the
23 insurance company to your office, that would
24 come to your attention, wouldn't it?

1 A. Not necessarily, no.

2 Q. Whose attention would it go to?

3 A. Depends if it -- who it was addressed
4 to. If it was addressed to him, it may have
5 just been -- come to our office and forwarded
6 from our offices. If it was addressed to
7 something more general, then it probably would
8 have been opened by Pam Simon.

9 Q. Okay. It's fair to say, though, that
10 if you had come into possession of
11 communications that could bear on the continuing
12 existence of the policy, you would want to make
13 sure that was dealt with, correct? You wouldn't
14 want the policy to lapse because, as far as you
15 were concerned, your wife was a one-fifth --
16 one-fifth indirect beneficiary of that policy,
17 correct?

18 A. Not correct.

19 Q. Why not? What's not correct about
20 that?

21 A. I would be indifferent as to whether
22 the policy lapsed, just as I was when the policy
23 lapsed.

24 Q. When did you first learn it lapsed?

1 A. I want to say after he passed away.

2 Q. So you weren't -- so during his
3 lifetime, you were unaware of it having lapsed?

4 A. Correct.

5 Q. Oh, okay. So when you say it was --
6 you were indifferent to it, you never had the
7 occasion to be indifferent to it when there was
8 still something to be done about it, right?

9 A. Well, I know I was indifferent about it
10 because it was a discussion about how to pay for
11 it during the time and he had no other assets,
12 and so this was the way he wanted to take care
13 of his wife, and at that time, I was not
14 indifferent to it.

15 Q. I see. I'm not following. So --

16 A. Well, I thought with no other assets,
17 that his wife needed to be taken care of, and
18 that should be a priority, along with repaying
19 his debt.

20 Q. Okay. Two things. When you say
21 repaying his debt, to whom was the debt?

22 A. Several people.

23 Q. Who?

24 A. Exchange Bank, Harris Bank Glencoe,

1 Boulevard Bank, Capitol Bankers Life, Fidelity
2 Union, and there were a couple of others that
3 I -- I'm not -- off the top of my head but I
4 believe had to do with condominiums owed that
5 were under water, and I can't tell you the exact
6 names.

7 Q. I think I might have missed -- I might
8 have -- might be misunderstanding what you said.

9 Were you aware during his lifetime that
10 the policy had lapsed?

11 A. No.

12 Q. Okay.

13 A. While he was alive was I --

14 Q. Yes.

15 A. No.

16 Q. All right. But you're saying that
17 after he died, you learned that it had lapsed
18 and it had to be paid?

19 A. No.

20 Q. So what could all of that have to do
21 with taking care of his wife? She was dead by
22 then, right?

23 A. Yeah. You asked me if I was ever
24 indifferent, and during the early '90s, I was

1 not indifferent.

2 Q. Oh, I'm sorry. I thought -- I meant
3 you were indifferent to it at having lapsed.
4 That's what I was referring to. I'm sorry. I
5 confused myself.

6 A. Okay. I was speaking of decades
7 before.

8 Q. Got it, got it.

9 MR. STAMOS: Let me step outside just for a
10 second with Kevin.

11 (Whereupon, a discussion was had
12 off the record and a short
13 break was taken.)

14 MR. STAMOS: All right. We're going to go
15 back on. We just have a few more questions.

16 BY MR. STAMOS:

17 Q. When -- to your knowledge, what -- who
18 made the first approach to the insurance company
19 with regard to the policy?

20 A. Simon Bernstein.

21 Q. No, no. I'm sorry.

22 After Simon's death, who's the -- who
23 was the person who made the first communication
24 to the insurance company with regard to

1 obtaining payment of the proceeds?

2 A. I don't know.

3 Q. Do you recall being part of any
4 conversations or becoming aware of any
5 conversations that took place prior to that
6 approach being made?

7 MR. SIMON: Objection, facts not in --

8 THE WITNESS: I don't know if it was prior to
9 or subsequent to the first approach.

10 BY MR. STAMOS:

11 Q. And when was the first approach -- I'm
12 sorry. Mr. Bernstein died in September of 2012?

13 A. Simon Bernstein?

14 Q. Yes.

15 A. September of 2012.

16 Q. And when was the first approach made to
17 the insurance company?

18 A. I don't know.

19 Q. When was the first conversation you had
20 with anyone after Simon Bernstein's death about
21 making an approach to the insurance company?

22 A. I believe in the winter of '12-'13.

23 December, January, right in there.

24 Q. And why then, not more proximate to the

1 time of his death?

2 A. That's the first conversation I had. I
3 don't know. That's why I said it's very
4 possible that a prior approach had been made.

5 Q. And with whom did you have the first
6 conversation about it?

7 A. I don't know who. It was all on the
8 phone, but Robert Spallina for sure was on the
9 phone. Ted Bernstein. I believe Lisa
10 Friedstein.

11 Q. Okay.

12 A. Jill Iantoni. Eliot might have been on
13 the phone. I don't know.

14 Q. Okay. And who said what to whom in
15 that conversation?

16 A. Does anybody have a copy of the
17 insurance policy.

18 Q. All right. And --

19 A. And does anybody have a copy of the
20 life insurance trust.

21 Q. And who initiated that call?

22 A. I don't know.

23 Q. Do you know, when the first submission
24 was made to the insurance company, do you know

1 who made it as trustee? Who was identified as
2 the trustee of the trust of that communication?

3 A. I don't know if anyone was identified
4 as trustee on the first submission.

5 Q. Have you ever seen the first submission
6 of the document?

7 A. I don't know if it was the first
8 submission. I don't know what -- I -- I can't
9 tell what would be the first submission.

10 Q. Right, right. Have you seen a document
11 that -- that you believe to have been the first
12 submission?

13 A. I would have no belief of whether it
14 was the first or second or third submission.

15 Q. Have you seen any documents that you
16 understand to have been a submission?

17 A. Yes.

18 Q. And who was identified -- did you see
19 one or more than one?

20 A. I've seen more than one.

21 Q. And in those, who was identified as
22 trustee?

23 A. In one, I don't know that anyone was
24 identified as trustee, and in the other one, I

1 believe Robert Spallina identified himself as
2 trustee.

3 Q. Okay. And was he the trustee?

4 A. No.

5 Q. Then why did he identify himself as
6 trustee?

7 MR. SIMON: Objection, speculation.

8 THE WITNESS: Ask Robert Spallina.

9 BY MR. STAMOS:

10 Q. Were you surprised to see him
11 identified as trustee when you -- when you read
12 it?

13 A. Yes.

14 Q. And did you discuss that with anyone?
15 Did you discuss the fact that he was identified
16 as the trustee when you knew that, to your
17 knowledge, he would not have been the trustee?

18 A. I discussed it before filing this
19 litigation, yes.

20 Q. With whom?

21 A. Adam Simon.

22 Q. Okay. And what did you --

23 A. Ted Bernstein.

24 Q. And what did you say to Adam and what

1 did he say to you?

2 MR. SIMON: Objection, attorney-client.

3 BY MR. STAMOS:

4 Q. You're not a party to this litigation,

5 are you?

6 A. No.

7 MR. SIMON: Yes, he is.

8 THE WITNESS: It's true. I am. Eliot sued

9 me.

10 BY MR. STAMOS:

11 Q. Well, at the time that the suit was

12 filed -- prior to the time the suit was filed,

13 you were not to be a party, correct? How could

14 you be a party? You never understood yourself

15 to be a beneficiary of either the trust or

16 the -- or the policy, correct?

17 A. That's correct.

18 Q. So when the suit was brought in order

19 to obtain proceeds of the policy and presumably

20 proceeds of the trust, you couldn't have been

21 suing on your own behalf, right?

22 A. I was not.

23 Q. So he wasn't representing you?

24 A. No.

1 Q. So what did he say to you and what did
2 you say to him?

3 A. I said that Spallina is not the
4 trustee. Ted is.

5 Q. Okay.

6 A. I saw the trust. I know Ted's the
7 trustee because that was one of the things that
8 needed to be changed in the draft, and I wasn't
9 positive that that was changed.

10 Q. Okay. Now, tell me this: You -- what
11 are the terms of the trust that you saw with
12 your own eyes?

13 A. I'd have to see a draft of the trust to
14 give you all the terms.

15 Q. All right. Did you ever have a
16 conversation with Mr. Spallina in which he -- in
17 which you asked him or he explained why it was
18 he identified himself as the trustee?

19 A. I may have. I don't recall.

20 Q. What did you say to him and what did he
21 say to you?

22 A. I just have a general remembrance of a
23 discussion about us filing the litigation.

24 Q. And what's your general remembrance of

1 how he explained that he identified himself as
2 the trustee?

3 A. I'm not sure that that specifically was
4 talked about.

5 MR. STAMOS: All right. I think that's all I
6 have. Anybody else have anything?

7 MR. SIMON: I do.

8 MR. STAMOS: Guys on the phone?

9 MS. FOGLIETTA: Not me.

10 MR. STAMOS: Okay. Eliot? Eliot, are you
11 there?

12 MR. SIMON: I take that as a no.

13 MR. BERSTEIN: I said I'm okay.

14 MR. STAMOS: Okay. I'm sorry. We didn't
15 hear you. Thank you. All right.

16 MR. SIMON: I do have questions.

17 MR. STAMOS: Yeah, of course.

18 MR. SIMON: I have some questions.

19 Just for the record, this is Adam Simon
20 questioning David Simon.

21 EXAMINATION

22 BY MR. SIMON:

23 Q. David, during the entire deposition,
24 you have not been presented with any marked

1 exhibits by Mr. Stamos; is that correct?

2 A. Yes.

3 Q. You've been asked to testify solely by
4 recollection; is that true?

5 A. Yes.

6 Q. Okay. I just would like to show you
7 some documents that may be relevant to some of
8 your testimony.

9 MR. SIMON: Can we mark this as David Simon
10 Deposition Exhibit No. 1.

11 (Whereupon, D. Simon Deposition
12 Exhibit No. 1 was marked for
13 identification.)

14 BY MR. STAMOS:

15 Q. David, I am showing you what's been
16 marked as David Simon Deposition Exhibit No. 1
17 that's got a Bates stamp BT 000031, and at the
18 top of the page, it says S.B. Lexington, Inc.,
19 Employer.

20 Have you ever seen that document
21 before?

22 A. Yes, I have.

23 Q. And can you describe what that document
24 is?

1 A. Under the VEBA, the individual insured
2 or member fills out a beneficiary designation
3 form. This is Si Bernstein's membership -- Si
4 Bernstein as member, filling out his beneficiary
5 designation.

6 Q. And at the top of the page, can you
7 read that, the very heading?

8 A. S.B. Lexington, Inc., Employer/Employee
9 Death Benefit Plan and Trust, Plan and Trust
10 Beneficiary Designation, Simon L. Bernstein.

11 Q. And then can you read -- actually, can
12 you read the entire form into the record?

13 A. Sure.

14 I hereby designate in accordance with
15 the terms of said plan and trust as it may be
16 amended that the name of the beneficiary should
17 be Simon Bernstein irrevocable insurance trust
18 and is signed then by Simon Bernstein as the
19 person to receive at my death the death benefit
20 stipulated in the S.B. Lexington, Inc. employee
21 death benefit and trust in the adoption form
22 adopted by my employer.

23 It is then signed again by Simon and
24 dated.

1 Q. What is the date?

2 A. 8/26/95.

3 Q. And do you recognize those signatures?

4 A. I do.

5 Q. And what are -- whose signatures are
6 those?

7 A. Simon Bernstein.

8 Q. Okay. I have no further questions on
9 that.

10 I'd like to show you --

11 MR. STAMOS: Can you mark this as David Simon
12 Deposition Exhibit No. 2.

13 (Whereupon, D. Simon Deposition
14 Exhibit No. 2 was marked for
15 identification.)

16 BY MR. SIMON:

17 Q. David, I'm showing you what's been
18 marked David Simon Deposition Exhibit No. 2.
19 It's got a Bates stamp of BT 000104. It's
20 entitled SS-4, Application for Employer
21 Identification Number.

22 Have you ever seen that form before?

23 A. Yes, I have.

24 Q. And can you describe what that is?

1 A. This is an application for a tax ID
2 number on behalf of the irrevocable insurance
3 trust, and I filled it out.

4 Q. And can you tell me what appears on
5 Line 1 under Name of Applicant?

6 A. Simon Bernstein Irrevocable Insurance
7 Trust.

8 Q. And on Line No. 3 as trustee or
9 executor?

10 A. Shirley Bernstein.

11 Q. And in the upper-right corner, can you
12 identify what number that is?

13 A. The tax ID number given to the
14 insurance trust.

15 Q. And that -- can you read that number
16 into the record?

17 A. 65-6178916, signed by Shirley Bernstein
18 as trustee, June 21, 1995.

19 Q. And do you recognize that signature?

20 A. I do.

21 Q. And whose signature is that?

22 A. Shirley Bernstein.

23 MR. SIMON: Can we mark this as David Simon
24 Exhibit 3.

1 (Whereupon, D. Simon Deposition
2 Exhibit No. 3 was marked for
3 identification.)

4 BY MR. SIMON:

5 Q. David, I'm showing you what's been
6 marked as David Simon Deposition Exhibit No. 3.
7 It's Bates stamped BT 000002 through BT 000012,
8 and I'm going to ask you if you recognize this
9 exhibit?

10 A. I do.

11 Q. And can you tell me -- can you describe
12 what's contained on the page stamped BT 000002?

13 A. It is a screenshot of a page from our
14 database.

15 Q. And can you tell us what it says at the
16 top of the page of that screenshot?

17 A. It is Si Trust and the properties of Si
18 Trust, and then it says when it was modified,
19 which was the day it was put in, June 21, 1995,
20 and the date that we accessed it, September 30,
21 2013, and then it has a created date, which was
22 when we modified our database to the new
23 database, which is September 3, 2004, so it was
24 reentered.

1 Q. Can you describe that further about the
2 new database?

3 A. We switched over and had to enter
4 into -- some old records into a new database.

5 Q. And do you recall how this document was
6 found?

7 A. Myself or Cheryl conducted a search and
8 found this print of the screen and then the
9 attached draft of the irrevocable trust
10 agreement.

11 Q. And can you describe what the remainder
12 of the exhibit is?

13 A. It's a draft of the irrevocable life
14 insurance trust that I gave to Si.

15 Q. And this was in June of 1995?

16 A. Yes.

17 Q. Showing you --

18 MR. SIMON: Can you mark this as Exhibit 4,
19 please.

20 (Whereupon, D. Simon Deposition
21 Exhibit No. 4 was marked for
22 identification.)

23 BY MR. SIMON:

24 Q. Showing you what has been marked as

1 David Simon Deposition Exhibit No. 4. It's
2 Bates stamped BT 000013 through 000021.

3 Have you ever seen that document
4 before?

5 A. Yes, I have, and it has my writing on
6 it.

7 Q. So you see some handwriting in the
8 blanks on the first page?

9 A. I do.

10 Q. And what does that say?

11 A. The handwriting says Si, then Shirley,
12 then Si.

13 Q. And it's got Shirley -- Shirley's name
14 and then the words -- what words follow
15 Shirley's name?

16 A. As trustee. This is an earlier draft
17 of the same document.

18 Q. Okay. Now, I'd like to direct your
19 attention to Article 7 of Exhibit 4, and can you
20 read that Article 7 into the record?

21 A. Upon my death, the trustee shall divide
22 the property of this trust into as many separate
23 trusts as there are children of mine who survive
24 me and children of mine who predecease me

1 leaving descendants who survive me. These
2 trusts shall be designated respectively by the
3 name of my children. Each trust shall be
4 administered and distributed in the following
5 manner.

6 And there's an A, B, and C.

7 Q. And then Article 8, let's look at the
8 last paragraph. Right before Article 9, can you
9 read that sentence?

10 A. As of the date of this agreement, I
11 currently have blank children living; namely,
12 colon.

13 Q. And now I'd like you to look back at
14 Exhibit No. 3 and read to me Article 7.

15 A. Upon my death, the trustee shall divide
16 the property of the trust into as many separate
17 trusts as there are children of mine that
18 survive me and children of mine who predecease
19 me, living descendants who survive me. These
20 trusts shall be designated respectively by the
21 names of my children. Each trust shall be
22 administered and distributed in the following
23 manner.

24 And there's an A, B, and C.

1 Q. And directing you to the end of
2 Article 8 of that draft, which is, again,
3 Exhibit 3, can you read the last same sentence?

4 A. Sure.

5 As of the date of this agreement, I
6 currently have five children living; namely, Ted
7 S. Bernstein, Pamela B. Simon, Jill Bernstein,
8 Lisa Bernstein Friedstein, and Eliot Bernstein.

9 MR. SIMON: I have nothing further.

10 MR. STAMOS: Couple follow-ups.

11 FURTHER EXAMINATION

12 BY MR. STAMOS:

13 Q. When you look at Exhibit No. 4,
14 where -- where was this document located?

15 A. My file.

16 Q. And when you say your files, what does
17 that mean? I mean, did you have a file that --

18 A. File, yes, my --

19 Q. Was it lying on a -- laying on a desk?

20 A. Oh, no. In storage --

21 Q. I mean, how was it maintained? I mean,
22 how did you -- how did you locate it?

23 A. Went to storage, got the manila folder
24 out that said File on it, opened the file.

1 Q. And what did that file -- what did that
2 file -- how was that file designated?

3 A. I -- I don't know off the top of my
4 head. I'd have to check.

5 Q. How did you -- were there other
6 materials in it aside from this document, this
7 blank?

8 A. No.

9 Q. So I take it the document that we have
10 marked as Exhibit No. 3 was not in that file,
11 because this -- this, you had to go in the
12 computer to find, correct?

13 A. Correct.

14 Q. And so how did -- where did this --
15 when you look at Exhibit No. 4, where did this
16 originally come from? Was this originally --
17 was this at some point in your word processor
18 and you -- with these lines in it that were to
19 be filled out?

20 A. Yes.

21 Q. Did you locate that? This, meaning
22 Exhibit 4, right, just so we know what we're
23 talking about.

24 A. Did I locate that on the word

1 processor?

2 Q. Yeah, no, I wasn't clear.

3 Looking at Exhibit No. 4, I take it
4 this is at -- this was at one point on your word
5 processor and it was printed out and then filled
6 out and then --

7 A. Not -- not the exhibit, no. It has my
8 handwriting on it, so what I think I did is, is
9 I wrote this in and gave it to my assistant who
10 then made the modifications which you see is
11 Exhibit 3.

12 Q. But my question to you is: Before you
13 wrote in, this was obviously printed out from a
14 printer, correct?

15 A. Correct.

16 Q. This must have been on your word
17 processor to be printed out on a printer,
18 correct? Exhibit 4.

19 A. I believe so.

20 Q. Did you find Exhibit 4 in your -- in
21 your computer?

22 A. Changed to look like Exhibit 3, yes.

23 Q. And then I take it -- hang on for a
24 second.

1 Were any subsequent drafts made on your
2 computer after -- after Exhibit No. 3?

3 A. No.

4 Q. Did you give a copy of Exhibit No. 3 to
5 Simon Bernstein?

6 A. Yes.

7 Q. And what did he do with it?

8 A. I don't know for sure because I wasn't
9 there, but I believe he went to Hopkins & Sutter
10 to have it changed one last time and executed.

11 Q. And did you share your draft with
12 Hopkins & Sutter? What's in your computer, was
13 it ever transmitted to Hopkins & Sutter so they
14 could mark it up?

15 A. It originated at Hopkins & Sutter
16 because it was Hopkins & Sutter that did my
17 irrevocable life insurance trust.

18 Q. No, no, I know that, but -- but you
19 created the document called Si Trust that you've
20 talked about, Exhibit No. 3, correct?

21 A. Actually, it was created at -- most of
22 it by Hopkins & Sutter when they did the work
23 for me.

24 Q. Okay.

1 A. I modified what you're seeing.

2 Q. I understand that. So you modified a
3 document that had been your document from
4 Hopkins & Sutter, right? That's what you're
5 telling us?

6 A. Yes.

7 Q. And then -- and you made modifications,
8 including you being identified as the trustee,
9 correct?

10 A. Yes.

11 Q. On No. 3, Exhibit No. 3?

12 A. Yes.

13 Q. And you gave that to Simon Bernstein,
14 correct?

15 A. Yes.

16 Q. Okay. What I'm asking is: Did you
17 also transmit to Hopkins & Sutter electronically
18 what we have before us as Exhibit No. 3 so that
19 they could make modifications to it pursuant to
20 what Mr. Bernstein wanted?

21 A. I personally did not.

22 Q. Did somebody else do that?

23 A. It's very possible.

24 Q. And who would have done that?

1 A. My assistant.

2 Q. Who?

3 A. Debbie.

4 Q. Is she still with you?

5 A. She's not.

6 Q. Is she still available?

7 A. Don't know.

8 Q. Would she have done that without your
9 instruction?

10 A. She would -- if Si would have told her,
11 she would have, yes.

12 Q. Do you think that happened?

13 A. I don't know.

14 Q. When Mr. Bernstein -- did you -- did
15 you keep a copy of what you gave Mr. Bernstein
16 to take to Hopkins & Sutter?

17 A. No, I did not.

18 Q. Why not?

19 A. No reason.

20 Q. Why'd you keep a draft?

21 A. I didn't realize I did, but obviously
22 at the time, Debbie must have filed it.

23 Q. When he returned to you after his
24 meetings at Hopkins & Sutter, did you keep a

1 copy of that document?

2 A. The executed trust?

3 Q. Yeah.

4 A. I believe we did have it for a period
5 of time till we moved offices.

6 Q. Okay. And I take it you would have
7 stored it in the same file as the draft, right?
8 You wouldn't put it in another place --

9 A. I didn't store it.

10 Q. Who --

11 A. Mr. Bernstein would have stored it,
12 Simon Bernstein.

13 Q. He did? Did you see him put it in the
14 file?

15 A. Did I see him? No. I don't watch --

16 Q. Did you ever see it again after that
17 day?

18 A. We do a thing called the document
19 review board, so depending on the exact date
20 that it was funded, I'd have to go back. I
21 probably would have seen it at that point, too,
22 so on every time there's an A.L.P.S. funding,
23 there's a series of documents.

24 Q. Every time there's a what funding?

1 A. A.L.P.S.

2 Q. Yeah?

3 A. Arbitrage Life Payment System.

4 So at the time of the funding of the
5 policy, there would have been a document review
6 board, and that would have been reviewed again
7 at that time.

8 Q. Why do you care who the beneficiary is?

9 A. He was also the owner.

10 Q. What does that matter at that the
11 point?

12 A. Because in the Arbitrage Life Payment
13 System, there's reps and warranties made by the
14 owner that are essential to the payment plan.

15 Q. Is it your testimony that you saw
16 the -- the trust at a later date in your office?

17 A. I would have to see what date it was
18 funded, but I would say yes, I saw it on the
19 date that it was funded also.

20 Q. Do you remember doing that? Do you
21 remember seeing it?

22 A. I remember seeing it when he came back.
23 I do not have an independent recollection of
24 that, but it was our habit and custom to do that

1 on each and every trust and each and every
2 owner.

3 Q. Okay. And that's something that would
4 have been maintained by your company because you
5 were participating in this A.L.P.S. program,
6 correct?

7 I'm probably not talking about it
8 properly, but -- but the exercise you said you
9 went through --

10 A. Yes.

11 Q. -- was something that -- this review
12 you would have done would have been done as the
13 company. The company would have been required
14 to do that as part of this A.L.P.S. payment?

15 A. S.T.P. would have done it. It's not
16 required to, but it's one of the ways that --

17 Q. All right. And it would have been in
18 your records, the document would have been in
19 your records to facilitate your doing that,
20 correct?

21 A. No.

22 Q. Whose records would it have been in?

23 A. Simon Bernstein's.

24 Q. And all the -- do you have other people

1 who have purchased insurance pursuant to the
2 A.L.P.S. program?

3 A. Yes.

4 Q. Do you do the same review for all of
5 them?

6 A. Yes.

7 Q. Do you have them bring their records in
8 to look at or do you look at the records you
9 maintain for them?

10 A. No, I would look at the records. And
11 if it wasn't other than Simon Bernstein or
12 myself or the employees are there, then we
13 probably would have kept a copy of that
14 individual's trust, but maybe not the whole
15 trust. Usually what happens is we get a trust
16 certification from the attorney, so there's a
17 front two pages, and then a back signature page.
18 That's the standard practice for us.

19 Q. I see. I see.

20 And your testimony is that at some
21 point, he just took that with him and it was no
22 longer available to you?

23 A. 1996 or when we moved offices, he took
24 all of his furniture, books, records.

1 Q. And when did -- when did -- at some
2 point, did he -- did it cease being funded
3 through the A.L.P.S. program?

4 A. The Lincoln Benefit policy?

5 Q. No. The -- the --

6 A. Capitol Bankers policy was never funded
7 through the A.L.P.S. program.

8 Q. Did the Lincoln benefits policy have
9 the '95 trust you've talked about as the
10 beneficiary?

11 A. And owner.

12 Q. Well, you said that earlier.

13 MR. STAMOS: Okay. That's all I got.

14 Thanks.

15 Reserve?

16 MR. SIMON: Yes.

17 (Whereupon, the deposition
18 concluded at 4:25 p.m.)

19

20

21

22

23

24

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

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

9)
10 Plaintiff,)
10)
11 vs.) No. 13 CV 3643
11)

12 HERITAGE UNION LIFE)
12 INSURANCE COMPANY,)
13)
13 Defendant.)

14 This is to certify that I have read the
15 transcript of my deposition taken in the
16 above-entitled cause by Vicki L. D'Antonio,
17 Certified Shorthand Reporter, on January 5, 2015,
18 and that the foregoing transcript accurately
19 states the questions asked and the answers given
20 by me as they now appear.

19 _____
20 DAVID SIMON

21 SUBSCRIBED AND SWORN TO
22 before me this _____ day
23 of _____, 2015.

23 _____
24 Notary Public

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4

5 I, VICKI L. D'ANTONIO, a Notary Public

6 within and for the County of Cook and State of

7 Illinois, do hereby certify that heretofore,

8 to-wit, on the 5th day of January, 2015,

9 personally appeared before me, DAVID SIMON, a

10 witness in a certain cause now pending and

11 undetermined in the United States District

12 Court, Northern District of Illinois, Eastern

13 Division, wherein SIMON BERNSTEIN IRREVOCABLE

14 INSURANCE TRUST DTD 6/21/95 is the Plaintiff and

15 HERITAGE UNION LIFE INSURANCE COMPANY

16 is the Defendant.

17 I further certify that the said DAVID

18 SIMON was by me first duly sworn to testify the

19 truth, the whole truth, and nothing but the

20 truth in the cause aforesaid; that the testimony

21 then given by said witness was reported

22 stenographically by me in the presence of said

23 witness and afterwards reduced to typewriting by

24 Computer-Aided Transcription, and the foregoing

1 is a true and correct transcript of the
2 testimony so given by said witness as aforesaid.

3 I further certify that the signature to
4 the foregoing deposition was reserved by counsel
5 for the respective parties.

6 I further certify that the taking of this
7 deposition was pursuant to notice and that there
8 were present at the deposition the attorneys
9 hereinbefore mentioned.

10 I further certify that I am not counsel
11 for nor in any way related to the parties to
12 this suit, nor am I in any way interested in the
13 outcome thereof.

14 IN TESTIMONY WHEREOF: I have hereunto
15 set my hand and affixed my notarial seal this
16 9th day of January, 2015.

17
18
19
20
21
22
23
24

Richard S. Antonelli

NOTARY PUBLIC, COOK COUNTY, ILLINOIS
CSR LIC. NO. 84-004344



1 McCorkle Litigation Services, Inc.
2 200 N. LaSalle Street, Suite 2900
3 Chicago, Illinois 60601-1014

4 January 9, 2015

5 The Simon Law Firm
6 Mr. Adam M. Simon
7 203 East Wacker Drive, Suite 2725
8 Chicago, Illinois 60601

9 IN RE: Bernstein v. Heritage
10 COURT NUMBER: 13 CV 3643
11 DATE TAKEN: January 5, 2015
12 DEPONENT: Mr. David Simon

13 Dear Mr. Simon:

14 Enclosed is the deposition transcript for the
15 aforementioned deponent in the above-entitled
16 cause. Also enclosed are additional signature
17 pages, if applicable, and errata sheets.

18 Per your agreement to secure signature, please
19 submit the transcript to the deponent for review
20 and signature. All changes or corrections must
21 be made on the errata sheets, not on the transcript
22 itself. All errata sheets should be signed and
23 all signature pages need to be signed and notarized.
24 After the deponent has completed the above,
 please return all signature pages and errata
 sheets to me at the above address, and I will
 handle distribution to the respective parties.

 If you have any questions, please call me at the
 phone number below.

 Sincerely,

 Margaret Setina Court Reporter Present:
 Signature Department Vicki L. D'Antonio
 cc: Mr. James Stamos

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EXHIBIT C

11187.001
File #2

Bernstein, Simon
Estate Planning

Page 3

To whom it may concern

J Simon BERNSTEIN do this day
Sept 7th 2012 of sound mind & Body
Wish to leave to my Beloved MARYGA

Puccio should I DIE THREE THINGS

① a check from J.P. Morgan for the
Amount of \$150,000 for taking care
of me when I needed her.

② my 20% of investment in Elecomet
Co being drawn up at this time by
STEVEN GREENWALD Att:

③ As soon as I can get a change of
\$100,000 FROM MY CURRENT DIS Policy

to beneficiary.

Should I die first I wish all these
things to happen with no interruption
From family or Probate.

ALL THINGS THAT I HAVE SIGNED

2)

to Maritza Puccio ~~and~~ to this date goes with her as side wishes, car-clothes-jewelry, etc.

For this consideration Maritza Puccio will remain with me so long as we agree to maintain our relationship. She & I will work to make this relationship built on respect, honesty and love between both parties.

Should either party fail to live up to these conditions all claims are VOID.

X

X
