

**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, et al. )

Third-Party Defendants, )

and )

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

TED BERNSTEIN, individually et al. )

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

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

**Filers:**

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

)

Third-Party Defendants\_ )

)

BRIAN M. O’CONNELL, as Personal )

Representative of the Estate of )

Simon L. Bernstein, )

)

Intervenor. )

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**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**

COMES NOW Eliot Ivan Bernstein (“Eliot”), a Third Party Defendant, Pro Se and files this “Response to Summary Judgement” and states under information and belief 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** There is no executed legally valid 95 Legally Nonexistent Unexecuted Trust that can act as Plaintiff in this matter and as an alleged Contingent Beneficiary. The insurance carrier HERITAGE already declined to pay the proceeds to the legally nonexistent 95 Legally Nonexistent Unexecuted Trust for failure to produce an executed copy of the said trust. Counsel, A. Simon cannot represent a legally non-existent trust. TED cannot act as alleged “Trustee” of a legally non-existent trust.

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** This failure to answer is cause for further discovery. I, Eliot Bernstein, should be granted Court Ordered Discovery as I cannot gain discovery to United Bank of Illinois since I am not an Executor/Personal Representative or Trustee.

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** The claim that the Contingent Beneficiary is a mistake and/or data entry error is made by affiant Don Sanders who is working for an insurance carrier that has lost the legally nonexistent “Policy” that is the subject contract of this Breach of Contract Lawsuit filed by the Plaintiff and where Sanders testimony could be construed as efforts to cover up for said liabilities resulting from losing an insurance policy, an unheard of event in insurance that would expose the carrier Jackson National Life to a variety of liabilities to beneficiaries and others.

There is evidence in production that shows that Simon Bernstein requested and was given the exact name of the beneficiaries, which were the Primary as LASALLE and the Contingent as Simon Bernstein Trust, NA in 2010 and Simon did not respond to the names as incorrect and the

insurance carrier referred to no truncation or abbreviation of the Contingent Beneficiaries name in their letter. SANDER'S statement that the name "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" was truncated by a computer system due to length or entered in error by an employee and thus was transformed into "Simon Bernstein Trust, N.A." does not fit any known computer system software that truncates data strings by eliminating the end of strings after the maximum character recognition is exceeded. Where the name of the beneficiary is not subject to interpretation by employees as the beneficiaries name must be exact and the beneficiary forms must be attached to the executed policy contract, which at this time no legally valid insurance contract has been produced to confirm SANDER'S claims and thus needs further discovery and litigation.

That there are frauds that have already been proven in the Estate and Trusts of Simon and Shirley Bernstein and there are missing trusts and other documents in the Estates and Trusts of Simon and Shirley Bernstein and Ted Bernstein according to his deposition testimony does not know what he did with a mass of dispositive documents brought to him minutes after his father died and these documents may have additional information that is intentionally being secreted from beneficiaries, the insurance carrier and this Court for Plaintiffs to attempt to steal off with the insurance proceeds deposited with the Court.

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** TED is not a valid "Trustee" of the 95 Legally Nonexistent Unexecuted Trust as there is no legally executed and binding trust document produced. No retainer of A. Simon's services has been produced to beneficiaries. Since there is no 95 Legally Nonexistent

Unexecuted Trust produced, the acts of the alleged Trustee and his counsel are legally invalid and where neither the alleged Trustee or his alleged Counsel are acting within the law.

TED retained SPALLINA as his counsel to file the fraudulent claim to the insurance carrier, whereby SPALLINA claimed to be the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust and the claim was DECLINED by the carrier leading to this Breach of Contract lawsuit and then TED retained A. Simon as his counsel and with no notice to the alleged beneficiaries became suddenly the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

That TED was advised by his own counsel SPALLINA that he had no standing to file this lawsuit. TED then retained his sister Pam’s husband’s brother, Adam Simon, to represent him as the new Trustee. Where Adam Simon is partner with his brother David Simon in a law firm that primarily worked for Simon Bernstein in his offices since each graduated college and where David Simon and his firm stand to benefit directly from this action not only from legal fees but D. Simon will get with his wife Pamela 1/5<sup>th</sup> of the proceeds if this lawsuit is successful for Plaintiffs. Similar to TED, is his sister Pamela Bernstein-Simon, who both were considered predeceased in the Estates and Trusts of Simon and Shirley Bernstein and if the monies are paid to the Estate or other vehicles and not the 95 Legally Nonexistent Unexecuted Trust, both stand to get nothing for them or their families. Their children may be beneficiaries but that is still to be determined via ongoing probate and trust actions due to the FRAUD that has occurred by TED and his counsel TESCHER and SPALLINA and others.

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** The fact that Plaintiffs claim that JP Morgan Chase Bank is an “alleged” successor calls for further discovery in these matters.

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 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** From the Idaho Department of Insurance @

<http://www.doi.idaho.gov/insurance/Succession.aspx?AID=1315>

The Certificate of Authority #1315 belongs to an active company with former names.

Start	End	Former Names
12/29/1980	12/12/2000	CAPITOL BANKERS LIFE INSURANCE COMPANY
12/12/2000	8/29/2008	ANNUITY & LIFE REASSURANCE AMERICA, INC.
8/29/2008		HERITAGE UNION LIFE INSURANCE COMPANY (1315)

That information from Annuity & Life Reassurance America has not been obtained in this lawsuit and they may have retained copies of the missing insurance policy and thus need for

further discovery. Eliot cannot obtain this information as he is not an Executor/Personal Representative of the Estate and Trusts of Simon. JACKSON is believed to have then acquired HERITAGE and entered this case on behalf of HERITAGE and then suddenly disappeared after depositing funds in the court registry. HERITAGE when interpleading the funds to this Court misled this Court to believe that there was a valid binding life insurance policy with “Policy Proceeds” equal to the amount interpled, when factually they failed to produce such policy showing that this in fact was the correct amount stated in the legally binding contract that remains missing. There can be no “Policy Proceeds” without a legally binding policy produced and this is misleading. There are conflicting evidences of the amount of insurance of the missing policy<sup>1</sup>.

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)

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<sup>1</sup> HERITAGE application to increase Death Benefit from 2 to 3 Million.  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/Heritage3MillionDeathBenefit.pdf>

**ANSWER** That Adam Simon representing the Trustee and the beneficiaries appears conflicted.

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** The Primary Beneficiary LASALLE was the trustee and administrator for the VEBA plan that the missing policy is a part of according to the records produced and thus LASALLE or its Successors must be contacted by the carrier as they remain the Primary Beneficiary.

What happened on dissolution of the VEBA to the assets of the VEBA, including any insurance benefits and policies, where the insured’s chosen beneficiaries of the policies issued for the VEBA were defined through the VEBA plan not by the missing policy’s named beneficiaries, which was LASALLE and Simon Bernstein Trust, NA. The VEBA plan trust must be produced to know the plan beneficiaries and what happens to the VEBA trust assets upon dissolution and this needs further discovery or litigation to determine.

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** It appears that this corporation was dissolved by TED immediately after his father died and no records of this entity have been turned over to beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein in Florida and thus further discovery needs to take place or further litigation to determine what assets were in this entity.

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** That Adam Simon represented Ted Bernstein as an alleged trustee of the 95 Legally Nonexistent Unexecuted Trust and filed opposition pleadings to block the entry of the Estate of Simon from intervening in this lawsuit. This was done in conflict and with improper representation as TED was simultaneously acting as Trustee for a Simon Bernstein Trust in Florida that would also possibly receive the proceeds and where Ted alleges to be a beneficiary of the 95 Legally Nonexistent Unexecuted Trust who stands to gain 20% of any proceeds paid and where TED and/or his children may get nothing if the proceeds are paid to the Estate and Trust beneficiaries in Florida, once those beneficiaries are determined. In no event will TED receive benefits if not paid through the 95 Legally Nonexistent Unexecuted Trust scheme in this Action.

That this conflict of TED'S that led him to file opposition papers to the Estate being joined in these matters has caused delays in the Estate being represented in these matters, compounding the delays in inheritances caused by TED'S prior counsel and the prior fiduciaries of the Estate of Simon, Co-Executors/Personal Representatives and Co-Trustees, TESCHER and SPALLINA, who intentionally blocked the Estate and Trust of Simon from entering this case

(working against the interest of the Estate and Trust beneficiaries), as they were working as TED's counsel to convert the proceeds through the 95 Legally Nonexistent Unexecuted Trust scheme whereby TESCHER and SPALLINA filed the fraudulent insurance claim that led to this Breach of Contract Lawsuit in efforts to defeat their clients they represented in the Estate of Simon to benefit TED instead. Where the claim asserted by the Plaintiff is that the insurance company breached the missing insurance contract terms by failing to pay the fraudulent death benefit claim submitted by TESCHER and SPALLINA and where SPALLINA represented that he was the trustee of the 95 Legally Nonexistent Unexecuted Trust that TED now claims to be the alleged Trustee of in this lawsuit.

That due to these intentional delays and interferences with expectancies both Eliot and the Estate have been denied proper time to fully complete discovery and thus discovery must be extended, especially where it was intentionally interfered with to attempt to close this Action before allowing known possible beneficiaries to participate. At this time, none of the grandchildren, including minor children are represented in this case by counsel, except Eliot's children who are represented Pro Se by Eliot.

## **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** A specimen policy was provided, which is not a legally valid executed and legally binding copy of the actual insurance policy that is subject of this lawsuit. A specimen policy is an insurance carrier policy submitted to each state the policy is being applied for in as a sample of what a policy will look like for a consumer.

There is no policy presently produced or proven by Plaintiffs so no "Policy Proceeds" can be determined from a specimen and the attempt to define the specimen as the actual "Policy" on Simon is misleading to the Court and requires further discovery as to where the actual policy is.

That the affidavit of SANDER'S states that the specimen policy amount of insurance is not the correct amount and would not be the amount stated in the missing life insurance contract and this is cause for further discovery and litigation into what exactly the missing policy death benefit amount is.

That the Specimen policy also contains no beneficiaries of the missing policy as the beneficiaries are not defined thereunder.

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** The application is not complete as submitted in production as parts appear missing, a verified copy would need to be obtained showing the entire document and cause for further discovery. Don Sanders affidavit is in question due to conflicts and adversity.

There is alleged evidence that shortly before his death Simon's policy lapsed and was reinstated, a new application was taken and appears missing from the records which may also contain new application information pertinent to this lawsuit and the reinstatement should have caused a new or reinstated policy to be produced as indicated in letters to Simon by HERITAGE and this lack of a reinstated policy is highly suspect that this information is missing from the carriers production.

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** This application is not known to be the actual application of the policy as no policy is produced at this time proving what application is attached to the policy, especially after alleged re-issue and where insurance contracts, policies, have attached to them the policy applications as part of the legally required contractual documents attached to the issued policy. Therefore, this evidence is questionable and needs further discovery to determine if in fact this application was the defining application of the original issued policy. The final application is required to be attached to the policy. (ii) The records and policies for the VEBA plan participants are sent to Simon's companies and office location at that time, as the policies were sold by Simon and the VEBA was administered with many other VEBA policies he sold through the trust company he established (Simon was the founder of death benefit VEBA programs and the leading broker nationwide in such sales.) (iii) Simon Bernstein was an executive and leading insurance salesman nationwide who brokerage sold billions of dollars of life insurance premium. (iv) Undisputed (v) Undisputed (vi) Undisputed (vii) This would indicate that the missing policy should be with the original owner or its successors and would require additional discovery to determine where it is, although it is the ultimate responsibility of the insurance carrier to maintain a copy of the actual policy and policy records according to law and underwriting and administrative procedures, as well as would be required by any reinsurers that risk was ceded to.

**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** That the VEBA information is critical to the payment of any proceeds of any policy once one is found, as LASALLE being the Trustee for the primary beneficiary of the VEBA plan would then have specific duties to pay beneficiaries determined in the VEBA plan by the employees to their named plan beneficiaries.

That if LASALLE dissolved the VEBA the benefits would be allocated according to law and the terms of the VEBA trust and again why further discovery is necessary to determine the role of the Primary Beneficiary and its obligations under the VEBA plan upon dissolution.

That the VEBA information and copies of the trust should be maintained as well by Pam and David Simon who ultimately controlled the administration of the many VEBA plans sold by Simon Bernstein and thus should have been produced in these matters but have not been.

It is alleged that the VEBA plan or its Successor plan may have had over \$50,000,000.00 of assets in it as late as 20092.

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** This statement contradicts Plaintiffs' own claims that a contingent beneficiary (with a different name than the insurance company's own records which claim the contingent to be Simon Bernstein Trust, NA) should be paid while the primary beneficiary LaSalle National

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<sup>2</sup> S B Lexington Inc Death Benefit Plan United Bank Of Illinois N A showing 50 Million + of assets in 2009  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/SBLexingtonDeathBenefitPlanUnitedBankOfIllinois.pdf>

Trust, NA is according to the carrier of the nonexistent policy the Primary Beneficiary and where Equifax was told the VEBA would be responsible for paying the insurance benefits.

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** That while this may have been the initial VEBA plan beneficiary designated by Simon there is evidence, including a 2000 Insurance Trust and the subsequent Simon Bernstein Trust NA that would suggest that Simon had changed the beneficiary of the VEBA plan and this would need discovery from LASALLE through its successor, Chicago Title to determine who the VEBA plan beneficiary now is.

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** According to the Insurance records the Primary beneficiary was LASALLE and the contingent beneficiary was not the “Bernstein Trust” aka 95 Legally Nonexistent Unexecuted Trust as alleged by Plaintiffs but in fact the Simon Bernstein Trust, NA.

Again with a legally existent Primary Beneficiary the Contingent Beneficiary does not even become a viable recipient of the death benefit, which could make Summary Judgement more fraud if the Contingent is paid while the parties all knew of an existing Primary Beneficiary. At death the VEBA was the Primary Beneficiary according to this account.

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** SANDER’S affidavit has claimed to be steeped in conflict as his employer JACKSON has a vested interest in the outcome of the litigation, especially if they have lost the insurance contract and are exposed to liabilities resulting from such loss.

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** Undisputed

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** The dissolution papers are missing to confirm the veracity of Pam’s affidavit which violates the Il Dead Man’s Act as it relates to the “shareholders” of which Simon was one.

While it is claimed that the owner was changed from LASALLE it is not claimed that the Primary Beneficiary was changed from LASALLE and again this would make LASALLE the beneficiary of the proceeds of the missing/lost/suppressed contract.

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** Note that no efforts were made to contact LaSalle National Trust NA or its Successor by HERITAGE or any party to this lawsuit and thus further discovery and litigation of these matters is still necessary and the insurance company must be rejoined as an indispensable party and this Court demand they answer why they have failed to contact the Primary Beneficiary.

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** The only party with claims to the benefits of the missing policy would according to insurance company records would be the primary beneficiary LaSalle National Trust, NA.

That documents are missing in the Estate and Trusts of Simon Bernstein and thus it is highly probable that like the 2000 Insurance Trust that was secreted from this Court the alleged Contingent Beneficiary by HERITAGE, the Simon Bernstein Trust NA is also being suppressed and secreted by Plaintiffs in their efforts to fraudulently convert the monies.

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** LASALLE or its successors would appear to be the only financial institutions with claims to the litigation proceeds and the carrier nor any parties in this litigation have notified LASALLE or its successors they are the Primary Beneficiary of an alleged insurance policy death benefit.

#### **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** Even if this were the case, this 95 Legally Nonexistent Unexecuted Trust would be only a Contingent Beneficiary and there is still a Primary Beneficiary and then there is the

2000 Proskauer Trust that supersedes the 95 Legally Nonexistent Unexecuted Trust and then there is a Simon Bernstein Trust, NA that supersedes the 95 Legally Nonexistent Unexecuted Trust as Contingent Beneficiary as of the year 2010 and confirmed by Simon Bernstein as such.

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** That this new information leads one to need discovery to get all the tax records regarding the VEBA trust and tax records for the missing 95 Legally Nonexistent Unexecuted Trust and tax records for all of the other trusts involved.

It should be noted that the Curator of the Estate of Simon who replaced TESCHER and SPALLINA, attorney at law Benjamin Brown, Esq. ("Brown") had requested from the IRS over a year ago tax returns for Simon and Shirley individually and for entities they owned and only days after he stated he thought he had received them, he unexpectedly died at age 49 from a heart attack. Upon receiving records from Brown, O'CONNELL the Personal Representative that replaced Brown stated the long anticipated tax returns were not with the records Brown turned over. Several months ago O'CONNELL stated his firm had ordered new "certified" copies of the tax returns and they would be produced shortly but as of this date they have not been produced to any parties. This is further reason that discovery should be continued as the tax returns will provide valuable information that may influence the outcome of this litigation.

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** This may be true at that time in 1995 but again this would only show that the VEBA controls whom the beneficiary would be and with LASALLE still the Primary Beneficiary this indicates that even if the VEBA had been dissolved as alleged, the VEBA trust provided that LASALLE or its Successor would pay the former VEBA plan participants benefits after dissolution of the VEBA.

That again even if proved that the 95 Legally Nonexistent Unexecuted Trust existed and were valid it would still be only a Contingent Beneficiary. Again, there are competing claims that the Contingent Beneficiary was changed by Simon to the Simon Bernstein Trust NA.

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** Here the Plaintiffs are claiming the benefits are paid to the VEBA Trust through LASALLE as the Primary Beneficiary to then be paid by LASALLE to the VEBA and the administrator would then pay the VEBA plan participant's beneficiary election, which they claim is the missing 95 Legally Nonexistent Unexecuted Trust. In this scenario, the 95 Legally Nonexistent Trust would not be listed as the Contingent Beneficiary on the insurance contract, as apparently, according to the records produced it has never been named as the Contingent Beneficiary on the missing contract.

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** Simon's intent changed over time and at the time of his death he had removed Ted and Pam from receiving any benefits of the Estate planning Trusts of Simon and they were considered predeceased.

Simon Bernstein's intent as of 2000 was more defined in the 2000 Proskauer Insurance Trust that at that time would have been the beneficiary and the 95 Legally Nonexistent Unexecuted Trust would have replaced it.

Simon Bernstein's intent as of 2010 was more defined when he confirmed with HERITAGE that the Contingent Beneficiary was the Simon Bernstein Trust NA.

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** This evidence contradicts Plaintiffs claims that the missing policy Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust.

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** SANDERS statement is made on hearsay evidence as he does not claim to be the party responsible for the error in entering the full formal name of the beneficiary. SANDERS also states that it is common practice for the insurance carrier to rename a beneficiary to an entirely different name and retain no formal evidence of the actual name of the contingent beneficiary.

That SANDERS statements are based on the records he reviewed but it is OBVIOUS that the records reviewed are missing key pertinent records, including but not limited to, THE

ACTUAL POLICY, copies of the trusts and more and so his statements are based on an incomplete set of records.

Simon Bernstein allegedly requested confirmation of the beneficiaries and the letter was sent indicating the Contingent Beneficiary as the Simon Bernstein Trust, NA, which to Eliot's knowledge, no one has conducted investigation to see if this trust exists and there are ongoing investigations into missing and suppressed and fraudulent and altered estate documents ongoing that may materially affect the outcome of this case and make Summary Judgement Premature when records are released that are being withheld or suppressed.

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** Movants Exhibit 14 indicates that a NEW POLICY COPY was issued by the carrier and sent to Simon's home address. This would indicate that insurer would have had a recent COPY of the missing policy available at that time but did not retain a copy with their letter sent to Simon or produce the letter with the copy sent at that time.

The reinstated policy may differ than any other earlier policy in key areas such as face amount, beneficiaries, health ratings, etc., which could materially affect the outcome of this lawsuit.

If the Primary Beneficiary did not change at this time then LASALLE is the receiver of any monies resulting from this lawsuit or the policy if it is found at some point through further discovery.

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** That a death benefit claim and this instant legal Action were both filed with NO DRAFT COPY in the possession of the alleged trustees of the 95 Legally Nonexistent Unexecuted Trust for over a year until they magically appeared when the Court was demanding that an executed copy be found to give Plaintiffs standing.

That these unexecuted drafts are not legally binding in any way and thus do not give standing in this lawsuit and do not qualify to be paid beneficiaries, as indicated when the insurance carrier DECLINED the death benefit request filed by SPALLINA who could not produce an executed trust as required by the carrier.

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** Undisputed

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** Illinois Dead Man rule disqualifies this affidavit statements relating to conversations or events involving Simon.

52. One unexecuted draft of what would become The Simon Bernstein Irrevocable Trust dated 6/21/95 include 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** The draft has no law firm markings and is wholly unexecuted and is disputed as to its legal validity in toto and nothing within the document can therefore be relied upon.

Why would David Simon handwrite in names to show Simon where names go in the trust?

What significance does this have?

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** The terms of this draft are not binding if they are in fact a draft of the 95 Legally Nonexistent Unexecuted Trust that to date does not exist in the Court record.

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** This document is an alleged draft on the date of the trust and yet no law firm has markings upon the document. There are other problems with the datafile that put it in dispute as a valid document. The File Created date is September 03, 2004. The file Modified date is June 21, 1995? How was it modified in 1995 when it was created in 2004? Accessed “Today, September 30, 2013.”

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** Ted Bernstein has a stepson making it 11 grandchildren if included.

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** The fact is disputed in their own statement above as to who the trustee of this alleged draft of the 95 Legally Nonexistent Unexecuted Trust was going to be, which makes this a disputed fact.

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** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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** The Illinois Dead Man rule prohibits this affidavit and statements contained therein relating to conversations with Simon Bernstein by David Simon who has in interest in the outcome of this action.

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** The "executed Bernstein Trust Agreement" does not exist and thus it is unknown what it would say if it existed.

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

That Simon Bernstein formed the Bernstein Trust on June 21, 1995;

a. That the five surviving children of Simon Bernstein were named as beneficiaries;



- b. 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** a) Undisputed b) Undisputed c) There is no “Bernstein Trust” that exists and thus again TED has no standing to act as a Trustee. Adam Simon should be sanctioned for attempting to claim that TED is a legally valid Trustee of a trust that does not exist and filing this lawsuit as Fraud on this Court. Adam Simon and the Plaintiffs should be reported for this Fraud on this Court to the proper authorities by this Court.

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** That the Lincoln Benefit Life Insurance Company policy should also have a copy any 95 Legally Nonexistent Unexecuted Trust and the Lincoln Benefit policy and this is hearsay evidence from interested parties to the litigation.

The Lincoln Benefit Life contract or any evidence suggesting the veracity of the claims made has not been produced by Plaintiffs.

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** No proof that a lapse occurred is presented.

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** This Lincoln Policy also is controlled by the 2000 Proskauer Rose Irrevocable Trust and supersedes any alleged 95 Legally Nonexistent Unexecuted Trust interest.

### **ELIOT' S CLAIMS**

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

**ANSWER** That until Eliot’s counterclaims, third party claims and cross claims are heard Summary Judgement is premature.

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** Eliot never submitted a claim form to the carrier claiming he or his children were named beneficiaries.

### **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** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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** Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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** Agree as Florida law provides that when no beneficiary can be proven at the time of death the estate is the beneficiary.

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** The 2012 Will of Simon Bernstein has been challenged on its validity and there are pending motions and petitions filed regarding the validity and the construction that remain unheard.

The Florida Governor Rick Scott's Notary Public Division has determined that the Will is improperly notarized by TED's assistant, Lindsay Baxley. The document is under ongoing investigation and challenged on validity and construction in the probate case.

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** Eliot's counter/cross/third party claims present evidence that confutes and puts into dispute the Plaintiffs arguments herein and thus make Summary Judgement premature and litigation necessary.

## **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** The reason the carrier declined the SPALLINA filed death benefit claim was because an executed copy of the alleged 95 Legally Existent Trust was not produced and thus is the same reason this Court should not pay the claim to the alleged 95 Legally Nonexistent Unexecuted Trust.

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

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged "Policy" at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent, and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the "Policy" are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic "Specimen Policy" not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the "Policy" are in genuine dispute. .

3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon

Bernstein (“Simon”) including but not limited to further document and record production from Heritage Union Life Insurance Company (“HERITAGE”), Jackson National Life Insurance Company (“JACKSON”), LaSalle National Trust, NA (“LASALLE”) in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein (“TED”), EBTs of Pamela Beth Simon (“PAM”), David Simon (“D. SIMON”), Robert L. Spallina, Esq. (“SPALLINA”), Donald R. Tescher, Esq. (“TESCHER”) and Don Sanders (“SANDERS”) at minimum.

4. It is noted for this Court that Judge Martin Colin (“COLIN”) of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.

6. The Disqualification motion<sup>3</sup> in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.

7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

8. The fact is there is no executed “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.

9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.

10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs

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<sup>3</sup> COLIN Disqualification Motion  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.

11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.

13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital<sup>4</sup> and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting

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<sup>4</sup> Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.

14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte “recuses” after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact witnesses to the frauds committed by TESCHER and SPALLINA’S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order<sup>5</sup>.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim<sup>6</sup> in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the “Trustee” of the 95 Legally Nonexistent Unexecuted Trust.

16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit (“Action”) filed for breach of contract and the Action is based

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<sup>5</sup> COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>6</sup> Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>



on the carrier denial<sup>7</sup> of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.

17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.

19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.

20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for

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<sup>7</sup> Reassure America Life Insurance Company Decline Letter  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

LASALLE when filing his death benefit claim<sup>8</sup>, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.

21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.

22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP<sup>9</sup> that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.

23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by

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<sup>8</sup> HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

<sup>9</sup> 2000 Simon Bernstein Life Insurance Trust – Proskauer <http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust<sup>10</sup> and sanctions or a sanctions hearing should be granted and further Discovery allowed.

24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, **the primary beneficiary was designated as LaSalle National Trust, N.A.** [emphasis added] as Successor Trustee...”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

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<sup>10</sup> TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposit%20ion.pdf>

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.

27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>11</sup> from six cases after his denial of Eliot's Petition for Disqualification<sup>12</sup> as "Legally Insufficient" on May 18, 2015<sup>13</sup>, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases<sup>14</sup> of the Bernstein family.

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<sup>11</sup> Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as "Legally Insufficient  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

<sup>12</sup> Petition for Disqualification of Judge Martin Colin  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

<sup>13</sup> Judge Colin Denial of Disqualification  
<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

<sup>14</sup> Case # 502012CP004391XXXXSB – Simon Bernstein Estate, Case # 502011CP000653XXXXSB – Shirley Bernstein Estate, Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children, Case # 502014CP003698XXXXSB – Shirley Trust Construction, Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB, Case # TBD – Creditor Claim – Eliot v. Estate of Simon

29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.

31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal

Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.

33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.

34. The matters need to be investigated by the carrier as a possible murder of Simon<sup>15</sup> which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.

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<sup>15</sup> Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

35. There are Petitions that were unheard by COLIN'S court at the time of his recent recusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446> , which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.

37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,

- a. Records from insurers and reinsurers,
- b. Records from the Primary Beneficiary LaSalle National Trust, NA,
- c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,

- d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,
- e. Records regarding the carriers stated Contingent Beneficiary, the missing Simon Bernstein Trust, NA.

38. There is need for further affidavits, declaration and further discovery after TED'S deposition that opens new discovery including the fact that TED claimed in deposition that he maintained a fully executed copy of the insurance contract<sup>16</sup>.

DATED: June 08, 2015

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 08, 2015 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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<sup>16</sup> TED Deposition Pages 116-118

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>



*/s/ Eliot Ivan Bernstein*

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