

**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

AMENDED RESPONSE TO SUMMARY
JUDGEMENT

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.)
 _____/

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN’S RESPONSE TO PLAINTIFFS
 AMENDED MOTION FOR SUMMARY JUDGEMENT AS TO COUNT 1 & II;
 PLAINTIFFS CLAIM TO POLICY PROCEEDS**

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:

1. Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff’s improper at this time.

2. There is a primary beneficiary, LaSalle National Trust, NA (“LASALLE”) and it appears that no one has contacted them or its Successors and this Summary Judgement is instead attempting to have this Court pay an ALLEGED Contingent Beneficiary instead of the Primary Beneficiary. When there is the existence of a Primary Beneficiary the contingent beneficiary cannot be paid benefits.

3. No executed copy of a “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“Legally Nonexistent Unexecuted Trust”) the trust alleged by Plaintiff to be the Contingent Beneficiary has been produced to this Court to establish legal standing as a Plaintiff or a Contingent Beneficiary.

4. As no executed copy of the 95 Legally Nonexistent Unexecuted Trust has been presented by Plaintiffs and produced to this Court, the legal standing of TED as a legally valid trustee of

such nonexistent trust is therefore disputed and Plaintiffs have failed to bring forward competent proof to demonstrate the absence of material issues of fact on this matter and therefore Summary Judgment must be denied. Thus, it is disputed whether this Trust even exists and without competent proof and-or further discovery, the Trust and alleged Trustee must be presumed to not exist or at minimum certainly not proven sufficient for Summary Judgment at this stage of litigation.

5. There is also an executed 2000 insurance trust done by Proskauer Rose that would supersede any 95 Legally Nonexistent Unexecuted Trust (FOOTNOTE 9 – Response to Plaintiffs Motion for Summary Judgment Statement of Facts), which the Plaintiffs and attorney SPALLINA coordinated and colluded to secret.

6. That SPALLINA, TESCHER, TED, PAM and DAVID SIMON are acting fraudulently before this Court by their intentional secreting of this 2000 Trust document (secreted from Eliot until turned over when TESCHER and SPALLINA resigned and were court Ordered to turn over their records) with the intent to defeat the wishes and intent of Simon Bernstein, best illustrated at TED'S recent deposition (EXHIBIT 10 – Pages 37-53) where it is shown that the 2000 Trust was intentionally secreted from the carrier and this Court by SPALLINA, TESCHER, TED and PAM as it did not suit their ends to produce the document as it cut certain parties out any benefits.

7. This concealment of pertinent evidence constitutes a fraud on the court and the beneficiaries and other interested parties who have been damaged by this intentional and with scienter obstruction and this deserves both sanctions and reporting of the intentional fraud on the court and others to the proper authorities by the long and strong arm of the law exercised through this Court.

8. There is also a missing Simon Bernstein Trust, NA that the carrier production records show was the Contingent Beneficiary at Simon's death that would supersede any 95 Legally Nonexistent Unexecuted Trust.

9. It is noted that Adam Simon is brother to David Simon who is married to Pam Bernstein-Simon. Without this lawsuit scheme, if the money passes to the estate instead of the 95 Legally Nonexistent Unexecuted Trust, then Pam Bernstein Simon and Ted Bernstein would receive NO benefits. Their children may receive benefits depending on the outcome of estate beneficiary disputes ongoing in Florida. Adam Simon represents TED as "Trustee" of the 95 Legally Nonexistent Unexecuted Trust and if there is no legal trust with standing, then there is no Trustee with standing and there ultimately is no counsel that has standing.

10. Virtually all the "undisputed facts" presented by Plaintiffs are disputed by Eliot in his counter complaint/cross claim, hereby included by reference herein.

11. There is no insurance contract "Policy", which is admitted by Plaintiffs and through the Affidavit submitted by Don Sanders of Jackson Nation (See Plaintiffs Summary Judgement EXHIBIT 29) that has been produced by any Plaintiff or any party to this action and thus Plaintiffs asserted fact that there is a life insurance "Policy" and reliance upon it or its terms at this time is all disputed as there is no legally binding insurance contract produced at this time.

12. As there is no legally binding insurance contract proven or provided or produced, as such there can be no "Policy Proceeds." determined to award Plaintiffs Summary Judgment at this time.

13. This lawsuit is a Breach of Contract lawsuit spawned from a denied insurance claim filed with HERITAGE that arose after Plaintiff TED'S attorney SPALLINA within weeks of Simon's death began illegally attempting to impersonate himself as the Trustee of LASALLE by

correspondences (FOOTNOTE 6 – Response to Plaintiffs Summary Judgement Statement of Facts), which was done within weeks after Simon Bernstein passed away. Thus, this lawsuit is not a dispute between various claimants as Plaintiffs suggest to this Court as there are not competing claimants.

14. There is no copy or record of the 95 Legally Nonexistent Unexecuted Trust produced in these matters and thus Plaintiff's standing is disputed, if there is no trust there is no Trustee and therefore TED'S legal standing is disputed.

15. Further, Plaintiffs individually, TED, Pamela Simon, Jill Iantoni and Lisa Friedstein, likewise have legal standing issues in dispute, as if the trust does not exist then they have no rights thereunder as alleged beneficiaries and whereby they have asserted no claims to this Court or the carrier that they are beneficiaries of the missing policy deserving standing in any individual capacity. Thus, their lawsuit should be dismissed or at least reviewed and-or investigated as a fraud upon this Court and their attorneys at law involved should all be reported to the proper authorities and sanctioned for intentional misconduct and acting with scienter in tortious interference with an expectancy.

16. While corresponding with HERITAGE, SPALLINA acted as the Trustee of LASALLE, the Primary Beneficiary, and filed a death benefit claim on behalf of the alleged Contingent Beneficiary, the 95 Legally Nonexistent Trust with HERITAGE, not on behalf of the primary beneficiary LASALLE (for unknown reasons) and that claim was subsequently DENIED because SPALLINA could not provide ANY document to HERITAGE to evidence a legally binding trust instrument to pay and this is the reason for the Breach of Contract lawsuit being filed NOT a claimant dispute.

17. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of LASALLE or provides any authority to act as same and thus within six weeks of the death of Simon Bernstein, attorney SPALLINA on behalf of his legal client TED was already acting fraudulently in attempts to secret control over assets and property in this case and as indicated in correspondences with the carrier, SPALLINA was attempting to convert the monies to his law firm's trust account with no legal authority (EXHIBIT 1).

18. There is no document or record or proof in this Court or any other court of any jurisdiction including the Palm Beach County Circuit Court and Probate Court that ever made or makes SPALLINA the Trustee of a 95 Legally Nonexistent Unexecuted Trust or provides any authority to act as same and thus on November 01, 2012 within 6 weeks after the death of Simon Bernstein, attorney SPALLINA was already acting fraudulently in attempts to secret control over assets and property in this case (see FOOTNOTES 6, 7 & 8 – Response to Plaintiffs Summary Judgement Statement of Facts), attempting to convert the monies to his law firm's trust account.

19. The claim form submitted by SPALLINA on November 01, 2012 makes no mention of the fact that at that time there were ongoing investigation by the Palm Beach County Sheriff and an autopsy being performed to determine if Simon Bernstein had been murdered ordered by TED.

20. The initial breach of contract action was not even filed in Cook County Illinois until after the Law Office of SPALLINA and TESCHER had already filed fraudulent documents in the Palm Beach County Circuit Court of COLIN on or about Oct. 24, 2012, including but not limited to, a false Petition of Discharge (full Waiver) (EXHIBIT 2) of Simon Bernstein dated April 9, 2012, which sought to use a document allegedly executed by Simon Bernstein and

witnessed by SPALLINA five months earlier, submitted POST MORTEM for Simon who was now deceased, enabling a deceased Simon to act as Personal Representative while dead to close the Estate of his wife Shirley Bernstein. In addition to the fraudulent submission of the document, the document contained numerous false and fraudulent recitals of acts allegedly signed to by Simon Bernstein, which clearly had not occurred by the date of the alleged signing on April 9, 2012, for instance Simon claims to have all beneficiaries Waivers and the waivers were not sent to beneficiaries until May of 2012 and certain beneficiaries did not submit them until after Simon died on September 13, 2012.

21. While the precise circumstances of COLIN'S knowledge and possible involvement in the fraud are not presently fully known, after certain frauds had been exposed, including COLIN learning at the hearing that a dead Simon had been illegally used to close the Estate of wife Shirley months after his death, COLIN stated on the record in a hearing on September 13, 2013 (EXHIBIT 3) that he had enough evidence at that time to read TED, TESCHER, SPALLINA and their counsel their Miranda Rights.

22. That the law firm of Tescher & Spallina, PA also submitted to the Court forged and fraudulent Waivers for six parties, including POST MORTEM forgery and fraudulent notarizations of Simon's, also used to close the Estate of Simon's deceased wife Shirley using Simon while dead to act as the Personal Representative as part of an elaborate fraud on the court of COLIN, the beneficiaries, the creditors and others. Upon learning of the six fraudulent waivers, including POST MORTEM forgery and fraudulent notarization for Simon that were proven fraudulently notarized and admitted to being forged by a member of the Tescher & Spallina PA law firm, Kimberly Moran who was then arrested and convicted, COLIN again stated he had enough evidence at that moment to read them all their Miranda Rights (See

EXHIBIT 3 September 13, 2013 Hearing Pages 14-18). The Court should note that COLIN however failed to take any corrective or administrative actions against those involved and in fact proceeded as if a crime had not taken place and allowed TESCHER, SPALLINA and TED to continue to be fiduciaries and counsel in the proceedings and forced Eliot and others to spend years attempting to remove them through pleading after pleading evaded by COLIN who should have removed them and instantly disqualified himself once he discovered the Fraud in and on his court committed by his appointed Fiduciaries, Counsel and involving him and his employees directly.

23. COLIN further failed to inform this Court of the crimes related parties to this Action were involved in in his court and instead began a two year denial of due process and procedure and retaliation against Eliot who was exposing the crimes of his court, while he was mandated under Judicial Canons to disqualify on his own initiative due to his direct involvement as a material and fact witness to the criminal acts that took place in and on his court that were committed by his appointed Officers and Fiduciaries, attorneys at law, TESCHER, SPALLINA and TED and other retained counsel, MANCERI and PANKAUSKI.

24. COLIN also acted outside the color of law as he could not investigate his own court, himself, his court appointed fiduciaries and officers without exuding the Appearance of Impropriety and Judicial Canons require mandatory disqualification in such situations, yet he hung on as long as he could despite numerous attempts to remove him and force disqualification on his own initiative and instead choose a day after denying Eliot's Petition for Disqualification to instead Recuse himself Sua Sponte on May 19, 2015 from six cases relating to the Bernstein family.

25. That the law firm of Tescher & Spallina, PA used Simon Bernstein POST MORTEM to close the Estate of Shirley in January 2013 where Simon who died on September 13, 2012 and was dead for four months closed the Estate of Shirley. At no time prior to Simon closing Shirley's estate while dead did TESCHER and SPALLINA who were acting as his counsel while he was dead notify the Florida probate court that Simon had passed away. At least there is no proof or record in the probate court that shows COLIN was so notified by Tescher & Spallina.

26. That when Simon died no Successor Personal Representative for Shirley's Estate was legally chosen and instead TESCHER, SPALLINA and TED used Simon to close Shirley's Estate as they needed for Simon to appear alive at the time of the closing of Shirley's Estate in order to attempt to then have Simon (while appearing alive) fraudulently change Shirley's Irrevocable Trust Beneficiaries that were set in stone two years earlier upon her death on December 08, 2010.

27. A fair review of the evidence thus far shows this complex scheme was created and designed in order for TESCHER, SPALLINA, TED et al. to seize Dominion and Control of the Estates and Trusts of Simon and Shirley Bernstein and then begin to steal assets of the estates and trusts, including through this secreted insurance scheme before this Court, while they breached fiduciary duties and law and denied beneficiaries access to information and accounting for any of the assets, all in violation of a mass of Probate Rules and Statutes and felony criminal laws and resulting in a mass of civil torts against beneficiaries and creditors and all allowed to continue through the closed eyes of COLIN.

28. That upon the resignations of TESCHER and SPALLINA after it was admitted and proven that their law firm committed fraud and forgery on the court and there were admissions to the Palm Beach Sheriff of intentionally and with scienter alteration of Shirley's Trust Document,

COLIN allowed them as their last act to transfer Trusteeship in the Florida Simon Trust to TED, despite COLIN knowing they acted as TED'S counsel to commit the frauds that directly benefited TED. COLIN'S acts can only be seen as an effort to continue the cover up of the crimes committed in his court by allowing TED to continue to breach fiduciary duties and deny documents, records and accountings from beneficiaries.

29. Continuing a Pattern and Practice of Fraud, simultaneous and in connection with the frauds in the Florida probate courts of COLIN and FRENCH were the illegal attempts by TESCHER, SPALLINA, TED and PAMELA SIMON to get the HERITAGE insurance proceeds initially converted illegally outside of the true and proper beneficiaries of the Estate and Trusts or LASALLE, with SPALLINA even fraudulently impersonating himself as Trustee of the institutional trust company LASALLE, the alleged Primary Beneficiary of the missing insurance policy at the center of this Action.

30. Attorney SPALLINA and his client TED continuing an alleged Pattern and Practice of Fraud then filed a death benefit claim with HERITAGE with SPALLINA who signed the death claim form as the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust (the Contingent Beneficiary alleged by Plaintiff of the missing insurance policy) which no Plaintiff or party working in concert with the Plaintiffs or any party who responded in this complaint have yet been able to provide to this Court or any court.

31. Numerous ancillary crimes were committed once Dominion and Control of the Estates and Trusts were seized and these crimes are under ongoing criminal investigations, including this insurance fraud scheme, with the primary suspects alleged to be the fiduciaries and counsel in the matters, including but not limited to, TED, ROSE, TESCHER, SPALLINA, PAMELA SIMON, MANCERI, SWERGOLD and now to be added COLIN and FRENCH.

32. TESCHER and SPALLINA were acting at the same time in many other conflicting capacities to fraudulently maintain complete control of the Estates and Trusts, including but not limited to: Alleged “Trustee” of the 95 Legally Nonexistent Unexecuted Trust when filing the death benefit claim; Counsel to TED as “Trustee” of the 95 Legally Nonexistent Unexecuted Trust, (prior to their falling out after the claim was denied and Adam Simon then replacing TESCHER and SPALLINA upon filing of this lawsuit, which according to Jackson National’s initial Answer (EXHIBIT 4) TED was advised by SPALLINA as his Counsel that he had no legal standing to file this lawsuit, “Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation...”); Alleged “Trustee” of LaSalle National Trust, NA; Co-Personal Representatives of the Simon Bernstein Estate; Co-Trustees of the Simon Bernstein Trust; Counsel to themselves as Co-Personal Representatives and Co-Trustees for Simon’s Estate and a Florida Simon Trust; Counsel to TED as alleged Successor Trustee of the Shirley Bernstein Trust; and, Counsel to TED as Successor Personal Representative to the Shirley Bernstein Estate.

33. Where TESCHER and SPALLINA then resigned (EXHIBIT 5) from the fiducial capacities listed above amidst admission in an ongoing investigation with Palm Beach County Sheriff Investigators (EXHIBIT 6) that they fraudulently altered and disseminated a Shirley Trust document and other documents and where many other dispositive documents and other records are under ongoing investigation at this time, including Wills and Trusts of both Simon and Shirley.

34. The insurer removed this lawsuit from the Illinois Circuit Court where it was originally filed to this Court and added Eliot as third party defendant, as the lawsuit had been secreted from Eliot despite claims from Plaintiffs that he is entitled to benefits.

35. The fact that the insurance carrier HERITAGE/JACKSON failed to produce a bona fide insurance policy is a liability to the carrier that should have caused them to remain in this lawsuit and the Court erred in allowing them to be dismissed prematurely. HERITAGE/JACKSON should be re-entered in the lawsuit by this Court enjoining them until such time that a bona fide policy is produced to this Court and they provide analysis of the law regarding LOST or MISSING insurance policies and the liabilities resulting from such loss of contract and demand they contact the Primary Beneficiary LASALLE and notify them of the claim.

36. There were no conflicting “claimants” to the proceeds as suggested by Plaintiffs as Eliot never filed a claim on his or anyone else’s behalf with the insurer HERITAGE and the insurer misled the Court that there was a claimant dispute over policy proceeds when interpleading their funds and did not correctly notify the Court that a fraudulent death benefit claim had been made by SPALLINA that was denied. When HERITAGE could not produce a policy with contracted values to be paid to the Court they paid instead an amount they claim represents the nonexistent policy amount but cannot prove this amount to be the policy amount due. Plaintiffs similarly have tried to restyle their pleadings to claim that there was a claimant dispute but have filed a Breach of Contract Lawsuit for the failure of the carrier to pay the Spallina fraudulent death benefit claim made.

37. That discovery needs to be expanded for the insurance carrier to contact the Primary Beneficiary LASALLE before any payment can be made to any alleged contingent beneficiary or to the Estate or any party.

38. Additionally, it took over a year and half for Eliot to get Judge COLIN to allow counsel to represent the Estate's potential interest in this lawsuit, which was blocked by the fiduciaries and their counsel, TED, SPALLINA, TESCHER et al. acting in conflicts of interest and through fraud to deny such Intervenor intervening in these matters.

39. Finally, documents have been secreted from this Court, the beneficiaries and others, for over two and half years making discovery almost impossible. The need for further discovery is essential in this lawsuit and the Florida estate and trust cases to determine the facts in this matter.

40. TED'S legal standing and qualifications as a legitimate Trustee are challenged in the Florida estate and trusts cases and until they heard and it determined if he is now qualified and has standing, discovery is being blocked due to TED'S alleged fiduciary roles and his continued breaches for failure to investigate the crimes committed by his former counsel or provide information to beneficiaries to investigate.

41. The evidence submitted by Plaintiffs is disputed and does not support Plaintiffs own motion that Simon Bernstein intended the Contingent Beneficiary to be the 95 Legally Nonexistent Unexecuted Trust. In fact, the 95 Legally Nonexistent Unexecuted Trust is only an alleged Contingent Beneficiary and thus should not be paid as Plaintiffs admit that LASALLE is the Primary Beneficiary and no one has proven that it is not a viable beneficiary that should be paid before any Contingent Beneficiary would be considered.

42. TED is being petitioned to be removed in the Florida probate court as Successor Personal Representative of Shirley's Estate, alleged Successor Trustee of Simon's Trust and Successor Trustee of Shirley's Trust, as he is not now qualified to be Trustee for a multitude of reasons, including but not limited to: breaches of fiduciary duties; conflicts of interest; adverse interests; alleged violations of state and federal laws under ongoing investigations; the fact that

the language in the Florida Simon Trust TED alleges to be trustee of, precludes him from such fiduciary role, as the Successor Trustee cannot be related to the issuer (his father Simon) and TED is considered PREDECEASED for all purposes of the Florida Simon Trust; the fact that it was TED'S former attorneys at law TESCHER and SPALLINA and their law firm members, who were acting as TED's counsel committed a series of crimes to benefit their client and business associate TED. Even if TED were the Successor Trustee of the 95 Legally Nonexistent Unexecuted Trust, TED's failure to take any action regarding SPALLINA'S fraudulent insurance claim would be cause for TED to be removed see (EXHIBIT 7).

43. TED has already acted with his counsel in this lawsuit to block the estate/trust beneficiaries in Florida from being represented in this matter and acted in his own self-dealing best interests at the expense of the estate/trust beneficiaries, which is cause for his instant removal in these matters as alleged Trustee of the 95 Legally Nonexistent Unexecuted Trust (EXHIBIT 8).

44. O'CONNELL, the newly appointed Successor Personal Representative/Executor of the Simon Estate and Intervenor in this lawsuit has filed an affirmative defense (EXHIBIT 9) that claims that TED is acting as an illegal and not valid alleged Successor Trustee of the Simon Bernstein Trust in Florida, based on the fact that the language in the alleged Simon Trust precludes the Successor Trustee from being a related party to the issuer and thus TED as Simon's son is not a valid Trustee and also TED is considered predeceased for all purposes of the trust.

45. TED has admitted in his deposition that despite having alleged his father may have been murdered and contacting and opening a Sheriff investigation and Coroner Autopsy that TED did not feel there was any need to notify this Court or the insurance carrier that his father

may have been murdered, which could materially affect the payout of any proceeds. (See Intervenor Response to Summary Judgement EXHIBIT A – TED Deposition Pages 127-134.)

46. The primary beneficiary LASALLE and/or its successor has not been contacted by the life insurance carriers or the Plaintiffs and thus again further discovery is needed as to what happened to LASALLE and what the terms of the VEBA trust they acted as Successor Trustee for that was beneficiary of the policy and what happened upon the alleged dissolution. Movant David Simon's affidavit claims that he dissolved a VEBA trust but he was not the Trustee of LASALLE who would have had legal obligations to dissolve the VEBA and distribute any assets held by it to the plan participants according to the VEBA trust instrument, which again has not been produced to this Court by Plaintiffs who maintained the trust document at their offices.

47. The Contingent Beneficiary according to the insurance parole evidence is not the 95 Legally Nonexistent Unexecuted Trust but instead the Simon Bernstein Trust, NA and this contradiction remains disputed. The only evidence produced by Plaintiffs contrary to the records of the carrier stating the Simon Bernstein Trust NA is an affidavit produced by a Jackson National Insurance Company executive stating that the name of the Contingent Beneficiary was a mistake but where the insurance company produced NO legally existent policy to prove such claim showing the policy beneficiary and where SANDERS statements are made in conflict as the carrier has an interest in having this case resolved quietly as it has LOST an insurance policy on the life of an insured and the liabilities from potential beneficiaries could be enormous.

48. The "drafts" of the alleged 95 Legally Nonexistent Unexecuted Trust prove that there is no legally executed trust that allows Plaintiff to have standing in these matters and have no legal basis to attempt to act as a contingent beneficiary. The "drafts" while alleged to have been done

by Hopkins and Sutter law firm before they were acquired by Foley & Lardner, LLP are suspiciously missing any law firm markings to identify their work.

49. Each of the "Consenting Children" have conflicted interests with their own children in these matters as if this Action is successful each child will receive 1/5th of the missing policy benefits and if unsuccessful in this Action all of them will receive nothing from the missing policy. If the estate is successful in this Action and the beneficiaries are determined to be Simon's grandchildren again the children will get nothing. The beneficiaries of the Estate and Trusts of Simon Bernstein are all in question in the probate court due to the frauds committed by TED'S former counsel and former fiduciaries of the Estate and Trusts of Simon Bernstein, TESCHER and SPALLINA. Finally, the grandchildren may not be beneficiaries in Simon's Estate either as the dispositive documents have been challenged and have already been found by Governor Rick Scott's Notary Public Division to have been improperly notarized and they are alleged fraudulent and under ongoing investigations and validity hearings were petitioned for but remain unheard by COLIN after two years making it impossible to move forward without the questions of validity and construction heard.

50. That it is alleged that Simon signed Dispositive Documents a 2012 Will and Amended and Restated Trust but those documents have also been legally challenged and remain in dispute and under investigation.

51. Further, it is unknown who the beneficiaries LASALLE, the primary beneficiary, is mandated to pay under the trust they operate under. The beneficiary remains disputed and unknown at this time, even according to the Court's recent Order denying Eliot's claim for emergency interim distribution until resolution of the beneficiaries is determined.

WHEREFORE, Eliot I. Bernstein, Pro Se Third party defendant, respectfully prays for an Order denying Plaintiffs' Summary Judgement motion in its entirety to Count I & II, dismissing the Plaintiffs' claims if appropriate, Ordering further Discovery as requested, ordering sanctions or a hearing on sanctions against Plaintiffs if appropriate, and for such other and further relief as this Court deems just and proper.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct.

Note: All URL'S contained herein are hereby incorporated by reference in entirety herein.

DATED: June 08, 2015

/s/ *Eliot Ivan Bernstein*
Third Party Defendant/Cross Plaintiff PRO SE
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
Telephone (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

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.

/s/ *Eliot Ivan Bernstein*
Third Party Defendant/Cross Plaintiff PRO SE
Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
Telephone (561) 245-8588
iviewit@iviewit.tv
www.iviewit.tv

EXHIBITS

1. SPALLINA LETTER TO HERITAGE TO PAY DEATH BENEFIT TO TESCHER & SPALLINA PA LAW FIRM TRUST ACCOUNT. PAGE 11, BULLET NUMBER 5.

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

2. APRIL 09, 2012 PETITION FOR DISCHARGE (FULL WAIVER)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121024%20Petition%20for%20Discharge%20NOTE%20signed%20April%2009%202012%20not%20filed%20until%20October%2024%202012%20COMMENTS.pdf>

3. SEPTEMBER 13, 2013 HEARING - COLIN DISCOVERS FRAUD UPON THE COURT - PAGES 14-18

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130913%20TRANSCRIPT%20Emergency%20Hearing%20Colin%20Spallina%20Teschher%20Ted%20Manceri.pdf>

4. JACKSON NATIONAL ANSWER AND COUNTER COMPLAINT (PAGE 8)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130626%20Jackson%20Answer%20to%20Complaint%20and%20Counterclaim%20and%20Third%20Party%20for%20Interpleader.pdf>

5. TESCHER AND SPALLINA RESIGNATION LETTER

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2014014%20Teschher%20Spallina%20Manceri%20Resignation%20Letters%20and%20Withdrawal%20as%20Counsel%20and%20Executors.pdf>

6. SHERIFF REPORTS (PAGE 6 OF 51)

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140912%20Sheriff%20and%20Coroner%20Reports.pdf>

7. TED DEPOSITION STATEMENT REGARDING SPALLINA ACTING AS TRUSTEE (PAGES 35-37)

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

8. ATTORNEY AT LAW PETER FEAMAN LETTER TO O'CONNELL REGARDING ALLEGED MISCONDUCT OF TED AND ROSE IN THE ILLINOIS INSURANCE LITIGATION.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O%27Connell.pdf>

9. O'CONNELL AFFIRMATIVE DEFENSE THAT TED IS NOT A LEGALLY VALID TRUSTEE.

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/O%27Connell%20Ted%20is%20not%20Valid%20Trustee%20in%20Simon%20Trust%20Simon%20Estate%20Answer%20and%20Affirmative%20Defenses%20Shirley%20Trust%20Case.pdf>

10. TED'S DEPOSITION - EXHIBITS 1, 2 AND 23 (SIMON BERNSTEIN 2000 INSURANCE TRUST DATED AUGUST 15, 2000) AND TESTIMONY PAGES 37-53. 82-87

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

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
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SIMON BERNSTEIN IRREVOCABLE)
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Plaintiff,)

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HERITAGE UNION LIFE INSURANCE)
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FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
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ELIOT IVAN BERNSTEIN,)

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Case No. 13 cv 3643
Honorable John Robert Blakey
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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.)

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 1/5th 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 policy¹.

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)

¹ 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

² 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 motion³ 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

³ 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 Hospital⁴ 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

⁴ 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 Order⁵.

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 claim⁶ 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

⁵ COLIN Recusal Order

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

⁶ 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 denial⁷ 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

⁷ 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 claim⁸, 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, LLP⁹ 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

⁸ 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>

⁹ 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 Trust¹⁰ 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.

¹⁰ 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, 2015¹¹ from six cases after his denial of Eliot's Petition for Disqualification¹² as "Legally Insufficient" on May 18, 2015¹³, 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 cases¹⁴ of the Bernstein family.

¹¹ 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>

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

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

¹⁴ 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 Simon¹⁵ 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.

¹⁵ 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 contract¹⁶.

DATED: June 08, 2015

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

2753 NW 34th St.

Boca Raton, FL 33434

Telephone (561) 245-8588

iviewit@iviewit.tv

www.iviewit.tv

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.

¹⁶ TED Deposition Pages 116-118

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

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

2753 NW 34th St.

Boca Raton, FL 33434

Telephone (561) 245-8588

iviewit@iviewit.tv

www.iviewit.tv

**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.)

Third-Party Defendants)

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

Intervenor.)

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

**THIRD-PARTY DEFENDANT ELIOT I.
BERNSTEIN'S MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGEMENT**

Filers:

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

_____ /

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POINT 1: BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.

- A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF.

- B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.

- C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE

TABLE OF AUTHORITIES

- 1. 735 ILCS 5/8-201
- 2. FRCP 56
- 3. *Anderson*, 477 U.S. at 249
- 4. *Lindsey vs. Sears Roebuck and Company* , 16 F.3d 616, 618 (5th Cir. 1994).
- 5. *Little v . Liquid AirCorp.*, 37 F.3d 1069, 1975 (5th Cir. 1994) (en banc)
- 6. *Eastman Kodak v. Image Technical Servs., Inc*, 504 U.S. 45 1, 45 658 (1992);
- 7. *Jones v. Royal Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4¹Dist. 1976),
- 8. *Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593);
- 9. *Reynolds v. First National Bank*, 279 Ill. App. 581)
- 10. *(lyfaley v. Burns*, 6 Ill. 2d 11, 126N.E.2d 695
- 11. *Lytle v. Household lllfg., Inc.*, 494 U.S. 545, 554-555, 110 S.Ct. 1331, 108 L.Ed.2d 504 (1990).

12. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986).
13. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006);
14. *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).
15. *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983).

PRELIMINARY STATEMENT

For the reasons herein and because of the genuine multiple issues of material fact and need for further discovery raised by Plaintiffs' own filings, the responses herein on Summary Judgment, the counterclaims made herein and all of the documentary evidence and exhibits to date, Plaintiffs' Amended Motion for Summary Judgment must be denied at this stage of litigation. Presented before this Court is an Amended Motion for Summary Judgment brought by Plaintiffs Ted Bernstein, Pamela Bernstein-Simon, Jill Bernstein-Iantoni, and Lisa Bernstein-Friedstein who added themselves as Plaintiffs after the action was first filed alleged on behalf of the 1995 Simon Bernstein Trust. This action was commenced on April 05, 2013 in the Illinois Circuit court several months after the passing of Simon Bernstein on September 13, 2012. At the time of Simon Bernstein's passing in September of 2012, the Estate of his wife, Shirley Bernstein who predeceased Simon Bernstein was still open and pending before Judge Martin Colin in the Florida Probate Court of Palm Beach County. Ted Bernstein, Pam Bernstein Simon, Jill Bernstein-Iantoni and Lisa Bernstein-Friedstein are natural children of Shirley and Simon Bernstein along with Third-party Defendant Eliot I. Bernstein, herein.

At the time of Simon Bernstein's passing, Ted Bernstein made comments at the Hospital where he passed suspecting the possible murder of Simon Bernstein. Ted Bernstein took action with the Coroner's Office and was seeking an autopsy of Simon Bernstein on or about the time of his passing and ultimately obtained the involvement of Palm Beach County Sheriff authorities

regarding the circumstances of Simon Bernstein's death, which resulted in police authorities arriving at the home of Simon Bernstein in the early morning of his passing. See Third-party Defendant Eliot I. Bernstein Answer and Cross Claim Par 18 (i)(a) citing and linking to Eliot Bernstein Emergency Motion to Judge Colin on May 2013 Florida Probate Court, Section III- Post Mortem Autopsy Demand and Sheriff Department Investigation of Allegations of Murder. The alleged policy at issue before this Court which has never been produced or presented and thus not proven involves the deceased Simon Bernstein.

Yet, in the short weeks after his passing and with unsettled questions as to the actual cause of death of Simon Bernstein existing, documentary evidence obtained months later shows that attorney Robert Spallina was seeking payment of a claimed policy's proceeds from Heritage Union Life while acting and being addressed by Heritage as the Trustee of the La Salle National Trust, N.A., which is shown by documentary evidence obtained months later to be the alleged Primary Beneficiary of an alleged policy involving Simon Bernstein at the time of his death, this fact has not been challenged by any party.

Somehow, Heritage apparently never confirms that attorney Spallina has or had any authority to act as Trustee of the La Salle National Trust, N.A., and no document or record has ever been brought forward in this action or elsewhere to show attorney Spallina was ever a Trustee of the La Salle National Trust, N.A. Mysteriously, on or about October 04 2012 again with open questions about the actual cause of death of Simon Bernstein outstanding, attorney Spallina then diverts to attempt to claim proceeds from Heritage now acting as the Trustee of the 1995 Simon Bernstein Trust, which also has never been produced or presented in writing in this action by submitting a claim for death benefits. On or about Oct. 19, 2012, documentary evidence of email communications between attorney Spallina, Ted and Pam Bernstein showing

the parties acting in concert to find a “solution” to missing trusts and policies. Days later on or about Oct. 24, 2012, attorney Tescher and Spallina’s offices begin filing documents in the Florida Probate Court of Judge Colin later determined to be fraudulent on many grounds including the fact that the attorneys were attempting to use an alleged sworn statement of now deceased Simon Bernstein allegedly sworn to months before his death to now close the Estate case of Shirley Bernstein acting as the Personal Representative while deceased. (See Response to Statement of Facts, See Footnote 3, Disqualification Motion.)

While the fraud is permitted to continue in the Florida Probate Court of Martin Colin who has also never held a hearing to determine a valid Trustee in those cases, attorneys Tescher & Spallina continued to communicate with the Plaintiffs on ways to obtain the proceeds from the alleged policy again while open questions and investigations remain as to the exact cause of death of Simon Bernstein all the while attorneys Spallina and the Plaintiffs never communicate to Heritage or any carrier that Simon Bernstein may have passed because of possible murder. These parties acting in concert specifically communicate on keeping a 2000 Trust of Simon Bernstein done by the law firm Proskauer Rose out of the insurance actions and this lawsuit as this Trust allegedly determines Pam Bernstein to be “predeceased” under the Trust and thus not able to claim proceeds, which is also the result of what would happen if the alleged policy proceeds were to flow into the Estate of Simon Bernstein due to a Will-Trust by Simon Bernstein that says that both Ted Bernstein and Pam Bernstein Simon are predeceased and will not gain benefits directly under the Estate-Trust.

From the time of Simon Bernstein’s passing and continuing for many months later attorneys Spallina and Tescher and Ted Bernstein and others are all withholding documents and records and property from Third-party Defendant Eliot I. Bernstein herein while also holding up

inheritances to Eliot Bernstein and his family and children. When the action is first filed in the Illinois courts by Ted Bernstein on behalf of the 1995 Simon Bernstein Trust that attorney Spallina attempted to act as Trustee of while making the death benefit claim to Heritage weeks before (that was then subsequently Denied by the carrier) attorney Spallina claims Ted Bernstein has no authority to file a breach of contract lawsuit against Heritage and heated exchanges take place by email between attorney Spallina, Plaintiffs and their attorneys the Simon Law Firm. Heritage-Jackson itself files an Answer in this Action which itself raises genuine material issues of fact preventing summary judgment as to what the actual policy is, where the policy is, what the policy says, what the terms and conditions of the policy are, what the death benefit actually is, what riders were attached, who the beneficiaries are and whether Ted Bernstein is a proper Trustee, if the trust exists and who is the Trustee of any such Trust that claims to be the beneficiary.

Meanwhile in this action, neither Heritage nor Plaintiffs seek to contact the party their own documents and filings show as the Primary Beneficiary being La Salle National Trust, N.A., which itself is a basis to deny summary judgment to Plaintiffs. Ultimately in this action neither Ted Bernstein nor any Plaintiff is able to find or produce any actual policy nor any actual Trust document and thus are relying solely upon parol evidence and statements barred by the Illinois Dead Man Statute. Yet, even such evidence even if admissible still lacks any clear and convincing evidence as to the actual policy, actual policy terms, conditions, riders, history nor any Trust and terms thereunder under which Plaintiffs can claim proceeds. On or about a year after the action is filed one David Simon, husband to Plaintiff Pam Bernstein Simon who is also brother to Adam Simon and partner in the The Simon Law Firm, the attorneys filing the complaints and documents in this action, magically has a revelation that he can prove an alleged

Trust allegedly by Data files on his computer that make no sense and do not match the dates alleged and all of which beg the question a reasonable juror could ask which is why he forgot he could prove the Trust for that entire year and why he and his brother never alleged those facts in any of the original and amended complaints in any event.

Thus, for all the genuine issues of material fact raised by Plaintiffs' own filings, raised by the Answer of Heritage-Jackson, raised by Third-party Defendant and Counterclaimant Eliot I. Bernstein's Answer and Counterclaim, raised by Third-Party Defendant and Counterclaimant Eliot Bernstein's Response and Opposition herein and for the specific areas of Discovery not produced and the absence of necessary and material parties such as La Salle National Trust NA or its successors, Plaintiffs' Amended Motion for Summary Judgement must be denied in its entirety at this stage of litigation.

PROCEDURAL HISTORY

The present motion before the Court is an Amended Motion for summary judgment by Plaintiffs as to Counts I and II of the Amended Complaint. This comes after the claims by Plaintiffs were originally brought in the State Court in Cook County, Illinois and the action was then removed to this federal district court where it was previously heard before Hon. District Judge Amy St. Eves. This motion by Plaintiffs is now before this Court at a time when related actions in the Florida Probate Court are in limbo after Eliot I. Bernstein, Third-party Defendant and Counterclaimant herein, filed a detailed, specified motion for mandatory Disqualification of Florida Probate Judge Martin Colin as a necessary material and fact witness after multiple fraudulent filings in the Florida Courts by the offices of attorneys Tescher & Spallina emerged in the Florida Courts. Attorneys Tescher and Spallina, by clear documentary evidence, were clearly working and communicating with the Plaintiffs during the relevant times of this federal action.

Florida Probate Court Judge Martin Colin Denied the motion for mandatory disqualification as being “legally insufficient” and then, within 24 hours, issued a Sua Sponte Recusal Orders from all six Florida cases but then acted upon those Florida cases with other Florida Judges ultimately resulting in the Florida cases being transferred to one Hon. Judge Coates who was a Partner at the Boca Raton office of the Proskauer Rose law firm that was directly involved with one of the Trusts implicated in this Illinois federal action. Now, even Judge Coates has recused himself from the Florida proceedings leaving the present Florida state matters in limbo. Further, this motion for Summary Judgment by Plaintiffs comes as there are continued and open investigations into the fraudulent document filings in Florida, the fraudulent insurance claim filed by Spallina, stolen estate and trust Properties, illegal Real Estate Sales and continue while Third-party Defendant and Counterclaimant Eliot I. Bernstein has sought leave to file a motion in this action to continue depositions of Ted Bernstein amongst others including Florida Judge Martin Colin, a motion which has yet to be filed. Because of the multiple genuine issues of material fact that exist and the need for further discovery, Plaintiffs’ Amended Motion for Summary Judgement must be denied at this time.

ARGUMENT: POINT 1 - BECAUSE MULTIPLE GENUINE ISSUES OF MATERIAL FACT EXIST, PLAINTIFFS HAVE FAILED TO MEET THEIR BURDEN AND PLAINTIFFS MOTION FOR SUMMARY JUDGEMENT MUST BE DENIED.

Plaintiffs seek summary judgment on Counts I and II of their Amended Complaint. (Dkt. No. 73) However, Count I is a breach of contract claim against Heritage Union Life Insurance Company that interpleaded the proceeds of an insurance policy and was dismissed from the case. (Dkt. No. 101) Plaintiffs provide no authority for the proposition that they may obtain a judgment against a party who is no longer a defendant. Summary judgment must be denied on Count I, which is moot. Heritage’s (and-or successor Jackson) absence from this action at this

stage of litigation is improper and the Answer filed by Jackson itself raises genuine issues of material facts as to Count II. Ironically, Plaintiffs' have not moved for summary judgment on Count III of the Amended Complaint and thus, this Memorandum does not address this claim at this stage of litigation.

A. PLAINTIFFS HAVE FAILED TO MEET THE CLEAR AND CONVINCING STANDARD OF PROOF

When seeking summary judgment, the movant bears the initial responsibility of demonstrating the absence of an issue of material fact with respect to those issues on which the movant bears the burden of proof at trial. *Lindsey vs. Sears Roebuck and Company*, 16 F.3d 616, 618 (5th Cir. 1994). If the movant fails to meet its initial burden, the motion must be denied, regardless of the non-movant's response. *Little v. Liquid AirCorp.*, 37 F.3d 1069, 1975 (5th Cir. 1994) (*en banc*). With respect to the Plaintiffs' current Amended Motion for Summary Judgment presently before the Court, it is absolutely clear that multiple issues of genuine fact exist preventing summary judgment at this stage of the litigation and that a reasonable juror could come to multiple conclusions against the moving party and thus, Plaintiffs' motion must be denied.

In determining whether a genuine issue exists for trial, the Court must view the evidence introduced and all factual inferences from the evidence in the light most favorable to the nonmovant. *Eastman Kodak v. Image Technical Servs., Inc.*, 504 U.S. 451, 456 (1992); *Gremillion v Gulf Coast Catering Co.*, 904 F.2d 902, 92 (5th Cir. 1990); see also *Bodenheimer v. PPG Indus., Inc.*, 5 F.3d 955, 956 (5th Cir. 1993). The action before the Court involves Plaintiffs' claims to proceeds allegedly under an Illinois insurance policy and thus, the Illinois state law of insurance contracts is at issue. In construing an insurance policy, the court must

ascertain the intent of the parties to the contract. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108, 607 N.E.2d 1204, 1212 (1992).

In *Royal Jones v Builders of Bloomington Normal, Inc.*, 39 Ill. App. 3d 489 (4¹Dist. 1976), the plaintiff sought to prove the existence of a trust agreement and, failing that, sought to prove the existence of a resulting trust. The court there described the applicable burden of proof as follows:

The proof necessary to establish the existence of a trust by parol evidence has been phrased in various ways: The proof must be 'clear and convincing' (*Williams v. Anderson*, 288 Ill. App. 149, 5 N.E. 2d 593); 'unequivocal and unmistakable' (*Reynolds v. First National Bank*, 279 Ill. App. 581); even so strong, unequivocal and unmistakable as to lead to but one conclusion. (*Ivafaley v. Burns*, 6 Ill. 2d 11, 126 N.E.2d 695). A similar high degree of proof is necessary to establish the terms of the trust, such as the identity of the beneficiaries, and the nature and extent of their interests. *Ivafaley v. Burns*.

In the present action, there is no contract which has been produced, there is no policy which has been produced, and the Plaintiffs' own pleadings, documentary evidence and statements and exhibits before this Court show that one major necessary party, La Salle National Trust, N.A., has never even been contacted by Plaintiffs at least according to the submissions before this Court and clearly have not been brought in to this action as a party. Thus, one of the major necessary parties in this action, La Salle National Trust NA, who by the way is deemed a Primary Beneficiary according to Plaintiffs' own documents and Heritage/Jackson and has never been heard before this Court and this alone should defeat Plaintiffs' present motion for summary judgment.

Another necessary party, Heritage and or Jackson as successor, by their own Answer and Counterclaim before this Court, has alleged Ted Bernstein is not a proper Trustee and raises material questions of fact itself as to the actual policy, policy terms, and also admitting that no actual policy has been produced. Yet, this necessary party has presently been dismissed from this action and Third-party Defendant and Counterclaimant Eliot Bernstein asserts Heritage-Jackson

should be brought back into this action by this Court and thus Summary Judgment to the Plaintiffs is inappropriate at this stage of litigation and must be denied.

Duties of an insured are controlled by the terms and conditions of its insurance contract. *American Country Insurance Co. v. Bruhn*, 289 Ill. App. 3d 241, 247, (1997). In construing an insurance policy, the primary function of the court is to ascertain and enforce the intentions of the parties as expressed in the agreement. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 108 (2001). Yet, as stated, the actual terms and conditions of the contract and policy are unknown as it has never been properly produced and thus summary judgment to Plaintiffs at this stage is impossible and must be denied. Even by attempting to prove a claim to proceeds by parol evidence, Plaintiffs wholly fail to meet their burden of demonstrating the absence of genuine material issues of fact by clear and convincing evidence and summary judgment must be denied.

According to his Deposition, Ted Bernstein, purported Trustee of the 1995 Trust, has never seen an executed copy of the document. (See Response Exhibit 10, 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 Response Exhibit 10, pp. 24:13 -25:3) 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 but also a party shown to be working in common with Ted Bernstein at certain stages and even represented Ted Bernstein, made an application for the Policy proceeds on behalf of Plaintiffs, purportedly as trustee of the 1995 Trust after communications from Heritage to Spallina as the Trustee of the La Salle Trust with no authority shown by Spallina to act or be such Trustee and with La Salle never being contacted or brought in as a party. (See Response

Exhibit 10, pp. 35:12 - 36:3 and Dep. Exhibit 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 Response Exhibit 10, pp. 35:12 - 37:3; Dep. Ex. 1).

According to Paragraphs 17-21 of the Jackson Counterclaim and Third Party Complaint submitted with its Answer herein, with Jackson as the alleged successor in interest to Heritage as follows:

“17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating: “In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.”

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or the "Simon Bernstein Trust, N.A.", as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or

Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.”

None of the filings by Plaintiffs satisfactorily answer these questions such that there is an absence of genuine issues of material fact by clear and convincing evidence entitling Plaintiffs to summary judgement. Likewise, the Trust and Trust documents have not been produced and are not proven by any standard of evidence and certainly not by a clear and convincing standard of evidence and therefore the very authority for Plaintiffs to claim rights to the proceeds of any insurance contract has not been proven and material issues of fact exist preventing summary judgment to Plaintiffs at this time.

B. SIGNIFICANT PROBATIVE EVIDENCE HAS BEEN ADDUCED FROM WHICH A JURY COULD REASONABLY FIND FOR THE NON-MOVING PARTY, ELIOT I. BERNSTEIN, AGAINST THE PLAINTIFFS THEREBY DENYING SUMMARY JUDGMENT AT THIS STAGE OF LITIGATION.

Plaintiffs’ assertions before this Court is that the VEBA dissolved in 1998 and LaSalle was no longer the owner of the policy but however records exist with Heritage (Movant Exhibit 36) showing as recent as 2010 with La Salle National Trust, N.A., still as the Primary Beneficiary. Yet, Plaintiffs have never contacted La Salle since the time of passing of Simon Bernstein or at least never brought any proof forward showing La Salle as Primary Beneficiary has ever been contacted and La Salle was not made a party to this action. Meanwhile, there is proof in the Record that attorney Spallina was being contacted by Heritage as the Trustee of La Salle National Trust, N.A. (See correspondence by Heritage to Spallina, Response Exhibit 1, P.7) in the weeks after the passing of Simon Bernstein who passed under such suspicious circumstances that Plaintiff Ted Bernstein was seeking an autopsy through the Coroner, an independent autopsy and involved the local Sheriff authorities regarding the possible murder of Simon Bernstein while never advising or informing any Insurance Company or this Court of these facts.

Nowhere in the Record is there any proof brought forward to show attorney Spallina as a valid Trustee of La Salle and nowhere in the Record is there any explanation about how or why this occurred. There is proof in the Record, however, showing attorney Spallina communicating with Ted Bernstein in Oct. 2012 to find a “solution” to some of the alleged missing policy and trust problems days before filings made in Probate Court of Judge Martin Colin in Florida on Oct. 24, 2012 (See Response Exhibit 2). These filings are later determined to involve fraudulent notaries performed by a Paralegal/Notary Public employed by attorneys Spallina and his partner Donald R. Tescher, Esq. at Spallina & Tescher PA named Kimberly Moran who was arrested and convicted. Attorney Spallina later admitted to Palm Beach County authorities of being involved in fraud-forgery of at least one Trust document involving Shirley Bernstein’s Irrevocable Trust to fraudulently include Ted Bernstein’s family back into the trust and a subsequent motion for mandatory disqualification of Florida Probate Judge Martin Colin recently filed and already exhibited herein showed Judge Colin as a necessary material witness to other specified fraud document filings by attorney Spallina (and maybe Tescher) around that time. This mandatory disqualification motion of Florida Judge Colin ultimately results in a sua sponte recent Recusal from all cases by Judge Colin within 24 hours of denying the disqualification motion as legally insufficient.

Further, there is other proof in the Record that attorney Spallina and the Plaintiffs secreted and withheld from this Court evidence of a 2000 Trust by Proskauer Rose that also cut Ted Bernstein and Pam Bernstein Simon out of a claim to proceeds. Later on, a “different story” emerges about the policies and Trusts, where David Simon jumps in to the game a year after the original complaint was filed and then 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 law 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 Movant Exhibit 35, pp. 44: 12 -45:15; 46:22 -47:15)

Despite David Simon's late in the game “magical revelation and recollection” that he recalls having created the trust on his computer and having seen it after execution which is magically recalled over a year after the original complaint was filed by Plaintiffs, the Complaint filed by Adam Simon who is the brother to David Simon filed 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) It was only after this event that David and Adam purportedly found Plaintiffs' Exhibits 15 and 16. Yet, despite these late in the game magical revelations and recollections, still no original documents are produced, nothing but Sample policies produced, no documents prepared by law firms produced nor properly signed or executed while at the same time Plaintiffs are failing to inform the insurance carriers of the possible murder of Simon Bernstein, failing to contact La Salle or bring in La Salle National Trust, N.A., the Plaintiffs were attempting to secret and hide documents from this Court and other parties like the 2000 Proskauer Trust that cut out Ted Bernstein and Pam Simon, and massive fraud is unfolding in the Florida Probate Court where Judge Martin Colin who has allowed the fraud to continue for 2.5 years without conducting a hearing into who is the proper Trustee, if the Trusts and Wills of Simon are valid and now suddenly “Recused” from all cases within 24 hours of Third-party Defendant Eliot Bernstein filing a detailed, specified motion for mandatory disqualification claiming COLIN as a material witness and possible participant to the

fraud on the Court who acted outside his jurisdiction by failing to disqualify when he knew of his standing as witness as required by Judicial Canons and law for over two years.

A reasonable juror under these facts and records could fairly arrive at multiple conclusions including but not limited to the Plaintiffs are hiding evidence from this Court, the Plaintiffs may be involved in fraud by these filings, La Salle National Trust, N.A. who hasn't been contacted despite attorney Spallina acting as Trustee with no authority as the Primary Beneficiary, and further that the Plaintiffs have failed to meet their burden of proof.

"If fair-minded persons could draw more than one conclusion or inference from the facts, including one unfavorable to the moving party, a triable issue exists and the motion for summary judgment should be denied. It is only when undisputed facts are susceptible of but a single inference that the issue becomes one of law." *Kern's Estate v. Handelsman*, 115 Ill. App.3d 789, 793-94 (1983). Significant probative evidence must be adduced from which a jury could reasonably find for the non-movant. *Anderson*, 477 U.S. at 249.

Third-party Defendant Eliot Bernstein has adduced significant probative evidence from which a jury could reasonably find in his favor and all such conclusions mandate that summary judgment is denied at this time.

C. ILLINOIS DEAD-MAN STATUTE PREVENTS THE MAJORITY OF PROOF OFFERED BY PLAINTIFFS WHICH EVEN IF TRUE HAS NOT BEEN DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE

The relevant portion of the DMA states as follows:

In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability..

The DMA is an evidentiary rule banning testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent. *Gunn v Sobucki*, 216 Ill. 2d 602, 837 N.E. 2d 865 (2005) (upheld DMA); *Brown, Udell and Pomerantz, Ltd. v Ryan*, 369. The DMA applies to summary judgment proceedings and in federal diversity

cases where state law supplies the rule of decision. *Ball v. Kotter*, 2012 WL 987223 (U.S. Dist. Ct. N. D. Ill.), citing *Brown, Udell and Pomerantz, Ltd v Ryan*, 369 Ill. App. 3d 821, 861 N.E.2d 258 (1st D 2006); *Lovejoy Electronics, Inc. v. O'Berto*, 873 F.2d 1001, 1007 (7th Cir. 1989).

While Plaintiffs have wholly failed to satisfy their burden of proof by clear and convincing evidence, any of the proof in the form of affidavits and deposition testimony by Ted Bernstein and David Simon that comes close to answering some of the multiple genuine issues of material fact would be barred by the Dead Man statute. For these additional reasons Summary Judgment must be denied.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, Plaintiffs' motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered and leave granted to add parties such as La Salle National Trust, N.A., bring Jackson-Heritage back into the case and for such other and further relief as may be just and proper.

DATED: June 08, 2015

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

2753 NW 34th St.

Boca Raton, FL 33434

Telephone (561) 245-8588

iviewit@iviewit.tv

www.iviewit.tv

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.

/s/ Eliot Ivan Bernstein

Third Party Defendant/Cross Plaintiff PRO SE

Eliot Ivan Bernstein

2753 NW 34th St.

Boca Raton, FL 33434

Telephone (561) 245-8588

iviewit@iviewit.tv

www.iviewit.tv

Responses and Replies

[1:13-cv-03643 Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company](#)

ROWLAND

United States District Court

Northern District of Illinois - CM/ECF LIVE, Ver 6,1

Notice of Electronic Filing

The following transaction was entered on 6/8/2015 at 5:10 AM CDT and filed on 6/8/2015

Case Name: Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v. Heritage Union Life Insurance Company
Case Number: [1:13-cv-03643](#)
Filer: Eliot Ivan Bernstein
Eliot Bernstein
Document Number: [195](#)

Docket Text:

RESPONSE by Eliot Ivan Bernstein, Eliot Bernstein in Opposition to MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Jill Marla Iantoni, Lisa Sue Friedstein, Pamela Beth Simon, Ted Bernstein for summary judgment as to Count I of Claims to Policy Proceeds[148], MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Jill Marla Iantoni, Lisa Sue Friedstein, Pamela Beth Simon, Ted Bernstein for summary judgment *AMENDED MOTION*[153] (Attachments: # (1) Supplement Amended Response to Statement of Facts, # (2) Supplement Amended Memorandum of Law)(Bernstein, Eliot)

1:13-cv-03643 Notice has been electronically mailed to:

Adam Michael Simon asimon@chicago-law.com

Eliot Ivan Bernstein iviewit@iviewit.tv

Glenn E. Heilizer glenn@heilizer.com

James John Stamos jstamos@stamostrucco.com, dvasquez@stamostrucco.com

John M. O'Halloran joh@mcveyparsky-law.com

Kevin Patrick Horan khoran@stamostrucco.com, sberkin@stamostrucco.com

Michael Duane Sanders mds@pw-law.com, sjohnson@pw-law.com

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Document description:Main Document

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Electronic document Stamp:

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Document description:Supplement Amended Response to Statement of Facts

Original filename:n/a

Electronic document Stamp:

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Document description:Supplement Amended Memorandum of Law

Original filename:n/a

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