

**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 )

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

Counter-Defendant )

and, )

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

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

**Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trustee and  
Individually,  
Pamela B. Simon, Jill Iantoni, and Lisa  
Friedstein (“Movants or Plaintiffs”)**

**MOVANTS’ REPLY TO THE  
ELIOT BERNSTEIN’S  
STATEMENT OF ADDITIONAL  
FACTS**

Third-Party Defendants.	)
<hr/>	)
ELIOT IVAN BERNSTEIN,	)
Cross-Plaintiff	)
v.	)
TED BERNSTEIN, individually and	)
as alleged Trustee of the Simon Bernstein	)
Irrevocable Insurance Trust Dtd, 6/21/95	)
Cross-Defendant	)
and,	)
PAMELA B. SIMON, DAVID B.SIMON,	)
both Professionally and Personally	)
ADAM SIMON, both Professionally and	)
Personally, THE SIMON LAW FIRM,	)
TESCHER & SPALLINA, P.A.,	)
DONALD TESCHER, both Professionally	)
and Personally, ROBERT SPALLINA,	)
both Professionally and Personally,	)
LISA FRIEDSTEIN, JILL IANTONI	)
S.B. LEXINGTON, INC. EMPLOYEE	)
DEATH BENEFIT TRUST, S.T.P.	)
ENTERPRISES, INC. S.B. LEXINGTON,	)
INC., NATIONAL SERVICE	)
ASSOCIATION (OF FLORIDA),	)
NATIONAL SERVICE ASSOCIATION	)
(OF ILLINOIS) AND JOHN AND JANE	)
DOES	)
Third-Party Defendants.	)
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NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995, by Ted Bernstein, as Trustee, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, and Lisa Friedstein (“Movants” or “Plaintiffs”), by and through their undersigned counsel, and respectfully submit this reply to the Eliot’s Statement of Additional Facts.

**GENERAL OBJECTIONS AND MOTION TO STRIKE  
ELIOT'S RESPONSE TO STATEMENT OF FACTS  
AND ELIOT'S STATEMENT OF ADDITIONAL FACTS**

Eliot's response to movant's statement of facts fails to comport to the FRCP and the Local Rules, in that many of the responses are non-responsive to the facts alleged by movant and raise issues well outside the scope of this litigation and the jurisdiction of this court.

Eliot misuses his own statements of additional fact in the same manner by bringing up irrelevant matters outside the scope of this litigation and jurisdiction of this court. Eliot also uses most of his responsive "statement of additional facts" as extra pages of argument which belong in a memorandum of law. Most of the "additional facts" alleged are not facts at all but unsupported conjecture, opinion and legal argument, absent any citation to legal authority, declaration, affidavit or document submission.

To provide three examples, Eliot's Responsive Statement of Additional Facts includes the following:

" 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."

32. The Estate and Trust cases need to be settled on several levels before an estate 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 by Spallina.

"36. The Affidavits submitted in the Summary Judgment 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 (cite omitted) 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.

Because Eliot’s statement of additional facts run so far afield of the FRCP and Local Rules, and have no citations to a factual record or evidence, it is virtually impossible for Movants to determine what if any additional facts are buried in there that require a reply.

Suffice to say Eliot continues to disregard the Federal Rules of Civil Procedure, and the Local Rules despite having received Movants’ Notice to Pro Se Party Regarding Summary Judgment, and having been admonished by the court on several recent occasions when the court struck Eliot’s two prior attempts at filing his response to this motion, his Omnibus Motion for Urgent Emergency Federal Protection.

Eliot’s response contains footnote’s to apparent web addresses that he refers to in his Response, but none of that material is properly before the court as it was not filed in accordance with the Local Rules. Eliot burdens both movants and the court by asking them to search to his footnoted internet links in order to find his citations. For all the foregoing reasons, Movants request that the Court strike and disregard Eliot’s response to movants’ statement of facts, Eliot’s statement of additional facts, and Eliot’s citations to his internet record in their entirety.

#### **RESPONSE**

In the alternative movants’ respond to Eliot’s “statement of additional facts” as follows:

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.

Answer: Disputed. Neither the Insurer nor any other party but Eliot have disputed either the existence of the Policy or the liability of the insurer for the Policy Proceeds. No objections were raised when the court permitted the Insurer to deposit the Policy Proceeds, or when the Insurer was subsequently dismissed from the 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.

Answer: Disputed. Neither the Insurer nor any other party but Eliot have disputed either the existence of the Policy or the liability of the insurer for the Policy Proceeds. No objections were raised when the court permitted the Insurer to deposit the Policy Proceeds, or when the Insurer was subsequently dismissed from the litigation. The Specimen Policy and Policy records were reviewed and explained by the Insurer’s VP of Operations, Don Sanders in his Affidavit.

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.

Answer: Move to strike as this statement #3 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. Discovery was closed in open court and without objection.

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.

Answer: Move to strike. None of Statement #4 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, it is not a statement of fact. . Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s

third party claims when the court granted their motion to dismiss.

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.

Answer: Move to strike. None of Statement #5 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.

6. The Disqualification motion 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.

Answer: Move to strike. None of Statement #6 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is

evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.

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.

Answer: Move to strike, as statement #7 contains no statement of additional fact, but just argument regarding the state of Movants evidence. None of Statement #7 pertains in any manner to this motion but only to the Probate matters pending in Florida. Further, despite Eliot’s contention that “there is evidence of coordinated action between those attorneys and Plaintiffs”, Eliot fails to submit any such evidence. Without evidence or citations to a record, there is no statement of fact requiring a response.



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.

Answer: Move to strike, and statement #8 contains no statement of additional fact, but just argument regarding the state of Movants evidence.

8. 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.

Answer: Move to strike, and statement #9 contains no statement of additional fact, but just argument regarding the state of movants evidence.

9. 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 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 Judgment 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.

Answer: Move to strike, as statement #10 contains no statement of additional fact, but just argument regarding the state of movants evidence.

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 Judgment at this time.

Answer: Objection and Move to strike, as statement #11 contains no statement of additional fact, but just argument regarding the state of movants evidence. Without waving said objections, the Insurer did in fact serve Bank of America, NA as successor to LaSalle. Bank of America never asserted a claim and was dismissed from the litigation. Nothing prevented Eliot from notifying and serving LaSalle with this action.

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.

Answer: Objection and move to strike, as statement #12 contains no statement of additional fact, but just argument regarding the state of Movants evidence.

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

Answer: Objection relevance and Disputed. Eliot has provided no evidence that any such investigations into the cause of death of Simon Bernstein conducted by the medical examiner or local law enforcement resulted in any charges being brought or any determination that a homicide occurred. On Simon Bernstein's death certificate, after autopsy, the "probable manner of death" is listed as "natural"; the causes of death are (i) "myocardial infarct" and (ii) "severe arteriosclerosis". (Simon Bernstein Death Certificate, **Exh. 12** to Movants SoF). The Insurer never disputed its liability for the Policy Proceeds based on the cause of death of the insured.

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 Orders.

Answer: Move to strike. None of Statement #14 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s third party claims when the court granted their motion to dismiss.

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

Answer: Objection relevance and move to strike. Disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot’s third

party claims when the court granted their motion to dismiss.

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

Answer: Disputed. The Insurer’s Interpleader Complaint speaks for itself as to the reasons the Insurer determined there was a possibility of duplicate liability.

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.

Answer: Objection relevance and disputed. **Exh. 15** and **Exh. 16** which are two drafts of the Bernstein Trust Agreement are date stamped BT000002-BT000021, and were among the first documents produced to all parties pursuant Rule 26. No claim was paid by the Insurer, instead the Insurer filed an Interpleader Complaint.

17. 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.

Answer: Objection and move to strike, as statement #18 contains no statement of additional fact, but just argument regarding an alleged conflict that is unsupported with any citations to a factual record.

18. 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.

Answer: Objection and move to strike, as statement #19 contains no statement of additional fact, but just argument regarding an alleged conflict that is unsupported with any citations to a factual record.

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

Answer: Objection relevance and move to strike. Disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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.

Answer: Objection relevance and move to strike. Statement #21 is almost entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. The Insurer never made a distribution based on any claim to the Policy

Proceeds but instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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

Answer: Objection relevance and move to strike. Statement #22 is almost entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. Eliot has no standing to act on behalf of the 2000 Trust. No party has produced or submitted any evidence that the 2000 Trust was named a beneficiary on the Policy records.

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

Answer: Objection relevance and move to strike. Statement #23 is entirely argument has no citations to evidence or a record. Without waiving said objections, disputed. The Insurer never made a distribution based on any claim to the Policy Proceeds but



instead filed an interpleader action. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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.

Answer: Objection relevance and move to strike. Statement #24 is entirely argument has no citations to evidence or a record. Without waiving said objection, Movants established that Simon Bernstein Trust, N.A. was in fact a misnomer or abbreviation on the records of the insurer and that the true beneficiary contained on the beneficiary designation form received by the Insurer identified the beneficiary as the Bernstein Trust.

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.

Answer: Objection relevance and move to strike. Statement #25 is almost entirely argument. Undisputed that the statement from Don Sander cited above is contained in his Affidavit.

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.

Answer: Objection relevance and move to strike. Statement #26 is entirely argument and not a statement of additional fact.

27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015<sup>11</sup> from six cases after his denial of Eliot’s Petition for Disqualification<sup>12</sup> as “Legally Insufficient” on May

18, 2015 , 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.

Answer: Objection and move to strike. None of Statement #27 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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

Answer: Objection relevance and move to strike. None of Statement #28 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss.

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.

Answer: Objection relevance and move to strike. None of Statement #29 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Spallina and Tescher were dismissed from this litigation as third-party defendants to Eliot's third party claims when the court granted their motion to dismiss. None of the other persons have appeared in this litigation or have anything to do with it, and Eliot has provided no evidence to the contrary.

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 Simon 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.

Answer: Objection relevance and move to strike. None of Statement #30 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Alan Rose has never appeared as an attorney or party to this Illinois litigation.

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.

Answer: Objection, relevance. None of Statement #30 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Alan Rose has never appeared as an attorney or party in this Illinois litigation.

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.

Answer: Objection relevance and move to strike. None of Statement #32 pertains in any manner to this litigation but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. Statement #32 is also incomprehensible.

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.

Answer: Objection and move to strike. Statement #33 is entirely argument and not a statement of additional fact. Disputed. The Insurer did serve Bank of America as successor to LaSalle National Trust, N.A.

34. The matters need to be investigated by the carrier as a possible murder of Simon 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.

Answer: Objection relevance and Disputed. Eliot has provided no evidence that any such investigations into the cause of death of Simon Bernstein conducted by the medical examiner or local law enforcement resulted in any charges being brought or determination that a homicide occurred. On Simon Bernstein's death certificate, after autopsy, the "probable manner of death" is listed as "natural"; the causes of death are (i) "myocardial infarct" and (ii) "severe arteriosclerosis". (Simon Bernstein Death Certificate, **Exh. 12** to Movants SoF). The Insurer has never disputed its liability for the Policy Proceeds based on the cause of death of the insured.

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.

Answer: Objection relevance and move to strike. None of Statement #35 pertains in any manner to this motion but only to the Probate matters pending in Florida. Without evidence or citations to a record, there is no statement of fact requiring a response. The Insurer has not disputed the insurance policy or its liability thereunder.

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.

Answer: Objection and move to strike. Statement #36 is entirely argument and not a statement of additional fact. Eliot has no standing to raise the DMA as he is not a representative of the estate. (*See* Movant’s Reply Brief).



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.

Answer: Move to strike as this statement #37 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. This argument would be more appropriate in a discovery related motion, and in any case, Eliot has failed to make any effort to conduct prior to discovery cut off. Further, Discovery was closed in open court and without objection.

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

Answer: Move to strike as this statement #38 is entirely argument and not a statement of fact. No evidence is submitted by Eliot. This argument would be more appropriate in a discovery related motion, and in any case, has failed to make any effort to conduct discovery prior to discovery cut off. Further, Discovery was closed in open court and without objection.

Dated: June 26, 2015

Respectfully Submitted,

/s/ Adam M. Simon

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 2725  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
Attorney for Movants  
Simon Bernstein Irrevocable Insurance Trust;  
Ted Bernstein as Trustee, and individually,  
Pamela B. Simon, Jill Iantoni, Lisa Friedstein