

EXHIBIT 2

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

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
by Ted S. Bernstein, its Trustee, Ted S.)
Bernstein, an individual,)
Pamela B. Simon, an individual,)
Jill Iantoni, an individual and Lisa S.)
Friedstein, an individual.)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

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HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

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

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)

Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland

Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)

AFFIDAVIT OF DON SANDERS

1. I, Don Sanders, am a resident of the City of Mansfield, County of Tarrant, State of Texas and am over the age of 18. If I were called and sworn as a witness in this matter I could competently and voluntarily testify to the facts set forth in this Affidavit.
2. When I use the term Capitol Bankers, I mean Capitol Bankers Life Insurance Company.
3. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
4. When I use the term "Jackson" I mean Jackson National Life Insurance Company.
5. When I use the term "Insurer", I mean the life insurance company that was the insurer of the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
6. When I use the term "Policy" herein, I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
7. When I use the term "Insured", I mean Simon Bernstein.
8. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
9. When I use the term "Policy Proceeds", I mean either the amount that was payable by the Insurer under the Policy upon the death of the insured and/or the amount that was actually paid by the Insurer to the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
10. When I use the term "Policy records", I mean the records of the Insurer relating to the Policy as produced by Jackson during the Litigation.
11. When I use the term "Litigation", I mean the above-captioned litigation.
12. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
13. I am currently employed as Assistant Vice-President of Operations for Jackson.
14. I have been employed in Jackson's operations department for the past 11 years, and have been employed in the life insurance industry for approximately 32 years.

15. In my role as Assistant Vice President of Operations with Jackson, I have personal knowledge regarding the policy administration and death claim practices and procedures Jackson utilizes with regard to the Capitol Bankers Life Insurance Policy at issue.
16. I am aware that I am being presented as a witness pursuant to Fed. R. Civ. P. 30(b)(6), on behalf of Jackson in response to a Subpoena for Deposition served upon Jackson by the Plaintiffs in the above-captioned matter.
17. I am aware that pursuant to Rule 30(b)(6) my statements and this Affidavit shall be relied upon as the statements of Jackson, itself.
18. I have had access to counsel for Jackson with regard to my testimony and affidavit prior to having signed this Affidavit.
19. I understand that since Heritage paid the Policy Proceeds to the Registry of the Court, Heritage has been dismissed and is no longer a party to the Litigation.
20. I have no personal or business interest in the outcome of the Litigation including no interest in the determination by the court of the beneficiary(ies) of the Policy Proceeds.
21. No one from Jackson has any interest in the outcome of this Litigation including determination by the court of the beneficiary(ies) of the Policy Proceeds.
22. I have received no compensation from any party to the Litigation in exchange for my testimony.
23. The Policy was issued by Capitol Bankers in 1982.
24. In June 1998, Capitol Bankers was acquired by Swiss Re Life & Health America, Inc.
25. In May of 2000, Capitol Bankers entered into a one hundred percent Coinsurance/Administrative Reinsurance Agreement with Reassure America Life Insurance Company.
26. In May 2000, one hundred percent of stock of the Capitol Bankers was sold to Annuity & Life Reassurance.
27. In December of 2000, Capitol Bankers changed its name to Annuity & Life Reassurance America, Inc.

28. In August 2005, Annuity & Life Reassurance America, Inc. was acquired by Wilton Re Group.
29. In August 2008, Annuity & Life Reassurance America, Inc. changed its name to Heritage Union Life Insurance Company.
30. In 2012, Jackson acquired and merged Reassure America Life Insurance Company into Jackson, and as a result, Jackson became administrator and reinsurer of the Policy.
31. Since at least 2000, Jackson (and/or its predecessor Reassure America Life Insurance Company) has been in possession of the Policy records.
32. I have personal knowledge regarding the record-keeping procedures and practices utilized by Jackson with regard to its administration of the Policy and others like it.
33. I have reviewed and made myself familiar with the Policy records.
34. The Policy records start with bates no. JCK000001 and end at bates no. JCK001275. I have reviewed these bate-stamped records, and can attest that the bate-stamped records are a true, accurate and complete set of the Policy records in Jackson's possession pertaining to the Policy.
35. The Policy records do not contain an original or executed duplicate of the Policy, which was issued in 1982.
36. The Policy records do include a specimen policy form, a copy of the Insured's application, and copies of the schedule pages that were included with the original Policy.
37. Also, the Policy records do not include:
 - (a) an original or copy of the "S.B. Lexington Employee Death Benefit Trust"; or
 - (b) the "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995", or
 - (c) any purported trust named the "Simon Bernstein Trust, N.A."
38. Bates no. JCK001099 to JCK001117 is a Capitol Bankers Life Insurance Company specimen policy form of the Capitol Bankers whole life insurance product referred to as "Current Value Life". This specimen policy is a sample of the policy form issued on the life of Simon Bernstein as Policy No. 1009208 (the "Policy").
39. This specimen policy form contains the same policy language that is contained in Policy No. 1009208. The only pages that are different are pages that relate to the variable policy

specifications that pertain primarily to Simon Bernstein's age, underwriting classification, sum insured and statement of policy costs and benefits.

40. From my review of the records, on the date of issuance the sum insured (or death benefit) of the Policy was \$2 million.
41. The Policy is a whole life, flexible premium, life insurance contract, which is a type of policy that builds cash value as premium payments are made.
42. The Insurer will deduct the monthly cost of insurance charges from any existing cash value in the Policy, but when the cash value is insufficient to cover the cost of insurance, then the Policy will go into a grace period and eventually lapse if no premium payment is made. A brief summary description of these features of the Policy are contained in a letter from the Insurer dated November 9, 2010, to the Owner. (Bates No. JCK000131).
43. If premium payments are not made according to schedule, or Policy loans are taken against the cash value, this reduces the cash value which negatively impacts the Policy's performance and eventually results in a reduction in the Policy proceeds.
44. The Policy records indicate that premiums were not made according to schedule, and Policy loans occurred with regard to the Policy such that at the time of the Insured's death, the net death benefit payable by the Insurer was \$1,689,070.00 (the "Policy Proceeds").
45. Bate stamp no. JCK001252-JCK001258 is a financial history report that is titled "Financial Activity from Issue."
46. On page JCK001258, the financial history report indicates that the amount of the Policy Proceeds at the time of the Insured's death was \$1,689,070.00.
47. I have reviewed the receipt from the Registry of the Court for the Northern District of Illinois (the "Registry"), and according to the receipt the Policy Proceeds, a total of \$1,703,567.09, was deposited by the Insurer to the Registry on June 26, 2013. This deposit represented the Policy Proceeds of \$1,689,070.00, less a deduction for a policy loan, plus interest paid from the date of Simon Bernstein's death until the date of deposit with the Registry. (Bates No. BT000106)
48. Part I of the Policy application is contained in the Policy records as Bates No. JCK000419. The owner and beneficiary sections of Part I set forth the initial policy owner and beneficiary(ies) of the Policy.

49. According to Part I of the application, the Policy Owner at issuance was "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
50. Also according to Part I of the application, the beneficiary was designated as follows: "First Arlington National Bank, Trustee of S.B. Lexington Employee Death Benefit Trust".
51. According to Part I of the application, Simon Bernstein's employer at the time of issuance was S.B. Lexington, Inc. and his title was listed as Chairman of the Board. (JCK000419).
52. Bates no. JCK001021 is a copy of the Schedule Page that was included with the Policy. The Schedule Page indicates the Policy No. 1009208 was a "Current Value Life" plan issued on December 27, 1982, insuring the life of Simon Bernstein with a "sum insured" of \$2 million.
53. Bates no. JCK001023 through JCK001024 is a copy of a Current Value Life, Statement of Policy Cost and Benefit Information which is an illustration of projected values and benefits of the Policy. This Statement of Policy Cost and Benefit Information indicates on its face that it was produced on the issue date of the Policy, December 27, 1982.
54. On or about November 7, 1989 the Insurer acknowledged a change of ownership designating United Bank of Illinois as trustee. (JCK000811). This first change of trustee likely occurred as early as July 6, 1983, because the Insurer received and recorded a Request Letter making this same change in trustee. (JCK000935)
55. On or about June 5, 1992, a letter submitted on behalf of the Policy Owner informing the Insurer that LaSalle National Trust was being appointed as successor trustee. On June 17, 1992, the Insurer acknowledged the change of ownership and designated the Policy Owner on its records as LaSalle National Trust, N.A., as Successor Trustee. (Bates No. JCK000365).
56. On or about November 27, 1995, Capitol Bankers received a "Request Letter" signed by LaSalle National Trust, N.A. in their capacity as Trustee, as Policy Owner, and the Request Letter contained the following requested changes to the Policy:
 - (a) LaSalle National Trust, N.A. as Trustee was designated as the primary beneficiary of the Policy; and
 - (b) The Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995 was designated as the contingent beneficiary.

57. Though the name of the Trust on the Request Letter was set forth as stated in Par. 30(b) above, it was apparently abbreviated upon input into the Insurer's systems as Simon Bernstein Ins. Trust Dated 6/21/95. (Bates No. JCK000370, JCK000372, JCK000514, JCK000554, 599, 601).
58. As a matter of standard policy and procedures at Jackson and as set forth in the Policy itself, the designation of the Owner and Beneficiary is governed by the Request Letter or Direction of the Owner and not by how the name of the owner or beneficiary is input by employees into the Insurer's systems as part of policy administration.
59. In my experience in operations, Insurers' systems require employees to abbreviate names of owners and/or beneficiaries at times when the names contain too many characters for the Insurer's systems capabilities.
60. On November 27, 1995 Capitol Bankers sent correspondence to LaSalle National Trust N.A., as Successor Trustee acknowledging the changes in beneficiaries as referenced in Par. 56 above.
61. In April of 1998, LaSalle National Trust, as successor Trustee submitted a change of owner which designated Simon Bernstein as the Owner of the Policy. (Bates No. JCK000560).
62. 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. as Successor Trustee, and the Contingent Beneficiary was designated as Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (Bates No. JCK000370).
63. Capitol Bankers Life Insurance Company acknowledged receipt of the "executed beneficiary change" in its correspondence to the Owner of the Policy dated November 27, 1995. (JCK000372).
64. According to Jackson's records, following the death of Simon Bernstein, Heritage or Jackson received competing claims to the death benefit proceeds. Jackson or Heritage received claims on behalf of the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 and a competing claim in the form of a letter from Eliot Bernstein either on his own behalf or on behalf of his children.

65. According to Jackson's records on the Policy, no one named Eliot Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
66. According to Jackson's records on the Policy, no one named Joshua Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
67. According to Jackson's records on the Policy, no one named Jacob Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
68. According to Jackson's records on the Policy, no one named Daniel Bernstein was ever designated as a primary or contingent beneficiary of the Policy.
69. According to Jackson's records on the Policy, no Owner of the Policy ever submitted a beneficiary designation which designated Simon Bernstein Trust, N.A. as a beneficiary of the Policy.
70. According to Jackson's records, no Owner of the Policy ever submitted a beneficiary designation which designated "Simon Bernstein's estate" or "the Estate" as beneficiary.
71. From my review of the records, and my experience in the industry and with Insurer database systems, it is evident that the name Simon Bernstein Trust, N.A. was either entered by an employee of the Insurer either as an abbreviation for the actual contingent beneficiary or in error. In any case, the document that contains the Owner's actual last beneficiary designation prior to the death of the insured is Bates No. JCK000601. In this document, the Owner designates Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 as the contingent (or successor) beneficiary.
72. The last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured is Bates No. JCK000370. The primary beneficiary designation is "LaSalle National Trust, N.A., Trustee", and the contingent beneficiary is "Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995". (See Bates No. JCK000370 and JCK000372).
73. According to Jackson's records, the last change of Owner submitted on the Policy prior to the death of the insured was on or about April 3, 1998. (JCK000563 and 566).
74. According to Jackson's records, a company named Equifax conducted an interview in connection with the application and underwriting for the Policy. The Equifax report indicates that Simon Bernstein was interviewed on March 25, 1982. The report says on

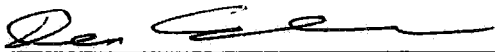
its face that it was prepared for Life Insurance Underwriting purposes only. (JCK001074).

75. Contained in the Equifax Report from Simon Bernstein's interview is the following description of the intended purpose of the insurance:
"BENEFICIARY-PURPOSE OF INSURANCE: The beneficiary of this policy is First Arlington National Bank, S.B. Lexington, Inc. employee death benefit trust. The insurance will be paid to the trust, and the trust will determine the manner in which the benefits are to be paid and to whom it will be paid. Normally, benefits are paid to family members." (JCK001084).
76. Since the death of Simon Bernstein, Jackson (and "Heritage") has received notices of potential claims from the Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95, and from Eliot Bernstein, purportedly on his own behalf and on behalf of his children. I am aware that a person named William Stansbury filed a petition to intervene in the above-captioned litigation but that his petition to intervene was denied by the court. I am aware that in Plaintiff's First Amended Complaint, that Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein have filed claims seeking imposition of a Resulting Trust and as such First Amended Complaint does represent additional potential claims to the Policy Proceeds.
77. The Policy records do not include any notices of claims from any of the following individuals or entities:
- a) The VEBA;
 - b) Any Bank Trustee of the VEBA;
 - c) Adam Simon;
 - d) David Simon;
 - e) The Simon Law Firm ; or
 - f) STP Enterprises, Inc.

78. I am unaware of any claims having been received by Jackson or Heritage as to the Policy proceeds from any persons or entities, other than those described in Par. 76 above.

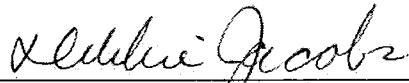
FURTHER AFFIANT SAYETH NAUGHT.

Dated: April 8, 2014



Don Sanders, Assistant Vice-President
Jackson National Life Insurance Company

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 8th DAY OF APRIL, 2014.



NOTARY PUBLIC
County of Dallas, TX

