

EXHIBIT 5

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)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)

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

Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

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

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)

ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)

TESCHER & SPALLINA, P.A.,)

DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)

both Professionally and Personally,)

LISA FRIEDSTEIN, JILL IANTONI)

S.B. LEXINGTON, INC. EMPLOYEE)

DEATH BENEFIT TRUST, S.T.P.)

ENTERPRISES, INC. S.B. LEXINGTON,)

INC., NATIONAL SERVICE)

ASSOCIATION (OF FLORIDA),)

NATIONAL SERVICE ASSOCIATION)

(OF ILLINOIS) AND JOHN AND JANE)

DOES)

Third-Party Defendants.)

AFFIDAVIT OF PAM SIMON

I, Pam Simon, being duly sworn under oath, deposes and states as follows:

1. I am a resident of the City of Chicago, County of Cook, State of Illinois and am over the age of 18. If I were called and sworn as a witness in the above-captioned matter I could competently and voluntarily testify to the facts set forth in this Affidavit based upon my personal knowledge.
2. My maiden name is Pamela Beth Bernstein. My married name is Pamela Beth Simon or Pam Simon.
3. I am one of five adult children of Simon Bernstein.
4. When I use the term "Affidavit of Don Sanders" I mean a certain affidavit executed by Don Sanders, Assistant Vice President of Operations for Jackson National Life Insurance Company on April 8, 2014.
5. When I use the term "Capitol Bankers", I mean Capitol Bankers Life Insurance Company.
6. When I use the term "Consenting Children", I mean collectively four of the five adult children of Simon Bernstein, whom are Ted Bernstein, Pamela Simon, Jill Iantoni, and Lisa Friedstein.
7. When I use the term "Heritage", I mean Heritage Union Life Insurance Company.
8. When I use the term "Jackson", I mean Jackson National Life Insurance Company.
9. When I use the term "Insurer", I mean the life insurance company that was the insurer on the risk for the Policy, which started as Capitol Bankers but changed through succession from time to time.
10. When I use the term "Policy", I mean Capitol Bankers Life Insurance Policy No. 1009208 insuring the life of Simon Bernstein.
11. When I use the term "Insured", I mean Simon Bernstein.
12. When I use the term "Owner", I mean the owner of the Policy as reflected on the Insurers' records from time to time.
13. When I use the term "Policy Proceeds", I mean the amount that was payable by the Insurer under the Policy upon the death of the insured.

14. When I use the term "Proceeds on Deposit", I mean the amount that was actually deposited by the Insurer with the Registry of the Court pursuant to the Insurers' Complaint for Interpleader.
15. When I use the term "Policy Records", I mean the records of the Insurer relating to the Policy as produced by the Insurer during the Litigation.
16. When I use the term "Litigation", I mean the above-captioned litigation.
17. When I use the term "VEBA", I am referring to the S.B. Lexington Employee Death Benefit Trust.
18. I have had an opportunity to consult with my attorney, and review the documents produced by all parties in the above-referenced litigation.
19. I have reviewed the Affidavit of Don Sanders.
20. I have been a licensed insurance agent in the State of Illinois for at least 35 years. In the 1980's and early 1990's, I was located in the same business office as my father, Simon Bernstein.
21. In the early 1980's, I along with my father, Simon Bernstein and brother, Ted Bernstein, marketed and sold VEBA Death Benefit Plans wherein corporate benefit plans would purchase life insurance on employees, and the employees would name the ultimate beneficiary of their death benefit by completing a Plan and Trust Beneficiary Designation Form.
22. In my experience as an insurance agent, and more specifically in my experience with the sales of life insurance policies issued through a Voluntary Employee Benefit Association, the original of the life insurance policy would be delivered by the insurer of the policy to the owner of the policy as listed on the application. On the application, the initial owner was listed as First Arlington National Bank as Trustee for the S.B. Lexington Employee Death Benefit Trust.
23. In late 1982, First Arlington National Bank was located in Arlington Heights, Illinois. First Arlington National Bank was the Trustee of the VEBA and was thus acting on behalf of the VEBA as Owner of the Policy. In my experience the insurer would have delivered the original Policy to the agent whom would then deliver the Policy to the original Owner. The agent whom signed the application for the Policy was my father Simon Bernstein whose offices were located in Chicago, Illinois. The delivery of the Policy to the Owner would have occurred in Arlington Heights, Illinois.
24. In late December of 1982 at the time of Policy issuance and delivery, Simon Bernstein, the insured, resided and was domiciled in Glencoe, Illinois.

25. In the late 1980's my father, Simon Bernstein, my husband, David Simon and myself, co-owned a life insurance brokerage named STP Enterprises, Inc. ("STP") that was located in offices in Chicago, Illinois. I am currently the president of STP. STP was named a third-party defendant to Eliot's claims. STP is represented by counsel, Adam M. Simon.
26. One of the life insurance companies, STP represented was Lincoln Benefit Life Insurance Company. In the 1990's my father, Simon Bernstein applied for and purchased a life insurance policy issued by Lincoln Benefit Life. During a search of records located at our Chicago offices following the death of my father, Simon Bernstein, we located a file containing documents relating to the Lincoln Benefit Life Policy and Plaintiff has produced those documents in this litigation. (See Ex. 18).
27. Ex. 18 is Lincoln Benefit Life Request for Service form for Lincoln Policy #U0204204 (the "Lincoln Policy"). This form indicates that the insured and owner was Simon Bernstein and that ownership of the Lincoln Policy was being transferred to the "Simon Bernstein Irrevocable Insurance Trust dtd 6/21/95", and includes the Tax ID for the trust, and the name of Shirley Bernstein as trustee. The document also contains the signature of my father, Simon Bernstein. I recognize my father's signature and have seen it on many occasions. Also, his signature was witnessed by former STP employee, Debbie Marsh, whose signature I also recognize. The document indicates it was received at Lincoln's Home Office and recorded on August 8, 1995. The Lincoln Policy lapsed for non-payment of premium in 2006, six years prior to Simon Bernstein's passing.
28. According to the Policy Records, the Policy was issued by Capitol Bankers in 1982. I have reviewed and made myself familiar with the Policy Records which start with bates no. JCK000001 and end at bates no. JCK001324.
29. I have also reviewed and made myself familiar with Plaintiff's document production made pursuant to Fed. R. Civ. P. 26. A true, accurate and complete set of copies of those documents were served upon the other parties to this Litigation and were stamped with bates no. BT000001-BT000112.
30. I have reviewed the Insurer's records regarding the amount of the death benefit, and have reviewed the receipt for the deposit of the Policy Proceeds with the Registry of the Court in the amount of \$1,703,567.09. I have no dispute or objection to the amount deposited as the Policy Proceeds.

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 ownership listing the owner as LaSalle National Trust, N.A., as Successor Trustee. (*See Ex. 7*)
32. I concur with the statement of Don Sanders in his Affidavit that the last beneficiary designation submitted by the Policy Owner and acknowledged by the Insurer prior to the death of the Insured marked as 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".
33. 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.
34. In 1995, my husband, David Simon and I created irrevocable insurance trusts with the assistance of attorneys from the firm of Hopkins and Sutter.
35. 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." I recognize the signature on the VEBA Beneficiary Designation form as that of my father, Simon Bernstein. (*See Ex. 4*).
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. As a part of the dissolution, ownership of the Policy was changed from the VEBA to Simon Bernstein, Individually (*See Ex. 9*).
37. After the death of Simon Bernstein, David Simon and I, with the assistance of our employees, conducted a search of my offices and business records in Chicago, Illinois. We located two unexecuted drafts of the Bernstein Trust were located. We were unable to locate an executed original or copy of the Bernstein Trust. (*See Ex. 15 and Ex. 16*).
38. Based on the foregoing, I am in agreement regarding the following facts, and the intent of my father, Simon Bernstein, with regard to the Policy proceeds:
 - a) At the time of Simon Bernstein's death, Simon Bernstein was the owner of the Policy;
 - b) In June of 1995, Simon Bernstein formed the Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995;

- c) In November of 1995, the VEBA as Owner submitted a Request to the Insurer designating the VEBA as primary beneficiary, and the Bernstein Trust as second or contingent beneficiary.
- d) In 1998: (i) S.B. Lexington, Inc. was voluntarily dissolved; (ii) the VEBA was terminated and (iii) the VEBA as Owner submitted a change of Owner to the Insurer designating Simon Bernstein as Owner of the Policy.
- e) On the date of Simon Bernstein's death, Simon Bernstein was the Owner of the Policy and the sole surviving beneficiary of the Policy was the contingent beneficiary, the Bernstein Trust;
- f) Following the death of my mother, Shirley Bernstein, and according to the drafts of the Bernstein Trust and the intent of Simon Bernstein, Ted Bernstein was appointed to act as successor Trustee;
- g) Each of the Consenting Children have signified their consent to a court appointment of Ted Bernstein as Trustee.
- h) The beneficiary of the Policy Proceeds is the Bernstein Trust;
- i) The beneficiaries of the Bernstein Trust are the five adult children (including Eliot, the non-consenting child) to share equally, twenty percent each;
- j) The sole asset of the Bernstein Trust is the Policy Proceeds, and the distribution of such proceeds to the five children of Simon Bernstein and any administrative matters related to the termination of the Trust are the only remaining acts required of the Trustee;
- k) The four consenting children of Simon Bernstein agree that upon entry of a judgment in favor of the Plaintiffs declaring that the Bernstein Trust is beneficiary of the Policy Proceeds, counsel for Bernstein Trust, Adam M. Simon, shall be authorized to present the judgment to the Registry and have the Registry distribute the Policy Proceeds in a check payable as follows:

“The Simon Law Firm Client Trust f/b/o Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995”.

l) The Policy Proceeds shall then be deposited to The Simon Law Firm Client Trust Account and shall be disbursed as follows:

- i) First to the payment of attorney Adam M. Simon's fees and costs;
- ii) Retention of \$5,000.00 in the Simon Law Client Trust Account for the benefit of the Bernstein Trust in order to pay for any professional expenses, i.e. accounting or legal, related to the final distribution of the Trust Assets and termination of trust. Any remaining balance after payment of such expenses shall be distributed to the five adult children in equal shares.
- iii) The balance to be split equally among the five adult children of Simon Bernstein.
- iv) Each Beneficiary that receives a share of the Policy proceeds shall execute and deliver to the Trustee (or Adam M. Simon) a receipt for such payment received.
- v) Along with the distributions, the Trustee shall provide each beneficiary with a final accounting of the distributions made from the Policy Proceeds.

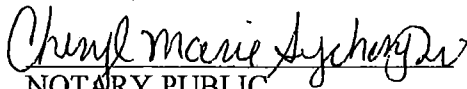
FURTHER AFFIANT SAYETH NAUGHT.

Dated: FEBRUARY 24TH, 2015



PAMELA SIMON

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 24th DAY OF FEBRUARY, 2015.


NOTARY PUBLIC
County of Lake, IL

