

**EXHIBIT 37**

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, et al., )

Third-Party Defendants. )  
\_\_\_\_\_ )

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

**AFFIDAVIT OF ROBERT L. SPALLINA**

1. My name is Robert L. Spallina. I am over the age of eighteen, and if duly sworn I could competently and voluntarily testify to the facts set forth herein.

2. While he was alive, Simon L. Bernstein ("Simon Bernstein") was a client of my then law firm, Tescher & Spallina, P.A. ("Firm"). The Firm and I provided estate planning advice and represented Simon Bernstein in connection with the preparation and execution of various testamentary documents from late 2007 until his death on September 13, 2012.

3. At all times material to my representation of Simon Bernstein, I was an attorney admitted to practice in the state of Florida. I hold a Bachelor of Science in accounting from the University of Florida Fisher School of Accounting; a Juris Doctor from Loyola Law School in Los Angeles, California; and a Master of Laws Degree in Estate Planning from the University of Miami School of Law. I am a former Certified Public Accountant and Certified Financial Planner, and began my career with KPMG Peat Marwick in Los Angeles. I was admitted to the Florida Bar in 2001, and focused my practice on wealth transfer planning, post-mortem planning, probate and related matters for high net worth individuals and families.

4. Of relevance to this lawsuit concerning the proceeds of a life insurance policy, during the spring and early summer 2012, Simon Bernstein asked our Firm to assist him in modifying his testamentary documents. During this time, while discussing and reviewing his overall estate plan, Simon Bernstein and I specifically discussed the insurance policy at issue.

5. Simon Bernstein told me he owned a life insurance policy with a current death benefit of \$1.6 million (the "Policy"). This is reflected in my attached notes of a meeting with Simon Bernstein on February 1, 2012. During this meeting and over the course of the next few months, Simon Bernstein and I discussed the Policy as part of his estate planning.

6. Simon Bernstein told me that the intended beneficiaries of the Policy were his five children equally, through an irrevocable life insurance trust that was the named beneficiary of the

Policy. On February 1, 2012, Simon Bernstein was considering giving part of the Policy proceeds to his girlfriend, Maritza Puccio. My notes reflect discussion of an increasing scale for Maritza:

0-2 yrs	250k
2-4 yrs	500k
>4 yrs	600k

7. I advised Simon Bernstein against changing the beneficiaries of his Policy to include Maritza, and ultimately (even though Simon Bernstein requested a form to change the beneficiaries) Simon Bernstein decided to leave the beneficiary unchanged.

8. Simon Bernstein also wanted to change other parts of his estate plan in 2012. Primarily, he wanted to change his current estate plan which benefitted only three of his five children; and had caused some family disharmony. As part of these discussions, Simon Bernstein and I again discussed the Policy. In the end, Simon Bernstein told me he had decided to leave the Policy unchanged, so that all of the proceeds would go equally to his five children through the 1995 Trust. Having thus provided for all of his children; Simon Bernstein decided to alter his testamentary documents and to exercise a power of appointment he held to leave all of his family's wealth to his ten grandchildren equally.

9. As soon as Simon Bernstein made that decision, he instructed me to set up a conference call with his children. Simon Bernstein told them during the call that he had decided to leave all of the money to the ten grandchildren. He did not discuss the Policy during that call, but Simon Bernstein and I had specifically discussed the Policy as part of our estate planning discussions.

10. Simon Bernstein never showed me the 1995 Trust, although we discussed several times the fact that (i) the 1995 Trust had been created and, (ii) now that his wife had died, the beneficiaries of the 1995 Trust were his five adult children: Ted, Pam, Eliot, Jill and Lisa, each of whom would receive one-fifth, or 20%, of the proceeds of the Policy. In 2012, Simon Bernstein made no changes to the Policy's ownership or beneficiary.

11. In light of Simon Bernstein's overall estate plan, including our specific discussions about the beneficiaries of the proceeds of the Policy, Simon Bernstein in fact executed new testamentary documents. Under Simon Bernstein's new Will and his Amended and Restated Trust Agreement, both of which were formally executed on July 25, 2012, his ten grandchildren are the ultimate beneficiaries of all of his wealth other than the Policy, which I have no doubt he intended to go to his children.

12. The final testamentary documents Simon Bernstein signed on July 25, 2012, were the last ones Simon Bernstein signed before he died on September 13, 2012.

13. Based upon my direct and personal involvement in meeting and discussing matters with Simon Bernstein, and my personal knowledge of Simon Bernstein's testamentary documents and his stated intent, I believe that Simon Bernstein was aware of and believed that the 1995 Trust existed and was named as the sole beneficiary of the Policy, or that Simon Bernstein was aware of and believed that the beneficiaries of the 1995 Trust (given that his wife had passed away) were his five adult children, who would each receive 20% of the life insurance proceeds.

14. Having discussed these matters with Simon Bernstein, and based upon my years of experience as an estate planning lawyer, Simon Bernstein understood that he retained ownership of the Policy. Simon Bernstein always wanted maximum flexibility to change his estate plan, and

putting ownership of the Policy into an irrevocable trust (such as the 2000 trust drafted by lawyers at Proskauer Rose) would have taken away Simon Bernstein's ability to change the Policy or the beneficiaries. Because Simon Bernstein remained the owner of the policy, he had the ability to change the beneficiary from the ILIT to a different beneficiary or beneficiaries up until the moment he died.

15. I also know from discussions with Simon Bernstein that he was aware of asset protection issues and was aware that the Policy proceeds would be exempt from his creditors, even if Simon Bernstein owned the Policy on the date of his death. Simon Bernstein would not have desired or intended to subject the proceeds of the Policy to claims of his creditors.

16. Further, I know from discussions with Simon Bernstein that he was aware of avoiding probate of assets. Under the structure he and I discussed, in which the beneficiary of the Policy was the 1995 Trust, the proceeds of the Policy would pass outside of probate. Simon Bernstein would not have desired or intended to subject these assets to probate, so if the 1995 Trust did not exist, I would have advised (and I believe Simon Bernstein would have followed my advice) that a new Trust document be drafted and executed at the same time as Simon Bernstein's new testamentary documents on July 25, 2012.

17. Above all else, I know from discussions with Simon Bernstein that he wanted to shield all of his assets from creditors, and in fact he was sued by William Stansbury shortly before his death. Stansbury was a former shareholder with Simon Bernstein in a business, and Simon Bernstein felt betrayed by Stansbury having sued Simon Bernstein.

18. Simon Bernstein removed Stansbury as a fiduciary when he executed new testamentary documents on July 25, 2012, and I do not believe Simon Bernstein would have allowed

the Policy to be subjected to creditors' claims, especially Stansbury, by misrepresenting to me that a 1995 Trust existed if one did not.

19. Based upon the foregoing, I believe that Simon Bernstein intended the Policy proceeds to be paid to his 1995 Trust, for the benefit of his five children.

FURTHER AFFIANT'S SAYETH NAUGHT.


  
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Robert Spallina

Dated: <sup>July</sup> June 1, 2016

SUBSCRIBED AND SWORN TO BEFORE ME THIS 1 DAY OF <sup>July</sup> JUNE, 2016, by ROBERT SPALLINA, who is  personally known to me or  provided the following identification: \_\_\_\_\_



Alexa Collevechio  
COMMISSION # FF185462  
EXPIRES: December 28, 2018  
WWW.AARONNOTARY.COM

  
NOTARY PUBLIC  
County of Palm Beach, FL

Si Penniston

JE/KLF

2/1/12

SIPC - Accounts	-	500k
LIC Accounts	-	100k
IRA		<u><u>600k</u></u>

LOANS	Si's Estate	Value	Estate Tax
1.2M JON	- LLP	- 1.15	.8M
.5M WF	- IRA	- .75	.25M
			<u>1.05M</u>

### Si's Estate

Si's Estate	Tax	FMV
- Cash	- 1.0M	2.0M
- House	- 1.0M	2.0M
- 1/2 LLP	- 1.15M	.8M
		<u>5.8M</u>

### LIC

Defining  
 To Give  
 To 529  
 To 529  
 To 529  
 To 529  
 To 529  
 To 529  
 To 529

- IRA	45	
- SI	33	Value (Tax)
- GC	12	
- PUC	10	
	<u>100</u>	545

Death  
 Beneficiary  
 1/1/12

Insurance	1.75M	→	250k	Tax: Penn Corp
Mortgage	→	0-2 yrs	250k	
		2-4 yrs	100k	
		4 yrs	500k	