

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

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643
Judge John Robert Blakey

Filers:
Eliot Ivan Bernstein, Pro Se

**LOCAL RULE 56.1(b)(3) RESPONSE TO PLAINTIFF/MOVANT STATEMENT OF
UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF
ADDITIONAL FACTS REQUIRING THE DENIAL OF PLAINTIFF/MOVANT
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:

I. 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. 1, Aff. of Ted Bernstein, ¶21)

ANSWER:

DISPUTED: At this time no valid legally executed “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”)” has been produced and thus does not at this time legally exist. Since the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”)” does not legally exist at this time it could not legally file a lawsuit. Since the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “Bernstein Trust”) does not

legally exist at this time and has not been produced in this action it cannot be legally represented by counsel, Adam M. Simon and David B. Simon of the Simon Law Firm.

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. 1, 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. 1, 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. 1, Aff. of Ted Bernstein, ¶24)

ANSWER:

UNDISPUTED

5. “Simon Bernstein Trust, N.A.” was named a Party to Heritage’s counterclaim for interpleader. “Simon Bernstein Trust, N.A.”. There are no Policy records produced by the Insurer indicating that a policy owner ever submitted a beneficiary designation naming Simon Bernstein Trust, N.A. as a beneficiary of the Policy. No one has submitted a claim to the Policy Proceeds with the Insurer on behalf of an entity named “Simon Bernstein Trust, N.A.”. (Ex. 2, Aff. of Don Sanders, ¶69 and ¶78)

ANSWER:

DISPUTED: According to insurance company parole evidence records “Simon Bernstein Trust, N.A.” is the Primary Beneficiary of the lost, suppressed or destroyed insurance contract.

However, since no original policy or copy of an original policy has been produced in these matters for Simon Bernstein by any party to the litigation it cannot at this time be determined who the policy claims as beneficiary at this time.

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 Counter-defendant and 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. 1, Aff. of Ted Bernstein, ¶25)

ANSWER:

DISPUTE: Ted Bernstein is not "Trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" as no legally binding executed trust has been produced at this time in this litigation by any party giving anybody legal standing as a fiduciary of the lost, suppressed or destroyed alleged "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95."

Therefore, since no legally executed and binding copy of the trust has been produced at this time Ted Bernstein could not presume he was Trustee of a trust he claims to have never seen and therefore his counsel, Adam Simon, who knew at the time he filed this complaint that he, nor his client Ted, possessed a legally binding executed copy of the alleged trust giving anyone legal standing to act as a fiduciary or file a lawsuit claiming such capacity and suing parties based on this presumed capacity. Note Plaintiffs' did not start this action with a copy of said lost, destroyed or missing trust attached to the complaint and it was not until months later that they allege to have found unexecuted drafts with no ability to determine who drafted the trust as the pages are missing any legal firm markings and where the two markedly different alleged drafts have different successor trustees written in handwriting on them. Therefore, if Plaintiffs filed the Complaint knowing they did not possess the trust they would have had to sought legal standing as a fiduciary from this court prior to acting in any such alleged capacity.

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. 1, Aff. of Ted Bernstein, ¶26)

ANSWER:

DISPUTED:

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 now appearing pro se, and was formerly represented by counsel, Adam M. Simon. (Ex. 3, 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 appearing pro-se and was formerly represented by counsel, Adam M. Simon. (Ex. 4, 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 and is represented by counsel, Adam M. Simon. (Ex. 5, Aff. of Pam Simon, ¶2, ¶3, ¶6 and ¶38.)

ANSWER:

UNDISPUTED

11. Heritage is the successor life insurer to the original insurer, Capitol Banker Life, 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. 1, Aff. of Ted Bernstein, ¶30)

ANSWER:

DISPUTED: It is alleged that Jackson National acquired Heritage Union and it was Jackson National who deposited monies in the court registry. There are no “Policy Proceeds” that could have been deposited with the Court as no legally binding policy has been produced for Simon Bernstein at this time by any party to the litigation, including the insurers and reinsurers. Therefore, monies were deposited and there is not at this time anyway to prove that this amount of money deposited is what the policy states.

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. 1, 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. 1, Aff. of Ted Bernstein, ¶32)

ANSWER:

UNDISPUTED

14. Adam M. Simon is counsel himself, and for the Bernstein Trust, Ted Bernstein (individually and as trustee), Pamela B. Simon, David B. Simon, The Simon Law Firm, and STP Enterprises, Inc. four of the five adult children of Simon Bernstein. Adam M. Simon was named a third-party defendant to Eliot’s Claims. Adam M. Simon is the brother-in-law of Pamela B. Simon, and the brother of David B. Simon. (Ex. 1, Aff. of Ted Bernstein, ¶33)

ANSWER:

DISPUTED: Adam Simon is no longer representing “four of the five adult children of Simon Bernstein” as Jill Iantoni and Lisa Friedstein have removed Adam Simon from representing them and this Court has allowed them to represent themselves Pro-Se. Adam Simon cannot be counsel to a trust that has not been produced and at this time no legally executed binding original or copy of the original exists and no terms of the trust therefore exist. Similarly, since no legally binding executed copy or original exists, the fiduciaries of such lost, suppressed or destroyed trust cannot act with any legal authority, especially where no construction or validity hearings have been held to have a court of law determine any standing of any fiduciary.

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. 1, Aff. of Ted Bernstein, ¶34)

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. 1, Aff. of Ted Bernstein, ¶35)

ANSWER:

UNDISPUTED:

17. Tescher and Spallina, P.A. was a law firm whose principal offices were formerly 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. 1, 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. 6, 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. 1, Aff. of Ted Bernstein ¶39, Dep. of David Simon, p. 51:13-18)

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. 7, Dep. of David Simon, p.51:13-18; Ex. 30, Aff. of Ted Bernstein, ¶40)

ANSWER:

DISPUTED: No supporting information to prove the dissolution has been provided other than statements of David Simon and Ted Bernstein. No copy of the VEBA trust with its terms has been produced to this Court or any litigant in these matters.

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. 1, Aff. of Ted Bernstein, ¶41)

ANSWER:

DISPUTE: Robert Spallina is not a partner of the law firm Tescher & Spallina, PA as that firm has been claimed to be dissolved by both Robert Spallina and Donald Tescher, at sometime after this litigation and the Florida Probate and Trust litigations began. Robert Spallina is not a lawyer anymore after surrendering his law license after signing an SEC Consent Order for Insider Trading where he pled guilty to criminal misconduct in a separate complaint with Federal Authorities according to the consent agreement.

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. 5, 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. 1, Aff. of Ted Bernstein, ¶42).

ANSWER:

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". The Estate is represented by the law firm of Stamos & Trucco

in this matter. (Dkt. #126; Ex. 1, Aff. of Ted Bernstein ¶43-¶44)

ANSWER:

UNDISPUTED

II. 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. 2, Aff. of Don Sanders at ¶38, ¶39, ¶48, ¶52; See Ex. 14). The amount of the Policy Proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (Dkt. #101 and Ex. 1, Aff. of Ted Bernstein, ¶30). The Policy defines “Beneficiary” as follows:

A Beneficiary is any person named on our [the Insurer’s] records to receive proceeds of this policy after the insured dies. There may be different classes of Beneficiaries, such as primary and contingent. These classes set the order of payment. There may be more than one beneficiary in a class. Unless you provide otherwise, any death benefit that becomes payable under this policy will be paid in equal shares to the Beneficiaries living at the death of the Insured. Payments will be made successively in the following order:
(emphasis added)

- a. Primary Beneficiaries.
- b. Contingent Beneficiaries, if any, provided no primary Beneficiary is living at the death of the Insured.
- c. The Owner or the Owner’s executor or administrator, provided no Primary or Contingent Beneficiary is living at the death of the Insured.

Any Beneficiary may be named an Irrevocable Beneficiary. An irrevocable beneficiary is one whose consent is needed to change that Beneficiary. Also, this Beneficiary must consent to the exercise of certain other rights by the Owner. We discuss ownership in part 2. (SoF, ¶26; Ex. 7 at bates no. JCK00101)

ANSWER:

DISPUTE: A specimen policy was provided to the Court that is of the type that is submitted to the states by the carrier for approval or for other marketing purposes and is not a valid binding contract for insurance on the Life of Simon Bernstein. Therefore, none of the terms of the actual “Policy” can be compared to the Specimen policy as the “Policy” has not been produced and thus

none of the terms of the actual “Policy” can be proven at this time to be the same as the Specimen Policy as there is no legally binding insurance contract or policy on the life of Simon Bernstein before the Court.

III. MOVANTS’ CLAIMS TO THE POLICY PROCEEDS

27. Plaintiff’s claims to the Policy Proceeds are based on their allegations that the five adult children of decedent, INCLUDING ELIOT, are the beneficiaries of The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, and that this same Trust is the named beneficiary of the Policy Proceeds at issue (the “Stake”). (Ex. 8, Plaintiff’s First Amended Complaint).

ANSWER:

DISPUTE: Again, since there is no valid legally binding insurance policy produced at this time there cannot be “Policy Proceeds” that can be confirmed at this time to be the amount on the bona fide insurance contract, in fact, their claims would be to the interpled monies in this Court, which were paid to this Court as if there was a “Policy” that stated the exact amount under the contract to be deposited. The Court should also seek production of the “Policy” to confirm that the amount deposited was the amount listed in the “Policy” and what terms were selected under the “Policy” for payouts.

IV. ELIOT’S NON-EXISTENT CLAIM TO THE POLICY PROCEEDS

28. Eliot Bernstein filed counterclaims, third-party claims and cross-claims in this litigation (“Eliot’s Claims”). (Ex. 9, Eliot’s Claims).

ANSWER:

UNDISPUTED

29. 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. Eliot’s Claims are devoid of any allegation or supporting facts to show that either Eliot or his children were ever named a beneficiary of the Policy Proceeds. (Ex. 9, Eliot’s Claims).

ANSWER:

DISPUTE: Eliot provided supporting facts to show that NO POLICY HAS BEEN PRODUCED

and that NO LEGALLY BINDING EXECUTED TRUST was provided to this Court or any party in this litigation making it wholly unknown who the beneficiaries are of the suppressed, destroyed or lost “Policy” are or who the beneficiaries of the suppressed, lost or destroyed Bernstein Trust are and thus Eliot has claims potentially to the policy and may in fact be the named beneficiary on the “Policy” once the “Policy” is discovered and produced or until this Court makes rulings regarding the beneficiaries under this convoluted and alleged fraudulent and abuse of process lawsuit. It is also alleged that all parties have conspired to suppress, lose or destroy the “Policy” and any copies that may have existed and have been held by any of the alleged prior fiduciaries or carriers involved have also been suppressed, lost or destroyed as part of scheme and artifice to defraud the true and proper beneficiaries of the policy.

30. This is confirmed by the 30(b)(6) witness designated by the Insurer affirming that 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. 2, Aff. of Don Sanders, ¶¶65-¶68).

ANSWER:

DISPUTED: Any changes of beneficiaries or owner forms would be governed by the insurance contract which under insurance laws would be made as attachments to the original policy and where the original policy has not been produced and appears suppressed, lost or destroyed there is no way to confirm at this time what changes were made to the insurance contract “Policy.”

V. ELIOT’S STATUS VIS-À-VIS THE ESTATE OF SIMON BERNSTEIN

31. The case styled as In Re Estate of Simon L. Bernstein, has been pending in the Probate Division of the Palm Beach County Circuit Court in Florida since 2012. In Re Estate of Simon L. Bernstein, No. 502012CP004391XXXNBIH.

ANSWER:

UNDISPUTED

32. A related case styled as Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al., has been pending in the same court before the same judges since 2014 involving matters related to a testamentary trust formed by Shirley Bernstein – Simon Bernstein’s spouse -- prior to her death. Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et. al, No. 502014CP003698XXXXNBIJ. For purposes of this motion, the actions pending in Palm Beach County are referred to as the “Probate Action(s)”.

ANSWER:

DISPUTED: The case above is actually styled as

“ Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd May 20, 2008, as amended

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B.SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,”

That it is recently learned from an email of Alan B. Rose to Eliot Bernstein and others, see attached Exhibit 2¹, that there are no trusts for Eliot’s minor children in existence at this time

¹ Alan Rose and Eliot Bernstein Emails
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160308%20Alan%20Rose%20Mrachek%20Letter>

named as parties to the lawsuit and despite Eliot being sued as Trustee under such nonexistent trusts. Again, another instance of alleged abuse of process and false process and fraud on the court in Palm Beach County.

Where further, there is no known “Simon L. Bernstein Trust Dtd 9/13/12” which would have had to been created in the few short hours of 9/13/12 that Simon lived that day, where Third Party Plaintiff Eliot Bernstein was with his father who was code blue in a critical care unit on that day and died shortly after 1am on the morning of 9/13/12 and there were no lawyers or estate planners present and Simon signed no documents or trusts on that day. No “Simon L. Bernstein Trust Dtd 9/13/12” has ever been produced to this court or any court at this time and thus any trusts alleged to be held under it cannot exist, as Mr. Rose has no admitted. Again, parties that are legally not existent are being sued through fraud on the court and more as is the case in this lawsuit.

That from Alan Rose’s emails exhibited already herein this Court can see that Mr. Rose references a different Simon Bernstein trust and attaches copies of an alleged trust and will titled “Simon Bernstein Will dtd 07-25-2012 conformed copy - original in courthouse.pdf; Simon L. Bernstein Amended and Restated Trust Agreement dtd 7-25-2012 - duplicate original.pdf” and where neither of these alleged testamentary documents are parties to the suit filed as the caption clearly shows and all pleadings show.

33. On December 15, 2015, after a trial was held in the Probate Actions, where Eliot Bernstein appeared and represented himself pro se, Judge John L. Phillips entered an Order including the following:

- a. This was a “Final Judgment” on Count II of the Amended Complaint;
- b. A trial was held on December 15, 2015 pursuant to the Court’s Order setting trial

on Amended Complaint Count II;

c. The Court received evidence in the form of documents and testimony of witnesses;

d. The Court heard argument from counsel and pro se parties who wished to argue;

e. The Court found that five testamentary documents, including the Will of Simon Bernstein and a Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012 are “genuine and authentic, and are valid and enforceable according to their terms.”

f. That based on evidence presented, “Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents... Ted S. Bernstein played no role in any questioned activities of the law firm of Tescher & Spallina, P.A., who represented Simon and Shirley when they were alive. There is no evidence to support the assertion of Eliot Bernstein that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided or abetted others in forging or fabricating documents. The evidence shows Ted Bernstein played no role in the preparation of any improper documents, the presentation of any improper documents to the Court, or any other improper act, contrary to the allegations of Eliot Bernstein.

g. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure...” (Ex. 10, Probate Order of 12/15/15, Ted Bernstein, as Trustee of Shirley Bernstein Trust Agreement v. Alexandra Bernstein...Eliot Bernstein, et. al. No. 502014CP003698.) (ADD TRANSCRIPT SHOWING ELIOT ATTENDED?).”

ANSWER:

DISPUTE:

- a. The final judgment is being appealed although it is alleged that the appeal court is conflicted with Third Party Plaintiff Eliot Bernstein and is aiding and abetting the continued and ongoing fraud on and fraud by the court in efforts to shut down Eliot’s whistleblowing efforts against Officers of the Court, including but not limited to, three judges involved, several attorneys at law and their firms, a predatory guardian Diana Lewis (a former defrocked Judge) and others.

b. Count II of the Amended Complaint in the sham and fraudulent Shirley Trust

Construction case was heard in an improperly scheduled hearing from a status conference in Simon's Estate and in violation of Florida Probate Rules and Statutes regarding the scheduling of trials. Virtually no pre-trial procedures were followed in violation of Florida Probate Rules and Statutes.

- c. The court's only witness to the documents was Robert Spallina who admitted in court under oath in the hearing to have fraudulently created a Shirley Trust and sent it to Eliot's minor children's counsel, Christine C. Yates, Esq. of Tripp Scott law firm in Ft. Lauderdale, FL. Spallina also admitted he was under a consent agreement with the SEC for insider trading and misrepresented that he did not plead guilty to criminal misconduct under the consent as stated in the consent order he signed, making this a serious violation of his consent order. Spallina also admitted to mail fraud and other fraud on the court in the use of Simon Bernstein's identity Post Mortem to file documents to close his deceased wife's estate through a further elaborate fraud on the court and where he stated under oath that he had not notified authorities of certain of these crimes he admitted before Judge John Phillips. Judge John Phillips has taken no steps to report the crimes or follow the Florida procedures for fraud on the court and failed to follow his Judicial Canons, Attorney Conduct Codes and state and federal law for reporting the misconduct and admitted fraud of another attorney at law and in fact has moved to swiftly retaliate against Third Party Plaintiff Eliot Bernstein and his wife and children to silence their whistleblowing efforts by denying them wholly of their due process rights through a series of fraudulently issued orders designed to remove Eliot and his family's civil rights and rights to their properties. Spallina, even testified to the validity of the Shirley

Bernstein trust that he later under cross examination by Eliot admitted he fraudulently altered and sent via mail to his minor children's counsel, this done as part of an elaborate fraud on the beneficiaries to change the beneficiaries to benefit their client and close personal friend Ted Bernstein whose family was wholly disinherited in the estate and trust plans of Simon and Shirley Bernstein. No other parties who signed or witnessed the documents, who all live in the same county, were brought in to testify as witnesses.

- d. Eliot Bernstein's minor children were precluded a stay request to allow counsel to represent them who was already retained and waiting to file Pro Hac Vice to enter once she received copies of the trusts the children were sued under. Alan Rose refused to provide copies of the trusts the children were sued under and only later did we learn that they do not exist from Alan Rose as already evidenced herein and therefore three minor children, alleged to be beneficiaries were not represented by counsel or their parents at the hearing. The parents were precluded from representing their children as Rose claimed that Third Party Plaintiff Eliot Bernstein had a conflict of interest with his children that precluded him from representing them. That two other minor children were also wholly unrepresented by their parents (who would have had similar conflicts alleged by Rose) or any counsel at all. That none of the named beneficiaries of the alleged Shirley Bernstein trust were sued under the action or appeared at trial, namely, the Eliot Bernstein Family Trust, the Jill Iantoni Family Trust and the Lisa Friedstein Family Trust in violation of Florida Probate Rules and Statutes regarding the validity hearings and parties that must be joined. In fact, Mr. Rose sued instead the beneficiaries of a non-existent Simon Bernstein Trust dated on the day he died September 13, 12 and alleged trusts held thereunder that he admits in his email do not exist legally at this time.

Therefore, due to this suit being filed against non-existent parties the whole lawsuit and all orders etc. are further fraud on the court and fraud by the court, as the court is fully apprised of these issues of parties sued legally not existing and has done nothing to follow its own fraud policy and laws regarding fraud again and again in these matters, instead choosing a path of ignoring these facts and rushing to silence Eliot Bernstein and his family and further rob their properties held in the State of Florida's custody,

- e. The hearing was limited to a validity hearing on testamentary documents from several non-related cases whereby no original documents were produced at trial to authenticate the copies and it was learned in the hearing that no parties claim to have possession of the original testamentary documents that were supposed to be turned over by Tescher and Spallina as part of their court ordered production.

All of the COPIES of the alleged testamentary documents produced to this Court and Third Party Plaintiff Eliot come from a court ordered production² calling for "ALL" documents of Tescher and Spallina to be turned over to the Curator of the Estate of Simon at the time, Benjamin Brown, when Spallina and Tescher resigned as counsel and co-trustees and co-personal representatives of Simon's Estate and Trusts and all Bernstein family matters³, after their firm was found committing fraud, fraud on the court, fraud on the beneficiaries and fraud on beneficiaries counsel in the Estate and Trust litigations in Florida involving Simon and Shirley Bernstein. It has been learned that NO ORIGINAL DOCUMENTS were produced by Tescher and Spallina to Ben Brown or any

² February 18, 2014 Martin Colin Order for Production of ALL records from Tescher & Spallina
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20COLIN%20TESCHER%20SPALLINA%20TO%20TURN%20OVER%20ALL%20RECORDS%20PRODUCTION%20ON%20PETITION%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf>

³ January 14, 2014 Tescher Resignation Letter from all Bernstein family matters.
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140114%20Tescher%20and%20Spallina%20Resignation%20Letter%20as%20PR%20in%20estates%20of%20Simon%20and%20Shirley.pdf>

other party and only copies of alleged original testamentary documents were transferred which violates the court order that would have required the originals to be turned over so the copies could be validated against them.

Despite being advised by Eliot Bernstein of the failure of Spallina and Tescher to comply with the court order to produce ALL documents, which would have included ALL Original documents, neither Benjamin Brown, nor his successor in the Estate of Simon, Brian O'Connell, nor Ted Bernstein or his counsel Alan B. Rose, have sought to have Tescher and Spallina comply with the order or sought contempt charges.

Benjamin Brown was given copies of alleged original documents by Tescher and Spallina, see Exhibit 1 - ECF DOCKET #'s 258-1 to 258-8, It is further alleged that the copies and files tendered to Brown who then turned over the majority of them to parties in the litigation have been being tampered with, including changing files or modifying files used in online exhibits to this court, including the production link exhibited in several prior filings @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140602%20ESTATE%20FILES%20FROM%20BEN%20BROWN%20CURATOR%20DELIVERED%20TO%20HIM%20BY%20TESCHER%20AND%20SPALLINA%20PRODUCTION.pdf> Third Party

Plaintiff, Eliot Bernstein, informed the court that file tampering in these matters was suspected and repeatedly in pleadings has urged the Court to print out and attach the documents at the linked URL's to any pleadings to avoid such hacking and alteration of the records before the court.

This failure to produce ANY original records in a case fraught with fraudulent documents, fraudulent notarizations and more, committed by multiple parties, with new

admissions by Spallina in a December 15, 2015 hearing of frauds he committed in the Estate and Trusts and had not revealed the crimes to any party until admitting them under oath in the hearing in Judge Phillips court, makes all records used in these matters questionable as to their authenticity if they come from the copies of alleged originals produced by Tescher and Spallina who are in violation of the court order to produce that would have required production of the originals and any copies.

- f. That the fraudulent order from the sham validity hearing attempts to vindicate Ted Bernstein of involvement in the preparation or transmission of fraudulent documents to the court that his attorneys that represented him submitted on his behalf that were to directly benefit his family from such fraud. The documents filed in Shirley's Estate that led to the re-opening of the Estate due to multiple fraudulent acts on the beneficiaries and the court were filed by Ted's attorneys representing him as alleged Personal Representative of the Estate and alleged Successor Trustee of the Shirley Trust and thus in essence were filed with the court by Ted as the Fiduciary, presumably Ted reviewed the work his counsel was filing on his behalf and thus responsible as a fiduciary. That there was NO EVIDENCE or TESTIMONY regarding Ted's involvement in the fraud at the validity hearing as the record of the hearing clearly reflects and Judge Phillips throughout the hearing precluded Eliot from asking questions of Ted and Spallina regarding the multiple frauds and their involvement claiming repeatedly it was a validity hearing and thus not relevant and the hearing was limited to validity and nothing else. This represents further fraud by the court in efforts to cover up the crimes of its court appointed officers and fiduciaries, including Ted, Judge Colin, Judge Phillips, Spallina, Tescher, et al.

34. On April 8, 2016, Hon. John. L Phillips entered another Probate Order including the following findings:

a. “This court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the “Trust”) are Simon Bernstein’s ‘then living grandchildren’. Under that ruling, Simon’s children -- including Eliot – are not beneficiaries of the Trust.” (insert footnote explaining that the Trust is beneficiary of the Will”).

b. The Court has already determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children’s interest resulting in appointment of a guardian ad litem.

c. Accordingly, the Court appoints Diana Lewis to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian ad Litem will have full power and autonomy to represent the interests of the Children of Eliot Bernstein, subject to the jurisdiction and review of the court.” (Ex. 11, Order entered 4/8/16, Eliot Bernstein, et. al v. Theodore Stuart Bernstein, et al., No. 502015CP001162).” (Ex. 11, Probate Order entered 4/8/16)

ANSWER:

DISPUTE:

g. This Court can see from the transcript and pleadings relating to the hearing, no Trust Construction hearing was held to determine beneficiaries at the validity only hearing on Count II and Judge Phillips signed prefabricated Orders that were prepared prior to the hearing by Alan Rose, which Order represents virtually nothing that was heard that day and which Third Party Plaintiff Eliot Bernstein was not given fair opportunity to see or object to the Orders prior to Phillips signing them and the Order claims that determinations were made regarding construction of the beneficiaries. Eliot is a named beneficiary in virtually every COPY of an alleged testamentary document that was produced and validated by Phillips at the hearing and the Order therefore even contradicts the copies of the documents alleged valid by Phillips. Phillips did not even care that Ted

and Rose claimed to not have possessed or seen the original documents they operate under.

35. In this same Probate Order, Judge Philips admonished Eliot that the court intended to use its “full measure of its coercive powers” to ensure Eliot’s, and anyone acting in concert with Eliot, non-interference with the guardian ad litem appointed for Eliot’s children. (emphasis added). (Ex. 11, Probate Order entered 4/8/16). For purposes of this motion, the two orders attached as Ex. 10 and Ex. 11 are referred to as the “Probate Orders”.

ANSWER:

DISPUTED: This part of the Order further evidences how Judge Phillips uses his Court as Weapon to extort Third Party Plaintiff Eliot and shut down his exposing the frauds in and by the court and holds predatory guardianship hearings to silence rights, through hearings again scheduled in violation of Florida Guardian Ad Litem Rules and Statutes and with no mandatory audio recording and no record created of such GAL hearings, to attempt to extort and bully and prey upon the children and deny Eliot and his minor and adult children and wife their due process rights through abuse of process, fraud on the court, fraud by the court, obstruction of justice with intent to deny deprive civil rights of litigants before his court. In fact, Phillips through his fraudulently gained Orders attempts to spin the case to portray Eliot as a problem and the allegations against Eliot to have guardians put on him by Alan Rose and Steven Lessne in the GAL hearings included to stop Eliot from accusing Judges and Attorneys of fraud, really. Diana Lewis the GAL assigned by Phillips and selected by Rose has been made aware of fraud and misconduct by Peter Feaman the attorney for William Stansbury and appears to ignore this information.

VI. THE ESTATE’S INTERVENOR COMPLAINT

36. 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. 12 at ¶12, Estate’s Intervenor Complaint).

ANSWER:

DISPUTE: Again, there is no “Policy” produced at this time. That again there is a Primary beneficiary, LaSalle National Trust, NA and a contingent beneficiary named by the carrier’s parole records as Simon Bernstein Trust, NA and until the whereabouts of these named beneficiaries or their successors is determined the Estate is not in line to receive any monies.

There are no “Policy Proceeds” as no policy has been produced to show the contractual policy amount.

VII. THE INSURER’S INTERPLEADER ACTION

37. A copy of the Insurer’s Interpleader Action is included in Movant’s Appendix to its Statement of Undisputed Facts as (Ex. 13, Insurer’s Interpleader Action). 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 potentially conflicting claim. (Ex. 13 at ¶22).

ANSWER:

DISPUTE: Eliot never filed any claim with the carrier. The only party who filed a formal claim is Robert Spallina acting as the alleged “Trustee” of the lost, suppressed or destroyed trust he claims to have never seen or possessed or had anything to do with. Spallina could also not prove that he was “Trustee” of the trust making the fraudulent claim and this appears to be the real reason for the declination.

Prior Opposition Incorporated by Reference:

Third Party Plaintiff Eliot hereby incorporates by reference my prior responses in my filing of the Opposition of Summary Judgement filed with this Court, see ECF Docket #258-9.

DATED: August 26, 2016

Respectfully submitted by,

/s/ *Eliot Ivan Bernstein*

Third Party Defendant/Cross Plaintiff PRO SE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 27, 2016 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*

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