

**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 INTERVENOR STATEMENT OF
UNDISPUTED MATERIAL FACTS AND LOCAL RULE 56.1(b)(3)(C) STATEMENT OF
ADDITIONAL FACTS REQUIRING THE DENIAL OF INTERVENOR 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. The Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (“1995 Trust”) is a Plaintiff and purports to be an irrevocable life insurance trust formed in Illinois. The Estate disputes the existence and terms of the 1995 Trust. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 1 (ECF No. 192); Order at 2-4 (ECF No. 220).)

ANSWER:

UNDISPUTED

2. Benjamin Brown, as Curator of The Estate of Simon L. Bernstein (the “Estate”), filed a motion to intervene in this litigation. On July 28, 2014, the Court granted the motion to intervene and the Estate became an Intervenor-Plaintiff. (ECF No. 121.) On November 3, 2014, Brian O’Connell substituted his appearance as the Personal Representative of the Estate. (ECF No. 126.)

ANSWER:

UNDISPUTED

3. Ted Bernstein, both individually and purporting to be Trustee of the alleged 1995 Trust, is a Plaintiff. Ted Bernstein has also been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Ted Bernstein is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 6 (ECF No. 192); Affidavit of Ted Bernstein ¶ 25 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

4. Ted Bernstein will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 3 (ECF No. 201); Deposition of Ted Bernstein, 9:18-10:4, 118:16-119:14 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

5. Pamela Simon is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Pamela Simon is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 10 (ECF No. 192); Affidavit of Pam Simon ¶¶ 2-3 (ECF No. 150-32).)

ANSWER:

UNDISPUTED

6. David Simon is Pamela Simon's husband, Adam Simon's brother, and has been named a Third-Party Defendant to Eliot Bernstein's third-party claims. Adam Simon was previously counsel for all Plaintiffs and is currently counsel for Plaintiffs the 1995 Trust, Ted Bernstein and Pamela Simon, and Third-Party Defendants David Simon and The Simon Law Firm. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 2 (ECF No. 201); Deposition of David Simon, 7:9-10 (ECF No. 192-2); Affidavit of David Simon ¶20 (ECF No. 150-33); ECF Nos. 12, 26, 46, 224 and 226.)

ANSWER:

UNDISPUTED

7. Pamela Simon will receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 2 (ECF No. 201); Deposition of David Simon, 58:13-59:4 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

8. Jill Marla Iantoni is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Jill Marla Iantoni is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 9 (ECF No. 192); Affidavit of Jill Iantoni ¶¶ 2-3 (ECF No. 150-34).)

ANSWER:

UNDISPUTED

9. Lisa Sue Friedstein is a Plaintiff, and has been named as a Third-Party Defendant to Eliot Bernstein's third-party claims. Lisa Sue Friedstein is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 8 (ECF No. 192); Affidavit of Lisa Friedstein ¶¶ 2-3 (ECF No. 150-35).)

ANSWER:

UNDISPUTED

10. Jill Marla Iantoni and Lisa Sue Friedstein will each receive over \$300,000, representing 20 percent of the Policy proceeds, if Plaintiffs prevail in this litigation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 4 (ECF No. 201); Deposition of Ted Bernstein, 118:16-119:14 (ECF No. 192-1); Deposition of David Simon, 58:13-59:4 (ECF No. 192-2); Plaintiffs' Exhibit 15 (ECF No. 150-16); Plaintiffs' Exhibit 16 (ECF No. 150-17).)

ANSWER:

UNDISPUTED

11. Eliot Bernstein ("Eliot") was made a Party by virtue of Heritage Union Life Insurance Company's counterclaim for Interpleader, and Eliot filed third-party claims against several Parties as described herein, making Eliot a Third-Party Plaintiff as well. Eliot is one of the five adult children of Simon Bernstein. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 3 (ECF No. 192); Affidavit of Ted Bernstein ¶ 23 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

12. Heritage Union Life Insurance Company (“Heritage”) is the successor to the Capitol Bankers Life Insurance Company (“Capitol Bankers”), which originally issued the Policy to Simon Bernstein 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. (ECF No. 101.)

ANSWER:

DISPUTED, Filings show that it appears to have been Jackson National Life that deposited the proceeds. There has been no insurance policy contract produced in this case for the policy at issue. A sample contract was provided but this is not Simon Bernstein’s insurance policy contract. Therefore, the term “Policy” does not actually relate to a bona fide life insurance contract on the life of Simon Bernstein and using the term “Policy” may mislead the court to believe a policy exists at this time. There can be no valid “Policy proceeds” as there is no bona fide insurance policy produced at this time. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

II. THE LIFE INSURANCE POLICY

13. In 1982, Simon Bernstein applied for a life insurance policy from Capitol Bankers, which was issued as Policy No. 1009208 (the “Policy”). (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 26 (ECF No. 192); Affidavit of Don Sanders ¶¶ 6, 23 (ECF No. 150-30).) The amount of the Policy proceeds (plus interest) on deposit with the Registry of the Court exceeds \$1.7 million. (ECF No. 101; Plaintiffs’ Exhibit 2 (ECF No. 150-3).)

ANSWER:

DISPUTED: The issued policy has not been produced by any party in this litigation and all references to “the Policy” or the terms of said “Policy” cannot be verified at this time. All such

items are in dispute until such time as proper records, verified records, complete and valid records are produced and authenticated. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

14. The Capitol Bankers Life Insurance Application, dated October 12, 1982 (the “Application”), designates Simon L. Bernstein as the Insured, lists S.B. Lexington, Inc. as his employer, and designates the Owner of the Policy as “First Arlington National Bank Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust.” (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 27 (ECF No. 192); Plaintiffs’ Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: The “Application” is a copy of the alleged application for insurance. However, the original application for life insurance must be attached to the binding issued policy and maintained by the insurer with a copy attached to any policies distributed as part of the life insurance contract. Until the insurer produces a bona fide policy for Simon Bernstein with the original application attached this copy may not be the binding application used for the policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

15. The Application: (i) directs premium notices to be sent to S.B. Lexington, Inc. Employee Death Benefit Plan c/o National Service Assoc. at 9933 Lawler Ste. 210, Skokie, Illinois 60077; (ii) lists Simon Bernstein’s occupation as an Executive with S.B. Lexington, Inc. located in Skokie, Illinois; (iii) lists Simon Bernstein as the selling agent of the Policy; and (iv) was signed in Illinois. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 28 (ECF No. 192); Plaintiffs’ Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: See answer 14 above.

16. In late 1982 when the Policy was issued: (a) the Policy would have been delivered to the selling agent (i.e. Simon Bernstein), who would have then delivered the Policy to the initial Owner; (b) Simon Bernstein resided and was domiciled in Glencoe, Illinois; (c) Simon Bernstein’s offices were located in Chicago, Illinois; and (d) First Arlington National Bank was

located in Arlington Heights, Illinois. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 28 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30); Affidavit of Pam Simon ¶¶ 22-24 (ECF No. 150-32).)

ANSWER:

DISPUTED: The insurer would have maintained the original policy with the original application and other attachments and any other parties would have received copies of said policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

III. THE DESIGNATED BENEFICIARIES

17. At the time the Policy was issued, the only designated beneficiary was First Arlington National Bank as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶¶ 29-30 (ECF No. 192); Plaintiffs' Exhibit 3 (ECF No. 150-4); Affidavit of Don Sanders ¶ 48 (ECF No. 150-30).)

ANSWER:

DISPUTED: As there is no "Policy" or even a copy of the "Policy" provided to this Court or any party in the litigation, the beneficiaries designated on the policy cannot be ascertained. As only a "Sample" policy has been provided it lists only sample beneficiaries and owners. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

18. In June of 1992, LaSalle National Trust, N.A., as Successor Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, became Owner of the Policy. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 31 (ECF No. 192); Plaintiffs' Exhibit 7 (ECF No. 150-8); Affidavit of Don Sanders ¶ 55 (ECF No. 150-30).)

ANSWER:

DISPUTED: Documents relating to the S.B. Lexington, Inc. Employee Death Benefit Trust aka the VEBA Trust are missing and the terms of successorship have not been provided, nor has a copy of the VEBA Trust been provided despite requests to produce such documents.

19. In November of 1995, Capitol Bankers received a “Request Letter” signed by the Owner of the Policy, LaSalle National Trust, N.A., pursuant to which the following changes were made to the Policy: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary; and (b) the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (i.e. the 1995 Trust) was designated contingent beneficiary. (Intervenor’s Response to Plaintiffs’ Statement of Undisputed Material Facts ¶ 33 (ECF No. 192); Plaintiffs’ Exhibit 8 at JCK000370 (ECF No. 150-9); Affidavit of Don Sanders ¶¶ 56, 60 (ECF No. 150-30).)

ANSWER:

DISPUTED: All change of beneficiary and change of ownership in policies are also required to be made part of the original insurance contract policy maintained by the insurer and reinsurers and therefore without the bona fide original insurance contract and all attachments produced it cannot be verified that this document JCK000370 was ever made part of the policy by the carrier. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

20. As of September 13, 2012, the date of Simon Bernstein’s death: (a) LaSalle National Trust, N.A., as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, was designated primary beneficiary of the Policy; and (b) the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (i.e. the 1995 Trust) was designated contingent beneficiary of the Policy. (Affidavit of Don Sanders ¶¶ 62, 72 (ECF No. 150-30); Plaintiffs’ Exhibit 8 at JCK000370 (ECF No. 150-9); Deposition of Ted Bernstein, 10:8-10 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, since there is no “Policy” the beneficiaries of the “Policy” cannot be determined at this time until such time that the bona fide original policy is produced by the insurance carrier or reinsurers. 20(b) is a wholly misleading statement by the Intervenor as the

carrier has claimed that based on parole evidence the contingent beneficiary on the missing policy is the Simon Bernstein Trust, N.A. Since no bona fide insurance contract exists however to confirm who is listed in the policy as contingent beneficiary nobody can be certain who is named on it. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

21. On April 3, 1998, S.B. Lexington, Inc. was voluntarily dissolved and the S.B. Lexington, Inc. Employee Death Benefit Trust was terminated. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 36 (ECF No. 192); Plaintiffs' Exhibit 9 (ECF No. 150-10); Affidavit of Pam Simon ¶ 36 (ECF No. 150-32).)

ANSWER:

DISPUTED: Documents regarding the dissolution of the VEBA and distribution of plan benefits, including individual policies that may have resulted from the dissolution upon any termination have not been produced at this time. Discovery should be opened on these matters.

22. Neither LaSalle National Trust, N.A. as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust, nor the S.B. Lexington, Inc. Employee Death Benefit Trust itself, has made any claim to the Policy proceeds. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 37 (ECF No. 192); Affidavit of Don Sanders ¶¶ 77(a)-(b), 78 (ECF No. 150-30).)

ANSWER:

UNDISPUTED

23. First Arlington National Bank has not made any claim to the Policy proceeds. Its successor-in-interest, J.P. Morgan Bank, filed a responsive pleading in this action, and then a motion for judgment on the pleadings in which it disclaimed any interest in the Policy proceeds and requested to be dismissed. That motion was granted and J.P. Morgan Bank was dismissed as a Party on March 12, 2014. (Intervenor's Response to Plaintiffs' Statement of Undisputed Material Facts ¶ 37 (ECF No. 192); ECF No. 60; ECF No. 105.)

ANSWER:

UNDISPUTED - However, First Arlington National Bank, nor JP Morgan are listed at the time of Simon's death on any parole evidence regarding the policy as beneficiaries, either primary or

contingent, as they appear to have been replaced by LaSalle National Trust, NA in all capacities. LaSalle National Trust, NA or its successor Chicago Title is the primary beneficiary according to the insurance companies parole evidence at the time of Simon's death and yet, LaSalle, nor its successor have made claim to the policy and may not at this time have been notified by the carrier that according to their parole evidence they are the alleged beneficiary. Perhaps they might have a copy of the policy.

Plaintiffs have claimed that Bank of America was the successor to LaSalle and while they were made party to this litigation they were let out of this action by the carrier Jackson National/Heritage removing them without any requesting any production or statements from them and the court granted their removal. Perhaps they may have a copy of the policy. Any and all parties associated with the depositing of funds into the Registry should be active parties to the litigation.

IV. THE FIRST "EXHAUSTIVE SEARCH" FOR THE 1995 TRUST

24. At least one "exhaustive search" for the 1995 Trust document was conducted between Simon Bernstein's death on September 13, 2012 and December 6, 2012, but no trust document could be found. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 9 (ECF No. 201); Deposition of Ted Bernstein, 55:1-11 and Dep. Ex. 3 at TS004519 (ECF No. 192-1).)

ANSWER:

DISPUTED: There is nothing more than a conclusory statement by Ted Bernstein that an alleged "exhaustive search" was done. Yet, this conclusory statement fails to provide any details of when the search occurred, who was present, what was actually found, the types of areas where records were sought, the traditional areas where records were kept and fails to provide other relevant details. Ted Bernstein claimed that whatever records he found were turned over to his

attorneys at Tescher & Spallina but Tescher & Spallina had no such records in their Production.

Nor has Ted Bernstein turned over any such records.

25. According to David Simon, the first attempt to locate the 1995 Trust document occurred in the winter of 2012-2013. He was aware of the search and advised that no such document was found. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 10 (ECF No. 201); Deposition of David Simon, 59:13-17, 60:4-6 (ECF No. 192-2).)

ANSWER:

DISPUTED. The non-moving party herein has insufficient information to confirm this statement of fact.

26. David Simon also testified that Foley & Lardner, the successor firm to Hopkins & Sutter, and some of the attorneys who broke away from Hopkins & Sutter and started their own firm, were contacted to see if they had a copy of a 1995 Trust document, but they did not. David Simon does not even know whether it was he or someone else who contacted Foley & Lardner and the attorneys, or with whom they specifically spoke, and he testified that whoever it was may have been asked to do so by him, his wife Pamela Simon, or his brother Adam Simon. (Deposition of David Simon, 44:17-45:15, 46:2-4 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

V. IDEAS ABOUT HOW TO OBTAIN THE POLICY PROCEEDS & UNSUCCESSFUL ATTEMPTS TO DO SO

27. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED

28. Plaintiffs considered "using" the 2000 Trust to obtain the Policy proceeds, but this option was rejected on or before November 19, 2012 because Pamela Simon was not included as a beneficiary of the 2000 Trust. (Deposition of Ted Bernstein, 48:21-49:9, Dep. Ex. 1 and Dep. Ex. 2 at TS004490 (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED

29. Plaintiffs' former counsel, Robert Spallina, representing that he was trustee of the 1995 Trust, made an application to Heritage for the Policy proceeds on behalf of Plaintiffs. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 7 (ECF No.201); Deposition of Ted Bernstein, 35:6-16 and Dep. Ex. 1 (ECF No. 192-1); Deposition of David Simon, 81:15-82:2 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

30. On October 19, 2012, Ted Bernstein sent Robert Spallina an email suggesting he had a "solution to the life insurance policy which provides the desired result," that he wanted to discuss and that the initial conversation about it involve only him, Robert Spallina, Pamela Simon and David Simon. The email also asked that Robert Spallina avoid any further overtures to the insurance company until after the initial conversation in order "to avoid any unnecessary confusion" for the insurance company. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 7 (ECF No. 201); Deposition of Ted Bernstein, Dep. Ex. 1 at TS004965 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: However, the emails produced come from a court ordered production¹ 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 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 and only copies of alleged

¹ 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>

originals, including all of the testamentary documents, were provided violating the court order that would have required the originals to be turned over.

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. 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.

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.

31. On November 19, 2012, after Robert Spallina unsuccessfully attempted to claim the Policy proceeds without providing any documentation, David Simon suggested attempting to secure the Policy proceeds on behalf of the Plaintiffs by submitting a waiver and settlement agreement to the insurer. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 8 (ECF No. 201); Deposition of Ted Bernstein, 51:22-52:2, 53:22-54:4 and Dep. Ex. 2 at TS004490 (ECF No. 192-1).) The Plaintiffs tried David Simon's suggestion of a waiver and settlement agreement, but it was not successful because Eliot would not agree. (Deposition of Ted Bernstein, 54:13-25 and Dep. Ex. 3 (ECF No. 192-1).)

ANSWER:

DISPUTED: Robert Spallina did provide documentation and made a formal signed claim form for the policy proceeds alleging he was the "Trustee" of 1995 Trust document. Spallina also provided an incomplete death certificate to the carrier when he filed his claim and failed to notify the carrier at the time that his client Ted Bernstein had claimed that his father may have been murdered by his girlfriend and there was an ongoing Palm Beach County Sheriff investigation and Palm Beach Medical Examiner Autopsy Ted had instigated with the aid of his attorneys according to Ted Bernstein.

The Waiver and Settlement Agreement proposed was not successful because David Simon and Adam Simon filed a Breach of Contract lawsuit in Illinois court based on the carrier's failure to pay the fraudulent claim submitted by Robert Spallina, who has now admitted that he was not and is not the "Trustee" of the 1995 Trust. Thus, Spallina's claim form to the carrier signed as "Trustee" of the 1995 is Prima Facie evidence of insurance fraud and has been reported to state and federal authorities as such for investigation. The Breach of Contract lawsuit was then moved to this Court, where Ted Bernstein suddenly and without any documentation alleges to be the

“Trustee” of the 1995 Trust. Both Ted Bernstein and Robert Spallina have claimed to have never seen the 1995 Trust they claim to be operating under.

32. Between October 19, 2012 and February 8, 2013, the Plaintiffs exchanged many emails discussing how best to obtain the Policy proceeds and referring to an inability to locate the 1995 Trust document. (Order at 5 (ECF No. 220); Deposition of Ted Bernstein, Dep. Exs. 1-4, 8-9 (ECF No. 192-1).) David Simon was a participant in the email exchanges, yet in none of those emails did he relate a recollection that he created the 1995 Trust document for Simon Bernstein, that he saw the final version of the 1995 Trust executed by Simon Bernstein, or that it named Ted Bernstein as successor trustee of the 1995 Trust. (Id.)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

33. One of those email exchanges on January 22, 2013 states that “none of us can be sure exactly what the 1995 trust said.” (Deposition of Ted Bernstein, Dep. Ex. 4 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

34. On February, 8, 2013, Pamela Simon informed Ted Bernstein that she could not find a copy of the insurance Policy or the 1995 Trust. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 11 (ECF No. 201); Deposition of Ted Bernstein, 60:25-61:10, Dep. Ex. 8 at BT000049, and Dep. Ex. 10 at BT000047 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

35. As of February 14, 2013, the Plaintiffs planned to pursue the Policy proceeds via a Release and Settlement Agreement and have the proceeds paid either to Robert Spallina as trustee or to the Tescher & Spallina trust account. (Deposition of Ted Bernstein, 62:17-63:3 and Dep. Ex. 11 at TS004464 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

36. From March 15, 2013 through April 12, 2013, Robert Spallina on behalf of Plaintiffs was engaged in discussions with Heritage and they planned for Heritage to interplead the funds into court in Florida. (Deposition of Ted Bernstein, Dep. Exs. 15 and 16 (ECF No. 192-1).) Unbeknownst to Mr. Spallina, however, on April 5, 2013, the Plaintiffs, through counsel Adam Simon, filed a lawsuit in the Circuit Court of Cook County seeking to obtain the Policy proceeds from Heritage. (Deposition of Ted Bernstein, Dep. Ex. 16 at TS005253-54 (ECF No. 192-1); Notice of Removal ¶ 1 (ECF No. 1).) As a result, Robert Spallina and the law firm Tescher & Spallina ceased representing Plaintiffs in connection with their efforts to obtain the Policy proceeds from Heritage. (Deposition of Ted Bernstein, Dep. Ex. 16 at TS005252, and Dep. Ex. 17 at TS006547 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

37. Despite David Simon's current claims that he drafted the 1995 Trust document on his computer and saw it after execution, the Complaint filed by his brother on April 5, 2013 makes no reference whatsoever to David Simon having drafted the 1995 Trust or having seen the final version after it was executed, or to the identity of the trustee and successor trustee named in the executed 1995 Trust, or to the alleged fact that Simon Bernstein ever even executed a 1995 Trust document. (Complaint at Law (ECF No. 1-1).)

ANSWER:

UNDISPUTED: It should be noted that Adam Simon when filing this lawsuit knew that his client Ted Bernstein had no 1995 Trust or copy of said 1995 Trust and thus could not at that time

prove that he was in fact a trustee of said trust and yet Adam Simon filed the lawsuit claiming Ted was factually the “Trustee” of the missing or suppressed 1995 Trust and sued parties as if he were factually the “Trustee” and they were factually beneficiaries of a trust he claims never to have seen. No copy of the underlying 1995 Trust was attached to the Complaint and the court was not initially apprised that Ted could not prove his standing as Trustee of an alleged trust he could not produce or had never seen. Ted’s standing as Trustee of the 1995 Trust is still a disputed issue in this litigation and Ted should be removed as alleged Trustee until such time that this court can ascertain what if any trust terms apply when no executed original or copy of the trust has been produced.

38. As of August 30, 2013, the 1995 Trust (in any form) could not be located. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 16 (ECF No.201); Plaintiffs’ Exhibit 15 at BT000002 (ECF No. 150-16); Deposition of David Simon, 95:9-13 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

VI. THE SEARCH WHICH UNCOVERED THE PURPORTED DRAFTS OF THE 1995 TRUST

39. David Simon claims to have located an unexecuted draft electronic copy of the purported 1995 Trust (i.e. Plaintiffs’ Exhibit 15 (ECF No. 150-16)) on the computer system of The Simon Law Firm on September 13, 2013. (Movants’ Reply to the Estate of Simon Bernstein’s Statement of Additional Facts ¶ 16 (ECF No. 201); Plaintiffs’ Exhibit 15 at BT000002 (ECF No. 150-16); Deposition of David Simon, 95:9-13 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

40. According to David Simon, he located Plaintiffs’ Exhibit 15 with the help of his brother, Adam Simon. (Affidavit of David Simon ¶ 29 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

41. David Simon also claims to have located an unexecuted draft paper copy of the purported 1995 Trust (i.e. Plaintiffs' Exhibit 16 (ECF No. 150-17)) which contains his handwritten notes in the stored files of The Simon Law Firm on or about September 13, 2013. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 17 (ECF No. 201); Plaintiffs' Exhibit 16 (ECF No. 150-17); Deposition of David Simon, 94:13-95:8 (ECF No.192-2); Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

42. According to David Simon, he located Plaintiffs' Exhibit 16 without anyone else's assistance. (Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

43. According to Pamela Simon, however, she and David Simon located Plaintiffs' Exhibit 15 and Plaintiffs' Exhibit 16, with assistance from their employees. (Affidavit of Pam Simon ¶ 37 (ECF No. 150-32).)

ANSWER:

UNDISPUTED

VII. THE EXISTENCE AND TERMS OF THE PURPORTED 1995 TRUST

44. Plaintiffs have produced no executed original or executed copy of a written trust agreement reflecting the terms of the purported 1995 Trust. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 6 (ECF No. 201); Answer to Intervenor Complaint ¶ 9 (ECF No. 144); Deposition of Ted Bernstein, 13:13-15 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

45. According to David Simon, he had a conversation with Simon Bernstein on June 20, 1995 about creating an insurance trust, during which Simon Bernstein said he wanted to create one and name his wife Shirley as trustee and David Simon as successor trustee, and David Simon agreed to be successor trustee. David Simon testified that he took handwritten notes of this conversation on Plaintiffs' Exhibit 16. (Plaintiffs' First Amended Complaint ¶ 29 (ECF No. 73); Deposition of David Simon, 39:15-40:1, 40:17-41:1, 41:7-20, 96:3-11 (ECF No. 192-2); Affidavit of David Simon ¶ 28 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

46. The handwritten notes on Plaintiffs' Exhibit 16, however, list the trustee as "Shirley, David, [illegible]?" and list the successor trustee as "Pam, Ted." (Plaintiffs' Exhibit 16 at BT000020 (ECF No. 150-17).)

ANSWER:

UNDISPUTED

47. David Simon testified that his assistant created Plaintiffs' Exhibit 15 by making the modifications reflected in David Simon's handwritten notes on Plaintiffs' Exhibit 16. (Deposition of David Simon, 40:17-41:1, 96:3-11 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

48. Plaintiffs' Exhibit 15, however, identifies the trustee as "Shirley Bernstein" and identifies the successor trustee as "David B. Simon." (Plaintiffs' Exhibit 15 at BT000010 (ECF No. 150-16).)

ANSWER:

UNDISPUTED

49. David Simon testified that, after thinking about it overnight, on June 21, 1995 he asked Simon Bernstein to remove him as successor trustee and make the successor trustees Simon Bernstein's children sequentially. (Deposition of David Simon, 41:17-23 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

50. David Simon averred, however, that he asked Simon Bernstein to appoint only Ted Bernstein as successor trustee. (Affidavit of David Simon ¶ 25 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

51. David Simon testified that he did not change the name of the successor trustee from his own name, and Simon Bernstein then took Plaintiffs' Exhibit 15 to the law firm of Hopkins & Sutter to be finalized and executed. (Deposition of David Simon, 40:2-7, 41:17-42:5 (ECF No. 192-2).)

ANSWER:

UNDISPUTED

52. According to David Simon, he met with Simon Bernstein after the 1995 Trust document was executed and reviewed the final executed version of it, which he claims named Ted Bernstein as the successor trustee. (Deposition of David Simon, 42:6-43:1 (ECF No. 192-2); Affidavit of David Simon ¶ 27 (ECF No. 150-33).)

ANSWER:

UNDISPUTED

53. David Simon testified that, when he met with Simon Bernstein after the 1995 Trust document was executed, he had Simon Bernstein sign a change of beneficiary form to submit to Lincoln Benefit in order to make the 1995 Trust the beneficiary of Simon Bernstein's life insurance policy issued by Lincoln Benefit, and that he would have expected Lincoln Benefit to retain a copy of that form. David Simon also testified that Lincoln Benefit was contacted and they did not have a copy of the 1995 Trust. (Deposition of David Simon, 43:10-44:2 (ECF No. 192-2); Order at 5-6 (ECF No. 220).)

ANSWER:

UNDISPUTED

54. Ted Bernstein, purported trustee of the 1995 Trust, has never seen an executed copy of a 1995 Trust document. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 5 (ECF No. 201); Deposition of Ted Bernstein, 24:6-12 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

55. According to Ted Bernstein, in the summer of 1995, he had a conversation with his father in which his father told Ted that he was forming a life insurance trust for the Policy and that Ted would be one of the trustees. No one except Simon Bernstein and Ted Bernstein was present for the conversation. (Movants' Reply to the Estate of Simon Bernstein's Statement of Additional Facts ¶ 5 (ECF No. 201); Deposition of Ted Bernstein, 23:1-8 (ECF No. 192-1); Affidavit of Ted Bernstein ¶ 88 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

56. Ted Bernstein averred, based on having reviewed the purported drafts of the 1995 Trust document and facts as told to him by David Simon, that Ted was appointed successor trustee of the 1995 Trust. (Affidavit of Ted Bernstein ¶ 99 (ECF No. 150-31).)

ANSWER:

UNDISPUTED

57. Ted Bernstein testified that the bases for his knowledge that he is successor trustee of the 1995 Trust are that he saw his name handwritten on Plaintiffs' Exhibit 16 at page BT000020 (ECF No. 150-17), and after his father's death, David Simon told him that he was successor trustee of the 1995 Trust. When David Simon informed Ted that he was successor trustee, Ted does not recall whether he even remembered the conversation he testified that he had with his father during the summer of 1995. (Deposition of Ted Bernstein, 12:19-16:16, 17:5-17, 24:13-25:3 and Dep. Ex. 22 (ECF No. 192-1).)

ANSWER:

UNDISPUTED

VIII. SIMON BERNSTEIN'S SUBSEQUENTLY-EXECUTED ESTATE DOCUMENTS

58. On August 15, 2000, Simon Bernstein executed the Simon Bernstein 2000 Insurance Trust (the "2000 Trust"), which identifies the Policy at issue in this litigation as an asset of the 2000 Trust. (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶ 1 and Schedule A (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED:

59. The 2000 Trust document makes no reference to the 1995 Trust (i.e. the "Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995"), which the 2000 Trust would have superseded. (Deposition of Ted Bernstein, Dep. Ex. 23 (ECF No. 192-1); Order at 5 (ECF No. 220).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina

and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

60. Pursuant to the terms of the 2000 Trust, the Trustees were only authorized to pay the trust principal and income to only Shirley Bernstein and Simon Bernstein's "descendants," with "descendants" being defined to "specifically exclude ... PAMELA BETH SIMON and her descendants." (Deposition of Ted Bernstein, Dep. Ex. 23 at ¶¶ 2(a)-(b), 9 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

61. On May 20, 2008, Simon Bernstein executed the Simon L. Bernstein Irrevocable Trust Agreement (the "2008 Trust"). The terms of the 2008 Trust, in effect, provide that no inheritance shall pass to Ted Bernstein, Pamela Simon, or the lineal descendants of either Ted Bernstein or Pamela Simon. (Deposition of David Simon, 55:2-17 (ECF No. 192-2); Deposition of Ted Bernstein, Dep. Ex. 25 (ECF No. 192-1).)

ANSWER:

DISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

62. In January 2012, Plaintiff Pamela Simon wrote to her father, Simon Bernstein, expressing her distress over his act of "disinheriting" her, David Simon and their children, as well as Ted Bernstein and his children. (Deposition of Ted Bernstein, Dep. Ex. 26 (ECF No. 192-1).) Pamela Simon wrote the note to her father because she was passionate about the fact that his "estate plan" did not include her and her family or Ted Bernstein and his family. (Deposition of Ted Bernstein, 90:22-25, 91:13-25, and Dep. Ex. 26 (ECF No. 192-1).)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production

63. A few months before he died on September 13, 2012, Simon Bernstein arranged a conference call with Robert Spallina, Plaintiffs and some of their spouses. During the call, Simon Bernstein instructed that the assets of his estate and trust would be left to his ten grandchildren and the insurance policy proceeds were to pass to his five children, in an effort to quell some then-existing family acrimony about his girlfriend and about the trust document that disinherited Pamela Simon, Ted Bernstein and their respective children. (Deposition of Ted Bernstein, 90:11-18 (ECF No. 192-1); Deposition of David Simon, 53:1-19, 54:3-55:17 (ECF No. 192-2).)

ANSWER:

DISPUTED: Robert Spallina's new June 2016 Affidavit submitted to this Court states that in the May 10, 2012 conference call the insurance policy was NOT discussed. This contradicts prior claims that it was by parties. Simon Bernstein held the meeting to discuss with his children possible changes he was considering making in his estate plan and gain consent from the three children who were the named beneficiaries to possible changes from them to their children and to include Ted and Pam's children.

64. On July 25, 2012, Simon Bernstein executed the Simon L. Bernstein Amended and Restated Trust Agreement (the "2012 Trust"), which amends and restates in its entirety the 2008 Trust. (Deposition of Ted Bernstein, Dep. Ex. 24 at TS007362 (ECF No. 192-1).) Pursuant to the terms of the 2012 Trust, all of the Plaintiffs shall be deemed to have predeceased Simon Bernstein and all assets are to be passed on equal shares among Simon Bernstein's grandchildren. (Id. at Art. I (B)-(C), Art. III (E)(1).)

ANSWER:

DISPUTED: There has been no original July 25, 2012, Simon L. Bernstein Amended and Restated Trust Agreement (the "2012 Trust") and despite Florida Judge John Phillips order that such trust is valid, no valid original has been produced, similar again to this federal action where original documents at this time have not been produced to validate any document produced by Tescher and Spallina as a valid copy of an original document.

Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

65. On September 7, 2012, six days prior to his death, Simon Bernstein prepared a holographic will directing a bequest to Maritza Puccio of, among other things, \$100,000 from his current insurance policy and expressing an intention to change the beneficiary on said policy to reflect his wishes. (ECF No. 192-3 at TS003889). Simon Bernstein directed that the bequest to Ms. Puccio should proceed in the event of his death “with no interruption from family or probate.” (Id.) This document was not witnessed or notarized. (Id.)

ANSWER:

UNDISPUTED: Again, the documents and emails referred to produced by Tescher and Spallina and used by parties in this lawsuit cannot at this time be verified as copies of original documents remain missing and not produced according to the court order for production.

66. There is no evidence that Simon Bernstein executed any other Wills or trust agreements between July 25, 2012 and his death on September 13, 2012.

ANSWER:

UNDISPUTED

Third Party Plaintiff Eliot hereby incorporates by reference my prior responses in my filing of Undisputed Facts for the Opposition of Summary Judgement I filed with this Court as additional support herein, see Exhibit 2.

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 26, 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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