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February 9, 2017

**VIA HAND DELIVERY**

The Honorable Rosemarie Scher  
North County Courthouse  
3188 PGA Boulevard  
Palm Beach Gardens, Florida 33410

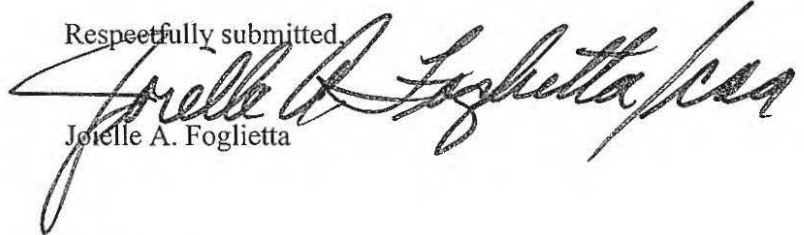
RE: Estate of Simon L. Bernstein  
Case No.: 502012CP004391XXXXNB IH  
Our File No.: 11270-52860

Dear Judge Scher:

Pursuant to Your Honor's instructions in your Order scheduling a Case Management Conference in the above-referenced matter for February 16, 2017 at 2:30 p.m., enclosed please find a hearing notebook on behalf of the Successor Personal Representative on his pending matters to be heard. Also enclosed are hard copies of the proposed Orders with self-addressed and stamped envelopes, as well as a jump drive with the Word format of each Order for Your Honor's edits.

Your consideration of this matter is greatly appreciated. If you should have any questions, please have your judicial assistant contact me.

Respectfully submitted,



Joelle A. Foglietta

JAF/caa  
Enclosure

cc: Counsel and beneficiaries of record (w/encl., via Federal Express)

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

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## **JUDGE'S NOTEBOOK**

**(Prepared for by Personal Representative  
on the below-described Matters)**

**Matter: Case Management Conference**

**Date: 2/16/17 @ 2:30 P.M.**

**Judge: Hon. Rosemarie Scher**

**\*\*\*\*\***

- RE: William Stansbury's Motion for Discharge, etc.:
  - Successor PR's Amended Petition for Authorization to Enter into Contingency Agreement or Hourly Agreement with Illinois Counsel in Pending Life Insurance Litigation
- Successor PR's Petition for Authorization to Sell Estate Jewelry
- Successor PR's Supplemental Petition for Instructions and Review of Compensation of Accountants Fees and Costs

IN RE: Estate of: SIMON L. BERNSTEIN  
File No.: 502012CP004391XXXXNB / IH  
Our File No.: 11270-52860

**JUDGE'S NOTEBOOK**  
**(Prepared for by Personal Representative)**  
**(February 16, 2017 @ 2:30 p.m.)**  
**(To be Continued on 3/2/17 if Not Concluded)**

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END

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 502012CP004391XXXXNB (TY)  
**JUDGE JOHN L. PHILLIPS**

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

---

**MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE  
FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S  
PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR  
ASSUMPTION OF RESPONSIBILITY BY THE ESTATE AND FOR  
REIMBURSEMENT OF ADVANCED FUNDS**

COMES NOW, William E. Stansbury ("Stansbury"), Creditor of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and moves this Court for an Order discharging Stansbury from further responsibility for the funding of the Estate's participation in the "Chicago life insurance litigation", and for the Estate to assume responsibility for funding the Chicago life insurance litigation, and states:

1. At the time of Simon Bernstein's death it was determined that there existed a life insurance policy on the life of Simon Bernstein issued by Heritage Union Insurance Company ("Heritage"). The policy proceeds are approximately \$1.75 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the "Insurance Trust").

2. The alleged Insurance Trust submitted a death claim to Heritage and demanded that Heritage pay the policy proceeds to the so-called "trustee" of the Insurance Trust the former Co-Personal Representative of the Estate. If paid to the Insurance Trust, the death benefit would

not be included as an asset of the Estate. However, neither the original nor a copy of the "Insurance Trust" exists.

3. Heritage refused to pay the death benefit of \$1.7 million to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois. The case was subsequently removed to the U.S. District Court for the Northern District of Illinois. (The "Life Insurance Litigation") See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) A copy of the Amended Complaint filed in U.S. District Court is attached as **Exhibit "1."** Heritage ultimately deposited the entire \$1.75 million death benefit of the policy into the registry of the court in Chicago.

4. The Estate of Simon Bernstein was not made a party to the Life Insurance Litigation, even though the Estate will clearly be affected by the outcome of the case. The original co-personal representatives of the Estate, Donald Tescher and Robert Spallina, either failed or refused to intervene on behalf of the Estate. In fact, they actively participated in trying to prevent the death benefit from being paid to the Estate at a time when they were Co-Personal Representatives of the Estate!

5. In December of 2013, Stansbury filed a Motion to Intervene in the Life Insurance Litigation as an Interested Party. The Court denied the Motion and thus Stansbury was unable to Intervene in his own right.

6. Thereafter, Stansbury brought the Life Insurance Litigation to the attention of Benjamin Brown ("Brown"), who had been appointed Curator of the Estate following the resignation of Tescher & Spallina as co-personal representatives. By Order dated May 23, 2014, pursuant to a Petition filed by Stansbury, this Court appointed Brown as Administrator Ad Litem



to pursue intervention in the Life Insurance Litigation in order to protect the interests of the Estate.

7. More importantly, as a creditor of the Estate, Stansbury volunteered to initially fund the Life Insurance Litigation despite being under no legal obligation to do so. While Stansbury does stand to benefit from a successful outcome in the Life Insurance Litigation, his funding of the case on behalf of the Estate will clearly benefit the Estate and the Simon Bernstein Trust, who is the residuary legatee of the Estate. As a consequence of Stansbury's offer of initial funding, this Court accordingly ordered that all fees and costs incurred in the Life Insurance Litigation, "including for the Curator in connection with this work as Administrator Ad Litem and any counsel retained by Administrator Ad Litem, will initially be borne by William Stansbury." A copy of the May 23, 2014 Order is attached as **Exhibit "2."**

8. On June 5, 2014, the Estate, by and through counsel in Chicago, James J. Stamos, Esq., filed a Motion to Intervene on behalf of the Estate.

9. On July 28, 2014, the United States District Court for the Northern District of Illinois **granted** the Estate's Motion to Intervene. In granting the Motion, the court stated at page 3 of the Order:

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the policy proceeds must be paid to the Estate as a matter of law. (*citing Harris v. Byard*, 501 So.2d 730, 734 (Fla. App. 1<sup>st</sup> DCA, 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than the decedent's estate for administration and distribution."))

The Court concluded that the Estate demonstrated a sufficient interest justifying intervention. A copy of the Order of the District Court Order is attached as **Exhibit "3."**

10. Thereafter, James J. Stamos ("Stamos"), the attorney in Chicago hired by the Estate to represent it in the Life Insurance Litigation, opines that the Estate has a meritorious case, and has a reasonable likelihood of success on the merits. Stamos believes in the merits of the Estate's position so strongly that his firm has offered to continue representing the Estate on a contingency fee basis. In that event, there will be no further out of pocket expenses to the Estate for legal fees unless and until there is a recovery, either through settlement or judgment. To date the Estate has not yet brought the contingency fee offer by Stamos before the Court for approval.

11. As a result of the foregoing, Stansbury respectfully submits that due to his actions on behalf of the Estate, he has enabled the Estate to intervene and advance a meritorious position in the pending Life Insurance Litigation. There is now created a realistic expectation that the assets in the Estate could be more than doubled should the Estate's position prevail.

12. As such, Stansbury, who volunteered to initially fund the Life Insurance Litigation, despite being under no legal obligation to do so, should be discharged from further responsibility to pay attorney fees and costs in connection with the Estate's participation in the Life Insurance Litigation. The Estate, through a contingent fee arrangement, can now proceed without paying legal fees out of pocket. Any fees would only be paid if there is a recovery.

WHEREFORE, Petitioner, William E. Stansbury, requests that this Court issue an Order stating that: a) Stansbury is hereby discharged from further responsibility to pay attorney fees and costs in connection with the Estate's participation in the Life Insurance Litigation; b) the responsibility to pay future attorney fees and costs in the case are hereby to be assumed by the Estate and the Estate is hereby authorized to proceed; and c) that the Court order that the Estate reimburse Stansbury for fees advanced in the amount to be determined at a subsequent hearing, together with any other relief this court deems just and proper.

Respectfully submitted,



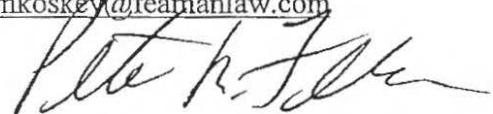
Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 4<sup>th</sup> day of May, 2016.

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By: \_\_\_\_\_



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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 )  
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, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

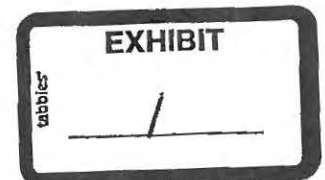
SIMON BERNSTEIN IRREVOCABLE )  
TRUST DTD 6/21/95 )

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )

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



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

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

**BACKGROUND**

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.

2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").

3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.

4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.

5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.



13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

### COUNT I

#### **BREACH OF CONTRACT**

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

## COUNT II

### DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

- i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;
- ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,
- iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL; and
- iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

### COUNT III

#### RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.

50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon

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Attorneys for Plaintiffs and Third-Party  
Defendants

*Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, Pamela Simon, Lisa Friedstein  
and Jill Iantoni*

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB  
PROBATE DIV.

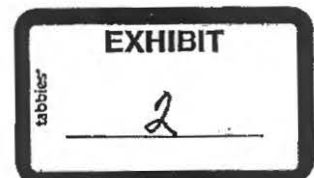
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO  
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN  
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS  
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING  
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that

I. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.






2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.

  
MARTIN COLIN  
Circuit Court Judge

*Copies to:*

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- Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [jrcvill@fwcwi.com](mailto:jrcvill@fwcwi.com);
- William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com);
- John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com);
- Benjamin P. Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com)

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

SIMON BERNSTEIN IRREVOCABLE	)	
INSURANCE TRUST DTD 6/21/95,	)	
	)	
Plaintiff,	)	
	)	Case No. 13 C 3643
v.	)	
	)	Judge Amy St. Eve
	)	
HERITAGE UNION LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**ORDER**

The Court grants Benjamin P. Brown’s motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

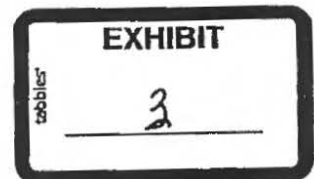
**STATEMENT**

On May 20, 2013, Defendant Jackson National Life Insurance Company (“Defendant” or “Jackson”), as successor in interest to Heritage Union Life Insurance Company (“Heritage”), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court’s diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust (“Bernstein Trust”) alleged a breach of contract claim against Heritage based on Heritage’s failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown’s (“Brown”) motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown’s motion brought pursuant to Rule 24(a)(2).

**BACKGROUND**

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,



the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

#### LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

### ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

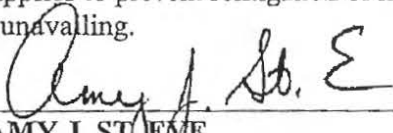
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). See *Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. See *Walker*, 705 F.3d at 658; see also *Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. See *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014

  
\_\_\_\_\_  
AMY J. ST. EVE  
United States District Court Judge

IN THE CIRCUIT COURT IN AND FOR THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

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**SUCCESSOR PERSONAL REPRESENTATIVE'S AMENDED PETITION FOR  
AUTHORIZATION TO ENTER INTO CONTINGENCY AGREEMENT OR HOURLY  
FEE AGREEMENT WITH ILLINOIS COUNSEL IN PENDING LIFE INSURANCE  
LITIGATION**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative," "Estate" and "Decedent," respectively), petitions this Court for Authorization to Enter into Contingency Agreement or Hourly Fee Agreement with Illinois Counsel in Pending Life Insurance Litigation, and as grounds, therefore, states as follows:

1. By Order dated May 23, 2014, pursuant to a Petition filed by William Stansbury this Court authorized then-acting Curator, Benjamin Brown, to intervene on behalf of the Estate in litigation pending in the United States District Court for the Northern District Illinois (hereinafter "District Court" and the "Life Insurance Litigation," respectively). *See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company*, Case No. 13 cv 3643 (N.D. Ill., E. Div.).

2. This Court ordered that all fees and cost incurred in the Life Insurance Litigation be borne by William Stansbury.

3. On June 5, 2014, the Estate, by and through counsel in Illinois, James J. Stamos, Esq. of Stamos & Trucco LLP (hereinafter "Illinois Counsel"), filed a Motion to Intervene, which the District Court granted on July 28, 2014.

4. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative.

5. The legal fees to date in the Life Insurance Litigation have been paid by William Stansbury ("Mr. Stansbury"), however, Mr. Stansbury has filed a Motion for Discharge from Further Responsibility for the Funding of the Estate's Participation in the Chicago Life Insurance Litigation and for Assumption of Responsibility by the Estate ("Motion for Discharge"). The Motion for Discharge is attached hereto as Exhibit "A".

6. The value of the life insurance policy at issue in the Life Insurance Litigation is approximately \$1,700,000.00.

7. The Successor Personal Representative believes it is in the best interest of the Estate to continue with the Life Insurance Litigation.

8. Illinois Counsel has agreed to waive the outstanding balance currently due and enter into a contingency agreement ("Contingency Agreement"), in which Illinois Counsel receives a percentage of recovery, in lieu of charging on an hourly basis. The Contingency Agreement is attached hereto as Exhibit "B".

9. Alternatively, the Successor Personal Representative could enter into an hourly fee agreement with Illinois Counsel, attached hereto as Exhibit "C" (hereinafter "Hourly Fee Agreement").

10. The Successor Personal Representative requests authorization to enter into the Contingency Agreement or the Hourly Fee Agreement with Illinois Counsel.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order authorizing Successor Personal Representative to enter into the Contingency

Agreement or the Hourly Fee Agreement with Illinois Counsel, and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 4<sup>th</sup> day of December, 2015 to the parties on the attached Service List.



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BRIAN M. O'CONNELL  
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ASHLEY N. CRISPIN  
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Florida Bar No: 94238  
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<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34<sup>th</sup> St. Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>		

In Re: Estate of Simon L. Bernstein  
File No: 502012CP004391XXXXSB

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IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE:

Case No.: 50 2012 CP 004391 SB  
JUDGE MARTIN COLIN

ESTATE OF SIMON  
BERNSTEIN,

Deceased.

Division: IY

**MOTION OF CREDITOR, WILLIAM E. STANSBURY, FOR DISCHARGE  
FROM FURTHER RESPONSIBILITY FOR THE FUNDING OF THE ESTATE'S  
PARTICIPATION IN THE CHICAGO LIFE INSURANCE LITIGATION AND FOR  
ASSUMPTION OF RESPONSIBILITY BY THE ESTATE**

COMES NOW, William E. Stansbury ("Stansbury"), Creditor of the Estate of Simon Bernstein (the "Estate"), by and through his undersigned counsel, and moves this Court for an Order discharging Stansbury from further responsibility for the funding of the Estate's participation in the "Chicago life insurance litigation", and for the Estate to assume responsibility for funding the Chicago life insurance litigation, and states:

1. At the time of Simon Bernstein's death it was determined that there existed a life insurance policy on the life of Simon Bernstein issued by Heritage Union Insurance Company ("Heritage"). The policy proceeds are approximately \$1.7 million, which, if included in the Estate, would more than double its assets. The policy was allegedly payable to a Simon Bernstein Irrevocable Insurance Trust as its beneficiary (the "Insurance Trust").

2. The alleged Insurance Trust submitted a death claim to Heritage and demanded that Heritage pay the policy proceeds to the so-called "trustee" of the Insurance Trust. If paid to the Insurance Trust, the death benefit would not be included as an asset of the Estate. However, neither the original nor a copy of the "Insurance Trust" exists.

3. As a result, Heritage refused to pay the death benefit of \$1.7 million to anyone without a court order. The alleged Insurance Trust then sued Heritage in the Circuit Court of Cook County, Illinois. The case was subsequently removed to Federal Court. (The "Life Insurance Litigation") See Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case No. 13 cv 3643 (N.D. Ill., E. Div.) A copy of the Amended Complaint filed in U.S. District Court is attached as Exhibit "1."

4. The Estate of Simon Bernstein was not made a party to the Life Insurance Litigation, even though the Estate will clearly be affected by the outcome of the litigation.

5. The original co-personal representatives of the Estate, Donald Tescher and Robert Spallina, failed or refused to intervene on behalf of the Estate.

6. After they resigned, Stansbury brought the Life Insurance Litigation to the attention of the Curator of the Estate and this Court. By Order dated May 23, 2014, pursuant to a Petition filed by Stansbury, this Court appointed the then-acting Curator, Benjamin Brown ("Brown"), as Administrator Ad Litem to pursue intervention in the Life Insurance Litigation in order to protect the interests of the Estate. This Court also ordered that all fees and costs incurred in the Life Insurance Litigation, "including for the Curator in connection with this work as Administrator Ad Litem and any counsel retained by Administrator Ad Litem, will initially be borne by William Stansbury." A copy of the May 23, 2014 Order is attached as Exhibit "2."

7. On June 5, 2014, the Estate, by and through counsel in Chicago, James J. Stamos, Esq., filed a Motion to Intervene.

8. On July 28, 2014, the United States District Court for the Northern District of Illinois **granted** the Estate's Motion to Intervene. In granting the Motion, the court stated at page 3 of the Order:

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the policy proceeds must be paid to the Estate as a matter of law. (*citing Harris v. Byard*, 501 So.2d 730, 734 (Fla. App. 1<sup>st</sup> DCA, 1987) (“Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than the decedent’s estate for administration and distribution.”))

The Court concluded that the Estate demonstrated a sufficient interest justifying intervention. A copy of the Order of the District Court Order is attached as Exhibit “3.”

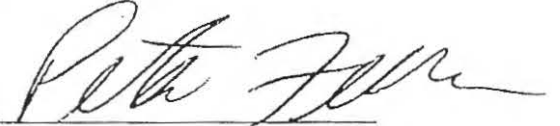
9. Additionally, James J. Stamos, the attorney in Chicago hired by the Estate to represent it in the Life Insurance Litigation, has stated that the Estate has a meritorious case, has a reasonable likelihood of success on the merits, and recommends that the Estate continue to participate.

10. As a result of the foregoing, Stansbury respectfully submits that due to his actions on behalf of the Estate, he has enabled the Estate to intervene and advance a meritorious position in the pending Life Insurance Litigation. There is now created a realistic expectation that the assets in the Estate could be more than doubled should the Estate’s position prevail. As such, Stansbury should be discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation, and the responsibility to pay attorney fees and costs in the case should henceforth be assumed by the Estate.

WHEREFORE, Petitioner, William E. Stansbury, requests that this Court issue an Order stating that: a) Stansbury is hereby discharged from further responsibility to pay attorney fees and costs in connection with the Estate’s participation in the Life Insurance Litigation; and, b) the responsibility to pay future attorney fees and costs in the case are hereby to be assumed by

the Estate and the Estate is hereby authorized to proceed.

Respectfully submitted,



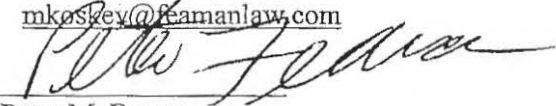
Peter M. Feaman

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service to: Alan Rose, Esq., MRACHEK, FITZGERALD ROSE, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mhandler@pm-law.com](mailto:mhandler@pm-law.com); Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); William H. Glasko, Esq., Golden Cowan, P.A., PALMETTO BAY LAW CENTER, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com); Brian O'Connell, Esq., Ciklin Lubitz Martens & O'Connell, 515 North Flagler Drive, 20<sup>th</sup> Floor, West Palm Beach, FL 33401, [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com); John P. Morrissey, Esq., 330 Clematis Street, Suite 213, West Palm Beach, FL 33401, [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com); Irwin J. Block, Esq., 700 S. Federal Hwy., Suite 200, Boca Raton, FL 33432, [ijb@ijblegal.com](mailto:ijb@ijblegal.com), on this 13 day of October, 2014.

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By: \_\_\_\_\_



Peter M. Feaman  
Florida Bar No. 0260347

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 )  
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, )

----- )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )

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

EXHIBIT 1

Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )  
Third-Party Defendants. )  
\_\_\_\_\_ )

ELIOT IVAN BERNSTEIN, )  
Cross-Plaintiff )

v. )

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

and, )

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



**PLAINTIFFS' FIRST AMENDED COMPLAINT**

**NOW COMES** Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually, PAMELA B. SIMON, individually, JILL IANTONI, individually, and LISA FRIEDSTEIN, individually, by their attorney, Adam M. Simon, and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, ("HERITAGE") states as follows:

**BACKGROUND**

1. At all relevant times, the BERNSTEIN TRUST was a common law irrevocable life insurance trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, ("Simon Bernstein" or "insured") and was formed pursuant to the laws of the state of Illinois.
2. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon Bernstein, and issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy").
3. Simon Bernstein's spouse, Shirley Bernstein, was named as the initial Trustee of the BERNSTEIN TRUST. Shirley Bernstein passed away on December 8, 2010, predeceasing Simon Bernstein.
4. The successor trustee, as set forth in the BERNSTEIN TRUST agreement is Ted Bernstein.
5. The beneficiaries of the BERNSTEIN TRUST as named in the BERNSTEIN TRUST Agreement are the children of Simon Bernstein.

6. Simon Bernstein passed away on September 13, 2012, and is survived by five adult children whose names are Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. By this amendment, Ted Bernstein, Pamela Simon, Jill Iantoni and Lisa Friedstein are being added as co-Plaintiffs in their individual capacities.

7. Four out five of the adult children of Simon Bernstein, whom hold eighty percent of the beneficial interest of the BERNSTEIN TRUST have consented to having Ted Bernstein, as Trustee of the BERNSTEIN TRUST, prosecute the claims of the BERNSTEIN TRUST as to the Policy proceeds at issue.

8. Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this matter.

9. The Policy was originally purchased by the S.B. Lexington, Inc. 501(c)(9) VEBA Trust (the "VEBA") from Capitol Bankers Life Insurance Company ("CBLIC") and was delivered to the original owner in Chicago, Illinois on or about December 27, 1982.

10. At the time of the purchase of the Policy, S.B. Lexington, Inc., was an Illinois corporation owned, in whole or part, and controlled by Simon Bernstein.

11. At the time of purchase of the Policy, S.B. Lexington, Inc. was an insurance brokerage licensed in the state of Illinois, and Simon Bernstein was both a principal and an employee of S.B. Lexington, Inc.

12. At the time of issuance and delivery of the Policy, CBLIC was an insurance company licensed and doing business in the State of Illinois.

13. HERITAGE subsequently assumed the Policy from CBLIC and thus became the successor to CBLIC as "Insurer" under the Policy and remained the insurer including at the time of Simon Bernstein's death.

14. In 1995, the VEBA, by and through LaSalle National Trust, N.A., as Trustee of the VEBA, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee, as primary beneficiary of the Policy, and the BERNSTEIN TRUST as the contingent beneficiary.

15. On or about August 26, 1995, Simon Bernstein, in his capacity as member or auxiliary member of the VEBA, signed a VEBA Plan and Trust Beneficiary Designation form designating the BERNSTEIN TRUST as the "person(s) to receive at my death the Death Benefit stipulated in the S.B. Lexington, Inc. Employee Death Benefit and Trust and the Adoption Form adopted by the Employer".

16. The August 26, 1995 VEBA Plan and Trust Beneficiary Designation form signed by Simon Bernstein evidenced Simon Bernstein's intent that the beneficiary of the Policy proceeds was to be the BERNSTEIN TRUST.

17. S.B. Lexington, Inc. and the VEBA were voluntarily dissolved on or about April 3, 1998.

18. On or about the time of the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon Bernstein, individually.

19. From the time of Simon Bernstein's designation of the BERNSTEIN TRUST as the intended beneficiary of the Policy proceeds on August 26, 1995, no document was submitted by Simon Bernstein (or any other Policy owner) to the Insurer which evidenced any change in his intent that the BERNSTEIN TRUST was to receive the Policy proceeds upon his death.

20. At the time of his death, Simon Bernstein was the owner of the Policy, and the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

21. The insured under the Policy, Simon Bernstein, passed away on September 13, 2012, and on that date the Policy remained in force.

22. Following Simon Bernstein's death, the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death claim to HERITAGE under the Policy including the insured's death certificate and other documentation.

**COUNT I**

**BREACH OF CONTRACT**

23. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶22 as if fully set forth as ¶23 of Count I.

24. The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the Policy upon HERITAGE'S receipt of due proof of the insured's death.

25. HERITAGE breached its obligations under the Policy by refusing and failing to pay the Policy proceeds to the BERNSTEIN TRUST as beneficiary of the Policy despite HERITAGE'S receipt of due proof of the insured's death.

26. Despite the BERNSTEIN TRUST'S repeated demands and its initiation of a breach of contract claim, HERITAGE did not pay out the death benefits on the Policy to the BERNSTEIN TRUST instead it filed an action in interpleader and deposited the Policy proceeds with the Registry of the Court.

27. As a direct result of HERITAGE's refusal and failure to pay the Policy proceeds to the BERNSTEIN TRUST pursuant to the Policy, Plaintiff has been damaged in an amount equal to the death benefits of the Policy plus interest, an amount which exceeds \$1,000,000.00.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for a judgment to be entered in its favor and against Defendant, HERITAGE, for the amount of the Policy proceeds on deposit with the Registry of the Court (an amount in excess of \$1,000,000.00) plus costs and reasonable attorneys' fees together with such further relief as this court may deem just and proper.

COUNT II

DECLARATORY JUDGMENT

28. Plaintiff, the BERNSTEIN TRUST, restates and realleges the allegations contained in ¶1-¶27 above as ¶28 of Count II and pleads in the alternative for a Declaratory Judgment.

29. On or about June 21, 1995, David Simon, an attorney and Simon Bernstein's son-in-law, met with Simon Bernstein before Simon Bernstein went to the law offices of Hopkins and Sutter in Chicago, Illinois to finalize and execute the BERNSTEIN TRUST Agreement.

30. After the meeting at Hopkins and Sutter, David B. Simon reviewed the final version of the BERNSTEIN TRUST Agreement and personally saw the final version of the BERNSTEIN TRUST Agreement containing Simon Bernstein's signature.

31. The final version of the BERNSTEIN TRUST Agreement named the children of Simon Bernstein as beneficiaries of the BERNSTEIN TRUST, and unsigned drafts of the BERNSTEIN TRUST Agreement confirm the same.

32. The final version of the BERNSTEIN TRUST Agreement named Shirley Bernstein, as Trustee, and named Ted Bernstein as, successor Trustee.

33. As set forth above, at the time of death of Simon Bernstein, the BERNSTEIN TRUST was the sole surviving beneficiary of the Policy.

34. Following the death of Simon Bernstein, neither an executed original of the BERNSTEIN TRUST Agreement nor an executed copy could be located by Simon Bernstein's family members.

35. Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:

i) Ted Bernstein and other Bernstein family members of Simon Bernstein's home and business office;

ii) the law offices of Tescher and Spallina, Simon Bernstein's counsel in Palm Beach County, Florida,

iii) the offices of Foley and Lardner (successor to Hopkins and Sutter) in Chicago, IL;  
and

iv) the offices of The Simon Law Firm.

36. As set forth above, Plaintiffs have provided HERITAGE with due proof of the death of Simon Bernstein which occurred on September 13, 2012.

WHEREFORE, PLAINTIFF, the BERNSTEIN TRUST prays for an Order entering a declaratory judgment as follows:

- a) declaring that the original BERNSTEIN TRUST was lost and after a diligent search cannot be located;
- b) declaring that the BERNSTEIN TRUST Agreement was executed and established by Simon Bernstein on or about June 21, 1995;
- c) declaring that the beneficiaries of the BERNSTEIN TRUST are the five children of Simon Bernstein;

- d) declaring that Ted Bernstein, is authorized to act as Trustee of the BERNSTEIN TRUST because the initial trustee, Shirley Bernstein, predeceased Simon Bernstein;
- e) declaring that the BERNSTEIN TRUST is the sole surviving beneficiary of the Policy;
- f) declaring that the BERNSTEIN TRUST is entitled to the proceeds placed on deposit by HERITAGE with the Registry of the Court;
- g) ordering the Registry of the Court to release all of the proceeds on deposit to the BERNSTEIN TRUST; and
- h) for such other relief as this court may deem just and proper.

### COUNT III

#### RESULTING TRUST

37. Plaintiffs restate and reallege the allegations contained in ¶1-¶36 of Count II as ¶37 of Count III and plead, in the alternative, for imposition of a Resulting Trust.

38. Pleading in the alternative, the executed original of the BERNSTEIN TRUST Agreement has been lost and after a diligent search as detailed above by the executors, trustee and attorneys of Simon Bernstein's estate and by Ted Bernstein, and others, its whereabouts remain unknown.

39. Plaintiffs have presented HERITAGE with due proof of Simon Bernstein's death, and Plaintiff has provided unexecuted drafts of the BERNSTEIN TRUST Agreement to HERITAGE.

40. Plaintiffs have also provided HERITAGE with other evidence of the BERNSTEIN TRUST'S existence including a document signed by Simon Bernstein that designated the BERNSTEIN TRUST as the ultimate beneficiary of the Policy proceeds upon his death.

41. At all relevant times and beginning on or about June 21, 1995, Simon Bernstein expressed his intent that (i) the BERNSTEIN TRUST was to be the ultimate beneficiary of the life insurance proceeds; and (ii) the beneficiaries of the BERNSTEIN TRUST were to be the children of Simon Bernstein.

42. Upon the death of Simon Bernstein, the right to the Policy proceeds immediately vested in the beneficiary of the Policy.

43. At the time of Simon Bernstein's death, the beneficiary of the Policy was the BERNSTEIN TRUST.

44. If an express trust cannot be established, then this court must enforce Simon Bernstein's intent that the BERNSTEIN TRUST be the beneficiary of the Policy; and therefore upon the death of Simon Bernstein the rights to the Policy proceeds immediately vested in a resulting trust in favor of the five children of Simon Bernstein.

45. Upon information and belief, Bank of America, N.A., as successor Trustee of the VEBA to LaSalle National Trust, N.A., has disclaimed any interest in the Policy.

46. In any case, the VEBA terminated in 1998 simultaneously with the dissolution of S.B. Lexington, Inc.

47. The primary beneficiary of the Policy named at the time of Simon Bernstein's death was LaSalle National Trust, N.A. as "Trustee" of the VEBA.

48. LaSalle National Trust, N.A., was the last acting Trustee of the VEBA and was named beneficiary of the Policy in its capacity as Trustee of the VEBA.

49. As set forth above, the VEBA no longer exists, and the ex-Trustee of the dissolved trust, and upon information and belief, Bank Of America, N.A., as successor to LaSalle National Trust, N.A. has disclaimed any interest in the Policy.



50. As set forth herein, Plaintiff has established that it is immediately entitled to the life insurance proceeds HERITAGE deposited with the Registry of the Court.

51. Alternatively, by virtue of the facts alleged herein, HERITAGE held the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein and since HERITAGE deposited the Policy proceeds the Registry, the Registry now holds the Policy proceeds in a resulting trust for the benefit of the children of Simon Bernstein.

WHEREFORE, PLAINTIFFS pray for an Order as follows:

- a) finding that the Registry of the Court holds the Policy Proceeds in a Resulting Trust for the benefit of the five children of Simon Bernstein, Ted Bernstein, Pamela Simon, Eliot Ivan Bernstein, Jill Iantoni and Lisa Friedstein; and
- b) ordering the Registry of the Court to release all the proceeds on deposit to the Bernstein Trust or alternatively as follows: 1) twenty percent to Ted Bernstein; 2) twenty percent to Pam Simon; 3) twenty percent to Eliot Ivan Bernstein; 4) twenty percent to Jill Iantoni; 5) twenty percent to Lisa Friedstein
- c) and for such other relief as this court may deem just and proper.

By: s/Adam M. Simon

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Attorneys for Plaintiffs and Third-Party  
Defendants

*Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, Pamela Simon, Lisa Friedstein  
and Jill Iantoni*



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB  
PROBATE DIV.

ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO  
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN  
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS  
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING  
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that


1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois ~~Litigation~~ involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.

EXHIBIT 2

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.

  
MARTIN COLIN  
Circuit Court Judge

*Copies to:*

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Benjamin P. Brown, Esq., Matwiczyn & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@mathrolaw.com](mailto:bbrown@mathrolaw.com)

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

SIMON BERNSTEIN IRREVOCABLE	)	
INSURANCE TRUST DTD 6/21/95,	)	
	)	
Plaintiff,	)	
	)	Case No. 13 C 3643
v.	)	
	)	Judge Amy St. Eve
	)	
HERITAGE UNION LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

ORDER

The Court grants Benjamin P. Brown’s motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

STATEMENT

On May 20, 2013, Defendant Jackson National Life Insurance Company (“Defendant” or “Jackson”), as successor in interest to Heritage Union Life Insurance Company (“Heritage”), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court’s diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust (“Bernstein Trust”) alleged a breach of contract claim against Heritage based on Heritage’s failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown’s (“Brown”) motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown’s motion brought pursuant to Rule 24(a)(2).

BACKGROUND

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

#### LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

## ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. See, e.g., *New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); see *Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); see also *Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

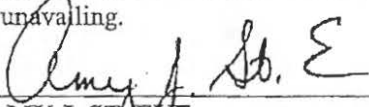
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

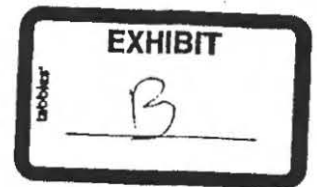
unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). See *Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. See *Walker*, 705 F.3d at 658; see also *Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. See *Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

Dated: July 28, 2014

  
\_\_\_\_\_  
AMY J. ST. E  
United States District Court Judge



## STAMOS & TRUCCO LLP

Attorneys at Law

One East Wacker Drive, Third Floor, Chicago, Illinois 60601

James J. Stamos  
jstamos@stamostrucco.com

TELEPHONE  
(312) 630-7979

FACSIMILE  
(312) 630-1183

November 25, 2015

Brian O'Connell  
Ciklin Lubitz & O'Connell  
515 North Flagler Drive  
20th Floor  
West Palm Beach, FL 33401

Re: Revised Retention Agreement  
*Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable Trust DTD  
6/21/95 v. Heritage Mutual Life Insurance Company*  
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)

Dear Mr. O'Connell:

This will confirm that, in your capacity as Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action, already underway in federal court in Chicago, on a contingent fee basis. Our fees to date have been paid directly by Mr. William Stansbury, a claimant against the Estate. The outstanding balance of our fees and costs is currently \$15,164.78.

Upon execution of this retention agreement, and its approval by the Probate Court, we will waive the outstanding balance and our fee agreement going forward will be as follows:

- (1) We will receive as a fee 1/3 of the gross amount recovered by settlement of the above-captioned matter at any time prior to the completion of the final pretrial conference or, if none, prior to the morning of the first day upon which trial actually commences, plus any costs incurred including, but not limited to, filing fees, travel costs, copying, telefax, court reporting fees and online research.
- (2) We will receive as a fee forty (40) percent of the gross amount recovered, by settlement or otherwise, at any point after the completion of the final pretrial



Brian O'Connell  
October 19, 2015  
Page 2 of 2

conference or, if none, at any time beginning on the morning of the first day upon which trial actually commences, plus any costs incurred as defined in paragraph 1.

- (3) Upon your execution of this Agreement and its approval by the Probate Court, Mr. Stansbury will be relieved of his obligation to pay any further litigation costs and/or fees.
- (4) In the event you instruct us to dismiss the case prior to final adjudication such that we are deprived of the opportunity to earn a fee based upon an amount paid in judgment or settlement, the Estate agrees to pay us immediately upon dismissal an amount equal to the number of hours we will have worked on the case through dismissal, multiplied by the hourly rates of \$420 for my time, \$210 for time billed by my associates, including Kevin Horan, other partner time at \$325 and paralegal time at \$105, in addition to any costs incurred as defined in paragraph 1, plus the current outstanding balance of \$15,164.78. It is further understood that any amounts paid under this paragraph 4 will be subject to the usual requirement that all fees charged in litigation be reasonable.

If you agree to these terms, please print this page, sign where indicated and return it to me along with a copy of the court's Order approving your entry into this Agreement on behalf of the Estate.

I look forward to hearing from you.

Very truly yours.



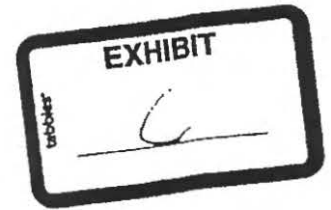
James J. Stamos

JJS:kph

AGREED AND ACCEPTED

---

Brian M. O'Connell, as Personal Representative  
of the Estate of Simon Bernstein



**STAMOS & TRUCCO LLP**

Attorneys at Law

One East Wacker Drive, Third Floor, Chicago, Illinois 60601

James J. Stamos  
[jstamos@stamosrucco.com](mailto:jstamos@stamosrucco.com)

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James J. Stamos  
[jstamos@stamosrucco.com](mailto:jstamos@stamosrucco.com)

December 5, 2015

BRIAN M. O'CONNELL  
Ciklin Lubitz & O'Connell  
515 N. Flagler Dr.  
20th Floor  
West Palm Beach, FL 33401

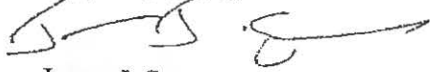
Re: *Estate of Simon Bernstein – Intervention of Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Mutual Life Insurance Company*  
Case No. 13 cv 3643 (No. Dist. of Ill. Eastern Div. – Chicago)

Dear Mr. O'Connell:

This will confirm that, in your capacity as Successor Personal Representative of the Estate of Simon Bernstein, you have retained my firm and me to represent the Estate in the captioned interpleader action in federal court in Chicago. We will bill my time at the hourly rate of \$420 an hour. We will bill other partner time at \$325 an hour and associate time at \$210 an hour. We bill monthly and we charge for customary out-of-pocket expenses including copying, telefax and online research. We require payment within 30 days of invoice. We will also require that the outstanding balance of \$15,164.78 owed under the previous retention agreement be paid within 30 days of the probate court's approval of this agreement.

If this letter accurately reflects our agreement, please execute where indicated, and return it to me. Email PDF is acceptable. I look forward to representing the Estate and working with you.

Very truly yours,



James J. Stamos

JJS:dmv

AGREED AND ACCEPTED

BRIAN M. O'CONNELL, as Successor Personal Representative  
of the Estate of Simon Bernstein

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: CASE NO.: 50 2012 CP 004391 XXXX SB  
PROBATE DIV.  
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

---

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO  
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN  
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS  
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING  
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is


ORDERED and ADJUDGED that

I. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.

  
MARTIN COLIN  
Circuit Court Judge

Copies to:  
Alan Rose, Esq., PAGE, MRACHIEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [machallick@pm-law.com](mailto:machallick@pm-law.com);  
John Pankowski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [john@pankowskilawfirm.com](mailto:john@pankowskilawfirm.com);  
Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com);  
Elliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [ev@evlaw.com](mailto:ev@evlaw.com);  
William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com);  
John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, [john@jpmorrisseylaw.com](mailto:john@jpmorrisseylaw.com);  
Benjamin P. Brown, Esq., Matwiczak & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrolaw.com](mailto:bbrown@matbrolaw.com)

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK, )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
successor in interest to "LaSalle National )  
Trust, N.A., TED BERSTEIN, individually )  
and as alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust Dtd. )  
6/21/95 and ELIOT BERNSTEIN, )

Third Party Defendants )

ELIOT IVAN BERNSTEIN, )

Case No. 13 cv 3643

Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

MOTION TO INTERVENE PURSUANT  
TO FED. R. CIV. P. 24 BY  
INTERESTED PARTY BENJAMIN P.  
BROWN, CURATOR AND  
ADMINISTRATOR AD LITEM OF  
THE ESTATE OF SIMON L.  
BERNSTEIN

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and )

PAMELA B. SIMON, DAVID B. SIMON )  
 both Professionally and Personally, ADAM )  
 SIMON both Professionally and Personally, )  
 THE SIMON LAW FIRM, TESCHER & )  
 SPALLINA, P.A., DONALD TESCHER )  
 both Professionally and Personally, )  
 ROBERT SPALLINA both Professionally )  
 and Personally, LISA FRIEDSTEIN, JILL )  
 IANTONI, S.B. LEXINGTON, INC., )  
 EMPLOYEE DEATH BENEFIT TRUST, )  
 S.T.P ENTERPRISES, INC., S.B. )  
 LEXINGTON, INC., EMPLOYEE DEATH )  
 BENEFIT TRUST, S.T.P. ENTERPRISES, )  
 INC., S.B. LEXINGTON, INC., )  
 NATIONAL SERVICE ASSOCIATION, )  
 INC. (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC, )  
 (OF ILLINOIS) AND JOHN AND )  
 JANE DOE'S )

Third Party Defendants )

---

BENJAMIN P. BROWN, as Curator and )  
 Administrator Ad Litem of the Estate of )  
 Simon L. Bernstein, )

Intervenor. )

**MOTION TO INTERVENE PURSUANT TO FED. R. CIV. P. 24 BY INTERESTED  
 PARTY BENJAMIN P. BROWN, CURATOR AND ADMINISTRATOR AD LITEM OF  
 THE ESTATE OF SIMON L. BERNSTEIN**

NOW COMES Benjamin P. Brown, as Curator and *Administrator Ad Litem* of the Estate of Simon L. Bernstein (“Brown”), by and through his undersigned counsel, and files this Motion to Intervene pursuant to Fed. R. Civ. P. 24, and in support thereof, states as follows:

1. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of Curatorship in favor of Benjamin Brown were issued on March 11, 2014. (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

2. At the time of Simon Bernstein’s death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the “Policy”). The Policy’s current proceeds are \$1,689,070.00, less an outstanding loan. (See Dkt. No. 17 at ¶17).

3. Upon Mr. Bernstein’s death, several of his children filed a Complaint in the Circuit Court of Cook County against the insurer claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the “Simon Bernstein Irrevocable Insurance Trust” (the “Trust”). The Bernstein children acknowledge that they are unable to produce an executed Trust document under which they assert their rights. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit B).

4. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. § 1335(a), in conjunction with its Answer to Plaintiff’s Complaint. (See Dkt. No. 17). In its Complaint for Interpleader, Heritage asserts that it cannot ascertain whether the Plaintiff is a proper beneficiary of the Policy:



“Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Trust, N.A.,” as listed as the Policy’s contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.”

(Dkt. No. 17 at ¶20).

5. In the absence of a valid trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent’s estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent’s estate for administration and distribution).

6. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the “Estate”) and was specifically directed by the Probate Court in Palm Beach County “to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent’s life.” (A copy of the Order Appointing *Administrator Ad Litem* is attached hereto as Exhibit C). Mr. Brown now seeks to Intervene in the instant litigation to assert the rights of the Estate as beneficiary of the Policy.

7. Brown is entitled to Intervention of Right under Fed. R. Civ. P. 24(a)(2) because the Estate is entitled to the Policy proceeds as a matter of law. But for Plaintiff’s claim, the Estate would have no competing claim to the proceeds of the Policy, as it is the default beneficiary under both Florida and Illinois law.

8. The Plaintiff’s and Brown’s interests in the outcome of this action are diametrically opposed: the Policy proceeds will either be payable to the Plaintiff or to the Estate,

which must be allowed to intervene as a matter of right to assert its rival claim. Disposing of this action without this Intervention will impair Mr. Brown's ability to protect the Estate's direct claim on the interpleaded funds and to carry out the mandate of the Florida Probate Court "to assert the interests of the Estate" in the present litigation. The parties to this action will not adequately represent Brown's interest in that the purported Trust will seek to defeat the Estate's claim and the insurer has no stake in the identity of the payee.

9. Brown is also entitled to Permissive Intervention under Fed. R. Civ. P. 24(b)(1)(B) in that the Estate shares with the main action a common question of law and fact, to wit, the proper disposition of life insurance proceeds in excess of \$1,000,000.00.

10. Brown's intervention will not destroy diversity of citizenship.

11. A pleading that sets out the claim for which intervention is sought is attached hereto as Exhibit D.

WHEREFORE, proposed Intervenor, Benjamin P. Brown, as Curator and *Administrator Ad Litem* on behalf of the Estate of Simon L. Bernstein, moves this Honorable Court for an Order permitting him to intervene in this action pursuant to Fed. R. Civ. P. 24 (a)(2) or 24 (b)(1)(B).

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos  
One of the attorneys for Proposed Intervenor,  
Benjamin P. Brown, Curator and *Administrator Ad Litem* on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, 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.

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.  
CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

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LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

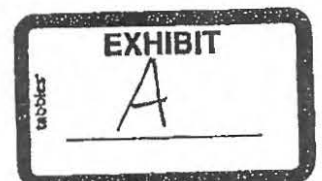
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

WHEREAS, this Court found it necessary for the appointment of a Curator and appointed Benjamin Brown, Esq. as Curator of this Estate on February 25, 2014. A copy of the Order is attached hereto as Exhibit "B"; and

WHEREAS Benjamin Brown as Curator appointed by Order of this Court has performed all acts prerequisite to the issuance of Letters of Curatorship as a legally qualified Curator of the Estate of Simon L. Bernstein;

NOW, THEREFORE, I the undersigned Circuit Judge do grant Benjamin Brown (hereinafter Curator), the Curatorship of the Estate of Simon L. Bernstein with the following powers:

- (a) To collect and preserve assets of the Estate;
- (b) To administer the assets of the Estate;
- (c) To evaluate all discovery requests related to the Decedent for the purposes of asserting objections and privileges on behalf of the Estate, if necessary;
- (d) To appear on behalf of the Estate in the following two cases: Case No. 502012CA013933 (Circuit Court, Palm Beach County, FL) and Case No. 13CV3643 (U.S. Dist. Ct. Northern Dist.,



Illinois),

Further, pursuant to Fla. Stat. §733.603, Curator shall proceed expeditiously with the duties described herein and except as otherwise specified by the Florida Probate Code, or ordered by the Court, shall do so without adjudication, Order or direction of the Court. The Curator may invoke the jurisdiction of this Court to resolve questions concerning the Estate or its administration.

DONE AND ORDERED in Chambers at Delray Beach, Palm Beach County, Florida,  
this \_\_\_\_\_ day of March, 2014.

SIGNED & DATED

Martin Colin, Circuit Judge

MAR 11 2014  
JUDGE MARTIN H. COLIN

Copies furnished to:

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com);

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com);

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com);

Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv);

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com).

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.

2. ~~With~~ <sup>BY MARCH 4, 2014</sup> ~~from the later of the date of this order or the appointment of a successor fiduciary,~~ the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of. (u/c)

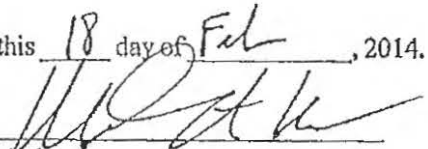
3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a \$ \_\_\_\_\_ retained to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

DONE AND ORDERED in Delray Beach, Florida; this 18 day of Feb, 2014.

  
Circuit Judge

cc: Parties on attached service list

*Wtk*  
.. THE COURT RESEMBLES JUDICIAL TO ENFORCE THIS ORDER.

SERVICE LIST

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
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2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308



IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

---

**ORDER ON "INTERESTED PERSON" WILLIAM STANSBURY'S  
MOTION FOR THE APPOINTMENT OF A CURATOR  
OR SUCCESSOR PERSONAL REPRESENTATIVE**

THIS CAUSE came on to be heard by this Honorable Court on Wednesday, February 19, 2014, on the Motion of William Stansbury, as an "Interested Person" in the Estate, For the Appointment of a Curator or Successor Personal Representative, and the Court having received evidence, reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED:

1. The Motion of William Stansbury is hereby granted.
2. The Court hereby appoints Benjamin Brown, Esq., Matwiczuk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 as Curator of this Estate pursuant to §733.501 Fla. Stat. (2013) and Florida Probate Rule 5.122(a).
3. Reasonable fees for the Curator are capped at \$350.00 per hour.

EXHIBIT "B"

2/25/14

4. Fee payments will be made in \$5,000.00 increments. Any fee requests in excess of that amount for any given period will require a court hearing.

5. In accordance with §733.501(2) Fla. Stat. (2013), bond is hereby set in the amount of \$ none.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida on this \_\_\_\_\_ day of February, 2014.

**SIGNED & DATED**  
MARTIN COLIN  
Circuit Court Judge FEB 25 2014  
JUDGE MARTIN H. COLIN

*Copies to:*

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com);

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com);

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com);

Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv);

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com).

LAW OFFICES  
**TESCHER & SPALLINA, P.A.**

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BOCA RATON, FLORIDA 33431

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ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein  
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

*Robert L. Spallina*  
ROBERT L. SPALLINA

RLS/km

Enclosures





IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB  
PROBATE DIV.

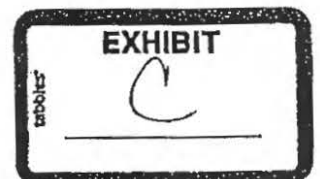
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO  
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN  
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS  
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING  
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that


1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.



2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.

  
MARTIN COLIN  
Circuit Court Judge

*Copies to:*

Alan Rose, Esq., PAGE, MRACHUK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [machuk@pm-law.com](mailto:machuk@pm-law.com);  
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Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [erbern@elivest.com](mailto:erbern@elivest.com);  
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John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, [john@jpmorrisseylaw.com](mailto:john@jpmorrisseylaw.com);  
Benjamin P. Brown, Esq., Matwiczak & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@matbrowlaw.com](mailto:bbrown@matbrowlaw.com)

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

v. )

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

Counter-Defendant )

and, )

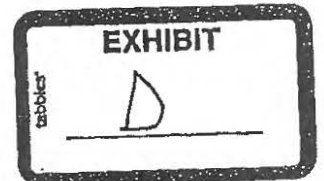
FIRST ARLINGTON NATIONAL BANK, )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
successor in interest to "LaSalle National )  
Trust, N.A., TED BERSTEIN, individually )  
and as alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust Dtd. )  
6/21/95 and ELIOT BERNSTEIN, )

Third Party Defendants )

Case No. 13 cv 3643

Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

INTERVENOR COMPLAINT FOR  
DECLARATORY JUDGMENT BY  
INTERESTED PARTY BENJAMIN P.  
BROWN, CURATOR AND  
ADMINISTRATOR AD LITEM OF  
THE ESTATE OF SIMON L.  
BERNSTEIN



ELIOT IVAN BERNSTEIN, )  
 )  
 Cross-Plaintiff )  
 v. )  
 )  
 TED BERNSTEIN, individually and as )  
 alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd. 6/21/95 )  
 )  
 Cross-Defendant )  
 and )  
 )  
 PAMELA B. SIMON, DAVID B. SIMON )  
 both Professionally and Personally, ADAM )  
 SIMON both Professionally and Personally, )  
 THE SIMON LAW FIRM, TESCHER & )  
 SPALLINA, P.A., DONALD TESCHER )  
 both Professionally and Personally, )  
 ROBERT SPALLINA both Professionally )  
 and Personally, LISA FRIEDSTEIN, JILL )  
 IANTONI, S.B. LEXINGTON, INC., )  
 EMPLOYEE DEATH BENEFIT TRUST, )  
 S.T.P ENTERPRISES, INC., S.B. )  
 LEXINGTON, INC., EMPLOYEE DEATH )  
 BENEFIT TRUST, S.T.P. ENTERPRISES, )  
 INC., S.B. LEXINGTON, INC., )  
 NATIONAL SERVICE ASSOCIATION, )  
 INC. (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC, )  
 (OF ILLINOIS) AND JOHN AND )  
 JANE DOE'S )  
 )  
 Third Party Defendants )  
 \_\_\_\_\_ )  
 BENJAMIN P. BROWN, as Curator and )  
 Administrator Ad Litem of the Estate of )  
 Simon L. Bernstein, )  
 )  
 Intervenor. )

**INTERVENOR COMPLAINT FOR DECLARATORY JUDGMENT BY INTERESTED  
 PARTY BENJAMIN P. BROWN, CURATOR AND ADMINISTRATOR AD LITEM OF  
 THE ESTATE OF SIMON L. BERNSTEIN**

NOW COMES Benjamin P. Brown, as Curator and *Administrator Ad Litem* of the Estate of Simon L. Bernstein ("Brown"), by and through his undersigned counsel, and states as follows for his Complaint for Declaratory Judgment pursuant to Fed. R. Civ. P. 57 against the purported Simon Bernstein Irrevocable Trust DTD 6/21/95 (the "Trust") and Heritage Union Life Insurance Company:

### INTRODUCTION

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in the Circuit Court of Palm Beach County, Florida.

### PARTIES AND JURISDICTION

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P. 24 and is a resident of Palm Beach County, Florida.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff's original Complaint to have been established in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the "Policy") at issue in the instant litigation.

5. The death benefit payable under the Policy exceeds \$1 million dollars.

6. This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).



## BACKGROUND

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of Curatorship in favor of Benjamin Brown were issued on March 11, 2014. (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (*See* Dkt. No. 17 at ¶17).

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights. (*See* letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit B).

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. § 1335(a), in conjunction with its Answer to Plaintiff's Complaint. (*See* Dkt. No. 17). In its Complaint for Interpleader, Heritage asserts the following:

"Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Trust, N.A.," as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust."

(Dkt. No. 17 at ¶20).

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the "Estate") and, more specifically, directed by the Probate Court in Palm Beach County "to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life." (A copy of the Order Appointing Administrator Ad Litem is attached hereto as Exhibit C).

12. 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 Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

13. Intervenor Benjamin P. Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

WHEREFORE, Intervenor, Benjamin P. Brown, as Curator and *Administrator Ad Litem* on behalf of the Estate of Simon L. Bernstein, requests this Court to enter judgment as follows:

- A. Declare that there is no valid beneficiary designated under the Policy;
- B. Declare that the proceeds of the Policy are payable to the Estate of Simon Bernstein;

C. For Intervenor's costs and expenses incurred herein, including reasonable attorneys' fees, and such other and further relief as this Court deems just and proper.

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

One of the attorneys for Proposed Intervenor,  
Benjamin P. Brown, Curator and Administrator Ad  
Litem on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, 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.

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

SIMON BERNSTEIN IRREVOCABLE	)	
INSURANCE TRUST DTD 6/21/95,	)	
	)	
Plaintiff,	)	
	)	Case No. 13 C 3643
v.	)	
	)	Judge Amy St. Eve
	)	
HERITAGE UNION LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**ORDER**

The Court grants Benjamin P. Brown’s motion to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2) [110].

**STATEMENT**

On May 20, 2013, Defendant Jackson National Life Insurance Company (“Defendant” or “Jackson”), as successor in interest to Heritage Union Life Insurance Company (“Heritage”), filed an amended notice of removal pursuant to 28 U.S.C. § 1441 removing the present lawsuit from the Circuit Court of Cook County, Illinois, based on the Court’s diversity jurisdiction. *See* 28 U.S.C. § 1332(a). In the Complaint filed on April 5, 2013, Plaintiff Simon Bernstein Irrevocable Insurance Trust (“Bernstein Trust”) alleged a breach of contract claim against Heritage based on Heritage’s failure to pay Plaintiff proceeds from the life insurance policy of decedent Simon Bernstein. On June 26, 2013, Defendant filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14 seeking a declaration of rights under the life insurance policy for which it is responsible to administer. Plaintiffs filed a First Amended Complaint on January 13, 2014.

Before the Court is Benjamin P. Brown’s (“Brown”) motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). Brown is the Administrator Ad Litem of the Estate of Simon Bernstein. For the following reasons, the Court grants Brown’s motion brought pursuant to Rule 24(a)(2).

**BACKGROUND**

In their First Amended Complaint, Plaintiffs, who are the Bernstein Trust and four of the five adult children of decedent Simon Bernstein, allege that at all times relevant to this lawsuit,

the Bernstein Trust was a common law trust established in Chicago, Illinois by Simon Bernstein. (R. 73, Am. Compl. ¶¶ 1, 7.) Plaintiffs assert that Ted Bernstein is the trustee of the Bernstein Trust and that the Bernstein Trust was a beneficiary of Simon Bernstein's life insurance policy. (*Id.* ¶¶ 2, 4.) In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. (*Id.* ¶ 5.) According to Plaintiffs, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy. (*Id.* ¶ 20.) Following Simon Bernstein's death on September 13, 2012, the Bernstein Trust, by and through its counsel in Palm Beach County, Florida, submitted a death claim to Heritage under the life insurance policy at issue. (*Id.* ¶ 22.)

In its Counter-Claim and Third-Party Complaint for Interpleader, Jackson alleges that it did not originate or administer the life insurance policy at issue, but inherited the policy from its predecessors. (R. 17, Counter ¶ 2.) Jackson further alleges that on December 27, 1982, Capitol Bankers Life Insurance Company issued the policy to Simon Bernstein and that over the years, the owners, beneficiaries, contingent beneficiaries, and issuers of the policy have changed. (*Id.* ¶¶ 15, 16.) At the time of the insured's death, the policy's death benefits were \$1,689,070.00. (*Id.* ¶ 17.) It is undisputed that no one has located an executed copy of the Bernstein Trust. (*Id.* ¶ 19.)

In the present motion to intervene, Brown maintains that after Simon Bernstein, a resident of Florida, died in September 2012, his estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Brown further alleges that on May 23, 2014, a judge in the Probate Court of Palm Beach County appointed him as Administrator Ad Litem of the Estate of Simon Bernstein ("Estate"). According to Brown, the probate judge directed him to "assert the interests of the Estate in the Illinois Litigation involving the life insurance proceeds on the Decedent's life." Brown contends that because no one can locate an executed copy of the Bernstein Trust, and, in absence of a valid trust and designated beneficiary, the insurance policy proceeds at issue in the present lawsuit are payable to the Estate, and not Plaintiffs.

## LEGAL STANDARD

"Rule 24 provides two avenues for intervention, either of which must be pursued by a timely motion." *Grochocinski v. Mayer Brown Rowe & Maw, LLP*, 719 F.3d 785, 797 (7th Cir. 2013). Intervention as of right under Rule 24(a)(2) states that "the court must permit anyone to intervene who claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed.R.Civ.P. 24(a)(2); *see also Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted). "Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit." *Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) (citation omitted). "That interest must be unique to the proposed intervenor." *Id.*

## ANALYSIS

At issue in this lawsuit is who are the beneficiaries of Simon Bernstein's life insurance policy. In their First Amended Complaint, Plaintiffs allege that there is a common law trust, namely, the Bernstein Trust, and that the Bernstein Trust is the beneficiary of Simon Bernstein's life insurance policy. In addition, Plaintiffs allege that the beneficiaries to the Bernstein Trust are Simon Bernstein's five children. In short, according to Plaintiffs' First Amended Complaint, at the time of his death, Simon Bernstein was the owner of the life insurance policy and the Bernstein Trust was the sole surviving beneficiary under the policy.

It is undisputed, however, that no one can locate the Bernstein Trust. Accordingly, Brown, the Administrator Ad Litem of the Estate, moves to intervene arguing that in the absence of a valid trust and designated beneficiary, the insurance policy proceeds must be paid to the Estate as a matter of law. *See, e.g., New York Life Ins. Co. v. Rak* 24 Ill.2d 128, 134, 180 N.E.2d 470 (Ill. 1962); *see Harris v. Byard*, 501 So.2d 730, 734 (Fla. Ct. App. 1987) ("Since the policy had no named beneficiary, there is no basis in law for directing payment of the policy proceeds to anyone other than decedent's estate for administration and distribution.").

In response to the present motion to intervene, Plaintiffs maintain that there is a designated beneficiary of the insurance proceeds. In support of their argument, Plaintiffs set forth an affidavit averring that "on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, the primary beneficiary was designated as LaSalle National Trust, N.A. as Successor Trustee, and the Contingent Beneficiary was designated as the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995. (R. 116-2, Sanders Aff. ¶ 62.) By submitting Sanders' affidavit, Plaintiffs have contradicted their own allegations in their First Amended Complaint by contending that the primary beneficiary of the insurance policy is LaSalle National Trust, N.A., and not the Bernstein Trust. Nevertheless, the Court cannot view this averment in a vacuum without more information about the insurance policy's provisions and any additional extrinsic evidence. To clarify, under Illinois law, "[t]he designation of a beneficiary is solely a decision of the insured and when a controversy arises as to the identity of a beneficiary the intention of the insured is the controlling element. If such intention is dependent on extrinsic facts which are disputed the question, of course, must be resolved as one of fact." *Reich v. W. F. Hall Printing Co.*, 46 Ill.App.3d 837, 844, 361 N.E.2d 296, 5 Ill.Dec. 157 (2d Dist. 1977); *see also Estate of Wilkening*, 109 Ill.App.3d 934, 941, 441 N.E.2d 158, 163, 65 Ill.Dec. 366, 371 (1st Dist. 1982) ("Evidence to establish a trust must be unequivocal both as to its existence and to its terms and conditions.") Moreover, Plaintiffs' contradiction illustrates why Brown has a competing interest in the insurance proceeds justifying intervention.

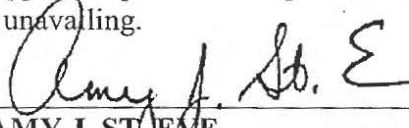
Further, Plaintiffs take issue with the fact that William E. Stansbury, who brought an unsuccessful motion to intervene in January 2014, filed a petition in the Florida probate court for an administrator ad litem and is paying costs and legal fees for the present motion to intervene. Based on Stansbury's conduct, Plaintiffs argue that the law of the case doctrine and collateral estoppel apply. In denying Stansbury's motion, the Court concluded that his interest as an

unsecured creditor of the Estate was too remote for purposes of Rule 24(a)(2). *See Flying J, Inc.*, 578 F.3d at 571 (“the fact that you might anticipate a benefit from a judgment in favor of one of the parties to a lawsuit — maybe you’re a creditor of one of them — does not entitle you to intervene in their suit.”).

Plaintiffs’ law of the case doctrine argument fails because “[w]hether an applicant has an interest sufficient to warrant intervention as a matter of right is a highly fact-specific determination, making comparison to other cases of limited value.” *Security Ins. Co. of Hartford v. Schipporeit, Inc.*, 69 F.3d 1377, 1381 (7th Cir. 1995). Here, Brown, as the Administrator Ad Litem, is protecting the Estate’s interest in the insurance proceeds, which is different from Stansbury’s remote interest as an unsecured creditor of the Estate. *See Walker*, 705 F.3d at 658; *see also Tallahassee Mem. Reg’l Med. Ctr., Inc. v. Petersen*, 920 So.2d 75, 78 (Fla. Ct. App. 2006) (“Florida Probate Rule 5.120(a) provides for discretionary appointment of a guardian ad litem in estate and trust proceedings where ... the personal representative or guardian may have adverse interests.”).

Furthermore, the doctrines of collateral estoppel or issue preclusion do not apply under the facts of this case because there was no separate, earlier judgment addressing the issues presented here. *See Adams v. City of Indianapolis*, 742 F.3d 720, 736 (7th Cir. 2014) (“‘collateral estoppel’ or ‘issue preclusion’—applies to prevent relitigation of issues resolved in an earlier suit.”). Therefore, this argument is unavailing.

**Dated:** July 28, 2014

  
\_\_\_\_\_  
AMY J. ST. JEVE  
United States District Court Judge



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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Counter-Plaintiff, )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK, )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
successor in interest to "LaSalle National )  
Trust, N.A., TED BERSTEIN, individually )  
and as alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust Dtd. )  
6/21/95 and ELIOT BERNSTEIN, )

Third Party Defendants )  
\_\_\_\_\_ )

Case No. 13 cv 3643

Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

INTERVENOR COMPLAINT FOR  
DECLARATORY JUDGMENT BY  
INTERESTED PARTY BENJAMIN P.  
BROWN, CURATOR AND  
ADMINISTRATOR AD LITEM OF  
THE ESTATE OF SIMON L.  
BERNSTEIN

ELIOT IVAN BERNSTEIN, )  
)  
Cross-Plaintiff )  
v. )  
)  
TED BERNSTEIN, individually and as )  
alleged Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd. 6/21/95 )  
)  
Cross-Defendant )  
and )  
)  
PAMELA B. SIMON, DAVID B. SIMON )  
both Professionally and Personally, ADAM )  
SIMON both Professionally and Personally, )  
THE SIMON LAW FIRM, TESCHER & )  
SPALLINA, P.A., DONALD TESCHER )  
both Professionally and Personally, )  
ROBERT SPALLINA both Professionally )  
and Personally, LISA FRIEDSTEIN, JILL )  
IANTONI, S.B. LEXINGTON, INC., )  
EMPLOYEE DEATH BENEFIT TRUST, )  
S.T.P ENTERPRISES, INC., S.B. )  
LEXINGTON, INC., EMPLOYEE DEATH )  
BENEFIT TRUST, S.T.P. ENTERPRISES, )  
INC., S.B. LEXINGTON, INC., )  
NATIONAL SERVICE ASSOCIATION, )  
INC. (OF FLORIDA) NATIONAL )  
SERVICE ASSOCIATION, INC, )  
(OF ILLINOIS) AND JOHN AND )  
JANE DOE'S )  
)  
Third Party Defendants )  
\_\_\_\_\_)  
BENJAMIN P. BROWN, as Curator and )  
Administrator Ad Litem of the Estate of )  
Simon L. Bernstein, )  
)  
Intervenor. )

**INTERVENOR COMPLAINT FOR DECLARATORY JUDGMENT BY INTERESTED  
PARTY BENJAMIN P. BROWN, CURATOR AND ADMINISTRATOR AD LITEM OF  
THE ESTATE OF SIMON L. BERNSTEIN**

NOW COMES Benjamin P. Brown, as Curator and *Administrator Ad Litem* of the Estate of Simon L. Bernstein (“Brown”), by and through his undersigned counsel, and states as follows for his Complaint for Declaratory Judgment pursuant to Fed. R. Civ. P. 57 against the purported Simon Bernstein Irrevocable Trust DTD 6/21/95 (the “Trust”) and Heritage Union Life Insurance Company:

#### INTRODUCTION

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in the Circuit Court of Palm Beach County, Florida.

#### PARTIES AND JURISDICTION

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P. 24 and is a resident of Palm Beach County, Florida.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff’s original Complaint to have been established in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the “Policy”) at issue in the instant litigation.

5. The death benefit payable under the Policy exceeds \$1 million dollars.

6. This Court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00. 28 U.S.C. §1332(a).

### BACKGROUND

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of Curatorship in favor of Benjamin Brown were issued on March 11, 2014. (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (See Dkt. No. 17 at ¶17).

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit B).

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 26, 2013 and filed an Interpleader action pursuant to 28 U.S.C. § 1335(a), in conjunction with its Answer to Plaintiff's Complaint. (See Dkt. No. 17). In its Complaint for Interpleader, Heritage asserts the following:

"Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Trust, N.A.," as listed as the Policy's contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust."

(Dkt. No. 17 at ¶20).

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the "Estate") and, more specifically, directed by the Probate Court in Palm Beach County "to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life." (A copy of the Order Appointing Administrator Ad Litem is attached hereto as Exhibit C).

12. 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 Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E. 2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

13. Intervenor Benjamin P. Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

WHEREFORE, Intervenor, Benjamin P. Brown, as Curator and *Administrator Ad Litem* on behalf of the Estate of Simon L. Bernstein, requests this Court to enter judgment as follows:

- A. Declare that there is no valid beneficiary designated under the Policy;
- B. Declare that the proceeds of the Policy are payable to the Estate of Simon Bernstein;

C. For Intervenor's costs and expenses incurred herein, including reasonable attorneys' fees, and such other and further relief as this Court deems just and proper.

Dated: June 5, 2014

Respectfully submitted,

/s/ James J. Stamos

One of the attorneys for Proposed Intervenor,  
Benjamin P. Brown, Curator and Administrator Ad  
Litem on behalf of the Estate of Simon L. Bernstein

James J. Stamos (ARDC 03128244)  
Kevin P. Horan (ARDC 06310581)  
STAMOS & TRUCCO LLP  
One East Wacker Drive, Third Floor  
Chicago, IL 60601  
Telephone: (312) 630-7979  
Facsimile: (312) 630-1183

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on June 5, 2014, 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.

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.  
CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

---

LETTERS OF CURATORSHIP IN FAVOR OF BENJAMIN BROWN

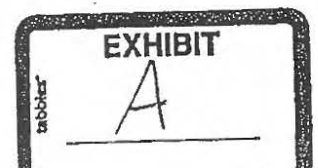
WHEREAS, Co-Personal Representatives of the Estate of Simon L. Bernstein were permitted to resign by Order of this Court on February 18, 2014. A copy of the Order is attached hereto as Exhibit "A"; and

WHEREAS, this Court found it necessary for the appointment of a Curator and appointed Benjamin Brown, Esq. as Curator of this Estate on February 25, 2014. A copy of the Order is attached hereto as Exhibit "B"; and

WHEREAS Benjamin Brown as Curator appointed by Order of this Court has performed all acts prerequisite to the issuance of Letters of Curatorship as a legally qualified Curator of the Estate of Simon L. Bernstein;

NOW, THEREFORE, I the undersigned Circuit Judge do grant Benjamin Brown (hereinafter Curator), the Curatorship of the Estate of Simon L. Bernstein with the following powers:

- (a) To collect and preserve assets of the Estate;
- (b) To administer the assets of the Estate;
- (c) To evaluate all discovery requests related to the Decedent for the purposes of asserting objections and privileges on behalf of the Estate, if necessary;
- (d) To appear on behalf of the Estate in the following two cases: Case No. 502012CA013933 (Circuit Court, Palm Beach County, FL) and Case No. 13CV3643 (U.S. Dist. Ct. Northern Dist.,





Illinois),

Further, pursuant to Fla. Stat. §733.603, Curator shall proceed expeditiously with the duties described herein and except as otherwise specified by the Florida Probate Code, or ordered by the Court, shall do so without adjudication, Order or direction of the Court. The Curator may invoke the jurisdiction of this Court to resolve questions concerning the Estate or its administration.

DONE AND ORDERED in Chambers at Delray Beach, Palm Beach County, Florida,  
this \_\_\_\_\_ day of March, 2014.

**SIGNED & DATED**

Martin Colin, Circuit Judge <sup>1 2014</sup>

**JUDGE MARTIN H. COLIN**

Copies furnished to:

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mchandler@pm-law.com](mailto:mchandler@pm-law.com);

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com);

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com);

Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv);

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com).

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF SIMON L. BERNSTEIN,

PROBATE DIVISION

Deceased.

CASE NO. 502012CP004391XXXXSB

ELIOT IVAN BERNSTEIN, PRO SE

DIVISION: IY (COLIN)

Petitioner

vs.

TESCHER & SPALLINA, P.A., (and all parties, associates and of counsel); ROBERT L. SPALLINA (both personally and professionally); DONALD R. TESCHER (both personally and professionally); THEODORE STUART BERNSTEIN (as alleged personal representative, trustee, successor trustee) (both personally and professionally); et. al.

Respondents.

ORDER ON PETITION FOR RESIGNATION AND DISCHARGE

This cause was heard by the Court on the co-Personal Representatives' Petition for Resignation and Discharge on February 18, 2014, and the Court, having heard arguments of counsel, and otherwise being fully advised in the premises, ORDERS AND ADJUDGES AS FOLLOWS:

1. The Petitioners' request to accept their resignation is ACCEPTED. The co-Personal Representatives' Letters of Administration are hereby revoked.

2. ~~Whereas~~ <sup>BY MARCH 4, 2014</sup> ~~from the later of the date of this order or the appointment of a successor fiduciary,~~ the resigning co-Personal Representatives shall deliver to the successor fiduciary all property of the Estate, real, personal, tangible or intangible, all of the documents and records of the Estate and all records associated with any property of the Estate, regardless of whether such property has been previously distributed, transferred, abandoned or otherwise disposed of.

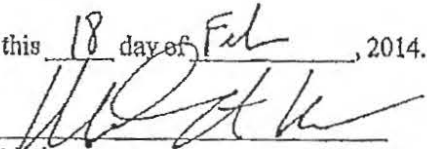
3. The Petitioners' request to reserve ruling on their discharge is ACCEPTED.

4. The resigning co-Personal Representatives shall file an accounting and a Renewed Petition for Discharge within sixty (60) days after the date hereof, which Renewed Petition for Discharge shall be verified and recite that the letters of administration have been revoked, the resigning co-Personal Representatives have surrendered all undistributed Estate assets, records, documents, papers and other property of or concerning the Estate to the successor fiduciary as set forth above, and the amount of compensation paid or to be paid by the resigning co-Personal Representatives pursuant to Probate Rule 5.430(g). Such accounting shall include cash and transactions from the commencement of administration of the Estate and ending as of the date the accounting is submitted.

5. The resigning co-Personal Representatives shall serve notice of filing and a copy of the accounting and Renewed Petition for Discharge on all interested parties and the notice shall state that the objection to the Renewed Petition for Discharge must be filed within thirty days after the later of service of the petition or service of the accounting on that interested person pursuant to Probate Rule 5.430(i).

6. The successor Personal Representative or Curator is authorized to pay a \$ \_\_\_\_\_ retainer to the accountant whom the Successor Personal Representative or Curator selects to provided the accounting which this Order requires. The accountant's hourly rate and compensation shall be subject to court approval.

DONE AND ORDERED in Delray Beach, Florida, this 18 day of Feb, 2014.

  
Circuit Judge

cc: Parties on attached service list

*Wtk*  
*"THE COURT RESEEN/ST JUDGE TO ENFORCE THIS ORDER"*

SERVICE LIST

Theodore Stuart Bernstein (e-mail)  
Life Insurance Concepts  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487

Alan B. Rose, Esq. (E-mail)  
Page Mrachek Fitzgerald Rose Konopka &  
Dow PA  
505 S Flagler Dr Ste 600  
West Palm Beach, Florida 33401

Eliot Bernstein (U.S. Mail)  
2753 NW 34<sup>th</sup> Street  
Boca Raton, Florida 33434

Lisa Sue Friedstein (U.S. Mail)  
2142 Churchill Lane  
Highland Park, Illinois 60035

Pamela Beth Simon (U.S. Mail)  
950 North Michigan Avenue, Suite 2603  
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Jill Iantoni (U.S. Mail)  
2101 Magnolia Lane  
Highland Park, Illinois 60035

Donald R. Tescher (E-mail)  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431

Mark R. Manceri, Esq. (E-mail)  
Mark R. Manceri, P.A.  
2929 East Commercial Boulevard, Ste. 702  
Fort Lauderdale, Florida 33308

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIV.

CASE NO.: 50 2012 CP 004391 XXXX SB

IN RE: ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

---

**ORDER ON "INTERESTED PERSON" WILLIAM STANSBURY'S  
MOTION FOR THE APPOINTMENT OF A CURATOR  
OR SUCCESSOR PERSONAL REPRESENTATIVE**

THIS CAUSE came on to be heard by this Honorable Court on Wednesday, February 19, 2014, on the Motion of William Stansbury, as an "Interested Person" in the Estate, For the Appointment of a Curator or Successor Personal Representative, and the Court having received evidence, reviewed the file, heard argument of counsel, and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED:

1. The Motion of William Stansbury is hereby granted.
2. The Court hereby appoints Benjamin Brown, Esq., Matwiczzyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401 as Curator of this Estate pursuant to §733.501 Fla. Stat. (2013) and Florida Probate Rule 5.122(a).
3. Reasonable fees for the Curator are capped at \$350.00 per hour.

EXHIBIT "B"

2/25/14

4. Fee payments will be made in \$5,000.00 increments. Any fee requests in excess of that amount for any given period will require a court hearing.

5. In accordance with §733.501(2) Fla. Stat. (2013), bond is hereby set in the amount of \$ None.

DONE and ORDERED in West Palm Beach, Palm Beach County, Florida on this \_\_\_ day of February, 2014.

**SIGNED & DATED**  
MARTIN COLIN  
Circuit Court Judge FEB 25 2014  
JUDGE MARTIN H. COLIN

*Copies to:*

Alan Rose, Esq., PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [mehandler@pm-law.com](mailto:mehandler@pm-law.com);

John Pankauski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com);

Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@feamanlaw.com](mailto:service@feamanlaw.com);

Eliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv);

William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@palmettobaylaw.com](mailto:bill@palmettobaylaw.com).

LAW OFFICES

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER I  
4855 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33431

ATTORNEYS  
DONALD R. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GALVANI

TEL: 561-997-7008  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

Attn: Bree  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62651

Re: Insured: Simon L. Bernstein  
Contract No.: 1009208

Dear Bree:

As per our earlier telephone conversation:

- We are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.
- Mrs. Shirley Bernstein was the initial beneficiary of the 1995 trust, but predeceased Mr. Bernstein.
- The Bernstein children are the secondary beneficiaries of the 1995 trust.
- We are submitting the Letters of Administration for the Estate of Simon Bernstein showing that we are the named Personal Representatives of the Estate.
- We would like to have the proceeds from the Heritage policy released to our firm's trust account so that we can make distributions amongst the five Bernstein children.
- If necessary, we will prepare for Heritage an Agreement and Mutual Release amongst all the children.
- We are enclosing the SS4 signed by Mr. Bernstein in 1995 to obtain the EIN number for the 1995 trust.

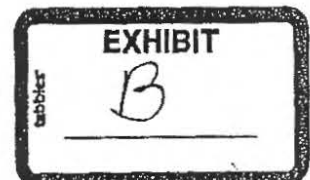
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

*Robert L. Spallina/km*  
ROBERT L. SPALLINA

RLS/km

Enclosures



FROM: Peter M. Feaman P.A. 7345664 TO: 2741418 05/23/2014 10:43:47 #17697 P.003/006

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO.: 50 2012 CP 004391 XXXX SB  
PROBATE DIV.

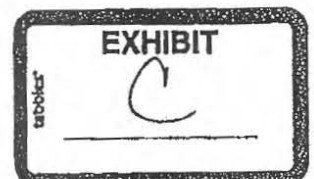
ESTATE OF SIMON L. BERNSTEIN,  
Deceased.

**ORDER APPOINTING ADMINISTRATOR AD LITEM TO  
ACT ON BEHALF OF THE ESTATE OF SIMON L. BERNSTEIN  
TO ASSERT THE INTERESTS OF THE ESTATE IN THE ILLINOIS  
LITIGATION (CASE NO. 13CV3643, N.D. ILL. E. DIV.) INVOLVING  
LIFE INSURANCE PROCEEDS ON THE DECEDENT'S LIFE**

THIS CAUSE came before this Honorable Court on May 23, 2014 upon the Curator's Amended Motion for Instructions/Determination regarding Estate Entitlement to Life Insurance Proceeds and upon the Petition for Appointment of Administrator Ad Litem filed by William Stansbury, in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, currently pending in the United States District Court for the Northern District Court of Illinois, and the Court having heard argument of counsel and being otherwise duly advised in the premises, it is

ORDERED and ADJUDGED that

1. The Court appoints Benjamin P. Brown, Esq., who is currently serving as Curator, as the Administrator Ad Litem on behalf of the Estate of Simon L. Bernstein to assert the interests of the Estate in the Illinois Litigation involving life insurance proceeds on the Decedent's life in the U.S. District Court case styled *Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 v. Heritage Union Life Insurance*, Case No. 13-cv-03643, pending in the United States District Court for the Northern District Court of Illinois.






1100001, 06/05/14, 10:44:01 #11687 P.004/008

2. For the reasons and subject to the conditions stated on the record during the hearing, all fees and costs incurred, including for the Curator in connection with his work as Administrator Ad Litem and any counsel retained by the Administrator Ad Litem, will initially be borne by William Stansbury.

3. The Court will consider any subsequent Petition for Fees and Costs by William Stansbury as appropriate under Florida law.

DONE AND ORDERED in Palm Beach County, Florida this 23 day of May, 2014.

  
MARTIN COLIN  
Circuit Court Judge

*Copies to:*

- Alan Rose, Esq., PAGE, MRACHLEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, [arose@pm-law.com](mailto:arose@pm-law.com) and [machle@pm-law.com](mailto:machle@pm-law.com)
- John Pankowski, Esq., PANKAUSKI LAW FIRM, 120 So. Olive Avenue, Suite 701, West Palm Beach, FL 33401, [john@pankowskilawfirm.com](mailto:john@pankowskilawfirm.com)
- Peter M. Feaman, Esq., PETER M. FEAMAN, P.A., 3615 W. Boynton Beach Blvd., Boynton Beach, FL 33436, [service@pfeamanlaw.com](mailto:service@pfeamanlaw.com)
- Elliot Bernstein, 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, [eb@elliottbernst.com](mailto:eb@elliottbernst.com)
- William H. Glasko, Esq., Golden Cowan, P.A., Palmetto Bay Law Center, 17345 S. Dixie Highway, Palmetto Bay, FL 33157, [bill@pcfla.com](mailto:bill@pcfla.com)
- John P. Morrissey, Esq., 330 Clematis St., Suite 213, West Palm Beach, FL 33401, [john@jpmorrisseyllp.com](mailto:john@jpmorrisseyllp.com)
- Benjamin P. Brown, Esq., Mutwiorzyk & Brown, LLP, 625 No. Flagler Drive, Suite 401, West Palm Beach, FL 33401, [bbrown@mutwiorzylaw.com](mailto:bbrown@mutwiorzylaw.com)

**I N T H E U N I T E D S T A T E S D I S T R I C T C O U R T  
F O R T H E N O R T H E R N D I S T R I C T O F I L L I N O I S  
E A S T E R N D I V I S I O N**

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

Plaintiff, )

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

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

Filers:  
Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trustee and  
Individually, Pam Simon, Jill Iantoni, and  
Lisa Friedstein

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

ANSWER TO INTERVENOR  
COMPLAINT OF BENJAMIN  
BROWN, AS *ADMINISTRATOR*  
*AD LITEM*, FOR THE ESTATE  
OF SIMON BERNSTEIN

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )

as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

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

ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff )

v. )

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

Cross-Defendant )

and, )

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

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

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, (The "Bernstein Trust"), Ted Bernstein, Individually, Pam Simon, Jill Iantoni, Lisa Friedstein, and states as their Answer to the Intervenor Complaint of the Estate of Simon Bernstein, as follows:

**INTRODUCTION**

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in Palm Beach County, Florida.

**Answer:**

Respondents make no answer to ¶1 as the allegations are merely descriptive and contain no allegations of fact requiring a response.

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P.24 and is a resident of Palm Beach County, Florida.

**Answer:** Admit.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff's original complaint to have been established in Chicago, Illinois.

**Answer:** Admit the Bernstein Trust was formed in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the "Policy") at issue in the instant litigation.

**Answer:** Admit.

5. The death benefit under the Policy proceeds exceeds \$1 million dollars.

**Answer:** Admit.

6. This court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00.

**Answer:** The Bernstein Trust admits this court has jurisdiction over this matter pursuant to 28 U.S.C. §1335 as pled in Heritage's counterclaim for interpleader.

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of curatorship in favor of Benjamin Brown were issued on March 11, 2014 (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

**Answer:** Admit.

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (see Dkt. No. 17 at ¶17).

**Answer:** Admit that Dkt. 17 reflects the deposit of the Policy proceeds with the Registry of the Court by Heritage pursuant to its Interpleader Action.

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights.

**Answer:**

Admit only that a complaint was filed on behalf of the Bernstein Trust in the Circuit Court of Cook County, and that, to date, no executed original or executed copy of a formal written trust agreement has been located by any party. Deny that no documents and signed writings have been produced evidencing the existence of the Bernstein Trust and its terms.

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 12, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a), in conjunction with its Answer to Plaintiff's Complaint. (*See* Dkt. 17). In its Complaint for Interpleader, Heritage asserts the following:

“Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Trust, N.A.”, as listed as the Policy’s contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.”

**ANSWER:** Neither admit nor deny the allegations in ¶10, as the Complaint for Interpleader speaks for itself.

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the “Estate”) and, more specifically, directed by the Probate Court in Palm Beach County “to assert the interests of the Estate in the Illinois Litigation involving life insurance on the Decedent’s life.”

**ANSWER:** Neither admit nor deny the allegations in ¶11, and states that the Order referenced in ¶11 speaks for itself.

12. 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 Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida Law. *See New York Life Ins. Co. v. RAK, 180 N. E.2d 470 (Ill. 1962)* (where beneficiary no longer existed, proceeds of life insurance policy passed to decedent's estate); *Harris v. Byard, 501 So.2d 730 (Fla. Dist. Ct. App. 1987)* (in the absence of a named beneficiary, no basis in law for directing payment of insurance proceeds to anyone other than decedent's estate for administration and distribution)

**ANSWER:** Deny.

13. Intervenor Benjamin Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

**Answer:** Deny that Intervenor is entitled to any of the relief sought in ¶13.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny any of the relief sought by Intervenor in his Complaint, enter judgment against Intervenor, and award Plaintiffs their costs and such other relief as this court deems just and proper.

Dated: March 5, 2015

Respectfully Submitted,

/s Adam M. Simon

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Attorney for Answering Plaintiffs  
*Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, Pamela B. Simon, Jill Iantoni and  
Lisa Friedstein*



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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff )

v. )

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

Counter-Defendant )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN )

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

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

**FILERS:**  
Simon Bernstein Irrevocable  
Insurance Trust Dated 6/21/95,  
Ted Bernstein, as Trnstee and  
Individually,  
Pamela B. Simon, Jill Iantoni, and Lisa  
Friedstein ("Movants or Plaintiffs")

**MOVANTS' MEMORANDUM OF LAW  
IN SUPPORT OF THEIR MOTION  
FOR SUMMARY JUDGMENT**

ELIOT IVAN BERNSTEIN, )  
 )  
 )  
 Cross-Plaintiff )  
 )  
 v. )  
 )  
 TED BERNSTEIN, individually and )  
 as alleged Trustee of the Simon Bernstein )  
 Irrevocable Insurance Trust Dtd, 6/21/95 )  
 )  
 Cross-Defendant )  
 and, )  
 )  
 PAMELA B. SIMON, DAVID B.SIMON, )  
 both Professionally and Personally )  
 ADAM SIMON, both Professionally and )  
 Personally, THE SIMON LAW FIRM, )  
 TESCHER & SPALLINA, P.A., )  
 DONALD TESCHER, both Professionally )  
 and Personally, ROBERT SPALLINA, )  
 both Professionally and Personally, )  
 LISA FRIEDSTEIN, JILL IANTONI )  
 S.B. LEXINGTON, INC. EMPLOYEE )  
 DEATH BENEFIT TRUST, S.T.P. )  
 ENTERPRISES, INC. S.B. LEXINGTON, )  
 INC., NATIONAL SERVICE )  
 ASSOCIATION (OF FLORIDA), )  
 NATIONAL SERVICE ASSOCIATION )  
 (OF ILLINOIS) AND JOHN AND JANE )  
 DOES )  
 )  
 Third-Party Defendants. )  
 )  
 \_\_\_\_\_ )

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NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995, by Ted Bernstein, as Trustee, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, and Lisa Friedstein (“Movants” or “Plaintiffs”), by and through their undersigned counsel, and respectfully submit this memorandum of law in support of their motion for summary judgment as to Counts I and II of Plaintiffs’ claims to the Policy Proceeds.

**I. INTRODUCTION**<sup>1</sup>

Movants will demonstrate to the court that the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 is the beneficiary of the Policy Proceeds at issue in this case.

Simon Bernstein, the insured and decedent in this matter, had a long career as a life insurance agent including owning and operating several insurance brokerages. Simon Bernstein was married to his spouse, Shirley, for fifty-two years prior to Shirley’s death in 2010. Simon and Shirley Bernstein had five children, whose names in order of age are as follows: Ted Bernstein, Pamela Simon, Eliot Bernstein, Jill Iantoni, and Lisa Friedstein. All five of Simon Bernstein’s children are now adults with children of their own. Simon Bernstein had ten grandchildren from his five children.

Simon Bernstein’s life insurance career started in Chicago where he raised his family. After his children were grown, Simon and Shirley moved from Chicago to Palm Beach County, Florida.

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<sup>1</sup> The definitions of capitalized terms used herein shall be consistent with the definition section contained in Movant’s Statement of Undisputed Facts.

Simon Bernstein was the Insured under the Policy. On the day Simon Bernstein passed away in 2012, Heritage was the successor insurer to the insurance company that issued the Policy.<sup>2</sup>

After Simon Bernstein died on September 13, 2012, Simon Bernstein's attorney, Robert Spallina, submitted a death claim on the Policy to Heritage on behalf of the Bernstein Trust. The death claim was not paid by Heritage. Subsequently, the Bernstein Trust filed an action for breach of contract against Heritage in the Circuit Court of Cook County. Heritage removed the action from Cook County Court to the Northern District of Illinois. Heritage then filed a counterclaim for interpleader, and named the Bernstein Trust, Eliot Bernstein, and certain banks named in the caption above as potential competing claimants to the Policy Proceeds. With leave of court, Heritage deposited the Policy Proceeds with the Registry of the Court and was subsequently dismissed from the case.

After being served, Eliot Bernstein appeared pro se and filed cross-claims, counter-claims, and third-party claims ("Eliot's Claims") naming the existing parties and several new third-parties.

The Estate of Simon Bernstein was granted leave to intervene in August of 2014. The Estate's intervenor complaint alleges that if no other claimant can prove up their claim, then the Estate should take the Policy Proceeds by default.

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<sup>2</sup> For purposes of this brief movants will refer to the last successor insurer as "Heritage". Movants will refer more generally to the "Insurer" as one or more of the companies that was on the risk for the death benefit from time to time during the Policy's existence.

## **II. FACTUAL BACKGROUND**

### **A. THE PARTIES**

Please see SoF ¶¶1-¶28 for a review of the identity and status of the parties.<sup>3</sup>

### **B. THE POLICY**

The Policy was originally purchased from Capitol Bankers by the VEBA in December of 1982 to insure the life of Simon Bernstein. The Policy was issued as Policy No. 1009208 with an original sum insured of \$2,000,000.00. (SoF ¶26; Ex. 5)

### **C. THE INSURED**

Simon Bernstein was the Insured under the Policy. Shirley, his spouse, predeceased Simon Bernstein. The identity of the Insured is not in dispute, nor does anyone dispute that the Insured passed away on September 13, 2012. (SoF, ¶26, ¶52, ¶68; Ex. 12)

### **D. THE INSURER**

The Insurer of the Policy changed over the life of the Policy from time to time through succession. The Insurer has been previously dismissed from this case after having deposited the Policy Proceeds with the Registry of the Court. Prior to its dismissal, the Insurer did not dispute either the existence of the Policy or its liability for the Policy Proceeds following the death of the Insured. (SoF ¶11)

### **E. THE POLICY PROCEEDS (THE "STAKE")**

In the Insurer's Complaint for Interpleader, the Insurer represented that the net death benefit payable under the Policy on the date of Simon Bernstein's death was \$1,689,070 (less an

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<sup>3</sup> Pursuant to Local Rule 56.1, Movants are concurrently filing their Statement of Uncontested Material Facts ("SoF").

outstanding policy loan). (Ex. 28 at ¶17). In its Rule 26 disclosures and in the Affidavit of Don Sanders, the Insurer provided documentation and testimony verifying the amount of the Policy Proceeds. No objections were made by any Party to this litigation regarding the amount of the Policy Proceeds that the Insurer deposited with the Registry of the Court. In short, the amount of the Policy Proceeds is undisputed. (SoF ¶11)

#### F. THE POLICY PROVISIONS ON BENEFICIARIES

The Policy provisions which set forth both the definitions of a beneficiary under the Policy, and the requirements for naming or changing a beneficiary of the Policy are the controlling factors in making the determination as to whom is the beneficiary of the Policy Proceeds. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 415, 318 N.E.2d 52, 57 (1<sup>st</sup> Dist., 1974) *citing* 2 Appelman, Insurance Law and Practice §921 (1966). In this instance, 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. 5 at bates no. JCK00101)



Here, the application for the Policy, indicates that initial Policy Owner designated “First Arlington Bank, Trustee of S.B. Lexington Employee Death Benefit Trust” [the “VEBA”] as the Beneficiary of the Policy. This was accomplished by the Policy Owner completing the beneficiary section of the application. (SoF, ¶28).

The Policy also includes the Insurer’s requirements for the Policy Owner to effectuate a change of beneficiary. With regard to changing the beneficiary, the Policy provides as follows:

The Owner or any Beneficiary may be changed during the Insured’s lifetime. We do not limit the number of changes that may be made. *To make a change, a written request, satisfactory to us, must be received at our Business Office.* The change will take effect as of the date the request was signed, even if the Insured dies before we receive it. Each change will be subject to any payment we made or other action we took before receiving the request. (Ex. 5 at bates #JCK00103). (emphasis added).

#### G. THE DESIGNATED BENEFICIARIES OF THE POLICY

According to the Insurer, the last change of beneficiaries was submitted to the Insurer by the Policy Owner on or about November 27, 1995. (SoF, ¶33). As a result of that last change of beneficiaries, the Beneficiaries of the Policy Proceeds designated as of the Insured’s date of death (Sept. 13, 2012), were as follows: LaSalle National Trust, as Successor Trustee [the “VEBA”] (primary beneficiary), and Simon Bernstein Irrevocable Insurance Trust dtd June 21, 1995 (contingent beneficiary). (SoF, ¶33 and ¶34)

The VEBA was an employee benefit plan that provided death benefits to the beneficiaries of the S.B. Lexington VEBA plan participants. The Policy was initially purchased by the VEBA and at Policy issuance the VEBA was both Policy Owner and Primary Beneficiary. (SoF, ¶27 and ¶28)

As part of the VEBA, the plan participant (an S.B. Lexington Employee), was authorized to designate his/her intended beneficiary of their death benefit under the VEBA. Simon Bernstein, as a plan participant, executed a beneficiary designation form for the death benefits provided through the VEBA. In August of 1995, Simon Bernstein designated the "Simon Bernstein Irrevocable Insurance Trust" as his Beneficiary for the death benefit provided through the VEBA. (SoF, ¶32; Ex. 4)

Simon Bernstein's beneficiary designation form which contains his designation of the Bernstein Trust as his Beneficiary for the VEBA death benefit provides extremely strong corroborating evidence of both (i) the existence of the Bernstein Trust; and (ii) Simon Bernstein's intent that the Beneficiary of the Policy Proceeds is the Bernstein Trust. (SoF, ¶32; Ex. 4).

In support of their motion, Movants submitted a simple diagram (Ex. 17) which is referred to and explained in Ex. 30, Aff. of Ted Bernstein at ¶105-¶106. This diagram illustrates that whether the Policy Proceeds were paid to the Primary Beneficiary -- the VEBA-- or the Contingent Beneficiary -- the Bernstein Trust, the result is the same. Ultimately, the Policy Proceeds are to be paid to the Bernstein Trust. (SoF, ¶44)

In 1998, S.B. Lexington was voluntarily dissolved and the VEBA terminated at the same time. In conjunction with this dissolution, the ownership of the Policy was also changed in 1998, from the VEBA to Simon Bernstein. So, as of 1998, it is undisputed that the Primary Beneficiary under the Policy, the VEBA, had ceased to exist, and thus the sole remaining beneficiary was the Contingent Beneficiary, the Bernstein Trust. (SoF ¶21 and ¶36)

**H. THE SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST  
DATED JUNE 21, 1995 (THE "BERNSTEIN TRUST")**

As set forth above, the last named Contingent Beneficiary of the Policy was the Bernstein Trust. But, one of the reasons the Insurer refused to pay the Policy Proceeds to the Bernstein Trust upon presentation of the death claim, was because no one has been able to locate an original or copy of an executed trust agreement for the Bernstein Trust (a "Bernstein Trust Agreement"). (SoF ¶45)

But, Movants in their Statement of Undisputed Facts set forth a comprehensive and cohesive bundle of evidence, including signed documentation from both the settlor and the initial trustee of the Bernstein Trust evidencing the existence of the Bernstein Trust. Movants have also provided sworn witness testimony and unexecuted drafts of the Bernstein Trust Agreement establishing the terms of the Bernstein Trust. Further, Movants account for 4/5ths of the Beneficiaries of the Bernstein Trust, and these 4/5ths are all in agreement with regard to the terms of the Bernstein Trust and intent of the Settlor.

It is also important to remember that this is not a case where the four consenting Beneficiaries are trying to exclude the fifth beneficiary. Instead, the four consenting Beneficiaries seek distribution of the Policy Proceeds to all five children of Simon Bernstein as Beneficiaries of the Bernstein Trust, *including the contesting Beneficiary, Eliot.*

**III. VENUE AND JURISDICTION**

The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1335 (interpleader). The insurer invoked such jurisdiction when it filed its Interpleader Action after having removed this matter from Cook County Court.

Venue is proper in this district because a substantial part of the events giving rise to the claims occurred in Cook County, Illinois. The insurance policy at issue was applied for and delivered in Illinois. At the time of issue, the insured was a citizen of Illinois. The initial policy owner was a bank trustee for the VEBA domiciled in Illinois. The Bernstein Trust was established and created in Illinois, at an Illinois law firm, by attorneys whom drafted a trust agreement that selected Illinois law to govern. (SoF, ¶28, ¶47-¶49)

#### IV. ARGUMENT

##### A. STANDARDS

Summary judgment is appropriate when “there is no genuine issue as to any material fact” and the movant “is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Only disputes “that might affect the outcome of the suit...will properly preclude the entry of summary judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). “When the material facts are not in dispute...the sole question is whether the moving party is entitled to judgment as a matter of law.” *ANR Advance Transp. V. Int’l Bhd. Of Teamsters Local 710*, 153 F.3d 774, 777 (7th Cir. 1998). If full summary judgment is not warranted, the court may grant partial summary judgment. Fed R. Civ. P. 56(a).

In an interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others. *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603 at 608-609, 190 Ill.Dec. 295, 621 N.E.2d 164 (1st Dist., 1983).

## B. GOVERNING LAW

Where an insurance policy is the result of an application to an agent of the insurance company within a state, the policy after having been issued, delivered by the company's agent within the state, and the premiums paid by the insured within the state to the company, the policy becomes a contract of that state, subject to the applicable laws of said state. Where the most significant contacts of the contract are made, the applicable law of that place is controlling. *Minnesota Mut. Life Ins. Co. v. Sullivant*, 334 F.Supp 346, 349 (1971), citing *New York Life Ins. Co. v Head*, 234 U.S. 149, 34 S.Ct. 879, 58 L.Ed. 1259 (1914).

Here, the law of the state of Illinois controls because it is undisputed that the first Policy Owner, the VEBA, was domiciled at the offices of its Bank Trustee located in Illinois. Simon Bernstein was the agent who sold the Policy and it is undisputed that when he sold the Policy he was a citizen of the state of Illinois, and the Policy would have been delivered to the Owner in the state of Illinois. Simon Bernstein was also the insured under the Policy and the application was signed in Illinois. (SoF ¶28). In short, all of the significant contacts with regard to the application, sale and delivery of the Policy occurred in Illinois.

With regard to issues relating to the Bernstein Trust, Illinois law also applies. Both drafts of the Bernstein Trust have two independent choice of law provisions on the first page of each draft and directly above the signature line for the grantor which state that "the Trust created hereby shall be construed and governed by the laws of Illinois." (SoF ¶57, Ex. 15 and Ex. 16 at Art. II and Art. XIII.) This makes perfect sense, since according to the undisputed testimony of David Simon, the attorneys who drafted the Bernstein Trust were from the law firm of

Hopkins and Sutter located in Chicago, IL. Simon Bernstein executed the Bernstein Trust in Chicago, Illinois. (SoF ¶47).

**C. THE BERNSTEIN TRUST WAS FORMALLY ESTABLISHED BY SIMON BERNSTEIN AS AN EXPRESS TRUST.**

In *Butler*, the Iowa Supreme Court cited to an extensive array of case law on the subject of the establishment of express trusts including several applicable citations to Illinois law. Prior to examining the facts of the case in *Butler*, the court noted the following pronouncements:

“Neither a statement by the settlor, nor a formal written declaration is essential to establish a trust”. The court continued, “Whether a trust has been perfectly created is largely a question of fact in each case, and the court in determining the fact will give efficacy to the situation and relation of the parties, the nature and situation of the property, and the purpose and objects which the settlor had in view.” *Butler v. Butler*, 253 Iowa 1084, 1113, 114 N.W.2d, 595, 612 (1962) citing *Perry on Trusts and Trustees*, 7<sup>th</sup> Ed, vol. 1, p.124.

Next, the *Butler* court cited the Illinois Supreme Court case in *McDiarmid* as follows:

“In support of their contention that they have proved an express trust appellees rely on our holdings in *Kingsbury v. Burnside*, 58 Ill. 310, 11 Am.Rep. 67, and many other decisions, including *Whetsler v. Sprague*, 224 Ill. 461, 79 N.E. 667, supra. These decisions hold that the statute of frauds has been complied with if the trustee makes a memorandum or writing showing that the property is held in trust. *The details of the trust may be established aliunde and even by parol evidence.*” *Butler*, 235 Iowa 1084, 1114, 114 N.W.2d 595, (1962) citing *McDiarmid v. McDiarmid*, 368 Ill. 638, 15 N.E.2d 493 (1938)

The *McDairmid* court continued:

“...that in order to establish an express trust and to meet the requirements of the statute of frauds it is not necessary that it be established by formal declaration of the trust but it is sufficient if proved by letters or other memoranda. The writing need not be an instrument expressly framed for the purpose of acknowledging the trust. *It is sufficient if*

*the recognition or admission of the trust be incidentally made in the course of correspondence and almost any memorandum will suffice.* The letter or memorandum need not be addressed to the *cestui que* of the trust and may be written after title has been acquired by the trustee.” *McDiarmid v. McDiarmid*, 368 Ill. 638, 642 (1938).

The *Butler* court also relied upon *Holmes*, where the Washington Supreme Court addressed the question of whether an express trust may be proven by a writing signed by the trustee. To answer the question, the court relied upon Pomeroy’s Eq. Juir. (3 Ed.) §1007 and concluded that an express trust may be proven by a writing signed by the grantor or trustee of the trust, but not from its *cestui que*. *Holmes v. Holmes*, 65 Wash. 572, 118 P. 733, 734 (1911)

In *Butler*, the court also set forth certain legal principles regarding the settlor’s manifestation of his intent to create a trust. The court stated:

“Except as otherwise provided by statute, the manifestation of intention to create a trust may be made by written or spoken words or conduct. No particular form of words or conduct is necessary for the manifestation of intention to create a trust.(cites omitted) Acts prior to and subsequent to, as well as acts contemporaneous with the manifestation which it is claimed creates a trust, may be relevant in determining the settlor’s intention to create a trust.” *Butler*, 235 Iowa 1084, 1113, 114 N.W.2d 595, 613 (1962)

Since an interest in real property is not at issue here, the Statute of Frauds is not applicable. But, even if it were, Movants’ have provided ample evidence in the form of signed writings by both the Settlor and Trustee which establish the existence of the Bernstein Trust as an express trust.

As far as written evidence which establishes the formation and existence of the Bernstein Trust, Movants submit the following:

1. The VEBA Beneficiary Designation form is critically important because it (i) contains the signature of the Simon Bernstein, (ii) refers to the “Simon Bernstein Irrevocable Insurance

Trust”, and (iii) memorializes Simon Bernstein’s intent that the Policy Proceeds were to be paid to the Bernstein Trust. (SoF, ¶32). Under the case law discussed above, this document alone is sufficient evidence of the establishment and existence of the Bernstein Trust.

2. The SS-4 Form used to obtain the Federal Tax Identification Number for the Bernstein Trust is also conclusive evidence of the formation of the Bernstein Trust. The SS-4 Form contains reference to the “Simon Bernstein Irrevocable Insurance Trust”, and is signed and dated on June 21, 1995 by the initial trustee of the Bernstein Trust, Shirley Bernstein. (SoF, ¶41). As discussed above, the signature of a Trustee is also sufficient on its own to evidence the establishment of a trust.

3. The Beneficiary Designation Forms for the Policy submitted by the Policy Owner designates the Bernstein Trust as a Contingent Beneficiary. (SoF, ¶33 and ¶34)

4. The unexecuted versions of the Bernstein Trust Agreement provide evidence of the Settlor’s intent to form the trust. This document also establishes the terms of the “irrevocable trust”. According to both drafts of the Bernstein Trust Agreement, the beneficiaries of the Bernstein Trust are the five children in equal shares. (SoF, ¶50)

5. The change of owner form signed by Simon Bernstein on August 8, 1995 which transferred his ownership interest in the Lincoln Policy to the Bernstein Trust. This document contains the full name of the Bernstein Trust, the tax identification number of the Bernstein Trust as reflected on the IRS SS-4 form, and it identifies the initial trustee, Shirley Bernstein.

In addition to the documentation produced in this case, Plaintiffs have proffered corroborating parole evidence of Simon Bernstein’s intent to i) form the Bernstein Trust: (ii) designate the Bernstein Trust as the beneficiary of the Policy proceeds; (iii) designate his wife



Shirley Bernstein, as initial trustee, and his son Ted, as successor trustee; and (iv) designate his five children as beneficiaries of the Bernstein Trust.

Such additional evidence includes the following:

- a) Affidavit of Don Sanders, Asst. Vice-President of Operations of the Insurer
- b) Affidavit of Ted Bernstein
- c) Affidavit of Pam Simon
- d) Affidavit of Jill Iantoni
- e) Affidavit of Lisa Friedstein
- f) Affidavit of David B. Simon
- g) Deposition of David B. Simon

**D. MOVANTS HAVE SET FORTH UNDISPUTED EVIDENCE THAT THE  
BENEFICIARY OF THE POLICY PROCEEDS IS THE BERNSTEIN TRUST.**

Movants have submitted a simple diagram marked as **Ex. 17** in their Appendix of Exhibits. In his Affidavit (**Ex. 30 at ¶106**), Ted Bernstein explains the diagram and how it illustrates Simon Bernstein's intent with regard to the Policy Proceeds.

This diagram shows that when Simon Bernstein executed the VEBA Member Beneficiary Form in 1995, just months after he formed the Bernstein Trust, he expressed his intent in a signed writing that the Policy Proceeds should be paid to the VEBA and then flow through to the Bernstein Trust (**Ex. 17, Option A**). In a belt in suspenders approach, the Bernstein Trust was also named contingent beneficiary of the Policy as illustrated in the diagram. So, if the Insured survived the primary beneficiary--which he did in this case--the Policy Proceeds would still be paid to the Bernstein Trust as contingent beneficiary (**Ex. 17, Option B**). (**SoF, ¶44**)

In April of 2010, the Policy records reflect that Simon Bernstein contacted the Insurer, and the Insurer responded with a letter confirming the primary and contingent beneficiaries as

follows: The primary was listed as “LaSalle National Trust” [the VEBA], and the contingent beneficiary is listed as “Simon Bernstein Trust, N.A.”. But, according to the Policy records as confirmed by Don Sanders in his Affidavit, “Simon Bernstein Trust, N.A.” is merely a misnomer or abbreviation input by the Insurer into their records for the named contingent beneficiary which is “Simon Bernstein Insurance Trust dated 6/21/95.” There is no record of any submission of a change of beneficiary to the Insurer under the name Simon Bernstein Trust, N.A., and no one as filed a claim on behalf of a separate entity named “Simon Bernstein Trust, N.A.” (SoF ¶45-46).

Simon Bernstein spent most of his career as a life insurance agent and owner and operator of life insurance agencies and brokerages. (SoF, ¶46). Simon Bernstein knew what was required to change an owner or beneficiary of a life insurance policy.

Approximately a year before his death, Simon Bernstein completed the necessary paperwork and submitted the required premium to reinstate the Policy after it had lapsed. In doing so, Simon Bernstein made no changes to the owner or beneficiary of the Policy when he transmitted the forms to the Insurer. (SoF, ¶44).

A final crucial piece of evidence is Simon Bernstein’s Will executed just months before his passing. A Will, by its very nature, is a legal instrument designed to express one’s intent. Simon Bernstein’s Will contains a provision expressly reaffirming his beneficiary designations and thus his desire that any proceeds of an insurance contract be paid to the designated beneficiary of that contract. (SoF ¶68).

**E. THE BENEFICIARIES OF THE BERNSTEIN TRUST**

The beneficiaries of the Bernstein Trust were set forth in the two unexecuted drafts of the Bernstein Trust Agreement. **(Ex. 15 and Ex. 16)**. And those beneficiaries are the five children of Simon Bernstein.

David Simon stated when Simon Bernstein approached him to form an insurance trust he initially said he wanted to do so to protect his wife and children. The Affidavit of Ted Bernstein also shows that in 1995 when the Bernstein Trust was formed, only two of Simon Bernstein's children had children of their own, and they were young minors at the time. **(SoF, ¶48)**

Movants have submitted the Equifax investigation report that was part of the Policy records, and that report indicates that Simon Bernstein told the investigator that the Policies purchased by the VEBA are owned by a trust and that the death benefits are generally left to family members. **(SoF, ¶30)**

The affidavits, documentation and evidence submitted by Movants all lead to the same conclusion. First, the Bernstein Trust was an express irrevocable insurance trust formed by Simon Bernstein, as settlor, on or about June 21, 1995. Second, the Bernstein Trust is the Beneficiary of the Policy proceeds. Third, the Beneficiaries of the Bernstein Trust are the Five Children, to share equally.

**F. ADMINISTRATIVE MATTER OF APPOINTING OR DECLARING TED BERNSTEIN TRUSTEE OF THE BERNSTEIN TRUST**

Shirley Bernstein, the initial trustee of the Bernstein Trust, predeceased Simon Bernstein. According to all of the evidence submitted by Movants, Ted Bernstein was appointed successor trustee to the Bernstein Trust, and he has brought this action on behalf of the Bernstein Trust and its beneficiaries. Based on the evidence provided, this Court should declare that Ted Bernstein is

the successor trustee of the Bernstein Trust with authority to carry out the actions needed to collect the Policy Proceeds and distribute them to the Five Children.

Further authority for Ted's appointment or declaration as acting trustee can be found in 760 ILCS 5/13 which provides as follows:

§ 13. Vacancy--Successor trustee. In the event of the death, resignation, refusal or inability to act of any trustee:

(1) the remaining trustee, if any, shall continue to act, with all the rights, powers and duties, of all of the trustees; or

(2) if there is no remaining trustee, a successor trustee may be appointed by a majority in interest if the beneficiaries then entitled to receive the income from the trust estate or, if the interest of the income beneficiaries are indefinite, by a majority in number of the beneficiaries then eligible to have the benefit of the income of the trust estate, by an instrument in writing delivered to the successor, who shall become a successor trustee upon written acceptance of the appointment, but no beneficiary who is appointed as a successor trustee shall have any discretion to determine the propriety or amount of any distribution of income or principal to himself or to any person to whom he is legally obligated.

Here, Movants' whom represent 80% of the beneficial interests of the Bernstein Trust, have submitted to the court and to Ted, as Trustee, there sworn affidavits containing their consent to having Ted continue to act as Trustee of the Bernstein Trust. Ted, in his Affidavit, has also signified his willingness to act as Trustee. This court, in its order granting movants motion for summary judgment should declare that Ted Bernstein is duly appointed and authorized to act as Trustee for the Bernstein Trust.

#### G. ELIOT'S CLAIM – THE SOLE CONFLICTING CLAIM

Another reason cited by the Insurer for its refusal to pay the death claim made by Bernstein Trust was because the Insurer received a letter from Eliot that purported to make a conflicting claim to the Policy Proceeds. (SoF, ¶72). A copy of Eliot's letter was attached as an

Exhibit to the Insurer's complaint for Interpleader. In his letter to the Insurer dated May 3, 2013, Eliot describes his purported claims as follows:

"I, Eliot I. Bernstein, son of Simon L. Bernstein, and my children have been notified that we are possible beneficiaries of the life insurance policy on my deceased father."

In this same letter, Eliot states that he has obtained counsel to represent his children with regard to their claims, and he would be retaining separate counsel for himself. (SoF, ¶26 and Ex. 28 at ¶22) Yet, in this litigation, only Eliot has appeared, pro se', presumably on behalf of himself.

No matter who Eliot purports to represent, Eliot's Claims fail to articulate any coherent set of facts or legal theories, either on his own behalf or on behalf of his children that could establish that Eliot or his children are beneficiaries of the Policy Proceeds.

Instead, Eliot's Claims sound in attempted fraud, and legal malpractice. Eliot's Claims recite allegation after allegation, all wholly irrelevant, of certain disputes and discrepancies involved in the probate and administration of the estate of Simon Bernstein which is occurring simultaneously herewith in Palm Beach County, Florida. Eliot describes the actions he is taking in Probate court in Palm Beach County and asks this court for basically the same relief he seeks in Palm Beach County.

Eliot's prayers for relief make absolutely no mention of the Policy Proceeds. Instead, in section "(i)" Eliot asks the court to seize all records regarding the Policies. But, Eliot has all Parties' Rule 26 production of documents including the Insurer's records. And, Eliot has had well over a year to conduct discovery. In short, this first prayer for relief is now moot because Eliot has had access to the records and ample time to conduct discovery.

In section “(ii)”, Eliot asks for court costs to be paid by the Parties not the Policy Owners. This prayer for relief also does not seek the Policy Proceeds. In section “(iii)”, Eliot states that he has asked the Probate Court in Florida to remove Ted Bernstein, Pam Simon, Donald Tescher and Robert Spallina from acting in any fiduciary capacity regarding the Estates of Simon or Shirley and Eliot asks this court for the same relief. First, Donald Tescher and Robert Spallina are no longer parties to this action as their motion to dismiss Eliot’s claims was granted. (SoF, ¶16, ¶17, and ¶22) Second, this Court has no jurisdiction over the Estates of Simon and Shirley Bernstein as that matter is being administered in Palm Beach County, Florida. Again, this third prayer for relief does not seek the Policy Proceeds.

In section “(iv)” Eliot complains of parties abusing their fiduciary duty and demands that such parties be required to retain non-conflicted counsel. Although this prayer is vague, it appears to be an attempt to have counsel for Movants disqualified. This prayer for relief was previously denied by the court when it denied Eliot’s motion to disqualify counsel (Dkt. #91). This prayer for relief also makes no mention of the Policy Proceeds.

In section “(v)” Eliot asks the court to take judicial notice of the crimes alleged in his complaint and use its court powers to “prevent any further crimes.” This prayer for relief is so vague that it would be impossible for the court to grant and enforce it. No specific redress is requested, and no demand is made for the Policy Proceeds.

In section “(vi)” Eliot asks for permission to obtain ECF access. Movant’s believe Eliot has ECF access. In section (vii) Eliot asks for leave to amend his claims. Neither of these prayers for relief seek the Policy Proceeds.

In section (viii), Eliot seeks \$8 million, punitive damages, attorneys' fees and costs. Eliot's Claims contains no allegations of fact regarding the damages alleged that have any reasonable relation to the \$8 million plus punitive damages award he seeks. And the amount sought certainly bears no relation to the amount of Policy Proceeds on deposit. This last prayer for money damages does not seek either a determination that Eliot or his children are beneficiaries of the Policy Proceeds, nor does it make a demand for an award of the Policy Proceeds.

Eliot's pleadings are based on his erroneous assumption that the determination of the beneficiary of the Policy proceeds must be made in Florida by the probate court, instead of the Northern District of Illinois. Here again, Eliot misapprehends the fact that the Policy Proceeds are not part of the probate action in Florida because they are non-probate assets whose beneficiary is determined according to the life insurance contract, the Policy. The Policy Proceeds vested in the Beneficiary of the Policy immediately upon the death of the insured. *Bank of Lyons v. Schultz*, 22 Ill.App.3d 410, 318 N.E.2d 52 (1<sup>st</sup> Dist., 1974).

Further, this Court has exercised its jurisdiction from the outset of this matter and it was left unchallenged by the Insurer or any other party. In fact, it was the Insurer whom removed the action to the Northern District from the Circuit Court of Cook County, and in so doing, the Insurer alleged and invoked this court's jurisdiction over this matter pursuant to 28 U.S.C. §1335 (interpleader).

What is also conspicuously absent from Eliot's Claims is any reference to documentation in the Insurer's records that supports a claim to the Policy Proceeds on Eliot's own behalf or that

of his children. In short, Eliot has not pled a conflicting claim to the Policy Proceeds such that this court could find in his favor.

#### **H. THE ESTATE OF SIMON BERNSTEIN'S INTERVENOR COMPLAINT**

Benjamin Brown, as personal representative of the Estate of Simon Bernstein (the "Estate") was granted leave to intervene in this litigation on July 28, 2014 (SoF, ¶25). But, intervenor's complaint does not set forth a conflicting claim to the Policy Proceeds with any affirmative evidence that the Estate was either a primary or contingent beneficiary of the Policy. Instead, the complaint merely sets forth the Estate's assertion that if all other claimants fail to establish a claim to the Policy Proceeds, then the Policy Proceeds should be paid to the Estate by default.

The Estate's claims are wholly moot since the contingent beneficiary of the Policy – the Bernstein Trust – has established its claim as matter of law such that it should be awarded the Policy Proceeds. Thus, the issue of whom should take by default does not even arise.

#### **V. CONCLUSION**

For all of the foregoing reasons, Movant's motion for summary judgment as to Counts I and II of their First Amended Complaint should be granted in its entirety.



Dated: March 27, 2015

Respectfully Submitted,

/s Adam M. Simon

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Ted Bernstein as Trustee, and individually,  
Pamela B. Simon, Jill Iantoni, Lisa Friedstein

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.,

Defendant.

Case No. 13 C 3643

Judge John Robert Blakey

ORDER

This is an interpleader action concerning the distribution of the proceeds from a life insurance policy that insured the life of Simon Bernstein. The Heritage Union Life Insurance Company interpleaded the funds at issue, and was subsequently dismissed from the case. The principal parties remaining in the case are: (1) Plaintiff Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the "Trust"); (2) the four Bernstein sibling Plaintiffs, who believe the proceeds of the policy should be distributed to the Trust (Ted Bernstein, Lisa Friedstein, Jill Iantoni and Pam Simon); (3) the fifth Bernstein sibling, Eliot Bernstein, a third party Plaintiff who disputes that approach; and (4) the intervenor estate of Simon Bernstein, as represented by Brian O'Connell.

Plaintiffs (the Trust and the four Bernstein siblings) assert three causes of action: (1) breach of contract against the Heritage Union Life Insurance Company; (2) a request for a declaratory judgment that the Trust is entitled to the proceeds of Simon Bernstein's life insurance policy; and (3) in the alternative, a request for a finding of a resulting trust.

Currently before the Court is Plaintiffs' motion for summary judgment with regard to Counts I and II of their Complaint. [148], [153]. As explained below, that motion is denied.

**Legal Standard**

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir.

2014). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Further, summary judgment is not appropriate “if the evidence is such that a reasonable jury could return a verdict for the non-moving party,” and the Court must “construe all facts and reasonable inferences in the light most favorable to the nonmoving party.” *Liberty Lobby*, 477 U.S. at 255; *see also Carter v. City of Milwaukee*, 743 F.3d 540, 543 (7th Cir. 2014).

Plaintiffs propose a different legal standard, arguing that in an “interpleader action each claimant has the burden of establishing its entitlement to the Stake, and it is insufficient to negate or rely on the weakness of the claims of others.” [153] at 8 (citing *Eskridge v. Farmers New World Life Ins. Co.*, 250 Ill.App.3d 603, 608-609 (Ill. App. Ct. 1983)). According to Plaintiffs, because Eliot and the Estate have failed to establish their entitlement to the proceeds, the Plaintiffs’ motion for summary judgment should be granted. They argue that since “they lacked viable claims of their own, both Eliot and the Estate sought simply to poke a few holes in Movants’ case which is insufficient to prevail in an Interpleader Action.” [200] at 13. This misunderstands the applicable standard at summary judgment. Even though this may be an interpleader action, the normal standards apply to motions for summary judgment. *See Protective Life Ins. Co. v. Hansen*, 632 F.3d 388, 392 (7th Cir. 2011); *Abstract & Title Guar. Co. v. Chicago Ins. Co.*, 489 F.3d 808, 810 (7th Cir. 2007). The Court will proceed accordingly.

### Count I

Plaintiffs’ motion for summary judgment on Count I is denied. Count I alleges a breach of contract against Heritage Union Life Insurance Company. However, Heritage Union is no longer a party to this matter. On February 18, 2014, the Court entered an order stating: “Heritage Union Life Insurance Company is hereby dismissed as a party from this action, including dismissal of all claims against it, with prejudice. Heritage Union Life Insurance Company is discharged of all liability under the Policy.” [101]. Because Heritage Union was dismissed from this matter, and Count I against Heritage Union was also dismissed, Plaintiffs’ motion for summary judgment on Count I is denied.

### Count II

Plaintiffs’ motion for summary judgment on Count II is denied. To prevail on their motion, Plaintiffs must show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014). Count II requests a declaratory judgment that: (1) the Trust was established on or about June 21, 1995; (2) the beneficiaries of the Trust are the five children of Simon Bernstein; (3) Ted Bernstein is the Trustee of the Trust; and (4) the Trust is entitled to the proceeds from Simon Bernstein’s life insurance policy. Unfortunately, Plaintiffs have been

unable to produce the executed Trust, and the Intervenor and Third Party Plaintiff dispute its existence. The parties also dispute the terms of any trust. If the Trust was established as claimed by Plaintiffs, they would be entitled to summary judgment here.

Because they have been unable to produce the executed Trust, Plaintiffs rely on extrinsic evidence to prove that the Trust existed as they claim. "However, one seeking to establish an express trust by parol evidence bears the burden of proving the trust by clear and convincing evidence. The acts or words relied upon must be so unequivocal and unmistakable as to lead to only one conclusion." *Eychaner v. Gross*, 779 N.E.2d 1115, 1135 (Ill. 2002). If such evidence is "doubtful or capable of reasonable explanation upon any other theory, it is not sufficient to establish an express trust." *Id.*

Here, there is a genuine dispute of fact concerning the existence of the Trust and its terms. To establish the existence of the Trust, Plaintiffs rely primarily on testimony from Ted Bernstein and David Simon. According to that testimony, Simon Bernstein executed the trust documents as set out in Plaintiffs' Exhibits 15 and 16. However, the testimony of David Simon and Ted Bernstein, along with the testimony of the other Plaintiffs, is barred by the Illinois Dead Man's Act to the extent it relates to conversations with the deceased or to any events which took place in the presence of the deceased. See 735 ILCS 5/8-201.<sup>1</sup> This dramatically limits the testimony upon which Plaintiffs may rely in support of their motion, and leaves the Court without any direct testimony describing the Trust's creation.

In addition to testimony, Plaintiffs rely on a series of documents purporting to show that the Trust was created. As mentioned above, Plaintiffs offer Exhibits 15 and 16 as unexecuted versions of the Trust. Yet those documents offer Plaintiffs little support in the absence of the testimony from David Simon and Ted Bernstein describing how some form of those exhibits was executed by Simon Bernstein. In addition to Exhibits 15 and 16, Plaintiffs offer the following:

- Ex. 19 – A 6/21/95 IRS Form SS-4 "Application for Employer Identification Number" on behalf of the "Simon Bernstein Irrevocable Insurance Trust." The Form SS-4 purports to be signed by Shirley Bernstein, Simon's wife. It is unclear from the face of the document whether it was submitted to or approved by the IRS.

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<sup>1</sup> There is an exception to the Dead Man's Act that reads: "If any person testifies on behalf of the representative to any conversation with the deceased . . . or to any event which took place in the presence of the deceased . . . any adverse party or interested person, if otherwise competent, may testify concerning the same conversation or event." This exception does not apply to the testimony cited by the Intervenor here because that testimony was given by Ted Bernstein and David Simon *on behalf of the Plaintiffs*. It was not given on behalf of the estate's representative. The Intervenor merely cited to Plaintiffs' evidence as a way of showing that the resolution of this matter would involve credibility determinations with regard to Plaintiffs' witnesses.

- Ex. 18 – An 8/8/95 “Request for Service” asking to transfer the ownership of Simon Bernstein’s life insurance policy to the “Simon Bernstein Irrevocable Insurance Trust dtd 6/21/1995.” This document refers to “ownership” of the policy, and does not affect the policy’s beneficiaries.
- Exhibit 4 – An “Employee Death Benefit Plan and Trust . . . Beneficiary Designation” in which Simon Bernstein designated the “Simon Bernstein Irrevocable Insurance Trust” as the beneficiary to receive his death benefits. Note that this document does not refer to the Trust at issue here, the “Simon Bernstein Irrevocable Insurance Trust dated 6/21/95.” It is unclear from the record if that was an oversight, or was intentionally done to refer to a distinct trust. This document is dated 8/26/1995.
- Exhibit 8 – An 11/7/95 “Request Letter” asking to change the successor beneficiary of Simon Bernstein’s life insurance policy to the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995.” This document includes a response from the insurance company stating that the “Simon Bernstein Ins. Trust” had been named a contingent beneficiary.
- Exhibit 36 – A 4/23/2010 letter from Heritage Union Life Insurance to Simon Bernstein that lists the contingent beneficiary of Simon Bernstein’s life insurance policy as “Simon Bernstein Trust, N.A.” However, the insurance company’s representative explained that no one had ever submitted a change of beneficiary request designating “Simon Bernstein Trust, N.A.” as a beneficiary of the policy. That representative explained, without apparent firsthand knowledge, that he thought that the “Simon Bernstein Trust, N.A.” name was used by mistake by an employee of the insurance company. Don Sanders Aff. at ¶¶ 69-71.

While the above sources do provide some evidence that the Trust was created, as Plaintiffs contend, that evidence is far from dispositive of the issue. In fact, the Intervenor has presented argument and evidence casting material doubt on whether: (1) the Trust was actually created; and (2) the terms of the Trust are as explained by Plaintiffs. The Intervenor argues as follows:

- The results and timing of the Plaintiffs search for the Trust raise doubts about their version of events. Plaintiffs claim that David Simon found both a hard copy and an electronic version of the Trust in his office. David Simon has offered testimony here that he aided Simon Bernstein in creating the Trust, and then kept both versions of the unexecuted Trust. However, David Simon’s search for the Trust documents occurred approximately a year after Simon Bernstein had died. Almost a year

earlier, immediately after Simon Bernstein's death, the family had conducted an "exhaustive search" for the Trust, and none was found. Between the two searches, the Bernstein siblings and their former attorney exchanged many emails addressing how best to obtain the insurance proceeds. Intervenor's Ex. A, Dep. Exs. 1-5, 8-18. Many of the emails reference the inability to locate the Trust document. *Id.* David Simon was a participant in those emails, but he did not relate a recollection of the critical facts from his affidavit regarding his memory of Simon Bernstein executing the Trust. Nor did those emails cause David Simon to search his own office for the missing documents. That search did not occur until after David Simon's brother (Adam Simon) and his firm were retained as counsel in this matter.

- In the course of their attempts to obtain the policy proceeds, the Bernstein siblings discussed using a different trust that had been established by Simon Bernstein – the "2000 Trust." Intervenor's Ex. A at 37:4-18; 48:21-49:19; Dep. Ex. 1. That option was rejected because Pam Simon was not included as a beneficiary of that trust. *Id.* The 2000 Trust is important, however, in that it identifies the proceeds of the policy at issue here as an asset of that trust. Intervenor's Ex. A, Dep. Ex. 23 at Schedule A. The 2000 Trust does not refer to an alleged 1995 trust, which the 2000 trust would have superseded.
- The original complaint in this matter does not refer to a written trust. Despite David Simon's statement that he recalls having created the trust on his own computer and having seen it after execution, the original Complaint in this matter makes no reference to the execution of a written trust. Instead, it refers only to the existence of a "common law trust." [1]. It makes no mention of the trust documents from Exhibits 15 and 16.
- Plaintiffs have offered testimony that, when Simon Bernstein took his trust to be executed at his law firm (then Hopkins & Sutter), the firm changed the identity of the successor trustee. This implies that the firm would have had an electronic version of the Trust, and possibly a hard copy. David Simon testified that the firm was contacted to see if it had a copy of the executed trust and did not; but David Simon could not recall who contacted the firm, which attorneys were contacted, or if he himself reached out to the firm at all. Intervenor's Ex. B at 44:12-45:15; 46:22-47:15.
- David Simon also testified that when Simon Bernstein returned from executing the Trust he helped Mr. Bernstein prepare documents to be submitted to the insurance company in order to give effect to the Trust. He also testified that he would have expected the insurance company to

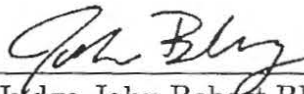
retain copies. David Simon does not remember any details about who contacted the insurance company. But it is clear that the company retained no copies of documents relevant to the Trust. Intervenor's Ex. B at 43:10-44:2.

- The purported trust documents, Exhibit 15 and 16, contain inconsistencies as to who would serve as the trustee. Exhibit 16 lists the potential trustees as "Shirley," "David," and an illegible name. It then lists the successor trustees as "Pam, Ted." Exhibit 15 lists Shirley as the trustee, and David B. Simon as the successor trustee. However, when the Trust first made a claim to the insurance company, it represented that an attorney by the name of Spallina was the trustee. Intervenor's Ex. B at 59:13-60:3; 81:15-83:12. Despite all of this, in the current proceeding the Plaintiffs claim that Ted Bernstein is the trustee.

Based on the evidence in the record, and "construing all facts and reasonable inferences in the light most favorable to the nonmoving party," the Court finds that there are genuine issues of material fact as to whether the Trust was executed and, if so, upon what terms. There remains a triable issue of fact such that a "reasonable jury could return a verdict for the non-moving party," *Liberty Lobby*, 477 U.S. at 255, and therefore summary judgment is inappropriate. Plaintiffs' motion is denied with regard to Count II.

IT IS SO ORDERED

Dated: March 15, 2016

  
\_\_\_\_\_  
Judge John Robert Blakey  
United States District Court

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

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

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

HERITAGE UNION LIFE INSURANCE )  
COMPANY )

Counter-Plaintiff, )

v. )

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

Counter-Defendant, )

and, )

FIRST ARLINGTON NATIONAL BANK )  
as Trustee of S.B. Lexington, Inc. Employee )  
Death Benefit Trust, UNITED BANK OF )  
ILLINOIS, BANK OF AMERICA, )  
Successor in interest to LaSalle National )  
Trust, N.A., SIMON BERNSTEIN TRUST, )  
N.A., TED BERNSTEIN, individually and )  
as purported Trustee of the Simon Bernstein )  
Irrevocable Insurance Trust Dtd 6/21/95, )  
and ELIOT BERNSTEIN, )

Third-Party Defendants. )

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

INTERVENOR'S LOCAL RULE  
56.1(a)(2) MEMORANDUM OF LAW IN  
SUPPORT OF SUMMARY JUDGMENT

Filer:  
Brian O'Connell, as Personal Representative  
of the Estate of  
Simon L. Bernstein, Intervenor.



ELIOT IVAN BERNSTEIN, )

Cross-Plaintiff, )

v. )

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

Cross-Defendant, )

and, )

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

Third-Party Defendants. )

BRIAN M. O'CONNELL, as Personal )  
Representative of the Estate of )  
Simon L. Bernstein, )

Intervenor. )

**INTERVENOR'S LOCAL RULE 56.1(a)(2) MEMORANDUM  
OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Intervenor Brian M. O'Connell, Personal Representative of the Estate of Simon L. Bernstein ("Estate"), for his Memorandum of Law in support of Motion for Summary Judgment pursuant to Local Rule 56.1(a)(2), states as follows:

### **INTRODUCTION**

Under well-established law, the Estate is the default beneficiary of the insurance Policy and entitled to the proceeds absent a valid designated beneficiary. The sole question presented to this Court is whether Plaintiffs can meet their burden of proving by clear and convincing evidence the existence and terms of a purported 1995 Trust which they claim is the valid designated beneficiary of the Policy. Discovery is complete. The only evidence Plaintiffs have to establish the existence and terms of the 1995 Trust is the self-interested testimony of David Simon and Ted Bernstein, which is barred by the Illinois Dead Man's Act, and a variety other of circumstantial evidence which, as a matter of law, cannot satisfy the "clear and convincing evidence" standard—either on its own or in conjunction with the testimony of David Simon and Ted Bernstein. As a consequence, Plaintiffs cannot meet their burden, and the Estate is entitled to summary judgment.

### **JURISDICTION AND VENUE**

The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1335 (interpleader). The insurer invoked such jurisdiction when it filed its interpleader action after removing this action from the Circuit Court of Cook County. Venue is proper in this district because a substantial part of the events giving rise to the claims occurred in Cook County, Illinois. The Policy was applied for and delivered in Cook County, and the initial Policy owner was a bank in Cook County, acting as trustee for a trust domiciled in Cook County. *Intervenor's Local Rule 56.1(a)(3) Statement of Undisputed Material Facts* ("SoF") ¶¶ 13-16.

### **LEGAL STANDARD FOR SUMMARY JUDGMENT**

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014). A defendant moving for summary judgment satisfies its burden “(1) by affirmatively disproving the plaintiff’s case by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (traditional test), or (2) by establishing that the nonmovant lacks sufficient evidence to prove an essential element of the cause of action (*Celotex* test).” *Williams v. Covenant Med. Ctr.*, 737 N.E.2d 662, 668 (Ill. App. Ct. 2000) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)) (internal citations omitted). “If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless, and the moving party is entitled to summary judgment as a matter of law.” *Celotex*, 477 U.S. at 331 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

Further, “in ruling on a motion for summary judgment, the judge must view the evidence through the prism of the substantive evidentiary burden.” *Anderson*, 477 U.S. at 254. Here, Plaintiffs have the burden of proving the 1995 Trust by clear and convincing evidence, which evidence cannot be “capable of reasonable explanation upon any other theory” and “must be so unequivocal and unmistakable as to lead to only one conclusion.” *Order* at 3 (ECF No. 220). “[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Anderson*, 477 U.S. at 249-50. Under these standards, the Estate is entitled to judgment as a matter of law.

### **ARGUMENT**

The Estate is entitled to summary judgment for the following reasons:

- (a) The Estate, as default beneficiary, is entitled to the Policy proceeds under both Illinois and Florida law unless Plaintiffs can prove the 1995 Trust by clear and convincing evidence.
- (b) Plaintiffs are attempting to prove the existence and terms of the 1995 Trust through the testimony of David Simon and Ted Bernstein, who are “interested parties” under Illinois’ Dead Man’s Act. Their testimony is inadmissible in this proceeding, and Plaintiffs cannot otherwise establish the 1995 Trust by clear and convincing evidence.
- (c) Even if the testimony of David Simon and Ted Bernstein were not barred by the Dead Man’s Act, the circumstantial evidence is inconsistent and contradictory to such a degree that Plaintiffs still cannot prove the 1995 Trust by clear and convincing evidence.

**I. The Estate, As The Default Beneficiary, Is Entitled To The Policy Proceeds Because Plaintiffs Cannot Prove The Existence of The Purported 1995 Trust.**

In the absence of a valid designated beneficiary, the Policy proceeds are payable to the Estate as a matter of both Illinois and Florida law. *See New York Life Ins. Co. v. RAK*, 180 N.E.2d 470, 470-71 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent’s estate); *Harris v. Byard*, 501 So.2d 730, 734 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent’s estate for administration and distribution).

Here, as of the Insured’s date of death, the designated primary beneficiary of the Policy was LaSalle National Trust, N.A. as Trustee of the S.B. Lexington, Inc. Employee Death Benefit Trust. SoF ¶ 20. The S.B. Lexington, Inc. Employee Death Benefit Trust ceased to exist prior to the Insured’s death, and neither it nor LaSalle National Trust, N.A. as Trustee thereof has made any claim to the Policy proceeds. SoF ¶¶ 20-21. Thus, there is no valid designated primary beneficiary of the Policy.

The contingent beneficiary was the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” (the “1995 Trust”). SoF ¶ 20. Plaintiffs admit that they have been unable to locate

an executed original or executed copy of the 1995 Trust document. *See* SoF ¶ 44. Nonetheless, in Count II, Plaintiffs seek a declaration that the 1995 Trust was established on or about June 21, 1995 and is entitled to the Policy proceeds, the trustee is Ted Bernstein and the beneficiaries are Simon Bernstein's five children. *First Amended Complaint*, Count II (ECF No. 73). Alternatively, Count III seeks a declaration that the Policy proceeds are being held in a resulting trust for the benefit of Plaintiffs and Eliot Bernstein. *Id.*, Count III. The only available evidence, however, demonstrates that Plaintiffs cannot prove Simon Bernstein created or intended to create the 1995 Trust, nor can they prove its terms. Because Plaintiffs cannot establish the existence of the 1995 Trust, there exists no valid designated beneficiary under the Policy, and the proceeds are payable to the Estate. As a result, the Estate is entitled to judgment as a matter of law.

“In Illinois, creation of an express trust requires: (1) intent of the parties to create a trust, which may be shown by a declaration of trust by the settlor or by circumstances which show that the settlor intended to create a trust; (2) a definite subject matter or trust property; (3) ascertainable beneficiaries; (4) a trustee; (5) specifications of a trust purpose and how the trust is to be performed; and (6) delivery of the trust property to the trustee.” *Eychaner v. Gross*, 779 N.E.2d 1115, 1131 (Ill. 2002). “If any one of the necessary elements is not described with certainty, no trust is created.” *Id.*

“[A] resulting trust is created by operation of law and arises out of a presumed intention of the parties as evidenced by their acts and conduct.” *Kaibab Indus., Inc. v. Family Ready Homes, Inc.*, 444 N.E.2d 1119, 1126 (Ill. App. Ct. 1983). Where a party does not establish the intent necessary to create an express trust, the Court cannot impose a resulting trust. *See Estate of Wilkening*, 441 N.E.2d 158, 164 (Ill. App. Ct. 1982) (“By definition, a resulting trust is imposed by operation of law to effectuate the intent of the parties. ... [T]he Estate did not establish the

requisite intent necessary to create an express trust. Obviously, without the established intent, the court cannot impose a trust that operates to effectuate that intent.”) (internal citations omitted).

Because they are unable to produce an executed copy of the 1995 Trust, Plaintiffs rely on parol evidence to prove the existence and terms of the 1995 Trust. *Order* at 3 (ECF No. 220).

However, one seeking to establish an express trust by parol evidence bears the burden of proving the trust by clear and convincing evidence. The acts or words relied upon must be so unequivocal and unmistakable as to lead to only one conclusion. If the parol evidence is doubtful or capable of reasonable explanation upon any other theory, it is not sufficient to establish an express trust.

*Eychaner*, 779 N.E.2d at 1135; *Order* at 3 (ECF No. 220); *All. to End Repression v. City of Chicago*, 74 C 3268, 2000 WL 562480, \*5 (N.D. Ill. May 8, 2000) (evidence is clear and convincing “only if the material offered instantly tilted the evidentiary scales in the affirmative when weighed against the evidence offered in opposition”) (internal quotes omitted). Likewise, the intent necessary to support a resulting trust must be established by clear and convincing evidence. *Kohlhaas v. Smith*, 97 N.E.2d 774, 776 (Ill. 1951). In light of the facts taken most favorably to the non-moving parties, Plaintiffs cannot possibly satisfy this standard.

**A. Plaintiffs Cannot Prove the Existence and Terms of the 1995 Trust by “Clear and Convincing Evidence” Because the Testimony of David Simon and Ted Bernstein is Barred by the Dead Man’s Act.**

Plaintiffs have no evidence that anyone actually witnessed Simon Bernstein execute the purported 1995 Trust or that anyone possesses an executed copy. To establish the intent to create the 1995 Trust, Plaintiffs instead rely primarily on the testimony of David Simon and Ted Bernstein that Simon Bernstein executed some form of the documents attached to Plaintiffs’ prior summary judgment motion as Exhibits 15 and 16, which are purportedly unexecuted drafts of the 1995 Trust. As this Court already held, “[h]owever, the testimony of David Simon and Ted Bernstein, along with the testimony of other Plaintiffs, is barred by the Illinois Dead Man’s Act to

the extent it relates to conversations with the deceased or to any events which took place in the presence of the deceased.” *Order* at 3 (ECF No. 220) (citing 735 ILCS 5/8-201). The Court’s holding was absolutely correct and remains so.

David Simon is the sole witness who claims to have seen the executed version of the purported 1995 Trust, and he testified that this took place during a meeting with Simon Bernstein. SoF ¶ 52. He also testified that he had a conversation with Simon Bernstein about the 1995 Trust and took notes from that conversation on Plaintiffs’ Exhibit 15. SoF ¶ 45. The only other witness who offered testimony about the terms of the 1995 Trust is Ted Bernstein, who attests that Simon Bernstein told him he would be named trustee once the 1995 Trust was formed. SoF ¶¶ 54-55.<sup>1</sup>

The testimony of both witnesses is barred by the Dead Man’s Act, which provides, in pertinent part, that “no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased ... or to any event which took place in the presence of the deceased.” 735 ILCS 5/8-201. Plaintiff Ted Bernstein is an “adverse party” to the Estate and “directly interested” because he will receive 20% of the interpleaded Policy proceeds if Plaintiffs prevail. *See* SoF ¶¶ 3-4. Thus, the Dead Man’s Act bars Ted Bernstein from testifying about any conversation with Simon Bernstein or events which took place in his presence.

In addition, Plaintiffs’ most critical witness, David Simon, is Pamela Simon’s spouse. SoF ¶ 6. Plaintiff Pamela Simon is not only an “adverse party,” but is also “directly interested” because she will receive 20% of the Policy proceeds if Plaintiffs prevail. SoF ¶¶ 5, 7. As a result, the Dead Man’s Act renders David Simon incompetent to testify about any conversation with or events which took place in the presence of Simon Bernstein, such as David Simon purportedly reviewing

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<sup>1</sup> In addition to being barred by the Dead Man’s Act, the testimony of David Simon and Ted Bernstein is also inadmissible hearsay. *See infra* § I(B)(1).

the executed 1995 Trust document with Simon Bernstein. See *In re Estate of Babcock*, 473 N.E.2d 1316, 1319 (Ill. 1985). The Dead Man's Act also bars David Simon from testifying about his notes. See 735 ILCS 5/8-201; *Theofanis v. Sarrafi*, 791 N.E.2d 38, 50-53 (Ill. App. Ct. 2003).<sup>2</sup>

“This dramatically limits the testimony upon which Plaintiffs may rely in support of their [claims regarding the existence and terms 1995 Trust], and leaves the Court without any direct testimony describing the Trust's creation.” *Order* at 3 (ECF No. 220). Without such testimony, the two purported drafts of the 1995 Trust document cannot establish the existence and terms of the 1995 Trust by clear and convincing evidence. See *id.* (“those documents offer Plaintiffs little support in the absence of the testimony from David Simon and Ted Bernstein describing how some form of those exhibits was executed by Simon Bernstein”).

Indeed, the mere existence of those two documents is not “so unequivocal and unmistakable as to lead to only one conclusion,” *i.e.* that Simon Bernstein intended to create the 1995 Trust and its terms were as set forth in the purported drafts, which are not even identical. Rather, the existence of those two documents is readily “capable of reasonable explanation upon any other theory” than an intent to create a trust with those terms—indeed, multiple theories—for example, that Simon Bernstein never actually saw the drafts or approved those terms, or he wound up creating the 1995 Trust with completely different terms than the drafts, or the purported drafts are not even drafts of the 1995 Trust.

In other words, Plaintiffs have no competent evidence upon which a trier of fact could find that Simon Bernstein executed anything, much less a document creating the 1995 Trust. Plaintiffs likewise have no evidence that would enable the factfinder to find that any such document

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<sup>2</sup> The Dead Man's Act likewise bars testimony by Plaintiffs Lisa Friedstein and Jill Iantoni, both of whom are “adverse” to the Estate and, like Ted and Pamela, “directly interested” because they will each receive 20% of the interpleaded Policy proceeds if Plaintiffs prevail. See SoF ¶¶ 8-10; 735 ILCS 5/8-201.



contained terms identical to the purported drafts or otherwise determine the actual or intended terms of the purported 1995 Trust. Therefore, Plaintiffs cannot carry their burden of proving the purported 1995 Trust by clear and convincing evidence. As a result, there is no valid designated beneficiary and the Policy proceeds are payable to the Estate, which is entitled to judgment as a matter of law. *See RAK*, 180 N.E.2d at 470-71 (where beneficiary no longer existed, proceeds of life insurance policy passed to the decedent's estate); *Harris*, 501 So.2d at 734 (in the absence of a named beneficiary, no basis in law for directing payment of insurance policy proceeds to anyone other than decedent's estate for administration and distribution).

**B. Even If The Testimony of David Simon and Ted Bernstein Were Not Barred by the Dead Man's Act, There is Still Not "Clear and Convincing Evidence" Establishing the Existence and Terms of the 1995 Trust.**

The Estate is entitled to summary judgment even if the testimony of David Simon and Ted Bernstein were not barred by the Dead Man's Act because the caliber and quality of that evidence and the other circumstantial evidence, even taken most favorably to the non-moving parties, is insufficient to allow a rational trier of fact to find an intent to create the 1995 Trust and determine its specific terms by clear and convincing evidence. In deciding the Estate's motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *See Anderson*, 477 U.S. at 255. But the Court must then determine whether that evidence "is of insufficient caliber or quantity" to allow a rational finder of fact to find that Plaintiffs have proven the 1995 Trust by clear and convincing evidence. *Id.* at 254. Again, clear and convincing evidence "must be so unequivocal and unmistakable as to lead to only one conclusion," and "[i]f the ... evidence is doubtful or capable of reasonable explanation upon any other theory, it is not sufficient." *Eychaner*, 779 N.E.2d at 1135; *Kohlhaas*, 97 N.E.2d at 776; *All. to End Repression*, 2000 WL 562480 at \*5.

Here, the available evidence demonstrates that Plaintiffs cannot satisfy the foregoing standard. Even assuming, *arguendo*, that the Dead Man's Act did not bar the testimony of David Simon and Ted Bernstein, that testimony and the other evidence does not unequivocally or unmistakably prove the intent of Simon Bernstein to create the 1995 Trust or the terms of that Trust. As detailed below, most of the testimony of David Simon and Ted Bernstein is hearsay, even if not barred by the Dead Man's Act. And the undisputed evidence about the events leading up to the "discovery" of the drafts are utterly inconsistent with the existence of a 1995 Trust. These include the inconsistent provisions of the drafts themselves, the inconsistencies between the testimony of the family as to what the drafts were to show, and what they do show, the failure of the family to discover those drafts for over a year despite supposedly exhaustive searches, and the conduct engaged in by the family, including David Simon and Ted Bernstein in considering and seeking to employ alternatives to a 1995 Trust to collect the proceeds.

**1. The Inconsistent, Unexecuted Drafts of the 1995 Trust, and David Simon's and Ted Bernstein's Inconsistent Testimony About Them and the Trustee's Identity, Do Not Meet the "Clear and Convincing Evidence" Standard.**

In place of an executed 1995 Trust document, Plaintiffs rely on two purported drafts of the 1995 Trust that are inconsistent with each other and with David Simon's testimony attempting to explaining how those drafts came to be, which testimony is itself internally inconsistent. Plaintiffs' Exhibit 16, the earlier draft, lists the potential trustees as "Shirley, David, [illegible name]?" and the successor trustees as "Pam, Ted." SoF ¶ 46. The more-recent "draft" embodied by Plaintiffs' Exhibit 15, however, lists Shirley as trustee and David Simon as successor trustee. SoF ¶ 48. In contrast to Plaintiffs' Exhibits 15 and 16, when the purported 1995 Trust first made a claim to the insurance company, it represented that Plaintiffs' former attorney, Robert Spallina, was the trustee. SoF ¶ 29. Despite all of this, in the current proceeding Plaintiffs claim now that Ted Bernstein is

the trustee. *Order* at 6 (ECF No. 220).

Plaintiffs' evidentiary basis for claiming Ted Bernstein is the trustee is two-fold. First, David Simon's testimony implies that he saw the executed 1995 Trust which provided that Ted Bernstein was the trustee. SoF ¶ 52. This is classic hearsay, however, in that the out of court statement written in the document (*i.e.* that Bernstein is trustee) is being offered to prove the truth of that assertion. As such, David Simon's testimony on this point is inadmissible irrespective of the Dead Man's Act.

Second, Ted Bernstein claims that Simon Bernstein told Ted that he was forming a life insurance trust and Ted would be one of the trustees once the trust was formed. SoF ¶ 55. Ted Bernstein further testified that his assertion that he is trustee is also based on David Simon telling Ted that he was the trustee and Ted seeing his name handwritten as one of multiple potential trustees on a document David Simon told him was a draft of the 1995 Trust. SoF ¶¶ 54-57. As such, Ted Bernstein has no personal knowledge about whether he is trustee. Ted's claim that he is trustee is entirely based on inadmissible hearsay, *i.e.* the out of court statements, spoken by Simon Bernstein and David Simon and written in the purported draft of the 1995 Trust, that Ted is the trustee, which are being offered by Ted for their truth. Admissibility aside, this still cannot constitute clear and convincing evidence that Ted is the trustee because it is capable of reasonable explanation by many other theories, *e.g.* Simon Bernstein never formed the 1995 Trust or did but decided not to make Ted trustee, the information given to Ted by David Simon was not accurate.

Similarly, David Simon's explanation of how those purported drafts came to be, which is inconsistent with the drafts, and his internally inconsistent attempts to explain the discrepancies, are not the caliber and quantity of evidence that would enable a reasonable trier of fact to conclude that Plaintiffs have shown the existence and terms of the 1995 Trust by clear and convincing

evidence. For example, David Simon testified that the trustees and successor trustees listed in Plaintiffs' Exhibit 16 are his handwritten notes from a June 20, 1995 conversation with Simon Bernstein in which Simon Bernstein said he wanted his wife, Shirley, to be trustee and asked David Simon to be the successor trustee, to which David Simon agreed. SoF ¶ 45. In contrast to his testimony about the conversation, David Simon's handwritten notes of that conversation list multiple potential trustees followed by a "?" and list multiple successor trustees—none of whom is David Simon. See SoF ¶ 46.

David Simon also testified that he used those handwritten notes on Plaintiffs' Exhibit 16 to create Plaintiffs' Exhibit 15. SoF ¶ 47. Yet the trustees' names handwritten on Plaintiffs' Exhibit 16 are not the same as the trustee in Plaintiffs' Exhibit 15, and the successor trustee listed in Plaintiffs' Exhibit 15 is not even one of the two successor trustees whose names are handwritten on Plaintiffs' Exhibit 16. See SoF ¶¶ 46, 48.

Attempting to explain why the more recent draft (*i.e.* Plaintiffs' Exhibit 15) lists a different individual than the individual who Plaintiffs now claim is the successor trustee, David Simon testified at this deposition that, after agreeing himself to be successor trustee, he thought about it overnight and then asked Simon Bernstein to replace him sequentially with Simon Bernstein's children. SoF ¶¶ 49. In contrast, David Simon later attempted to support Plaintiffs' summary judgment motion by inconsistently attesting in his affidavit that he actually suggested that Simon Bernstein appoint Ted Bernstein as the only successor trustee. SoF ¶ 50. Not coincidentally, in this proceeding, Ted Bernstein is who Plaintiffs now claim was the trustee. This supposed trustee has never seen an executed copy of the 1995 Trust, and his only bases for claiming he is trustee are Simon Bernstein telling him before any Trust was ever even purportedly created, David Simon telling him it is so, and him having seen it written on a document that David Simon told him was

a draft of the purported 1995 Trust. SoF ¶¶ 54-57.

In sum, the purported drafts of the 1995 Trust have inconsistent terms, Plaintiffs have taken inconsistent positions about the identity of the trustee, and David Simon's internally inconsistent testimony, which is inconsistent with the terms of the purported drafts, is also inadmissible hearsay, like Ted Bernstein's testimony. This aspect of the evidence is of insufficient caliber and quantity to enable a rational trier of fact to conclude that Plaintiffs have proven by clear and convincing evidence both an intent to create the 1995 Trust and its terms.

**2. David Simon's Testimony About the Discovery of the Purported Drafts of the 1995 Trust Does Not Contribute to Satisfying the "Clear and Convincing Evidence" Standard.**

Plaintiffs' testimony about the circumstances under which the purported drafts of the 1995 Trust were supposedly discovered does not support the validity of those documents or their value in showing that Simon Bernstein intended to create a trust with those terms. Shortly after the death of Simon Bernstein in 2012, his family (including the Plaintiffs) conducted what was described as an "exhaustive search" for the 1995 Trust, and none was found. SoF ¶ 24-25. One year later, David Simon (with the help of his brother and counsel herein, Adam), searched his office and records in Chicago and purportedly located both a hard copy draft of the 1995 Trust and a version prepared on a word processor at the Simon Law Firm. *See* SoF ¶¶ 39-42.

Between the "exhaustive" search conducted in the aftermath of Simon Bernstein's death and the search conducted by the Simon brothers, however, Plaintiffs and their then-attorney, Robert Spallina, exchanged many emails referring to the inability to locate a trust document and addressing how best to extract the insurance proceeds from Heritage. SoF ¶¶ 32. David Simon was a participant in those email exchanges, yet in none of those emails did he relate a recollection of the critical fact that he drafted the 1995 Trust and saw the final executed version, which named

Ted Bernstein trustee. *See id.*; *Order* at 4-5 (ECF No. 220). Nor did it come to his mind to check his office files and his computer for this critical document. Those critical facts are also found nowhere in the original Complaint David Simon's brother filed in this action during that period. SoF ¶ 37. Apparently, David Simon inexplicably did not search his office and computer files for Plaintiffs' Exhibits 15 and 16 until one year later.

**3. David Simon's Uncorroborated Testimony about the Creation of the 1995 Trust Does Not Help Plaintiffs Satisfy the "Clear and Convincing Evidence" Standard.**

According to David Simon, Simon Bernstein took the draft 1995 Trust document to Hopkins & Sutter to be executed and the identity of the successor trustee on the executed version was changed when he saw the final version. SoF ¶¶ 48-52. This clearly implies that the document was revised at Hopkins & Sutter, and thus, the firm would have an electronic and possibly a hard copy of the final version of the document which was purportedly executed. David Simon testified that Foley & Lardner, the successor firm to Hopkins & Sutter, and other attorneys who broke away and started their own firm, were contacted to see if they had retained a copy of the 1995 Trust, but they did not. Oddly, David Simon has no idea who specifically was contacted or even whether it was him or someone else who contacted them. SoF ¶ 26; *Order* at 5 (ECF No. 220).

Perhaps more importantly, David Simon testified that after Simon Bernstein returned from executing the 1995 Trust, he assisted Simon Bernstein in preparing documents to be submitted to the insurer in order to give effect to the 1995 Trust and that he would have expected the insurer to retain copies of the documents. *See* SoF ¶ 53. Again, however, he cannot recall who called the insurer or with whom that person spoke, and the insurer retained no copies of documents relevant to the 1995 Trust. *Id.*; *Order* at 5-6 (ECF No. 220).

**4. The Creation of the 2000 Trust is Inconsistent with the Existence of the 1995 Trust and the Notion That Ted Bernstein is the Trustee.**

While Plaintiffs addressed the lack of an executed 1995 Trust document in their email exchanges, they also considered several other options for attempting to obtain the Policy proceeds from the insurer. One of the options was “using” the 2000 Trust, a trust that Simon Bernstein admittedly executed. SoF ¶¶ 27-28. Plaintiffs deliberated extensively over this option, exchanging numerous emails with their then-counsel, Robert Spallina, but this option was rejected because the 2000 Trust did not include Pamela Simon as a beneficiary. SoF ¶ 27. As an initial matter, the notion of Plaintiffs “using” the 2002 Trust to obtain the Policy proceeds is entirely inconsistent with Ted Bernstein’s supposed understanding that he was the trustee of a 1995 Trust. His participating in “using” the 2000 Trust to obtain Policy proceeds of which the 1995 Trust was supposedly the beneficiary would have breached his fiduciary duties as trustee of the 1995 Trust.

More importantly, however, the existence of the 2000 Trust is also critical because it identifies the proceeds of the insurance policy at issue here as an asset of *that* Trust, but does not refer to the existence of the alleged 1995 Trust, which the 2000 Trust would have superseded. SoF ¶¶ 58-59; *Order* at 5 (ECF No. 220).<sup>3</sup> No rational trier of fact could conclude that Simon Bernstein 1) executed the 2000 Trust, 2) omitting any reference to a 1995 Trust, but 3) actually *intended* for the Policy proceeds identified as an asset of the 2000 Trust not to pass in accordance with the terms of that Trust and 4) instead to pass in accordance with the terms of a trust he supposedly created five years earlier. And, on this evidence, no rational trier of fact could determine the specific terms of the 1995 Trust by clear and convincing evidence.

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<sup>3</sup> It is also significant that no subsequent estate planning document executed by Simon Bernstein revokes, or even refers to the existence of, a purported 1995 Trust. *See* SoF ¶¶ 60-65.

All of the evidence that exists in this case taken as true, and considered most favorably to the Plaintiffs, nonetheless presents a confused, contradictory and inconsistent series of events with regard to whether the 1995 Trust ever existed and what its terms were. Even if a trier of fact believed that both David Simon and Ted Bernstein were telling the truth, *i.e.* believed what they were saying, the Court must consider that testimony with all of the other circumstantial evidence, not one item of which supports the notion that Simon Bernstein intended to create the 1995 Trust or that anyone knows its terms. As a consequence, no reasonable trier of fact could conclude that this amalgam of evidence proves the existence and terms of a 1995 Trust by clear and convincing evidence.

### CONCLUSION

For the foregoing reasons, the Estate respectfully requests that the Court grant summary judgment in favor of the Estate on its Complaint for Declaratory Judgment (ECF No. 112) and on Plaintiffs' First Amended Complaint (ECF No. 73).

Dated: May 25, 2016

BRIAN M. O'CONNELL, PERSONAL REPRESENTATIVE  
OF THE ESTATE OF SIMON L. BERNSTEIN, Intervenor

By: /s/ James J. Stamos  
*One of Intervenor's Attorneys*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he caused a copy of the foregoing **Intervenor's Local Rule 56.1(a)(2) Memorandum of Law in Support of Summary Judgment** to be served upon all registered E-Filers via electronic filing using the CM/ECF system, and to be served upon the following persons via U.S. mail, proper postage prepaid:

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on this 25<sup>th</sup> day of May, 2016.

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*/s/ James J. Stamos*

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.,

Defendant.

Case No. 1:13-cv-3643

Judge John Robert Blakey

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HERITAGE UNION LIFE INSURANCE  
COMPANY,

Counter-Plaintiff,

v.

SIMON BERNSTEIN IRREVOCABLE  
INSURANCE TRUST DTD 6/21/95,

Counter-Defendant,

and

FIRST ARLINGTON NATIONAL BANK,  
*et al.*,

Third-Party Defendants.

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ELIOT IVAN BERNSTEIN,

Cross-Plaintiff,

v.

TED BERNSTEIN, *et al.*,

Cross-Defendants,

and

PAMELA B. SIMON, *et al.*,

Third-Party Defendants.

**MEMORANDUM OPINION AND ORDER**

This action concerns the distribution of proceeds from a life insurance policy (the “Policy Proceeds”) previously held by decedent Simon Bernstein. The principal parties remaining in the case are: (1) Plaintiff Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 (the “1995 Trust”); (2) the four Bernstein siblings who believe the Policy Proceeds should be distributed to the 1995 Trust (Ted Bernstein, Lisa Friedstein, Jill Iantoni and Pam Simon; collectively, the “Agreed Siblings”); (3) the fifth Bernstein sibling, Eliot Bernstein, a *pro se* third-party Plaintiff who disputes that approach (“Eliot”); and (4) the intervenor estate of Simon Bernstein (the “Estate”), which contends that the 1995 Trust was never actually created, such that the Policy Proceeds should default to the Estate.

Before the Court are two motions for summary judgment. In the first, [239] at 1-4, the 1995 Trust and the Agreed Siblings seek judgment on Eliot’s third-party claims. In the second, [245] at 1-6, the Estate seeks judgment against the 1995 Trust and the Agreed Siblings on their claims in the Second Amended Complaint, [73], and entry of judgment in the Estate’s favor on its Complaint for Declaratory Judgment. [112] at 1-17. For the reasons explained below, the former is granted while the latter is denied.

## I. Background<sup>1</sup>

### A. Procedural Posture

Following Simon Bernstein's death on September 13, 2012, the 1995 Trust submitted a death claim to Heritage pursuant to Simon Bernstein's life insurance policy. [150] at 15; [240] at 13. After Heritage failed to pay, the 1995 Trust initiated this lawsuit in the Circuit Court of Cook County, alleging that Heritage had breached its contractual obligations. [1-1] at 1-3. On May 20, 2013, Jackson National Life Insurance Company ("Jackson"), as successor in interest to Heritage, removed the case to this Court. [1] at 1-2.

On June 26, 2013, Heritage, through Jackson, filed a Third-Party Complaint and Counter-Claim for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, seeking a declaration of rights under the life insurance policy. [17] at 1-10. Heritage was eventually dismissed in February of 2014 after interpleading the Policy Proceeds. [101] at 2.

On September 22, 2013, Eliot, a third-party Defendant to Jackson's interpleader claim, filed a 177-page Answer, Cross-Claim and Counter-Claim. [35] at 1-117. Eliot brought claims against the 1995 Trust, the Agreed Siblings, and

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<sup>1</sup> The facts are taken from the parties' Local Rule 56.1 statements and the Court's previous rulings [106, 220]. [240] refers to Plaintiffs' statement of material facts. [247] refers to the Estate's statement of material facts. [255], which incorporates [150] by reference, refers to Plaintiffs' statement of additional facts. [257] refers to both Eliot's responses to Plaintiffs' statement of material facts and Eliot's statement of additional material facts. [260] refers to Eliot's responses to the Estate's statement of material facts. [266] refers to the Estate's responses to Plaintiffs' statement of additional facts.

The Estate correctly notes that [255] deviates in certain respects from the procedure enumerated in Local Rule 56.1. Given this lawsuit's convoluted history, and in the interests of justice and judicial economy, the Court nevertheless elects to consider [255] and [150] in support of Plaintiffs' opposition to the Estate's motion for summary judgment.

multiple third-party Defendants (including the law firm of Tescher & Spallina, P.A., The Simon Law Firm, Donald Tescher, Robert Spallina, David Simon, Adam Simon, S.B. Lexington, Inc., S.B. Lexington, Inc. Employee Death Benefit Trust, and S.T.P. Enterprises, Inc.). *Id.*

On January 13, 2014, the Agreed Siblings and the 1995 Trust filed their First Amended Complaint. [73] at 1-11. Plaintiffs alleged that: (1) the 1995 Trust was a common law trust established in Chicago by Simon Bernstein; (2) Ted Bernstein is the trustee of the 1995 Trust; and (3) the 1995 Trust was the beneficiary of Simon Bernstein's life insurance policy. *Id.* In addition, Plaintiffs alleged that all of Simon Bernstein's children, *including Eliot*, are equal beneficiaries to the Trust. *Id.*

On March 3, 2014, the Court dismissed Eliot's claims against Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina. [106] at 1-4. The Court explained that Eliot, as a third-party Defendant to an interpleader claim, was "not facing any liability" in this action, and he was accordingly not authorized to seek relief against other third parties. *Id.*

On June 5, 2014, the Estate filed its Complaint for Declaratory Judgment, [112] at 1-16, and on July 28, 2014, the Court granted the Estate's motion to intervene. [121] at 3-4.

Fact discovery closed on January 9, 2015, [123], and on March 15, 2016 the Court denied Plaintiffs' motion for summary judgment. [220] at 1-6. The Court found, *inter alia*, that while Plaintiffs were able to adduce "some evidence that the [1995] Trust was created," this evidence was "far from dispositive." *Id.* at 4.

## B. Probate Actions

The Probate Division of the Palm Beach County Circuit Court recently resolved two other cases related to the disposition of Simon Bernstein's assets: *In re Estate of Simon L. Bernstein*, No. 502012CP004391XXXNBIH (Fla. Cir. Ct.) and *Ted Bernstein, as Trustee of the Shirley Bernstein Trust Agreement dtd 5/20/2008 v. Alexandra Bernstein, et al.*, No. 502014CP003698XXXXNBIJ (Fla. Cir. Ct.) (collectively, the "Probate Actions").

Judge John L. Phillips presided over a joint trial of the Probate Actions in December of 2015. A full recitation of Judge Phillips' findings is unnecessary here, but relevant portions of his final orders include:

- The testamentary document identified as the "Will of Simon Bernstein" was "genuine and authentic," and "valid and enforceable according to [its] terms."
- Ted Bernstein "was not involved in the preparation or creation of" the Will of Simon Bernstein, "played no role in any questioned activities of the law firm of Tescher & Spallina, P.A.," there was "no evidence to support the assertions of Eliot Bernstein that Ted Bernstein forged or fabricated" the Will of Simon Bernstein, and, in fact, "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."
- The beneficiaries of the testamentary trust identified in the Will of Simon Bernstein are "Simon Bernstein's then living grandchildren," while "Simon's children – including Eliot Bernstein – are not beneficiaries."
- Eliot "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," such that it became necessary to appoint a *guardian ad litem*.

[240-11] at 2-5; [240-12] at 2-3.

## II. Legal Standard

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. *Spurling v. C & M Fine Pack, Inc.*, 739 F.3d 1055, 1060 (7th Cir. 2014). A genuine dispute as to any material fact exists if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining whether a genuine issue of material fact exists, this Court must construe all facts and reasonable inferences in the light most favorable to the nonmoving party. *See CTL ex rel. Trebatoski v. Ashland Sch. Dist.*, 743 F.3d 524, 528 (7th Cir. 2014).

## III. Analysis

### A. Motion for Summary Judgment on Eliot’s Claims

Eliot currently has seven claims pending against the 1995 Trust, the Agreed Siblings, David Simon, Adam Simon, The Simon Law Firm, S.B. Lexington, Inc., S.B. Lexington, Inc. Employee Death Benefit Trust, and S.T.P. Enterprises, Inc.<sup>2</sup>

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<sup>2</sup> As Judge St. Eve (the District Judge originally assigned to this case) previously explained before dismissing third-party Defendants Tescher & Spallina, P.A., Donald Tescher, and Robert Spallina: “Eliot is not an original Defendant to Plaintiffs’ First Amended Complaint . . . . Instead, Eliot is a Third-Party Defendant in Jackson’s interpleader action [such that] he is not facing any liability in this lawsuit . . . . Rule 14(a) does not authorize Eliot to seek any such relief in the present lawsuit because Eliot is not facing any liability in the first instance.” [106] at 3-4. This reasoning applies with equal force to the remaining third-party Defendants. The Federal Rules of Civil Procedure permit a defendant to “serve a summons and complaint on a nonparty who is or may be liable to it for all or part of the claim against it.” Fed. R. Civ. P. 14(a)(1). Here, Eliot is not facing any liability, and his claims against the remaining third-party Defendants are procedurally

[35] at 61-117. Eliot's causes of action sound in fraud, negligence, breach of fiduciary duty, conversion, abuse of legal process, legal malpractice, and civil conspiracy.<sup>3</sup>

**1. Fraud, Negligence, Breach of Fiduciary Duty & Legal Malpractice**

Plaintiffs argue that Eliot's claims for fraud, negligence, breach of fiduciary duty, and legal malpractice fail because Eliot "cannot show that he sustained damages or that he has standing to assert damages on behalf of his children or the Estate." [241] at 14; *see also Damato v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 878 F. Supp. 1156, 1162 (N.D. Ill. 1995) (damages are a requisite element of a claim for fraud); *Elliot v. Chicago Hous. Auth.*, No. 98-cv-6307, 1999 WL 519200, at \*9 (N.D. Ill. July 14, 1999) (damages are a requisite element of a claim for negligence); *Pearson v. Garrett-Evangelical Theological Seminary, Inc.*, 790 F. Supp. 2d 759, 768 (N.D. Ill. 2011) (damages are a requisite element of a claim for breach of fiduciary duty); *Snyder v. Heidelberger*, 953 N.E.2d 415, 424 (Ill. 2011) (damages are a requisite element of a claim for legal malpractice).

First, Eliot cannot sustain cognizable damages related to the disposition of the Estate or the testamentary trust in light of the Probate Court's rulings. The

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defective. Because all of Eliot's claims also fail as a substantive matter, however, they are dismissed on that basis, as discussed *infra*.

<sup>3</sup> The Court construes Eliot's arguments on each claim liberally, in light of his *pro se* status. *See Johnson v. Cook Cty. Jail*, No. 14-cv-0007, 2015 WL 2149468, at \*2 (N.D. Ill. May 6, 2015) ("Motions for summary judgment involving *pro se* litigants are construed liberally for the benefit of the unrepresented party, so as to ensure that otherwise understandable filings are not disregarded if the *pro se* litigant stumbles on a technicality. That said, *pro se* litigants are not entitled to a general dispensation from the rules of procedure.") (internal quotations omitted).



Probate Court found, *inter alia*, that Simon Bernstein's "children – including Eliot – are not beneficiaries" of the Will of Simon Bernstein or the related testamentary trust. [240] at 11. Instead, Simon Bernstein's grandchildren (including Eliot's children) are the testamentary trust's beneficiaries. *Id.* Eliot also has no interest in the disposition of the testamentary trust vis-à-vis his own children, as the Probate Court was forced to appoint a *guardian ad litem* in light of Eliot's "adverse and destructive" actions relative "to his children's interest." *Id.* These findings have preclusive effect in this case,<sup>4</sup> such that Eliot cannot demonstrate cognizable damages relative to the disposition of the Estate or the testamentary trust.

Second, Eliot cannot identify cognizable damages relating to the disposition of the Policy Proceeds, as Plaintiffs have consistently argued that Eliot is entitled to

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<sup>4</sup> All four elements of collateral estoppel are present in this case. *See Westport Ins. Corp. v. City of Waukegan*, 157 F. Supp. 3d 769, 778 (N.D. Ill. 2016) ("Collateral estoppel applies if the following four elements are met: (1) the issue sought to be precluded must be the same as that involved in the prior action; (2) the issue must have been actually litigated; (3) the determination of the issue must have been essential to the final judgment; and (4) the party against whom estoppel is invoked must be fully represented in the prior action.") (internal quotation omitted). Here, the "issue sought to be precluded" is Eliot's lack of a cognizable interest in the Estate and the testamentary trust, precisely "the same as that involved" in the Probate Court. This issue was "actually litigated," as the Probate Court held a full trial on this issue, and resolution of this question formed the crux of the Probate Court's final judgments. Finally, Eliot, the party against whom estoppel is invoked, was "fully represented," as he had a full and fair opportunity to litigate this question at trial. *See Murray v. Nationwide Better Health*, No. 10-cv-3262, 2014 WL 53255, at \*4 (C.D. Ill. Jan. 7, 2014) (The "overarching concern when applying issue preclusion is that the party against whom the prior action is invoked must have had a full and fair opportunity to litigate the issue.").

Eliot argues that the application of collateral estoppel is inappropriate, given that he was proceeding *pro se* in the Probate Court and the Probate Court's orders were appealed. Neither of these concerns have merit. *See DeGuelle v. Camilli*, 724 F.3d 933, 938 (7th Cir. 2013) (The "idea that litigating *pro se* should insulate a litigant from application of the collateral estoppel doctrine, or, more broadly, the doctrine of *res judicata*, of which collateral estoppel is an aspect, is absurd."); *Robinson v. Stanley*, No. 06-cv-5158, 2011 WL 3876903, at \*5 (N.D. Ill. Aug. 31, 2011), *aff'd*, 474 F. App'x 456 (7th Cir. 2012) (The Seven Circuit "has adhered to the general rule in American jurisprudence that a final judgment of a court of first instance can be given collateral estoppel effect even while an appeal is pending.") (internal quotation omitted).

an equal share of the same. [265] at 3 (asserting a claim to the Policy Proceeds “on behalf of all five siblings, *including* Eliot”) (emphasis in original).

In his response opposing summary judgment, Eliot fails to articulate a coherent response to Plaintiffs’ argument. *See generally* [261]. Indeed, Eliot does not identify any material in the record to support his vague and conclusory damages allegations. Eliot has simply recycled his previous arguments, and cited only his pleadings in support of the same. *See, e.g.*, [261] at 3 (“Moreover, the Counterclaims have express language seeking claims to the proceeds and damages from the wrongful conduct . . . See ECF No. 35.”).

Eliot’s exclusive reliance on his pleadings rather than evidence, at this point in the proceedings, is both: (1) inconsistent with Federal Rule of Civil Procedure 56, this district’s local rules, and this Court’s standing orders; and (2) insufficient to defeat a motion for summary judgment. *See Essex Crane Rental Corp. v. C.J. Mahan Const. Co.*, No. 07-cv-439, 2008 WL 3978345, at \*10 (N.D. Ill. Aug. 25, 2008) (“Unlike a motion to dismiss, summary judgment is the put up or shut up moment in a lawsuit, and the nonmovant must do more than merely rest on its pleadings.”) (internal quotation omitted).

Plaintiffs have cited ample evidence in the record to support their argument that Eliot’s claims for fraud, negligence, breach of fiduciary duty, and legal malpractice must fail, as Eliot cannot adduce any evidence of the requisite damages. Eliot’s opposition fails to formulate a cogent response, much less cite any

countervailing evidence in the record. Plaintiffs' motion for summary judgment is accordingly granted with respect to these four claims.

## 2. Conversion

The elements of conversion under Illinois law are: "(1) the unauthorized and wrongful assumption of control or ownership by one person over the personalty of another; (2) the other person's right in the property; (3) the right to immediate possession of the property; and (4) a demand for possession." *Jordan v. Dominick's Finer Foods*, 115 F. Supp. 3d 950, 956 (N.D. Ill. 2015).

Plaintiffs argue that Eliot's claim for conversion fails, because Eliot cannot identify "a specific asset or piece of property that was converted" or "show an unfettered right of ownership to such property." [241] at 15. This argument similarly turns on Eliot's lack of legal interest in the Estate or testamentary trust, and the Plaintiffs' acknowledgement that Eliot, under their theory, is entitled to an equal share of the Policy Proceeds. *Id.*

Here again, Eliot has failed to formulate an intelligible response. His brief does not even mention his conversion claim. *See generally* [261]. Eliot makes no effort to either identify any purportedly converted property or cite material in the record in support of his conversion claim. *See id.* In light of the foregoing, Plaintiffs' motion for summary judgment is also granted with respect to Eliot's conversion claim.

### 3. Abuse of Process

Under Illinois law, abuse of process “is the misuse of legal process to accomplish some purpose outside the scope of the process itself.” *Neurosurgery & Spine Surgery, S.C. v. Goldman*, 790 N.E.2d 925, 929 (Ill. App. Ct. 2003). The “two distinct elements of an abuse of process claim are: (1) the existence of an ulterior purpose or motive; and (2) some act in the use of process that is not proper in the regular course of proceedings.” *Id.* at 930. The “tort of abuse of process is not favored under Illinois law,” and its “elements must be strictly construed.” *Id.*

Plaintiffs argue that Eliot cannot satisfy either element of his abuse of process claim. More specifically, they claim that the Probate Actions were simply “filed by the named beneficiary of a life insurance policy to pursue a death claim against a life insurer for the Policy Proceeds,” and that no “act in the use of” that process was improper. [241] at 13.

Eliot’s response does not specifically address his claim for abuse of process; indeed, the phrase “abuse of process” does not appear in his briefing. *See generally* [261]. Instead, Eliot asserts, without citation to the record, that Plaintiffs have “repeatedly taken action to barrage and occupy” him in one case in order “to improperly gain advantage” in the other. *Id.* at 6. These allegations, in addition to having no evidentiary basis in the record, are insufficient under Illinois law. *Goldman*, 790 N.E.2d at 930 (“abuse of process is a very narrow tort” typically “found only in cases in which a plaintiff has suffered an actual arrest or seizure of

property”). Plaintiffs are entitled to summary judgment on Eliot’s abuse of process claim.

#### 4. Civil Conspiracy

Under Illinois law, the elements for a civil conspiracy are: (1) a combination of two or more persons; (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means; and (3) in the furtherance of the same, one of the conspirators committed an overt tortious or unlawful act. *See Fritz v. Johnston*, 807 N.E.2d 461, 470 (Ill. 2004). As “the third element of this test indicates, however, civil conspiracy is not an independent tort: if a plaintiff fails to state an independent cause of action underlying his conspiracy allegations, the claim for conspiracy also fails.” *Jones v. City of Chicago*, No. 08-cv-3501, 2011 WL 1898243, at \*6 (N.D. Ill. May 18, 2011) (internal quotation omitted).

Plaintiffs argue that Eliot’s civil conspiracy claim fails, because it remains predicated upon his other deficient claims. Eliot fails to respond to this argument. *See Jones*, 2011 WL 1898243, at \*6 (“Because defendants are entitled to summary judgment on Jones’s state law claim for malicious prosecution, and Jones’s conspiracy claim is predicated on her malicious prosecution claim, defendants are also entitled to summary judgment on count four.”); *Siegel v. Shell Oil Co.*, 656 F. Supp. 2d 825, 836 (N.D.Ill. 2009), *aff’d*, 612 F.3d 932 (7th Cir. 2010) (granting summary judgment in favor of defendants on plaintiff’s civil conspiracy claim because “Siegel has failed to establish his ICFA deceptive and unfair practices claim or his unjust enrichment claims”).

In short, Eliot “fails to present any evidence or legal arguments as to the underlying elements of his conspiracy claim,” such that the Plaintiffs are entitled to summary judgment. *Siegel*, 656 F. Supp. 2d at 836.

#### **5. Additional Discovery**

Eliot, in the alternative, also “respectfully seeks application of Federal Rules of Civil Procedure 56(f) to obtain either a continuance or Deposition and Discovery.” [261] at 11. The Court presumes that Eliot actually intended to invoke Federal Rule of Civil Procedure 56(d), which provides that a “nonmovant” may receive “time to obtain affidavits or declarations or to take discovery” when that same party demonstrates that it currently “cannot present facts essential to justify its opposition.” In either event, this effort is rejected. Eliot’s untimely request is not supported by the requisite “affidavit or declaration,” the discovery he seeks would not alter the Court’s analysis, and fact discovery has been closed since January of 2015. Fed. R. Civ. P. 56(d).

#### **B. The Estate’s Motion for Summary Judgment**

In the other summary judgment motion pending before the Court, the Estate argues that Plaintiffs cannot establish the existence of the 1995 Trust, such that the Estate is entitled to the Policy Proceeds as Simon Bernstein’s default beneficiary. The Trust and the Agreed Siblings essentially concede that: (1) absent valid countervailing provisions in the 1995 Trust, the Estate would be entitled to the Policy Proceeds; and (2) they are unable to produce the executed version of the 1995

Trust, and they must rely on extrinsic evidence to support their claim that the 1995 Trust actually exists.

A party “seeking to establish an express trust” by such evidence “bears the burden of proving the trust by clear and convincing evidence” and the “acts or words relied upon must be so unequivocal and unmistakable as to lead to only one conclusion.” *Eychaner v. Gross*, 779 N.E.2d 1115, 1135 (Ill. 2002). If such evidence is “doubtful or capable of reasonable explanation upon any other theory, it is not sufficient to establish an express trust.” *Id.*

#### **1. Evidence Suggesting That The 1995 Trust Was Created**

Plaintiffs’ extrinsic evidence falls into three discrete categories: (1) testimony from the Agreed Siblings (and Linda Simon’s spouse, David Simon) regarding the creation of the 1995 Trust by Simon Bernstein; (2) the affidavit of attorney Robert Spallina regarding the creation of the 1995 Trust and his understanding of Simon Bernstein’s intentions; and (3) six documents that Plaintiffs characterize as “a comprehensive and cohesive bundle of evidence” supporting their allegation that the 1995 Trust exists. *Id.* Before deciding whether a reasonable factfinder could infer that the 1995 Trust exists based on this evidence, however, the Court must first determine whether this material is cognizable on summary judgment.

##### **a) The Agreed Siblings’ Testimony**

As the Court previously explained, “the testimony of David Simon and Ted Bernstein, along with the testimony of the other Plaintiffs, is barred by the Illinois Dead Man’s Act to the extent it relates to conversations with the deceased or to any

events which took place in the presence of the deceased.” [220] at 3. The Agreed Siblings and their spouses remain “directly interested” in this action, and the Court accordingly disregards their testimony regarding “any conversation with the deceased person,” Simon Bernstein. 735 Ill. Comp. Stat. 5/8-201.<sup>5</sup>

**b) Mr. Spallina’s Affidavit and Notes**

In the affidavit relied upon by Plaintiffs, Mr. Spallina avers, *inter alia*, that:

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

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<sup>5</sup> While it is true that “as a general rule federal rather than state law governs the admissibility of evidence in federal diversity cases, there are a number of express exemptions to this rule, including state dead man laws.” *Campbell v. RAP Trucking Inc.*, No. 09-CV-2256, 2011 WL 4001348, at \*3 (C.D. Ill. Sept. 8, 2011).



held to leave all of his family's wealth to his ten grandchildren equally."

- "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."
- "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."
- "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."
- "I believe that Simon Bernstein intended the Policy proceeds to be paid to his 1995 Trust, for the benefit of his five children."

[255-2] at 2-7.

The Estate argues that these statements by Mr. Spallina constitute inadmissible hearsay or expressions of subjective belief, which "cannot be used to defeat a motion for summary judgment." *Sys. Dev. Integration, LLC v. Computer Scis. Corp.*, 739 F. Supp. 2d 1063, 1069, 1078 (N.D. Ill. 2010); see also *Richardson v. Rush Presbyterian St. Luke's Med. Ctr.*, 63 Fed. App'x 886, 890 (7th Cir. 2003)

(“Lampkin’s averment [of what “she was informed by other patients”] is inadmissible hearsay and is not based upon her personal knowledge, so it cannot be used to defeat a motion for summary judgment.”); *Hammer v. Residential Credit Sols., Inc.*, No. 13-cv-6397, 2015 WL 7776807, at \*12 (N.D. Ill. Dec. 3, 2015) (“A testimonial statement about contract formation would be a statement to the effect that a contract does or does not exist. Such an out-of-court statement would be impermissible hearsay.”); *Hindin/Owen/Engelke, Inc. v. GRM Indus., Inc.*, 869 F. Supp. 539, 544 (N.D. Ill. 1994) (“A statement by an employee that his employer agrees to make a proposal would be a statement offered for the truth of the matter asserted, *i.e.*, that his employer agreed to make a proposal, and constitutes hearsay.”); Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.”).

The Estate, however, paints with too broad a brush. Mr. Spallina’s statements regarding his work for Simon Bernstein (including his statements regarding Simon Bernstein’s modifications to his testamentary documents) are based upon Mr. Spallina’s personal knowledge, and ostensibly are not hearsay. For example, Mr. Spallina might competently testify that: (1) Simon Bernstein modified his testamentary documents in 2012 to name his grandchildren (instead of his children) as the sole beneficiaries of his Estate; (2) when Simon Bernstein made those modifications in 2012, he was aware of the life insurance policy at issue here;

and (3) Simon Bernstein, in 2000, considered but ultimately decided against placing that same life insurance policy into an irrevocable trust. Considered in conjunction, this testimony suggests that Simon Bernstein provided for his children in a manner outside of his testamentary documents.

**c) Plaintiffs' Documentary Evidence**

In their attempt to resist the Estate's motion for summary judgment, Plaintiffs also identify six separate documents that they contend represent evidence of the 1995 Trust's existence.

The Court previously considered this same documentary evidence when it rejected *Plaintiffs'* motion for summary judgment in March of 2016. At that time, the Court noted that this documentary evidence does "provide some evidence that the Trust was created," though it was "far from dispositive." [220] at 4. Ultimately, while the party moving for summary judgment may have changed, the weight of this documentary evidence has not, as discussed below.

**(1) Drafts Of The 1995 Trust**

Two of the principal documents relied upon by Plaintiffs are unexecuted drafts of the 1995 Trust itself. As the Court previously explained, however, these "documents offer Plaintiffs little support in the absence of the testimony from David Simon and Ted Bernstein describing how some form of those exhibits was executed by Simon Bernstein," and that same testimony is excluded by the Illinois Dead Man's Act. *Id.* at 3.

**(2) The Request Letter**

Plaintiffs identify a “Request Letter” dated November 7, 1995 in support of their claim that the 1995 Trust actually exists. The Request Letter is a standardized form, which instructs Capitol Bankers Life to “Change Beneficiary As Follows”—the “Simon Bernstein Irrevocable Insurance Trust Dated June 21, 1995” is the new “successor” to the Policy Proceeds. [150-9] at 2.

**(3) The Request for Service**

Plaintiffs also rely upon a “Request for Service” form dated August 8, 1995, which seeks to transfer ownership of the life insurance policy to the “Simon Bernstein Irrevocable Insurance Trust dtd 6/21/1995.” [150-19]. As the Court previously noted, however, this “document refers to ‘ownership’ of the policy, and does not affect the policy’s beneficiaries.” [220] at 4.

**(4) The Beneficiary Designation**

In a “Beneficiary Designation” dated August 26, 1995, Simon Bernstein designated the “Simon Bernstein Irrevocable Insurance Trust” as the beneficiary to receive his death benefits. Plaintiffs suggest that this designation is probative of the fact that the Trust actually exists; however, “this document does not refer to the Trust at issue here, the ‘Simon Bernstein Irrevocable Insurance Trust dated 6/21/95.’” [220] at 4. It remains “unclear from the record if that was an oversight, or was intentionally done to refer to a distinct trust.” *Id.*

**(5) The IRS Form 22-4**

Finally, Plaintiffs point to an IRS “Form 22-4” (or application for an Employer Identification Number) in support of their contention that the 1995 Trust exists as alleged. [150-20]. The Form 22-4 reflects that it was executed on behalf of the “Simon Bernstein Irrevocable Insurance Trust” and signed by Shirley Bernstein, Simon’s wife. *Id.* It is unclear from the record whether the Form 22-4 was actually submitted to, or approved by, the IRS. *Id.*

**2. The Weight of the Evidence**

As the Court previously explained, Plaintiffs’ documents, while not “dispositive,” provide “some evidence that the Trust was created.” [220] at 4. In fact, Plaintiffs’ case has improved since the Court first considered their evidence in March of 2016, in light of the new affidavit from Mr. Spallina, and the Court remains incapable of resolving these disputed factual questions on summary judgment.


A reasonable factfinder could infer, based upon both the potential testimony of Mr. Spallina and the documentary evidence previously discussed, that Simon Bernstein created the 1995 Trust in the manner alleged by Plaintiffs. The Estate’s motion for summary judgment is accordingly denied.

**IV. Conclusion**

For the foregoing reasons, Plaintiffs' motion for summary judgment on Eliot Bernstein's claims [239] is granted, and the Estate's motion for summary judgment [245] is denied.

Dated: January 30, 2016

Entered: \_\_\_\_\_

  
\_\_\_\_\_  
John Robert Blakey  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 6.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.: 1:13-cv-03643  
Honorable John Robert  
Blakey

Eliot Bernstein

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, January 25, 2017:

MINUTE entry before the Honorable John Robert Blakey: Enter Memorandum Opinion and Order. For the reasons stated in the accompanying Memorandum Opinion and Order, Plaintiffs' Motion for Summary Judgment [239] is granted and Intervenor's Motion for Summary Judgment [245] is denied. The status hearing previously set for 2/21/2017 at 9:45 AM in Courtroom 1725 to stand, at which time the parties shall be prepared to set a trial date. Mailed notice(gel, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

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IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB

Deceased.  
\_\_\_\_\_ /

**ORDER ON SUCCESSOR PERSONAL REPRESENTATIVE'S  
AMENDED PETITION FOR AUTHORIZATION TO ENTER INTO  
CONTINGENCY AGREEMENT OR HOURLY FEE AGREEMENT WITH  
ILLINOIS COUNSEL IN PENDING LIFE INSURANCE LITIGATION**

THIS CAUSE having come before the Court on Successor Personal Representative's Amended Petition for Authorization to Enter into Contingency Agreement or Hourly Fee Agreement with Illinois Counsel in Pending Life Insurance Litigation ("Amended Petition"), and the Court having heard argument of counsel and otherwise being duly advised on the premises, it is thereupon

ORDERED AND ADJUDGED that the Successor Personal Representative's Amended  
Petition \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida, this \_\_\_\_  
day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
ROSEMARIE SCHER, Circuit Judge



In Re: Estate of Simon L. Bernstein  
 File No: 502012CP004391XXXXNB  
 Order on Successor Personal Representative's  
 Amended Petition for Authorization to Enter  
 into Contingency Agreement or Hourly Fee  
 Agreement with Illinois Counsel in Pending  
 Life Insurance Litigation

**Copies furnished to:**  
**All counsel/beneficiaries listed on below Service List**

**SERVICE LIST**

<p>Alan B. Rose, Esq.          Page, Mrachek, Fitzgerald &amp;          Rose, P.A.          505 S. Flagler Dr., Suite 600          West Palm Beach, FL 33401          (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a></p> <p><b>Attorney for Ted S. Bernstein</b></p>	<p>John P. Morrissey, Esq.          330 Clematis St., Suite 213          West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p> <p><b>Attorney for Molly Simon et al</b></p>	<p>Donald R. Tescher, Esq.          Tescher &amp; Associates, P.A.          925 S. Federal Highway          Suite 500          Boca Raton, FL 33432          (561) 997-7008  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a></p> <p><b>Former PR of the Estate of Simon L. Bernstein</b></p>
<p>Peter Feaman, Esq.          Peter M. Feaman, P.A.          3695 Boynton Beach          Blvd., Suite 9          Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p> <p><b>Attorney for William Stansbury</b></p>	<p>Shendell &amp; Pollock, P.L.          2700 N. Military Trail, suite 150          Boca Raton, FL 33431          241-2323 Fax: 241-2330          Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p> <p><b>Attorney for Tescher and Spallina</b></p>	<p>Max Friedstein          2142 Churchill Laue          Highland Park, IL 60035</p> <p><b>Beneficiary</b></p>

In Re: Estate of Simon L. Bernstein  
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 into Contingency Agreement or Hourly Fee  
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<p>Eliot Bernstein and          Joshua, Jacob and Daniel          Bernstein, Minors          c/o Eliot and Candice          Bernstein, Parents and          Natural Guardians          2753 N.W. 34<sup>th</sup> St.          Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p> <p><b>Pro Se</b></p>	<p>Pamela Beth Simon          950 N. Michigan Ave., Apt. 2603          Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p><b>Beneficiary</b></p>	<p>Lisa Friedstein and          Carley Friedstein, Minor          c/o Jeffrey and Lisa Friedstein          Parent and Natural Guardian          2142 Churchill Lane          Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p> <p><b>Beneficiary</b></p>
<p>Jill Iantoni and          Julia Iantoni, a Minor          c/o Guy and Jill Iantoni, her          Parents &amp; Natural Guardians          2101 Magnolia Lane          Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p> <p><b>Beneficiary</b></p>	<p>Brian M. O'Connell, Esq.          Ashley Crispin Ackal, Esq.          Ciklin Lubitz &amp; O'Connell          515 N. Flagler Dr., 20<sup>th</sup> FL          West Palm Beach, FL 33401  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>  <a href="mailto:probateservice@ciklinlubitz.com">probateservice@ciklinlubitz.com</a></p> <p><b>PR of the Estate of Simon L.          Bernstein</b></p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p> <p><b>Former PR of the Estate of          Simon L. Bernstein</b></p>
<p>Diana Lewis          ADR &amp; Mediation Services,          LLC          2765 Tecumseh Drive          West Palm Beach, FL 33409          (561) 758-3017  <a href="mailto:dzlewis@aol.com">dzlewis@aol.com</a>  <b>Guardian Ad Litem for          Joshua, Jacob and Daniel          Bernstein, Minors</b></p>		

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/AH

Deceased.

---

**PETITION FOR AUTHORIZATION TO SELL ESTATE JEWELRY**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative"), hereby files this Petition for Authorization to Sell Estate Jewelry ("Petition"), and as grounds, states:

1. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative of the Estate of Simon L. Bernstein ("Estate" and "Decedent", respectively).
2. On or about March 3, 2016, the Court entered an Order authorizing payment for an appraisal of the Estate's jewelry, attached hereto as Exhibit "A" (hereinafter "Appraisal" and "Jewelry," respectively).
3. The fair market value of the Jewelry as stated on the Appraisal is \$80,175.00.
4. The Successor Personal Representative believes it is expedient, necessary and in the best interest of the Estate to sell the Jewelry.
5. Accordingly, the Successor Personal Representative requests authorization to sell the Jewelry by a method to be established by the Successor Personal Representative.
6. Prior to the sale of any Jewelry pursuant to the paragraph 5 above, the Successor Personal Representative agrees to provide the children of the Decedent, namely: Ted S. Bernstein, Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa S. Friedstein, fourteen (14) days from entry of an order, on this Petition to state, in writing, which pieces they would like to purchase (purchase

In Re: Estate of Simon L. Bernstein  
File No: 502012CP004391XXXXSB/

price to be that listed on the Appraisal), by a method to be established by the Successor Personal Representative.

7. The Personal Representative requests that any remaining items of jewelry not disposed of under paragraph 6, above, are to be sold by the Successor Personal Representative by a method to be established by Brian M. O'Connell, as Successor Personal Representative of the Estate.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order granting the relief set forth above, and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record via the Court's e-portal system or U.S. Postal Service on this 27<sup>th</sup> day of July, 2016 to the parties on the attached Service List.

By: /s/ Joielle A. Foglietta  
BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY CRISPIN ACKAL  
Florida Bar No: 037495  
JOIELLE A. FOGLIETTA  
Florida Bar No: 094238  
ZACHARY M. ROTHMAN  
Florida Bar No: 117924  
Ciklin Lubitz & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
Tel: 561-832-5900; Fax: 561-833-4209  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
[probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

SERVICE LIST

<p>Alan B. Rose, Esq.        Page, Mrachek, Fitzgerald &amp;        Rose, PA.        505 S. Flagler Dr., Suite 600        West Palm Beach, FL 33401        (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a>        Attorney for Ted S. Bernstein</p>	<p>John P. Morrissey, Esq.        330 Clematis St., Suite 213        West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a>        Attorney for Molly Simon et al</p>	<p>Donald R. Tescher, Esq.        Robert L. Spallina, Esq.        925 S. Federal Highway, Suite        500        Boca Raton, FL 33432  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a>  <a href="mailto:rspallina@tescherspallina.com">rspallina@tescherspallina.com</a>  <a href="mailto:kmoran@tescherspallina.com">kmoran@tescherspallina.com</a></p>
<p>Peter Feaman, Esq.        Peter M. Feaman, P.A.        3695 Boynton Beach        Blvd., Suite 9        Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p>	<p>Shendell &amp; Pollock, P.L.        2700 N. Military Trail, suite        150        Boca Raton, FL 33431        241-2323 Fax: 241-2330        Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>        Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>        Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>         Attorney for Tescher and        Spallina</p>	<p>Max Friedstein        2142 Churchill Lane        Highland Park, IL 60035        Beneficiary</p>
<p>Eliot Bernstein and        Joshua, Jacob and Daniel        Bernstein, Minors        c/o Eliot and Candice        Bernstein, Parents and Natural        Guardians        2753 N.W. 34<sup>th</sup> St.        Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon        950 N. Michigan Ave., Apt.        2603        Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and        Carley Friedstein, Minor        c/o Jeffrey and Lisa Friedstein        Parent and Natural Guardian        2142 Chnrchill Lane        Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a>        Beneficiary</p>
<p>Jill Iantoni and        Julia Iantoni, a Minor        c/o Guy and Jill Iantoni, her        Parents &amp; Natural Guardians        2101 Magnolia Lane        Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>		

  
**PROVIDENT**  
**JEWELRY**



## FAIR MARKET VALUE APPRAISAL

January 15, 2016

Fair Market Value Appraisal of Mr. Simon Bernstein's Jewelry as requested by the Estate.

ATTORNEY:

C/o Zachary Rothman,  
Ciklin Lubitz & O'Connell  
515 N. Flagler Dr.  
20<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Office: 561.820.0324  
Fax: 561.833.4209

Dear Mr. Rothman,

At your request I examined the jewelry you submitted for valuation and have provided an opinion of the **Fair Market Value**.

This report is valid only in its entirety and the final figure excludes any applicable taxes. You may wish to take this into consideration when using the report. The value conclusions are subject to limiting conditions that are set forth in the body of the report. To the best of my knowledge and experience, I estimate the **FIFTEEN (15)** pieces presented on appraisals numbered 1-13 have a total **Fair Market Value** of **\$ 80,175.00**

Photographs are included with the original report for your reference. This report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

If I can be of any further assistance, please call.

Sincerely,



Stephanie L. Hardy G.J.G., (GIA)  
Graduate Jeweler Gemologist, Jewelry Designer and Appraiser

**West Palm Beach**  
331 Clematis Street  
West Palm Beach, FL 33401  
561.833.7755

**Naples I**  
541 5th Avenue South  
Naples, FL 34102  
239.649.7737

**Naples II**  
766 5th Avenue South  
Naples, FL 34102  
239.649.7200

**Fort Myers**  
15245 South Tamiami Tr  
Fort Myers, FL 33908  
239.274.7777

**Jupiter**  
828 W Indiantown Rd  
Jupiter, FL 33458  
561.747.4449

**Boca Raton**  
8221 Glades Rd, #1-F  
Boca Raton, FL 33434  
561.488.7737

## Table of Contents

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- Table of Contents
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This report is valid only in its entirety and for its stated purpose and intended use and was prepared in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

## Statements and Limiting Conditions

### **Purpose**

The purpose of this report is to describe and document the quality of the jewelry listed and to estimate the **Fair Market Value**.

### **Intended Use**

The intended use of this report is for providing an estate appraisal listing the Fair Market Value for use in the resolution of **The Estate of Simon Bernstein**.

**Valuation Date:** January 15, 2016

### **Definition of Fair Market Value**

The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The fair market value of a particular item of property is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account location of the item wherever appropriate. Taken from Treasury Regulation 20.2031-1 (b)

### **Approach to Value**

There are three traditional approaches to value that are as follows:

**Income approach:** Applies to income producing properties and is used only if an income situation or rental property can be identified.

**Market Data approach:** Compares the qualities of the subject item to an article with similar or identical qualities, and researches and records current verifiable sales of such merchandise.

**Cost approach:** Establishes the total value of an item by considering the value of its component parts (precious metal content, gemstone weights and qualities, labor, and any other fees) together with the appropriate retail markup according to the norms of the jewelers in the locale, supply and demand, and the current state of the marketplace.

***Fair Market Value is estimated using the market data approach. Neither the income approach nor the cost approach applies in establishing Fair Market Value. However, the cost approach to value was used to check on the market values found.***

### **Market**

To value an item a market (and market level) must be recognized. The most appropriate market for jewelry can vary depending upon the article's age, condition, quality, intrinsic content, aesthetic appeal, provenance, current fashion trends, artistic interpretation, and period of manufacture among others.

The type of retail outlet that most commonly carries the items being appraised is considered to be the most appropriate market. However, the auction market was also considered as another appropriate market in establishing Fair Market Value for this type of jewelry.

### **Limiting Conditions**

The jewelry described within has been analyzed and graded in accordance with prescribed grading standards using "state of the art" methods and precision laboratory equipment.

Jewelry constructed solely of, or in combination with, precious metals (i.e. platinum, palladium, yellow or white gold and/or silver) is tested, analyzed and described for its type and content of such metal. Unless otherwise stated, all gemstone weights, grades and measurements are approximate and stones have not been removed from their mountings.

Diamonds are graded with the prescribed grading nomenclature of the Gemological Institute of America (GIA).

Colored stones are color graded with the use of the GIA Gem Set color grading system. Unless otherwise stated, all colored stones listed on this appraisal report have probably been subjected to various treatments to improve their appearance. Treatments are considered usual and customary practices when properly disclosed and when done without intent to defraud the consumer. The treatments are mostly stable and do not require special care. When a treatment is detected and considered unusual it will be so noted by this appraiser. Some treatments are reversible and re-treatable. It may be beyond the scope of an appraisal to determine exact treatment methods or the amount of treatment present. Some treatments require sophisticated equipment not found in a standard gemological laboratory. Prevailing market values are based on these universally practiced and accepted processes by the gems and jewelry trade.



**Stones which are not described in detail have no significant value.**

Sources are assumed to be reliable and the appraiser does not assume responsibility for their information.

The appraiser assumes the ownership of the subject property is true as stated by the client.

The fees paid for this appraisal do not include the services of the appraiser for any other matter. In particular, fees paid to date do not include any of the appraiser's time or services in connection with any statement, testimony or other matters before an insurance company, its agents, employees or any court or other body in connection with the property herein described.

If the appraiser is required to testify or to make any statements to a third party concerning the described property and/or appraisal, the applicant shall pay the appraiser for all of such time and services so rendered.

This document is limited to its stated intended use and is invalid if all items listed in the Table of Contents are not present.

Unless expressly stated, the items appraised are in good condition. Any serious deficiencies and repairs are noted. Ordinary wear and tear is not noted.

The information in this report is confidential.

This appraisal process does not discover liens, encumbrances, or fractional interests but, if known, they are noted.

The limited owner of this appraisal is the party for whom the work was performed.

Possession of this report does not provide title to the items appraised.

Possession of this report, any portion of this report, or any copy thereof, does not include the right of publication without the appraiser's written consent.

Each item described in this report has been photographed and file copies of the photograph(s) as well as a copy of the report are maintained in the appraiser's files for at least five years after the report date.

Third parties may rely on the information in this report for the defined purpose and intended use only. Third parties requiring further information than what is in the report must obtain the written permission of the owner of the appraisal before the appraiser will discuss the report.

No changes may be made to this report by anyone other than the appraiser. The appraiser cannot be responsible for unauthorized alterations.

The professional relationship between the appraiser and the client ends with the delivery of this report or at the conclusion of the settlement.

**Subscriptions and Sources Retained for Value Consulting**  
Rapaport, Martin - Rapaport Diamond Report, New York, NY  
KitCo.com  
Ebay.com  
JomaShop.com  
Tradesy.com  
DirectAuction.HiBid.com  
The Diamond and Gemstone Book, Stuller v. 66

<b>Metal Market</b>	<b>01/15/2016</b>
Gold	\$ 1,089.80
Silver	\$ 14.01
Platinum	\$ 833.00

**List of Laboratory Instruments**

Binocular microscope  
Loupe  
Electronic scale  
Touchstone and acids  
Fiber optic light  
Spectroscope  
Polariscope  
GIA Gem Set color grading system

Leveridge gauge  
Thermal conductivity diamond tester  
Ultraviolet light unit  
Electronic metals tester  
Dichroscope  
Refractometer  
Meleemeter

# STEPHANIE L. HARDY G.J.G., GIA

## PROVIDENT JEWELRY

331 CLEMATIS ST.

WEST PALM BEACH, FL 33401

W: 561-833-7755

C: 561-215-7321

FAX: 561-833-8763

EMAIL: [STEPHANIE\\_PROVIDENT@HOTMAIL.COM](mailto:STEPHANIE_PROVIDENT@HOTMAIL.COM)

**PROFESSIONAL:** RESPONSIBILITIES INCLUDE, BUT HAVE NOT BEEN LIMITED TO:

### **PROVIDENT JEWELRY**

WEST PALM BEACH, FL

#### ***GEMOLOGIST, APPRAISER AND DESIGNER***

Retail and Wholesale Sales, Appraisals, Purchasing, Inventory Control, Stone Identification and Grading, Custom Jewelry Design, Jewelry Display and Merchandising, Photography of Fine Jewelry, Exhibit and Sell at Trade Shows.

### **LITTLE SWITZERLAND**

BOCA RATON, FL,  
SUNRISE, FL  
& KETCHIKAN, AK

#### ***SALES TRAINER, SPECIAL PROJECTS AND SENIOR MANAGER***

Train Sales Staff on Location, Compose Sales Training Manual, and Establish Sales Training Program, Compile a Manual of Product Overviews, Customer Service  
Open and Close a Seasonal Store in Alaska, Bring a Retail Store to Maximum Efficiency in Florida, Maintain Budget and Reach Sales Goals. Train and Educate Sales Staff, Close Sales of Luxury Goods and Fine Jewelry, Appraisals, Customer Service, Scheduling, Inventory Control, Merchandising, Establish Online Store and Marketing Strategy.

### **DIAMONDS INTERNATIONAL & TANZANITE INTERNATIONAL**

JUNEAU, AK  
& ST. THOMAS USVI

#### ***SENIOR MANAGER***

Oversee Operations of High Volume Luxury Jewelry Stores in Vacation Destinations, Fine Jewelry Sales, Appraisals, Conduct Training Seminars, Maintain Control of Inventory, Hire Sales Staff

### **EXCALIBUR BY KURT ROTHNER**

LOS ANGELES, CA

#### ***GEMOLOGIST***

Identify and Grade Stones, Appraise, Buy and Sell Estate and Period Jewelry and Vintage Watches, Customer Service to Celebrity Clientele, Exhibit, Buy and Sell at Trade Shows, Inventory Control, Establish Website and List Items

### **EDUCATION:**

GEMOLOGICAL INSTITUTE OF AMERICA 1995  
GRADUATE JEWELER, GRADUATE GEMOLOGIST, JEWELRY DESIGN

INDIANA UNIVERSITY OF PENNSYLVANIA 1994  
B.S. GEOLOGY, BUSINESS MANAGEMENT MINOR

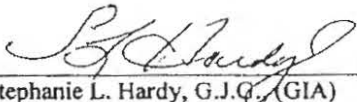
### **ASSOCIATIONS:**

Gemological Institute of America Alumni Association, Cambridge Who's Who, MJSA, Women's Jewelry Association, Association for the Study of Jewelry and the Related Arts, American Society of Jewelry Historians, Appraisers International Society, USPAP 15 Hour Course

**Certification**

I hereby certify that, to the best of my knowledge and belief:

- ◆ The statements of fact contained in this report are true and correct.
- ◆ The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my unbiased professional analysis, opinions, and conclusions.
- ◆ I have no present or prospective interest in the property that is the subject of this report and I have no personal interest or bias with respect to the parties involved.
- ◆ My compensation is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of my client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.
- ◆ I have made a personal inspection of the property that is the subject of this report.
- ◆ No one provided significant professional assistance to the person signing this report.
- ◆ My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.



Stephanie L. Hardy, G.J.Q. (GIA)

Graduate Jeweler Gemologist, Jewelry Designer and Appraiser  
Provident Jewelry  
01/15/2016

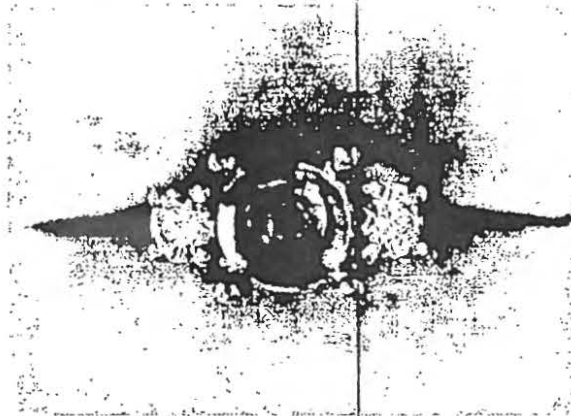
Prepared For: The Estate of Simon Bernstein

Date: 01/15/2016

1. One Semi-Mount Diamond Ring set in platinum. The ring is engraved "David S..."\* The ring features two (2) prong-set round brilliant cut diamonds which average I-J color, VS2-SI1 clarity and are approximately 0.97 carats total weight. The ring weighs 6.1 DWT (9.5 grams.)

FMV = \$ 1,800.00

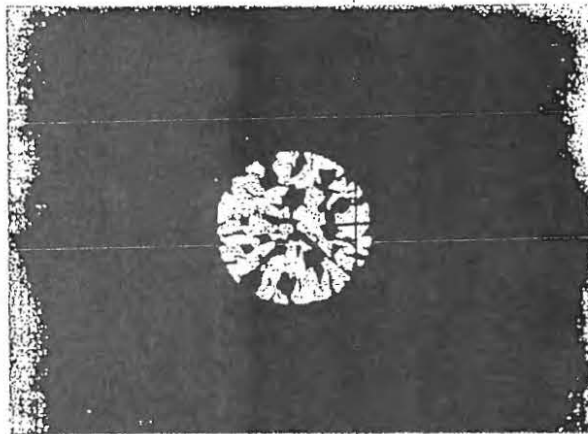
\*The hand engraved signature of the jeweler who made the ring is not legible.



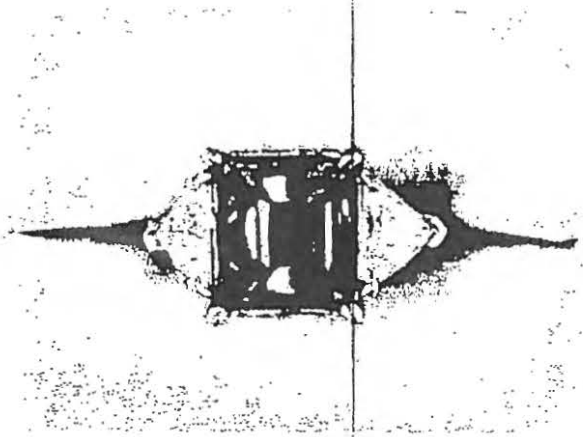
2. One Loose Round Brilliant Cut Diamond which weighs 4.77 carats. The diamond measures approximately 10.58-10.72 x 6.60mm and is approximately K-L color, SI1-SI2 clarity.

FMV = \$ 30,750.00\*

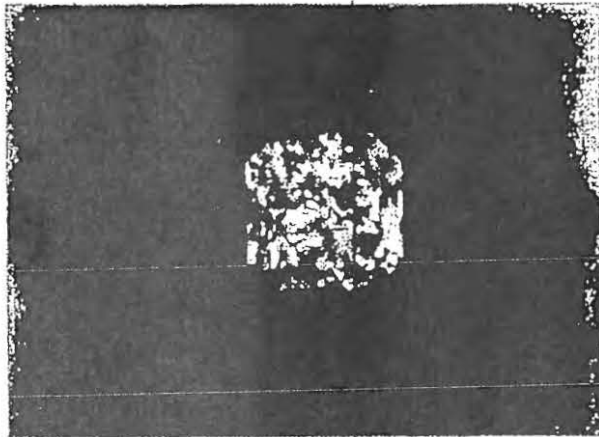
\* The diamond is significantly abraded on the pavilion and will have to be re-cut. The process of re-cutting will decrease the weight of the diamond. The Fair Market Value reflects the loss of weight and the cost of re-cutting.



3. One Semi-Mount Diamond Ring set in platinum. The ring features two (2) prong-set triangular brilliant cut diamonds which average I-J color, VS1-SI1 clarity and are approximately 1.59 carats total weight. The ring weighs 5.0 DWT (7.8 grams.)  
FMV = \$ 3,700.00

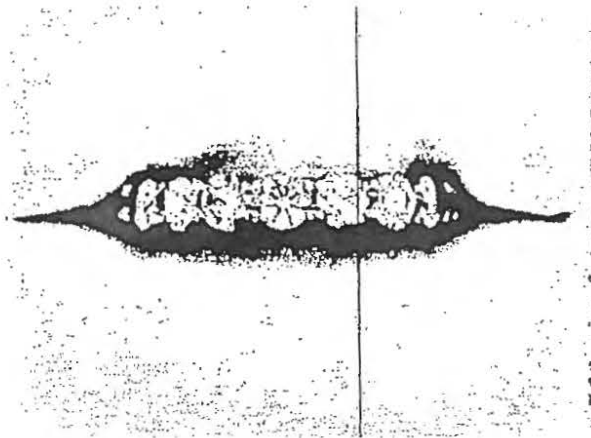


4. One Loose Radiant Cut Diamond which weighs 7.17 carats. The diamond measures approximately 11.19 x 10.49 x 6.86mm and is approximately K-L color, SI2-I1 clarity.  
FMV = \$ 33,350.00



5. One "Shared Prong" Diamond Eternity Ring set in platinum. The ring features eighteen (18) prong-set round brilliant cut diamonds which average I-J color, SI1-SI2\* clarity and calculate to approximately 3.96 carats total weight. The ring weighs 4.9 DWT (7.6 grams.)  
FMV = \$ 1,500.00

\*Fifteen (15) of the diamonds are chipped. The Fair Market Value reflects the loss of weight and the cost of re-cutting and / or replacing the damaged diamonds.



6. One Open Cuban Link Bracelet. The bracelet links are 18 karat yellow gold with a 14 karat yellow gold lobster-claw clasp. The bracelet is approximately 7.5 inches (11.7cm) long. The bracelet weighs 8.0 DWT (12.4 grams.)  
FMV = \$ 300.00

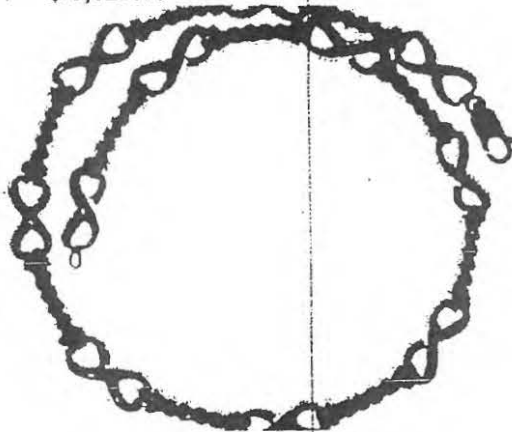


7. One Moss Agate Talon Necklace set in 14 karat yellow gold. The necklace features a polished piece of moss agate which is approximately 2 inches (5 cm) long. The agate is supported\* by a textured open link chain which is approximately 24 inches (60 cm). The necklace weighs 14.0 DWT (21.8 grams.)  
FMV = \$ 225.00

\*The tip of the "talon" needs to be re-attached.

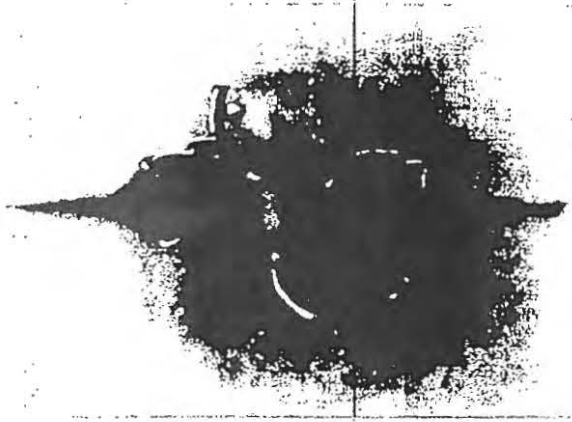


8. One "Infinity and Twisted Rope" Link Necklace. The links of the necklace are 18 karat yellow gold and the clasp is a 14 karat yellow gold lobster claw. The necklace is approximately 15.5 inches (38.75cm) long. The necklace weighs 30.85 DWT (47.9 grams.)  
FMV = \$ 1,125.00

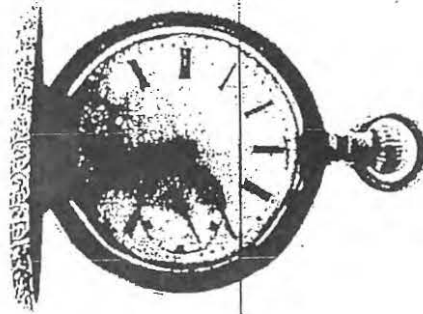




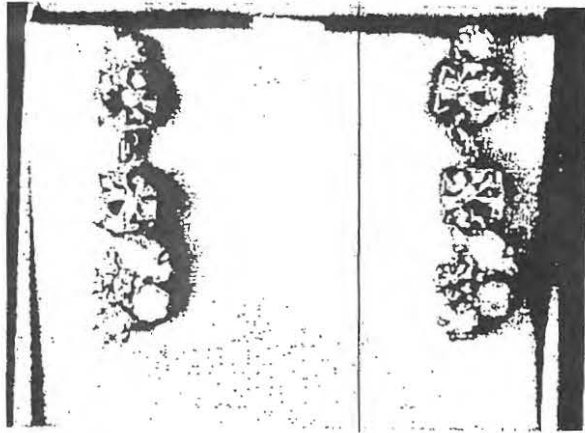
9. One "Flower" Ring set in 14 karat yellow gold. The ring features six (6) prong-set pear-shaped cabochons of jade. The jade stones average 8mm x 6mm and are white, black, orange, gold and green. The ring weighs 4.1 DWT (6.4 grams.)  
FMV = \$ 120.00



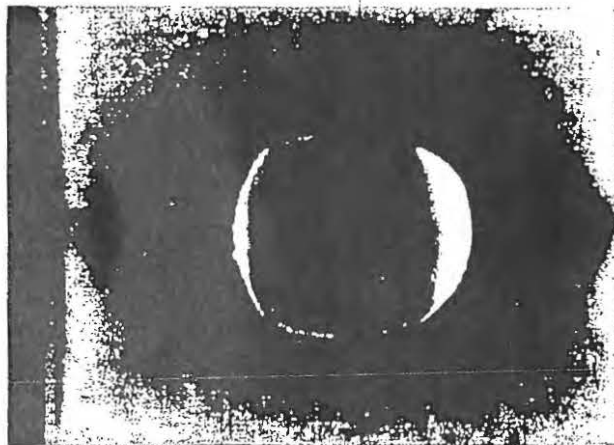
10. One Hunter Case Pocket Watch. The case of the watch tests as 14 karat\* and the bow of the watch is not gold. The watch is engraved "*With all My Love, Shirley 7-25-74*" inside the front cover. It is also engraved "*No 410 STEMWINDER Breguet Hairspring Compons and cut Balance Paul Rochat LOCLE*" on the cuvee. The watch features a manual wind movement and a white face with roman numerals. The face and crystal are damaged. The watch weighs 37.4 DWT (58.2 grams.)  
FMV = \$ 300.00  
\*Gold filled case.



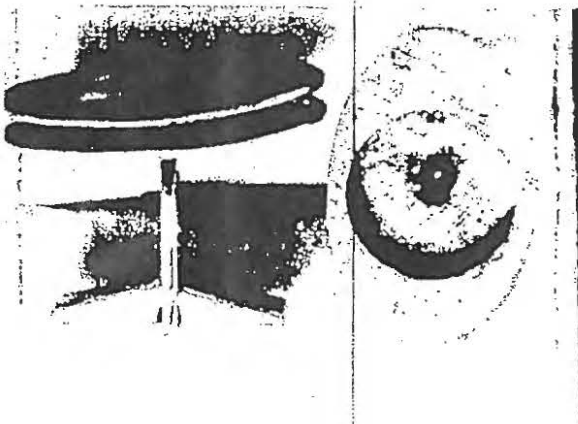
11. One pair of Crystal Earrings set in a silver colored base metal. The earrings feature twelve (12) round crystals and two (2) marquise cut crystals. The earrings weigh 3.1 DWT (4.8 grams.)  
FMV = \$ 10.00



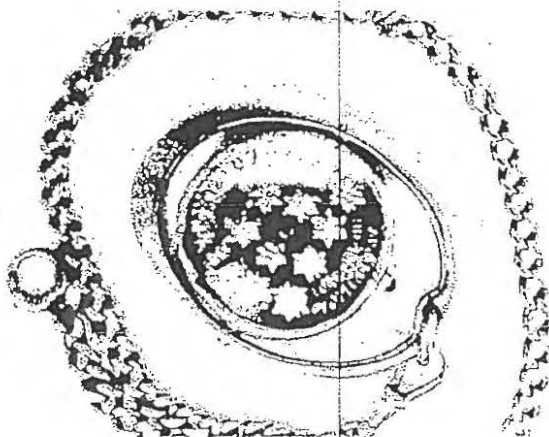
12. One Signet Ring set in 154 karat yellow gold. The ring is engraved with a stylized "B." The ring weighs 9.3 DWT (14.5 grams.)  
FMV = \$ 270.00



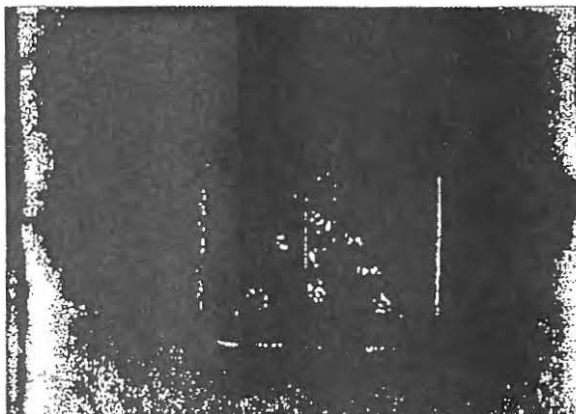
13. One pair of Oval Cufflinks set in 14 karat yellow gold by Avedon. The cufflinks have a Florentine finish and feature two (2) prong-set round brilliant cut sapphires which are approximately 0.14 carats total weight. The sapphires average sl.g-Blue ( T 7-8 / S 3-4 ) color, Type II: VS clarity. The cufflinks weigh 6.5 DWT (10.1 grams.)  
FMV = \$ 225.00



14. One Corum Coin Pocket Watch on a Chain. The Corum watch is housed in an Israeli State commemorative gold coin and has a manual wind movement. The watch is supported by a large oval frame which is 18 karat yellow gold. The watch is hinged at the 3:00 and 6:00 positions so that it may rotate in the frame. The chain is a Cuban link of 14 karat yellow gold, approximately 13.5 inches (21 cm) with a spring ring clasp and a swivel clasp. The chain weighs 11.6 DWT (18.0 grams.) The watch, frame and chain together weigh 42.0 DWT (65.3 grams.)  
FMV = \$ 6,350.00



15. One Diamond and Enamel Tie Pin set in 10 karat\* yellow gold. The pin features ten (10) flush-set single cut diamonds which average H-I color, VS2-SI1 clarity and are approximately 0.22 carats total weight. The black enamel is damaged. The pin weighs 2.3 DWT (3.6 grams.)  
FMV = \$ 150.00  
\*As tested with assaying acids.



# Appraisal

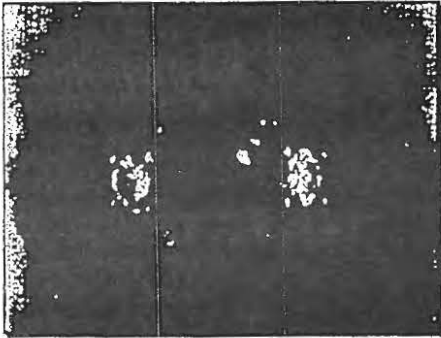
Following is the name and address of the Presenter of the items:

**Appraisal No: 1102745763**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 1

DESCRIPTION: One Semi-Mount Diamond Ring set in platinum. The ring is engraved "David S...." The ring features two (2) prong-set round brilliant cut diamonds which average I-J color, VS2-Si1 clarity and are approximately 0.97 carats total weight. The ring weighs 6.1 DWT (9.5 grams.)

FMV = \$ 1,800.00

\*The hand engraved signature of the jeweler who made the ring is not legible.

APPRAISED VALUE: \$1,800.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

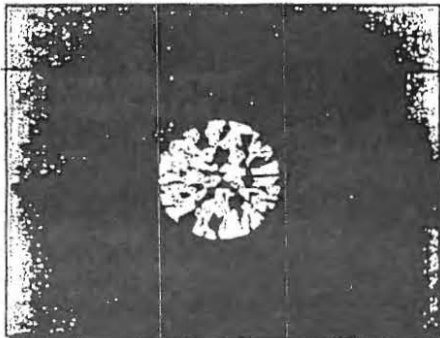
Following is the name and address of the Presenter of the items:

**Appraisal No: 1102745764**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 2

DESCRIPTION: One Loose Round Brilliant Cut Diamond which weighs 4.77 carats. The diamond measures approximately 10.58-10.72 x 6.60mm and is approximately K-L color, SI1-SI2 clarity.

FMV = \$ 30,750.00\*

\* The diamond is significantly abraded on the pavilion and will have to be re-cut. The process of re-cutting will decrease the weight of the diamond. The Fair Market Value reflects the loss of weight and the cost of re-cutting.

APPRAISED VALUE: \$30,750.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

*Fine Estate Jewelry*

331 Clematis Street

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Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745765**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 3

DESCRIPTION: One Semi-Mount Diamond Ring set in platinum. The ring features two (2) prong-set triangular brilliant cut diamonds which average I-J color, VS1-SI1 clarity and are approximately 1.59 carats total weight. The ring weighs 5.0 DWT (7.8 grams.)  
FMV = \$ 3,700.00

APPRAISED VALUE: \$3,700.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## **PROVIDENT JEWELRY**

Fine Estate Jewelry  
331 Clematis Street  
West Palm Beach, FL 33401  
Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA) Jan. 18, 2016  
Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

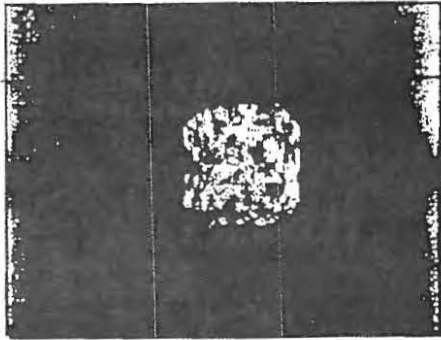
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745766**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewellery and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 4

DESCRIPTION: One Loose Radiant Cut Diamond which weighs 7.17 carats. The diamond measures approximately 11.19 x 10.49 x 6.86mm and is approximately K-L color, SI2-I1 clarity.  
FMV = \$ 33,350.00

APPRAISED VALUE: \$33,350.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## **PROVIDENT JEWELRY**

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Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser



# Appraisal

Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745767**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 5

DESCRIPTION: One "Shared Prong" Diamond Eternity Ring set in platinum. The ring features eighteen (18) prong-set round brilliant cut diamonds which average I-J color, SI1-SI2\* clarity and calculate to approximately 3.96 carats total weight. The ring weighs 4.9 DWT (7.6 grams.)  
FMV = \$ 1,500.00

\*Fifteen (15) of the diamonds are chipped. The Fair Market Value reflects the loss of weight and the cost of re-cutting and / or replacing the damaged diamonds.

APPRAISED VALUE: \$1,500.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry

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West Palm Beach, FL 33401

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Stephanie L. Hardy G.I.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

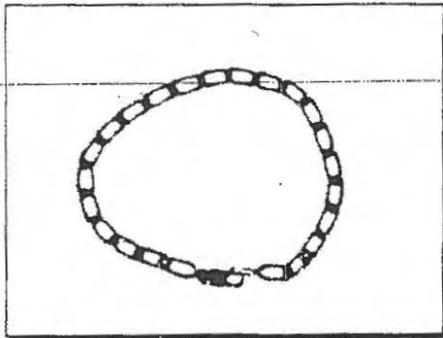
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745768**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 6

DESCRIPTION: One Open Cuban Link Bracelet. The bracelet links are 18 karat yellow gold with a 14 karat yellow gold lobster-claw clasp. The bracelet is approximately 7.5 inches (11.7cm) long. The bracelet weighs 8.0 DWT (12.4 grams.)  
FMV = \$ 300.00

APPRAISED VALUE: \$300.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## **PROVIDENT JEWELRY**

Fine Estate Jewelry

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

A handwritten signature in cursive script, reading "Stephanie L. Hardy". The signature is written in black ink and is positioned above a horizontal line.

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

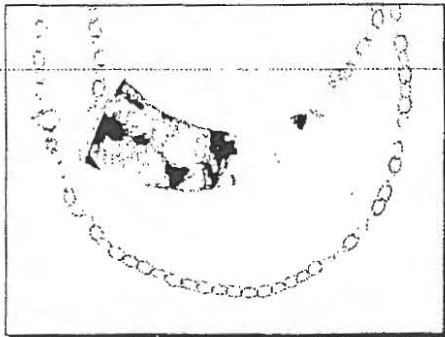
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745769**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 7

DESCRIPTION: One Moss Agate Talon Necklace set in 14 karat yellow gold. The necklace features a polished piece of moss agate which is approximately 2 inches (5 cm) long. The agate is supported\* by a textured open link chain which is approximately 24 inches (60 cm). The necklace weighs 14.0 DWT (21.8 grams.)

FMV = \$ 225.00

\*The tip of the "talon" needs to be re-attached.

APPRAISED VALUE: \$225.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry

331 Clematis Street

West Palm Beach, FL 33401

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Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

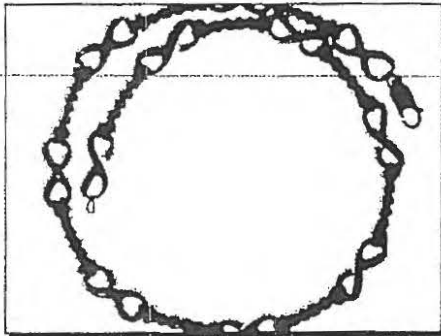
Following is the name and address of the Presentor of the items:

Appraisal No: 1102745770

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 8

DESCRIPTION: One "Infinity and Twisted Rope" Link Necklace. The links of the necklace are 18 karat yellow gold and the clasp is a 14 karat yellow gold lobster claw. The necklace is approximately 15.5 inches (38.75cm) long. The necklace weighs 30.85 DWT (47.9 grams.)  
FMV = \$ 1,125:00

APPRAISED VALUE: \$1,125.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## **PROVIDENT JEWELRY**

*Fine Estate Jewelry*

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745771**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 9

DESCRIPTION: One "Flower" Ring set in 14 karat yellow gold. The ring features six (6) prong-set pear-shaped cabochons of jade\*. The jade stones average 8mm x 6mm and are white, black, orange, gold and green. The ring weighs 4.1 DWT (6.4 grams.)  
FMV = \$ 120.00

APPRAISED VALUE: \$120.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

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331 Clematis Street

West Palm Beach, FL 33401

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Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

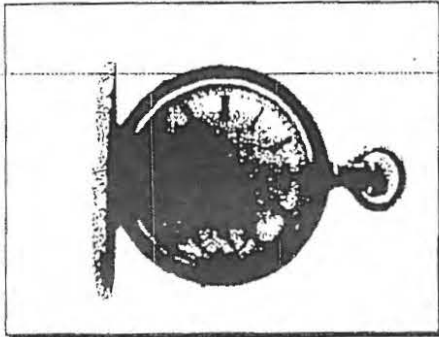
Following is the name and address of the Presenter of the items:

**Appraisal No: 1102745772**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewellery and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 10

DESCRIPTION: One Hunter Case Pocket Watch. The case of the watch tests as 14 karat\* and the bow of the watch is not gold. The watch is engraved "With all My Love, Shirley 7-25-74" inside the front cover. It is also engraved "No 410 STEMWINDER Breguet Hairspring Compond and cut Balance Paul Rochat LOCLE" on the cuvee. The watch features a manual wind movement and a white face with roman numerals. The face and crystal are damaged. The watch weighs 37.4 DWT (58.2 grams.)

FMV = \$ 300.00

\*Gold filled case.

APPRAISED VALUE: \$300.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

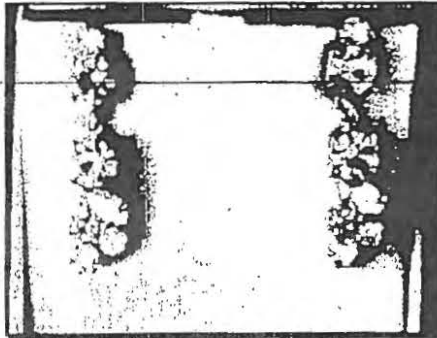
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745773**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 11

DESCRIPTION: One pair of Crystal Earrings set in a silver colored base metal. The earrings feature twelve (12) round crystals and two (2) marquise cut crystals. The earrings weigh 3.1 DWT (4.8 grams.)  
FMV = \$ 10.00

APPRAISED VALUE: \$10.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

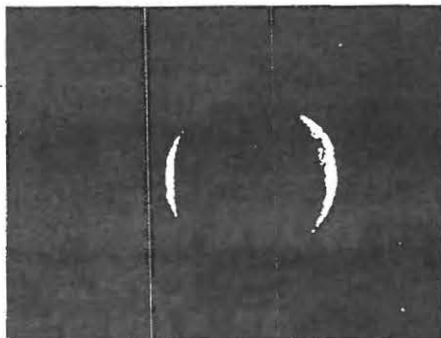
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745774**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewellery and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 12

DESCRIPTION: One Signet Ring set in 154 karat yellow gold. The ring is engraved with a stylized "B." The ring weighs 9.3 DWT (14.5 grams.)  
FMV = \$ 270.00

APPRAISED VALUE: \$270.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry  
331 Clematis Street  
West Palm Beach, FL 33401  
Phone: (888) 888-4367 Fax: (561) 833-8763

A handwritten signature in cursive script, reading "Stephanie L. Hardy".

Stephanie L. Hardy G.J.G. (GIA) Jan. 18, 2016  
Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser



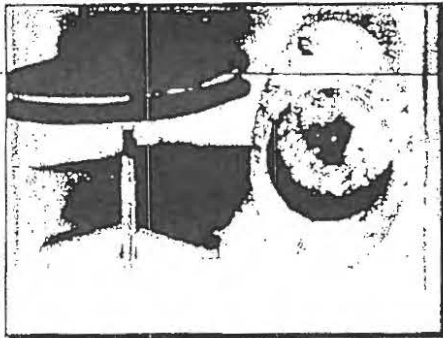
# Appraisal

Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745775**

**Name: THE ESTATE OF SIMON BERNSTEIN**  
**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 13

DESCRIPTION: One pair of Oval Cufflinks set in 14 karat yellow gold by Avedon. The cufflinks have a Florentine finish and feature two (2) prong-set round brilliant cut sapphires which are approximately 0.14 carats total weight. The sapphires average sl.g-Blue ( T 7-8 / S 3-4 ) color, Type II: VS clarity. The cufflinks weigh 6.5 DWT (10.1 grams.)  
FMV = \$ 225.00

APPRAISED VALUE: \$225.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## PROVIDENT JEWELRY

Fine Estate Jewelry  
331 Clematis Street  
West Palm Beach, FL 33401  
Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

# Appraisal

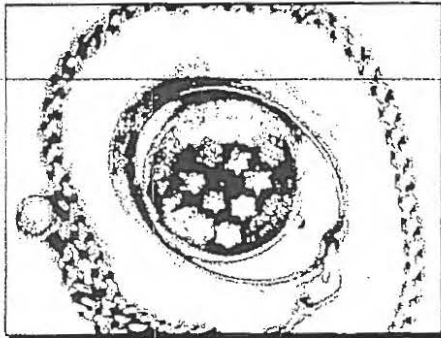
Following is the name and address of the Presentor of the items:

**Appraisal No: 1102745776**

**Name: THE ESTATE OF SIMON BERNSTEIN**

**Address: 515 N. FLAGLER DR WEST PALM BEACH, FL 33401**

*This is to certify that we are, and for many years have been, engaged in the jewelry business, purchasing, selling and appraising Diamonds, Watches, Jewelry and Precious Stones of every name and nature. We herewith certify that we have carefully examined the following listed and described articles. Appraisals are based on limitations of settings. All gemstones have been analyzed in the settings. The appraised value given is NOT an offer to purchase.*



ITEM NO.: FMV 14

**DESCRIPTION:** One Corum Coin Pocket Watch on a Chain. The Corum watch is housed in an Israeli State commemorative gold coin and has a manual wind movement. The watch is supported by a large oval frame which is 18 karat yellow gold. The watch is hinged at the 3:00 and 6:00 positions so that it may rotate in the frame. The chain is a Cuban link of 14 karat yellow gold, approximately 13.5 inches (21 cm) with a spring ring clasp and a swivel clasp. The chain weighs 11.6 DWT (18.0 grams.) The watch, frame and chain together weigh 42.0 DWT (65.3 grams.)  
FMV = \$ 6,350.00

APPRAISED VALUE: \$6,350.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE


## **PROVIDENT JEWELRY**

*Fine Estate Jewelry*

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

  
Stephanie L. Hardy G.J.G. (GIA)  
Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

Jan. 18, 2016

# Appraisal

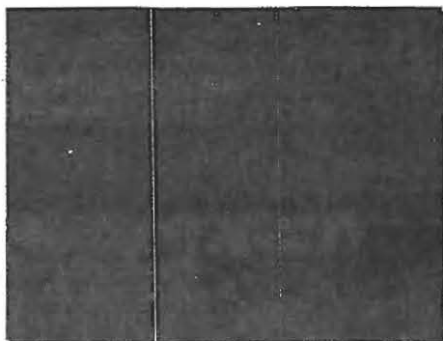
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ITEM NO.: FMV 15

DESCRIPTION: One Diamond and Enamel Tie Pin set in 10 karat\* yellow gold. The pin features ten (10) flush-set single cut diamonds which average H-I color, VS2-SI1 clarity and are approximately 0.22 carats total weight. The black enamel is damaged. The pin weighs 2.3 DWT (3.6 grams.)

FMV = \$ 150.00

\*As tested with assaying acids.

APPRAISED VALUE: \$150.00

THIS APPRAISAL IS FOR  
FAIR MARKET VALUE

## **PROVIDENT JEWELRY**

*Fine Estate Jewelry*

331 Clematis Street

West Palm Beach, FL 33401

Phone: (888) 888-4367 Fax: (561) 833-8763

Stephanie L. Hardy G.J.G. (GIA)

Jan. 18, 2016

Graduate Jeweler- Gemologist, Jewelry Designer and Appraiser

IN THE CIRCUIT COURT IN AND FOR THE 15th JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

**MOTION IN OPPOSITION TO PERSONAL REPRESENTATIVE'S (1) PETITION FOR  
AUTHORIZATION TO SELL ESTATE JEWELRY and (2) STATUS CONFERENCE  
ON PETITION FOR AUTHORIZATION TO MOVE, STORE AND SELL TPP**

ELIOT IVAN BERNSTEIN, Beneficiary of the Estate of SIMON L. BERNSTEIN, Pro Se,  
("Mr. Bernstein" or "Eliot"), hereby files this Opposition to the PERSONAL  
REPRESENTATIVE'S (1) "PETITION FOR AUTHORIZATION TO SELL ESTATE  
JEWELRY" and (2) "STATUS CONFERENCE ON PETITION FOR AUTHORIZATION TO  
MOVE, STORE AND SELL TPP" ("Petitions"), filed by and as grounds, states:

1. Eliot gives this Court of John L. Phillips no jurisdiction in these matters and appears solely to contest and object to the jurisdiction of this Court and any actions by the Personal Representative Brian O'Connell's office due to continuing and ongoing issues of fraud on the court and fraud by the court and its officers and fiduciaries that remains unresolved in this case and whereby no proper procedures have been followed according to the Florida court fraud policy<sup>1</sup>, Judicial Canons, Florida Attorney Conduct Code and state and federal Law.
2. All matters and actions in the case should be Stayed until such time as the fraud on the court has been corrected and all Statewide fraud policy procedures have been followed, including notifying and engaging the Inspector General and Chief Justice of the court of the prior fraud

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<sup>1</sup> September 27, 2012 Florida State Courts System Fraud Policy  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120927%20Florida%20State%20Courts%20System%20Fraud%20on%20the%20Court%20Policy%20Procedure.pdf>

by officers of the court and fiduciaries and the newly admitted fraud on the court and fraud on the beneficiaries that was uncovered in statements under oath by Robert Spallina in the December 15, 2015 hearing before this court that he claimed he had not revealed to anyone prior to sham hearing before the court<sup>2</sup>..

3. Judge John Phillips knows and should know that he should be mandatory disqualified based just on the original motions for mandatory disqualification<sup>3</sup> and Eliot I. Bernstein pleads and demands that Judge Phillips perform this mandatory duty to disqualify on his own motion due to conflicts, adverse interests, alleged fraud and more.
4. Until such time that all fraud on and by the court is properly regulated, all acts of this court are further aiding and abetting fraud on the court, constituting fraud by the court and all acts are outside the color of law. See "EMERGENCY PETITION TO: FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN ESTATE

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<sup>2</sup> December 15, 2015 Hearing Judge Phillips Validity Sham Hearing  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151215%20Hearing%20Transcript%20Phillips%20Validity%20Hearing.pdf>

<sup>3</sup> December 04, 2015 "VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION QF CIRCUIT JUDGE JOHN L. PHILLIPS  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20SECOND%20FILED%20DOCKETED%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and  
December 04, 2015 -"NOTICE OF CORRECTION TO VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS"  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151204%20SECOND%20FILED%20DOCKETED%20FINAL%20CORRECTIONS%20to%20Disqualification%20of%20Florida%20Circuit%20Court%20Judge%20John%20L%20Phillips%20ECF%20STAMPED.pdf>

and  
December 28, 2015 2nd VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE MANDATORY DISQUALIFICATION OF CIRCUIT JUDGE JOHN L. PHILLIPS  
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20151228%20FINAL%20SIGNED%20NOTARIZED%20Second%20Disqualification%20of%20Judge%20Phillips%20after%20Validity%20Hearing%20on%20December%2015,%202015%20ECF%20STAMPED%20COPY.pdf>

OF SHIRLEY BERNSTEIN AND MORE”<sup>4</sup> detailing the initial fraud on the court by court appointed officers, fiduciaries and counsel in the case, attorneys at law Robert Spallina and Donald Tescher (See SEC Consent of Robert Spallina and Donald Tescher for Insider Trading<sup>5</sup>) and fiduciary Ted Bernstein. See, Disqualification Motions Martin Colin & All Writs Colin Disqualification detailing the fraud on and by the court and more.<sup>6</sup>

5. This Court knows and should know that both PR Brian O’Connell’s office and Trustee Ted Bernstein and his counsel Alan Rose have wholly failed to ensure compliance with the Order of Judge Colin of Feb. 18, 2014<sup>7</sup> regarding full production of all records of attorneys Tescher

<sup>4</sup> May 06, 2013 Petition to Freeze

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20130506%20FINAL%20SIGNED%20Petition%20Freeze%20Estates%20Orginal%20LOWEST.pdf>

<sup>5</sup> See, SEC Complaint and “SEC Charges Five With Insider Trading, Including Two Attorneys and an Accountant”

<http://www.sec.gov/news/pressrelease/2015-213.html>

and Government Complaint @ <http://www.sec.gov/litigation/complaints/2015/comp-pr2015-213.pdf> and Consent Orders

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/2015%20Spallina%20and%20Tescher%20SEC%20Settlement%20Consent%20Orders%20Insider%20Trading.pdf>

<sup>6</sup> See All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150609%20FINAL%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See Amended All Writ Filed with the Florida Supreme Court @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150630%20FINAL%20REDO%20All%20Writs%20Mandamus%20Prohibition%20and%20Restraining%20Order%20Stay%20re%20Martin%20Colin%20Disqualification%20ECF%20STAMPED%20COPY.pdf>

and

See VERIFIED SWORN EMERGENCY PETITION AND AFFIDAVIT FOR IMMEDIATE DISQUALIFICATION OF JUDGE MARTIN COLIN @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin>

and

Colin Order Denying Disqualification @

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

and

See Colin Sua Sponte Recusals @

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519%20Colin%20Recusals%20Clerk%20Reassigns.pdf>

<sup>7</sup> February 18, 2014 Colin Order for Tescher and Spallina to turn over ALL records after resigning after admitting their law firm committed fraud on the court, fraud on beneficiaries and others.

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140218%20ORDER%20COLIN%20TESCHER%20SPALLINA%20TO%20TURN%20OVER%20ALL%20RECORDS%20PRODUCTION%20ON%20PETITI>

& Spallina and thus breaching duties as “fiduciaries” and this Court knows such full production was not properly available under due process procedures prior to an alleged “validity” hearing which is on appeal and in fact this Court knows attorney Alan Rose falsely claimed there was no such order at trial.

6. This Court knows and should know that both Trustee Ted Bernstein, his attorney Alan Rose and PR Brian O’Connell are intertwined as witnesses to what took place with the TPP and documents and records in general and specifically from 7020 Lions Head Lane Boca Raton, Fl and hearings should be held and/or depositions of these parties taken prior to any further actions as alleged fiduciaries which must be stayed at this time.
7. The court should note that PR O’Connell has claimed that Ted is not a validly serving Trustee of the Simon Bernstein Trust and attorney Peter Feaman, Esq. has also claimed Ted is acting improperly with his counsel Rose, implying that he is acting in breach of fiduciary duty as he is not qualified to be Trustee under the very terms of the Simon Trust he alleges to operate under that this court erroneously validated without knowing the whereabouts of the original document. See O’Connell and Feaman Letters regarding Ted Bernstein not being a valid trustee and conflicts and more<sup>8</sup>.

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ON%20FOR%20DISCHARGE%20TESCHER%20SPALLINA%20Case%20502012CP004391XXXXSB%20SIMON.pdf

<sup>8</sup> O’Connell Pleading Affirmative Defense 1 - Page 7 - Ted is not a validly serving Trustee of the Simon Trust

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150217%20Answer%20%20Affirmative%20Defenses%20O'Connell%20States%20Ted%20is%20NOT%20VALID%20TRUSTEE.pdf>

and

August 29, 2014 Letter Feaman to O’Connell

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20140829%20Feaman%20Stansbury%20Letter%20to%20Brian%20O'Connell.pdf>

and

December 16, 2014 Feaman to O’Connell Letter

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20141216%20Attorney%20Peter%20Feaman%20Letter%20to%20Attorney%20Personal%20Representative%20Brian%20O'Connell%20re%20Ted%20and%20Alan%20Conflicts.pdf>

8. Even the appraisal done by the Estate at issue herein for the TPP neglects the fact that certain jewelry of Shirley Bernstein's was unaccounted on her inventories that have been challenged as fraudulent and at this time those motions remain unheard.
9. It is unclear how the Jewelry of Shirley's estate that was never inventoried on her inventory was appraised in Simon's Estate and how it was transferred from Shirley Bernstein's estate if it was never ITEMIZED as part of her inventory. Her inventory filed and challenged at this time claims a value of \$25,000 total assets and yet items appear on Simon's inventory of Shirley's assets after the time of her death that are far in excess of \$25,000. Example, PR Brian O'Connell for the Estate of Simon has an Inventory in Simon's Estate showing approximately \$80 thousand plus from Shirley's jewelry yet the Shirley Estate accounting only was valued at \$25,000 and Shirley predeceased Simon. Thus, it is not possible for Simon to have a greater value transferred to him than what was accounted for in Shirley's estate and the result is this is all part of ongoing fraud upon the Court and by the Court in continuing failures to address such fraud.
10. Therefore, the inventorying of Shirley's assets that are alleged to have transferred to Simon is again alleged herein as further fraud and theft of estate of Simon and Shirley assets by fiduciaries and counsel in these matters.
11. Accountings in Shirley's Estate have not been done in violation of Florida Probate Rules and Statutes, either prior to fraudulent closing achieved by fraud on the court that led to the reopening or post as required by Probate Rules and Statutes.
12. Shirley Bernstein had a wedding ring valued and insured at approximately \$250,000 that has not been accounted for in Shirley's Estate and as the Court is aware from the December 15, 2015 hearing the fiduciaries are also aware of fully paid for Bentley that is also unaccounted



in her inventory and despite admitted knowledge of these items existence and failure to correct or amend the inventory, no further actions should be permitted by any of the fiduciaries including PR Brian O'Connell and Ted Bernstein and all matters must now be stayed and an injunction and freeze of assets and records ordered, along with notifying the proper authorities of the continuing and ongoing theft and fraud regarding the millions of dollars of Personal Property now missing.

13. That accountings in Simon's Estate and Trust have been done and challenged by multiple parties and remain unheard as of this date and there are further allegations of fraud on the court and fraud on the beneficiaries and interested parties in those pleadings that involve properties in the Shirley Estate.
14. Personal Property was re-inventoried for Simon's estate and Tangible Personal Property from Shirley's estate that was improperly listed on Simon's estate inventory without first being inventoried on Shirley's inventory, were found to have now gone missing from an original Inventory done by Ted Bernstein, including the entire contents of a multimillion dollar Condominium owned by the Shirley Trust that were misrepresented by Alan Rose and Ted Bernstein to have been moved to 7020 Lions Head Lane, Boca Raton, address of another home that was owned by Shirley. Additionally found missing from the original inventory when the re-inventorying was done due to the missing Condominium properties is also now new missing Tangible Personal Property from the 7020 Lions Head Lane, Boca Raton home and none of these stolen items have been properly inventoried or accounted for by prior fiduciaries and now Brian O'Connell. Brian O'Connell is also aware of ongoing criminal complaints filed regarding these properties and has evaded contacting authorities despite his direct knowledge of the missing properties that were told by Rose and Ted to the court and

others to be at the Saint Andrews Country Club 7020 Lions Head home. O'Connell is further now working with Ted despite knowing he is not a validly serving trustee under the language of the Simon trust to aid and abet the fraud and theft involving the properties, while billing for his time working with such "not validly serving" trustee.

15. The Hearing to hear these two petitions should be also be struck, as the hearing was not properly scheduled; only one (1) day was given by O'Connell to opposing parties to object before filing for hearing; the hearing requires evidentiary proceedings for the two petitions; there are outstanding production requests, there are outstanding accounting objections, there are outstanding motions unheard regarding the TPP and the Jewelry, no fraud policies, ethics policies and judicial canons have been complied with and NO pre-trial procedures were followed.

16. I, Eliot Ivan Bernstein, ask this court to again have Judge John Phillips disqualify himself as legally required as petitioned in two prior disqualification motions denied by Judge Phillips as legally insufficient (unheard on the merits) and further fear extreme prejudice and retaliation against my family by Judge John Phillips if he stays on, especially where he has refused to disqualify despite it being mandatorily required by Judicial Canon and law and he should do so on his own motion without needing a Pro Se litigant to file papers "legally sufficient" to show him conflicts and other violations that make his original and continued jurisdiction improper and demand disqualification and voiding of all his orders gained through acts outside the color of law.

17. If Judge Phillips does not disqualify on his own motion as required by Judicial Canon and Law then I Eliot Bernstein seek a protective order from Judge Phillips who I allege is continuing an ongoing fraud on the court, fraud by the court, is acting outside the color of

law and who is retaliating against me and my family for exposing fraud on the court and fraud by the court involving his professed "love" for former recused Judge Martin Colin<sup>9</sup> (who recused one day after denying a mandatory disqualification) and other parties he has expressed favoritism over, including several court appointed counsel and fiduciaries in these matters while neglecting judicial duties and fraud on the court.

18. Judge Phillips has also held predatory guardianship hearings that did not follow guardianship rules and regulations of this court and has obtained an improper and illegal predatory guardianship on two of my minor children and one adult child in his efforts to shut down their due process rights and me and my wife's due process rights as their proper guardian and shutting me out of my due process rights as a beneficiary in the Estates and Trusts of both my mother and father.

19. Judge Phillips has repeatedly barked and ranted on and off the record at both myself and my lovely wife Candice threatening us with contempt and jail, repeatedly, in efforts to silence our rights and shut down efforts to further expose the frauds in and by the court and its officers and fiduciaries, his professed close personal friends and love. Statements of witnesses to Judge Phillips erratic behavior at proceedings can be provided to this court upon request and the record also reflects the outward hostility of Phillips to Eliot and Candice Bernstein. See William Stansbury Statement.<sup>10</sup>

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<sup>9</sup> History of Martin Colin's conflicts causing recusal, alleged by Palm Beach Post in their series, Guardianship a Broken Trust (115+ cases) <http://www.mypalmbeachpost.com/guardianships-colin-savitt/> and An August 20, 2016 Article by the Palm Beach Post "Judge Colin appoints ex-law partner to case that nets \$500,000-plus CRIME & LAW By John Pacenti - Post Staff Writer Aug. 20, 2016 @ <http://www.mypalmbeachpost.com/news/news/crime-law/judge-colin-appoints-ex-law-partner-to-case-that-n/nsJbh/>

<sup>10</sup> March 03, 2016

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160302%20Signed%20William%20Stansbury%20Amended%20Eliot%20and%20Candice%20Bernstein%20GAL%20issue%203.2.2016.pdf>

20. Judge Phillips has wrongfully removed my /standing in several cases improperly after sham proceedings to shut down my due process rights and efforts to expose the frauds in and by the court and its officers and fiduciaries.
21. That I have informed Judge Phillips that I am both seeking to sue him professionally and personally in Federal Court and that I have reported his fraudulent misconduct to state and federal authorities and I reasonably believe this further angers and prejudices Judge Phillips against my family.
22. That Brian O'Connell should be removed as PR of the Estate of Simon for furthering fraud on the court and attempting to traffic in stolen goods, which he knows has been reported to this court and criminal authorities and he is fully aware of the issues of the theft of the personal properties already exposed to this court and himself by Eliot and William Stansbury and others.
23. Judge Phillips is cognizant of fraud on the court and fraud on beneficiaries and counsel to them and was made aware of new crimes admitted and committed by former Co-Personal Representative and counsel Robert Spallina under oath in a December 15, 2015 hearing before him that Spallina claimed he had not told anyone to that time about, including felony federal and state crimes and Judge Phillips has further failed to report the criminal misconduct and fraud on the court or follow the Florida court fraud policies and procedures.

WHEREFORE, Eliot I. Bernstein respectfully requests the Court enter an Order disqualifying Judge Phillips, enjoining and staying all matters pending fraud procedures to be followed and proper hearings herein, denying any relief to the PR and enjoining the PR from any and all action pending proper hearings to be held and further granting the relief set forth above and such other relief as the Court deems just and proper.

Respectfully Submitted

DATE: August, 23, 2016

By: /S/ Eliot Ivan Bernstein  
Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434  
561.245.8588  
iviewit@iviewit.tv

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to counsel of record via the Court's e-portal system or U.S. Postal Service on this 23rd day of August, 2016 to the parties on the attached Service List.

By: /S/ Eliot Ivan Bernstein  
Pro Se  
2753 NW 34th Street  
Boca Raton, FL 33434  
561.245.8588  
iviewit@iviewit.tv

**SERVICE LIST**

Theodore Stuart Bernstein Life Insurance Concepts 950 Peninsula Corporate Circle, Suite 3010 Boca Raton, Florida 33487 tbernstein@lifeinsuranceconcepts.com	Alan B. Rose, Esq. Page, Mrachek, Fitzgerald & Rose, P.A. 505 South Flagler Drive, Suite 600 West Palm Beach, Florida 33401 (561) 355-6991 arose@pm-law.com and arose@mrachek-law.com mchandler@mrachek-law.com cklein@mrachek-law.com lmrachek@mrachek-law.com	John J. Pankauski, Esq. Pankauski Law Firm PLLC 120 South Olive Avenue 7th Floor West Palm Beach, FL 33401 (561) 514-0900 courtfilings@pankauskilawfirm.com john@pankauskilawfirm.com	Robert L. Spallina, Esq., Tescher & Spallina, P.A. Boca Village Corporate Center I 4855 Technology Way Suite 720 Boca Raton, FL 33431 rspallina@tescherspallina.com kmoran@tescherspallina.com ddustin@tescherspallina.com
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<p>Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  psimon@stpcorp.com</p>	<p>Irwin J. Block, Esq.  The Law Office of Irwin J.  Block PL  700 South Federal Highway  Suite 200  Boca Raton, Florida 33432  ijb@ijblegal.com  lamb@kolawyers.com</p>	<p>Mark R. Manceri, Esq.,  and  Mark R. Manceri, P.A.,  2929 East Commercial  Boulevard  Suite 702  Fort Lauderdale, FL 33308  mrmlaw@comcast.net  mrmlaw1@gmail.com</p>	<p>Donald Tescher, Esq.,  Tescher &amp; Spallina,  P.A.  Boca Village Corporate  Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  dtescher@tescherspallin  a.com  dtescher@tescherspallin  a.com  ddustin@tescherspallina  .com  kmoran@tescherspallin  a.com</p>
<p>Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  jilliantoni@gmail.com</p>	<p>Peter Feaman, Esquire  Peter M. Feaman, P.A.  3695 W. Boynton Beach Blvd.  Suite #9  Boynton Beach, FL 33436  Tel: 561.734.5552  Fax: 561.734.5554  pfeaman@feamanlaw.com  service@feamanlaw.com  mkoskey@feamanlaw.com</p>	<p>Benjamin Brown, Esq.,  Thornton B Henry, Esq.,  and  Peter Matwiczuk  Matwiczuk &amp; Brown, LLP  625 No. Flagler Drive  Suite 401  West Palm Beach, FL  33401  bbrown@matbrolaw.com  attorneys@matbrolaw.com  bhenry@matbrolaw.com  pmatwiczuk@matbrolaw.c  om</p>	
<p>Lisa Friedstein  2142 Churchill Lane  Highland Park, IL 60035  Lisa@friedsteins.com  lisa.friedstein@gmail.com  lisa@friedsteins.com</p>			<p>Kimberly Moran  kmoran@tescherspallin  a.com</p>
			<p>John P Morrissey, Esq.  John P. Morrissey, P.A.  330 Clematis Street  Suite 213  West Palm Beach, FL  33401</p>

			john@jmorrisseylaw.com
<p>Matt Logan 2231 Bloods Grove Circle Delray Beach, FL 33445 matl89@aol.com</p>	<p>Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 NW 34th Street Boca Raton, FL 33434 iviewit@iviewit.tv</p>	<p>Julia Iantoni, a Minor c/o Guy and Jill Iantoni, Her Parents and Natural Guardians 210 I Magnolia Lane Highland Park, IL 60035 jilliantoni@gmail.com</p>	
<p>Lindsay Baxley aka Lindsay Giles lindsay@lifeinsuranceconc epts.com</p>	<p>Carley &amp; Max Friedstein c/o Jeffrey and Lisa Friedstein Parents and Natural Guardians 2142 Churchill Lane Highland Park, IL 6003 Lisa@friedsteins.com lisa.friedstein@gmail.com</p>	<p>Molly Simon 1731 N. Old Pueblo Drive Tucson, AZ 85745 molly.simon1203@gmail.c om</p>	
<p>Shendell &amp; Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 .41-2323 Fax: 241-2330 Gary R. Shendell, Esq. gary@shendellpollock.com estella@shendellpollock.c om grs@shendellpollock.com Kenneth S. Pollock, Esq. ken@shendellpollock.com britt@shendellpollock.com Matthew A. Tornincasa, Esq. matt@shendellpollock.com robyne@shendellpollock.c om</p>			

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. 502012CP4391XXXXNB IH

SIMON L. BERNSTEIN

Deceased.

NOTICE OF HEARING (UMC)

TO: **Counsel and Parties on Attached Service List**

YOU ARE HEREBY NOTIFIED that the undersigned has scheduled hearing the following:

- MATTER(S): **1. Petition for Authorization to Sell Estate Jewelry; and**  
**2. Status Conference on Petition for Authorization to Move, Store, and Sell the Tangible Personal Property Located at 7020 Lions Head Lane**

DATE: **Wednesday, August 24, 2016**

TIME: **8:30 a.m.**

JUDGE: **Honorable John L. Phillips**

PLACE: **Ctrm. 3, North County Courthouse  
3188 PGA Boulevard, Palm Beach Gardens, FL 33410**

KINDLY GOVERN YOURSELF ACCORDINGLY

**SEE ATTACHED FOR AMERICANS WITH DISABILITY ACT LANGUAGE**

Counsel has conferred with all parties who may be affected by the relief sought in the motion in a good faith effort to resolve or narrow the issues raised.

Counsel has made reasonable efforts to confer with all parties who may be affected by the relief sought in the motion but has been unable to do so.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent by e-mail service via the Court's e-portal or U.S. Postal Service to Counsel and Parties of record listed on the attached Service List this 28<sup>th</sup> day of July, 2016.



IN RE: Estate of SIMON L. BERNSTEIN  
File No.: 502012CP004391XXXXNB IH  
Notice of Hearing for 8/24/16 at 8:30 a.m.  
On PR's Pet to Sell Est Jewelry & PR's Pet  
for Auth to Move, Store and Sell TPP

---

*/s/ Joielle A. Foglietta*

---

BRIAN M. O'CONNELL

Florida Bar No: 308471

ASHLEY CRISPIN ACKAL

Florida Bar No: 37495

JOIELLE A. FOGLIETTA

Florida Bar No. 94238

ZACHARY M. ROTHMAN

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secondary e-mail: [probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

IN RE: Estate of SIMON L. BERNSTEIN  
 File No.: 502012CP004391XXXXNB IH  
 Notice of Hearing for 8/24/16 at 8:30 a.m.  
 On PR's Pet to Sell Est Jewelry & PR's Pet  
 for Auth to Move, Store and Sell TPP

**SERVICE LIST**

<p>Alan B. Rose, Esq.          Page, Mrachek, Fitzgerald &amp;          Rose, PA.          505 S. Flagler Dr., Suite 600          West Palm Beach, FL 33401          (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a></p> <p><b>Attorney for Ted S. Bernstein</b></p>	<p>John P. Morrissey, Esq.          330 Clematis St., Suite 213          West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p> <p><b>Attorney for Molly Simon et al</b></p>	<p>Donald R. Tescher, Esq.          Tescher &amp; Associates, P.A.          925 S. Federal Highway          Suite 500          Boca Raton, FL 33432          (561) 997-7008  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a></p> <p><b>Former PR of the Estate of Simon L. Bernstein</b></p>
<p>Peter Feaman, Esq.          Peter M. Feaman, P.A.          3695 Boynton Beach Blvd., Suite 9          Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p> <p><b>Attorney for William Stansbury</b></p>	<p>Shendell &amp; Pollock, P.L.          2700 N. Military Trail, suite 150          Boca Raton, FL 33431          241-2323 Fax: 241-2330          Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p> <p><b>Attorney for Tescher and Spallina</b></p>	<p>Max Friedstein          2142 Churchill Lane          Highland Park, IL 60035</p> <p><b>Beneficiary</b></p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors          c/o Eliot and Candice Bernstein, Parents and Natural Guardians          2753 N.W. 34<sup>th</sup> St.          Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p> <p><b>Pro Se</b></p>	<p>Pamela Beth Simon          950 N. Michigan Ave., Apt. 2603          Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p><b>Beneficiary</b></p>	<p>Lisa Friedstein and Carley Friedstein, Minor          c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian          2142 Churchill Lane          Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p> <p><b>Beneficiary</b></p>
<p>Jill Iantoni and Julia Iantoni, a Minor          c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians</p>	<p>Brian M. O'Connell, Esq.          Ashley Crispin Ackal, Esq.          Ciklin Lubitz &amp; O'Connell</p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p>

IN RE: Estate of SIMON L. BERNSTEIN  
 File No.: 502012CP004391XXXXNB IH  
 Notice of Hearing for 8/24/16 at 8:30 a.m.  
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<p>2101 Magnolia Lane          Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p> <p><b>Beneficiary</b></p>	<p>515 N. Flagler Dr., 20<sup>th</sup> FL          West Palm Beach, FL 33401  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>  <a href="mailto:probateservice@ciklinlubitz.com">probateservice@ciklinlubitz.com</a></p> <p><b>PR of the Estate of Simon L. Bernstein</b></p>	<p><b>Former PR of the Estate of Simon L. Bernstein</b></p>
<p>Diana Lewis  <b>Guardian Ad Litem for Joshua, Jacob and Daniel Bernstein, Minors</b>          ADR &amp; Mediation Services, LLC          2765 Tecumseh Drive          West Palm Beach, FL 33409          (561) 758-3017  <a href="mailto:dzlewis@aol.com">dzlewis@aol.com</a></p>		

IN RE: Estate of SIMON L. BERNSTEIN  
File No.: 502012CP004391XXXXNB IH  
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This notice is provided pursuant to Administrative Order No. 2.207-1/15

**“If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Tammy Anton, Americans with Disabilities Act Coordinator, Palm Beach County Courthouse, 205 North Dixie Highway West Palm Beach, Florida 33401; telephone number (561) 355-4380 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.”**

**“Si usted es una persona minusválida que necesita algún acomodamiento para poder participar en este procedimiento, usted tiene derecho, sin tener gastos propios, a que se le provea cierta ayuda. Tenga la amabilidad de ponerse en contacto con Tammy Anton, 205 N. Dixie Highway, West Palm Beach, Florida 33401; teléfono número (561) 355-4380, por lo menos 7 días antes de la cita fijada para su comparecencia en los tribunales, o inmediatamente después de recibir esta notificación si el tiempo antes de la comparecencia que se ha programado es menos de 7 días; si usted tiene discapacitación del oído o de la voz, llame al 711.”**

**“Si ou se yon moun ki enfim ki bezwen akomodasyon pou w ka patisipe nan pwosedi sa, ou kalifye sau ou pa gen okenn lajan pou w peye, gen pwovizyon pou jwen kèk èd. Tanpri kontakte Tammy Anton, kòdonatè pwogram Lwa pou ameriken ki Enfim yo nan Tribinal Konte Palm Beach la ki nan 205 North Dixie Highway, West Palm Beach, Florida 33401; telefòn li se (561) 355-4380 nan 7 jou anvan dat ou gen randevou pou parèt nan tribinal la, oubyen imedyatman apre ou fin resevwa konvokasyon an si lè ou gen pou w parèt nan tribinal la mwens ke 7 jou; si ou gen pwoblèm pou w tande oubyen pale, rele 711.”**

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXNB/IH

Deceased.

ORDER ON PETITION FOR AUTHORIZATION TO SELL ESTATE  
JEWELRY

THIS CAUSE having come before the Court on Successor Personal Representative, Brian M. O'Connell's ("Successor Personal Representative") Petition for Authorization to Sell Estate Jewelry ("Petition"), having heard argument of counsel, and otherwise being duly advised on the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Petition is GRANTED, as follows:
2. The Successor Personal Representative is authorized to sell the jewelry as listed on the Appraisal attached to the Petition as Exhibit "A" ("Jewelry" and "Appraisal," respectively), except for the following items, which may only be sold upon further order of this Court: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The children of the decedent, namely: Ted S. Bernstein, Pamela B. Simon, Eliot Bernstein, Jill Iantoni and Lisa S. Friedstein shall have 30 days from the date of this Order to express an interest in purchasing the Jewelry, in writing, and by a method to be established by Brian M. O'Connell, as Successor Personal Representative of the Estate. If any children of the decedent wish to purchase any item(s) of Jewelry by the method to be established by Brian M.

O'Connell, as Successor Personal Representative of the Estate, they shall do so at the purchase price on the Appraisal and shall further pay for the cost(s) associated with shipping, insurance, and/or any other costs associated with the turnover of the Jewelry.

5. Any remaining items of Jewelry to be sold by the Successor Personal Representative shall be by a method to be established by Brian M. O'Connell, as Successor Personal Representative of the Estate.

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida, this  
\_\_\_\_ day of \_\_\_\_\_, 2017

---

ROSEMARY SCHER, Circuit Judge

**Copies furnished to:**

All Counsel of Record and Parties listed on attached Service List

**SERVICE LIST**

<p>Alan B. Rose, Esq.        Page, Mrachek, Fitzgerald &amp;        Rose, PA.        505 S. Flagler Dr., Suite 600        West Palm Beach, FL 33401        (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a></p> <p><b>Attorney for Ted S. Bernstein</b></p>	<p>John P. Morrissey, Esq.        330 Clematis St., Suite 213        West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p> <p><b>Attorney for Molly Simon et al</b></p>	<p>Donald R. Tescher, Esq.        Tescher &amp; Associates, P.A.        925 S. Federal Highway        Suite 500        Boca Raton, FL 33432        (561) 997-7008  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a></p> <p><b>Former PR of the Estate of Simon L. Bernstein</b></p>
<p>Peter Feaman, Esq.        Peter M. Feaman, P.A.        3695 Boynton Beach        Blvd., Suite 9        Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p> <p><b>Attorney for William Stansbury</b></p>	<p>Shendell &amp; Pollock, P.L.        2700 N. Military Trail, suite 150        Boca Raton, FL 33431        241-2323 Fax: 241-2330        Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>        Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>        Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p> <p><b>Attorney for Tescher and Spallina</b></p>	<p>Max Friedstein        2142 Churchill Lane        Highland Park, IL 60035</p> <p><b>Beneficiary</b></p>
<p>Eliot Bernstein and        Joshua, Jacob and Daniel        Bernstein, Minors        c/o Eliot and Candice        Bernstein, Parents and        Natural Guardians        2753 N.W. 34<sup>th</sup> St.        Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p> <p><b>Pro Se</b></p>	<p>Pamela Beth Simon        950 N. Michigan Ave., Apt. 2603        Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p><b>Beneficiary</b></p>	<p>Lisa Friedstein and        Carley Friedstein, Minor        c/o Jeffrey and Lisa Friedstein        Parent and Natural Guardian        2142 Churchill Lane        Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p> <p><b>Beneficiary</b></p>
<p>Jill Iantoni and        Julia Iantoni, a Minor        c/o Guy and Jill Iantoni, her        Parents &amp; Natural Guardians        2101 Magnolia Lane        Highland Park, IL 60035</p>	<p>Brian M. O'Connell, Esq.        Ashley Crispin Ackal, Esq.        Ciklin Lubitz &amp; O'Connell        515 N. Flagler Dr., 20<sup>th</sup> FL        West Palm Beach, FL 33401  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>  <a href="mailto:probateservice@ciklinlubitz.com">probateservice@ciklinlubitz.com</a></p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p> <p><b>Former PR of the Estate of Simon L. Bernstein</b></p>

In Re: Estate of Simon L. Bernstein  
File No: 502012CP004391XXXXNB  
Order on Petition for Authorization to  
Sell Estate Jewelry

---

<u>jilliantoni@gmail.com</u>	<b>PR of the Estate of Simon L. Bernstein</b>	
<b>Beneficiary</b> Diana Lewis <b>Guardian Ad Litem for Joshua, Jacob and Daniel Bernstein, Minors</b> ADR & Mediation Services, LLC 2765 Tecumseh Drive West Palm Beach, FL 33409 (561) 758-3017 <u>dzlewis@aol.com</u>		



IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXSB

Deceased.

---

**PETITION FOR INSTRUCTIONS AND REVIEW OF COMPENSATION OF  
ACCOUNTANTS' FEES & COSTS**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Successor Personal Representative" or "Mr. O'Connell" and "Decedent", respectively), hereby files this Petition for Instructions and Review of Compensation of Accountants' Fees and Costs pursuant to Fla. Stat. § 733.6175, and, in support, states as follows:

1. The Decedent, a resident of Palm Beach County, Florida, died on September 12, 2012, with an Estate ("Estate"), subject to probate in the State of Florida, with a total inventory value of \$1,121,325.21. See a copy of the Inventory attached hereto as Exhibit "A."

2. The Will of Mr. Bernstein named two personal representatives, Robert L. Spallina ("Spallina") and Donald R. Tescher ("Tescher").

3. On July 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative of the Estate.

4. Upon information and belief, CBIZ MHM, LLC ("CBIZ"), an accounting firm, was retained by co-personal representatives, Tescher and Spallina, on behalf of the Estate.

5. According to the invoices submitted by CBIZ, the Estate has incurred approximately \$29,887.75 in fees and costs for the following:

- Accumulation and analysis of information and preparation of U.S. Fiduciary Tax Return (Form 1041) for 2012 and Form 1040 for 2012

- Numerous communications with Attorney and Curator for information to file a complete and proper tax return;
- Completion of Form 8855;
- Accumulation of information and preparation of Extension Form; and
- Numerous communications with Attorney Robert Spallina, Curator Ben Brown and Ted Bernstein for information necessary to properly prepare the above mentioned return.

See Composite Exhibit "B," attached hereto.

6. Mr. O'Connell requests the Court for instructions regarding payment to CBIZ, and to review the reasonableness of the compensation charged by CBIZ for its services to the Estate for 2012 as set forth on Exhibit "B."

WHEREFORE, BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN, respectfully requests this Court for instructions and to review the reasonableness of the compensation charged by CBIZ MHM, LLC for its accounting services provided to the Estate for 2012 and/or for an Order authorizing the Successor Personal Representative to pay CBIZ MHM, LLC for such services, and for attorneys' fees and costs and any further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 5 day of May, 2015 to the parties on the attached Service List.



---

BRIAN M. O'CONNELL  
Florida Bar No: 308471  
JOIELLE A. FOGLIETTA  
Florida Bar No: 94238  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
Telephone: 561-832-5900  
Facsimile: 561-833-4209

**SERVICE LIST**

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<p>Peter Feaman, Esq. Peter M. Feaman, P.A. 3695 Boynton Beach Blvd., Suite 9 Boynton Beach, FL 33436 <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p>	<p>Shendell &amp; Pollock, P.L. 2700 N. Military Trail, suite 150 Boca Raton, FL 33431 241-2323 Fax: 241-2330 Gary R. Shendell, Esq. <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a> <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a> Kenneth S. Pollock, Esq. <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a> <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a> <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>  Attorney for Tescher and Spallina</p>	<p>Max Friedstein 2142 Churchill Lane Highland Park, IL 60035 Beneficiary</p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors c/o Eliot and Candice Bernstein, Parents and Natural Guardians 2753 N.W. 34<sup>th</sup> St. Boca Raton, FL 33434 <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p>	<p>Pamela Beth Simon 950 N. Michigan Ave., Apt. 2603 Chicago, IL 60611 <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p>	<p>Lisa Friedstein and Carley Friedstein, Minor c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian 2142 Churchill Lane Highland Park, IL 60035 <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a> <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a> Beneficiary</p>
<p>Jill Iantoni and Julia Iantoni, a Minor c/o Guy and Jill Iantoni, her Parents &amp; Natural Guardians 2101 Magnolia Lane Highland Park, IL 60035 <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p>		

IN THE CIRCUIT COURT FOR PALM BEACH  
COUNTY, FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

SIMON L. BERNSTEIN  
Deceased.

FILE NO: 502012CP004391XXXXSB

**INVENTORY BY BRIAN M. O'CONNELL, AS  
SUCCESSOR PERSONAL REPRESENTATIVE**

The undersigned Successor Personal Representative of the estate of SIMON L. BERNSTEIN, deceased, who died September 12, 2012 submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of this Personal Representative:<sup>1</sup>

REAL ESTATE IN FLORIDA -- Exempt (Protected) Homestead: NONE

REAL ESTATE IN FLORIDA -- Non Exempt Homestead: NONE

*(Whether or not homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)*

OTHER REAL ESTATE IN FLORIDA: NONE

Total Real Estate in Florida -- Except Exempt (Protected) Homestead \$ 0.00

<sup>1</sup> This Inventory reports all assets which have come into the possession and knowledge of the undersigned as Successor Personal Representative as of this date. The undersigned plans on conducting discovery as to possible additional assets and an Amended Inventory will be filed, if necessary.



PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
Sabadell Bank – estate checking account # 15346	\$ 11,735.84
JP Morgan – estate checking account	25,531.59
JP Morgan – estate inherited IRA account # 8004	559,217.78
Promissory Note dated July 1, 2008, payable to Decedent by Bernstein Family Realty LLC	365,000.00
Jewelry (as of 5/14/13 appraisal by A. Matteini & Co.)	63,205.00
Furniture & furnishings (as of 1/22/13 appraisal by Robert A. Hittel)	51,135.00
Reimbursements owed to the Estate by Bernstein Family Realty LLC for expenses and legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	25,500.00
Reimbursements owed to the Estate by the Simon Bernstein Insurance Trust for legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	20,000.00
LIC Holdings, Inc. (Company stock held at corporate office per Schedule E of the Amended Accounting of Curator)	Unknown
Objection to the Final Accounting of Personal Representative for the time period of September 13, 2012 through February 28, 2014, dated August 13, 2014	Unknown
Claim for insurance proceeds pending under <u>Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company, Case Number 13 cv 3643 (N.D. Ill., E. Div.)</u>	Unknown
Total Personal Property – Wherever Located	\$1,121,325.21

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE

(Except exempt (protected) homestead)

\$ 1,121,325.21

All real estate located outside the State of Florida owned by the decedent of which the Personal Representative is aware, if any, is described on a schedule attached hereto, [If none, so indicate]

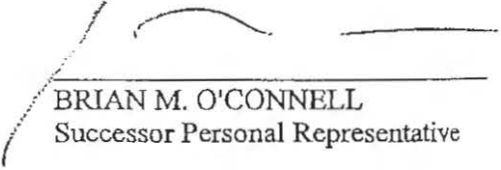
NONE KNOWN AT THIS TIME.

*NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the Personal Representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.*

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on December 1, 2014.

  
94238  
ASHLEY N. CRISPIN  
Florida Bar # 37495  
FOR  
CIKLIN, LUBITZ, MARTENS, & O'CONNELL  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Telephone No. (561) 832-5900  
Facsimile: (561) 833-4209  
Primary e-mail: [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
Secondary email: [probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

  
BRIAN M. O'CONNELL  
Successor Personal Representative

[Print or Type Names Under All Signature Lines]



CBIZ MHM, LLC

Simon Bernstein Estate (1040)  
c/o Ciklin Lubitz Martens & O'Connell  
Attn: Brian O'Connell  
515 North Flager Drive, 20th Floor  
West Palm Beach, FL 33401

Invoice No. 117692  
Date 07/09/2014  
Client No. 4001350.0  
Total Amount Due \$ 11,397.80

TO INSURE PROPER CREDIT, PLEASE WRITE INVOICE NUMBER ON CHECK

**Professional Services Rendered Through June 30, 2014**

Accumulation and analysis of Information and preparation of U.S. Fiduciary Tax Return (Form 1041) for 2012.

Numerous communications with Attorney and Curator for information to file a complete and proper tax return.

\$ 11,397.80

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
11,397.80	0.00	0.00	0.00	0.00	11,397.80

Invoice Due Upon Receipt

Payments Received Are Posted Through Above Invoice Date

Client Name: Simon Bernstein Estate (1040)  
Invoice No.: 117692

Client No: 4001350  
Invoice Date: 07/09/2014

**Make check payable to: CBIZ MHM, LLC**  
Remit payment to: PO Box 953152, St. Louis, MO 63195-3152  
Ph: 561.994.5050 - F: 561.241.0071 - www.cbizsouthflorida.com

A finance charge of 1.5% per month will be added to any unpaid balance over 60 days from invoice date.





CBIZ MHM, LLC

Estate of Simon Bernstein (1041)  
c/o Ciklin Lubitz Martens & O'Connell  
Attn: Brian O'Connell  
515 North Flager Drive, 20th Floor  
West Palm Beach, FL 33401

Invoice No. 117691  
Date 07/09/2014  
Client No. 4001350.101  
Total Amount Due \$ 18,489.95

TO INSURE PROPER CREDIT, PLEASE WRITE INVOICE NUMBER ON CHECK

**Professional Services Rendered Through June 30, 2014**

Accumulation and analysis of information and preparation of U.S. Fiduciary Tax Return (Form 1041) for 2012.

Completion of Form 8855.

Accumulation of information and preparation of Extension Form.

Numerous communications with Attorney Robert Spallina, Curator Ben Brown and Ted Bernstein for information necessary to properly prepare the above mentioned return.

\$ 18,489.95

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
18,489.95	0.00	0.00	0.00	0.00	18,489.95

Invoice Due Upon Receipt  
Payments Received Are Posted Through Above Invoice Date

Client Name: Estate of Simon Bernstein (1041)

Client No: 4001350

Invoice No.: 117691

Invoice Date: 07/09/2014

**Make check payable to: CBIZ MHM, LLC**

Remit payment to: PO Box 953152, St. Louis, MO 63195-3152

Ph: 561.994.5050 ~ F: 561.241.0071 ~ www.cbizsouthflorida.com

*A finance charge of 1.5% per month will be added to any unpaid balance over 60 days from invoice date.*



Estate of Simon Bernstein  
Invoice# 117691 dated 7/9/2014

Date	Employee	Cat	Memo
12/10/2013	THIERMAN	TAX	talk Linda, go through files to make sure all assets, call with Broker to go over all accounts at JP Morgan, emails
12/11/2013	THIERMAN	TAX	emails, talk to Robert Spallina re variety of issues-see emails; research re estimated tax filing requirements for trusts that received distributions from estate for 2013.
12/12/2013	DEROSA/L	TAX	Organize information, prepare schedule of JPM account showing deposits and withdrawals
12/12/2013	DEROSA/L	TAX	Prepare 1041, go over return w/Abby
12/12/2013	THIERMAN	TAX	extension; go over issues with Marc
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12/13/2013	THIERMAN	TAX	check on extension
12/16/2013	DEROSA/L	TAX	Verify that extension was mailed Friday, track down proof of mailing.
12/20/2013	DEROSA/L	TAX	Add additional information to tax return, start to clear review points, start to clear diagnostics
1/23/2014	MESSURI	TAX	Telephone call with Ted re spallina issues. Discussed with staff to not communicate with Tescher & Spallina
3/25/2014	MESSURI	TAX	email to Ted re status of things
4/10/2014	MESSURI	TAX	email response to new atty. met with abby re email
4/21/2014	MESSURI	TAX	Discuss with Aby prior to conf call with new atty
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4/29/2014	THIERMAN	TAX	email Robert Spallina and copy Ben Brown re open items for 1041 and 1040.
4/29/2014	MESSURI	TAX	met with Abby on issues
4/29/2014	DEROSA/L	TAX	Look for 2012 tax information, check with Anthony and Abby. Discuss form 8855 with Abby and print information sent by curator.
4/30/2014	DEROSA/L	TAX	Sort thru workpapers, make changes t tax return; Prepare form 8855 for Abby to send to Curator for filing
4/30/2014	THIERMAN	TAX	Form 8855 send to ben brown
5/1/2014	THIERMAN	TAX	8855 - email from curator
5/5/2014	DEROSA/L	TAX	Start to organize workpapers
5/8/2014	MESSURI	TAX	discuss ith Abby & email to Ted Form for his signature
5/8/2014	DEROSA/L	ACCT	Organize all data, add barcodes for scanning, make additional changes to return send return to scanning. Discuss some open items with Abby and make phone call with Abby to Robert Spallina regarding questionable expenses.
5/9/2014	DEROSA/L	ACCT	Go thru Accounting of Personal Representative and determine if there were any additional expenses that need to be included on tax return.

Estate of Simon Bernstein  
Invoice# 117691 dated 7/9/2014

Date	Employee	Cat	Memo
5/12/2014	DEROSA/L	TAX	Prepare schedules of expenss received from attomeys in their final accounting. Make changes to the return, send to Abby for final review. Several phone calls and discussions w/Abby regarding changes.
5/12/2014	LEWIS	TAX	assist Abby
5/13/2014	MESSURI	TAX	Review Comments
5/13/2014	THIERMAN	TAX	talk Marc, talk Robert Spallina, talk Ben Brown; issues re capital account, expenses from accounting; updating return 8855
5/15/2014	PERGAMENT	TAX	Return Processing
5/15/2014	PERGAMENT	TAX	Return Processing
5/16/2014	MESSURI	TAX	prepare tax return backup to send to atty. Per Abby Request
5/16/2014	THIERMAN	TAX	workpapers
5/20/2014	MESSURI	TAX	met with abby re estate & docs to provide to curator
6/5/2014	MESSURI	TAX	Email 2012 w/p's to curator ben Brown
6/9/2014	MESSURI	TAX	email to mark re curator request for returns. emial to curator to confirm returns he is requesting.
6/9/2014	THIERMAN	TAX	re prior year returns
6/10/2014	MESSURI	TAX	Email to Ben Brown copies of 2007 - 2011 Form 100 for Simon & Shirley
6/24/2014	THIERMAN	TAX	email from Ben Brown- email to Anthony re IRA
		Total Hours	80.60
		Total Billing	18,489.95

IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:  
SIMON L. BERNSTEIN,  
Deceased.

PROBATE DIVISION  
FILE NO: 502012CP4391XXXXSB IH

---

**SUPPLEMENTAL PETITION FOR INSTRUCTIONS AND REVIEW OF  
COMPENSATION OF ACCOUNTANTS' FEES AND COSTS**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Successor Personal Representative" or "Mr. O'Connell" and "Decedent", respectively), hereby files this Supplemental Petition for Instructions and Review of Compensation of Accountants' Fees and Costs pursuant to Fla. Stat. § 733.6175, and, in support, states as follows:

1. The Decedent, a resident of Palm Beach County, Florida, died on September 12, 2012, with an Estate ("Estate"), subject to probate in the State of Florida, with a total inventory value of \$1,121,325.21. See a copy of the Inventory attached hereto as Exhibit "A."
2. The Will of Mr. Bernstein named two personal representatives, Robert L. Spallina ("Spallina") and Donald R. Tescher ("Tescher").
3. On July 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative of the Estate.
4. Upon information and belief, CBIZ MHM, LLC ("CBIZ"), an accounting firm, was retained by co-personal representatives, Tescher and Spallina, on behalf of the Estate.
5. According to the invoices submitted by CBIZ, the Estate has incurred approximately \$53,345.09 in fees and costs, plus finance charges for the following:
  - Accumulation and analysis of information and preparation of U.S. Fiduciary Tax Return (Form 1041) for 2012 and Form 1040 for 2012

IN RE: Estate of SIMON L. BERNSTEIN  
File No.: 502012CP004391XXXXSB IH  
Supp Pet for Instructions and Review of  
Compensation of Accountants' Fees and Costs

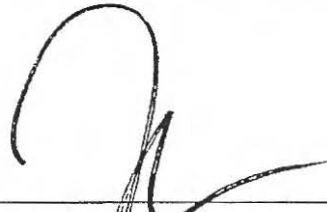
- Numerous communications with Attorney and Curator for information to file a complete and proper tax return;
- Completion of Form 8855;
- Accumulation of information and preparation of Extension Form; and
- Numerous communications with Attorney Robert Spallina, Curator Ben Brown and Ted Bernstein for information necessary to properly prepare the above mentioned return.

See Composite Exhibit "B," attached hereto.

6. Mr. O'Connell requests the Court for instructions regarding payment to CBIZ, and to review the reasonableness of the compensation charged by CBIZ for its services to the Estate for 2012 as set forth on Exhibit "B."

WHEREFORE, BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN, respectfully requests this Court for instructions and to review the reasonableness of the compensation charged by CBIZ MHM, LLC for its accounting services provided to the Estate for 2012 and/or for an Order authorizing the Successor Personal Representative to pay CBIZ MHM, LLC for such services, and for attorneys' fees and costs and any further relief as this Court deems just and proper.

I HEREBY CERTIFY that a true and correct of the foregoing was furnished via the Court's e-filing portal or by U.S. Postal Service to counsel and parties of record listed on the attached Service List this 22<sup>nd</sup> day of July, 2016.



---

BRIAN M. O'CONNELL  
Florida Bar No: 308471  
ASHLEY CRISPIN ACKAL  
Florida Bar No.: 037495  
JOIELLE A. FOGLIETTA  
Florida Bar No. 94238  
Ciklin Lubitz & O'Connell

IN RE: Estate of SIMON L. BERNSTEIN  
File No.: 502012CP004391XXXXSB IH  
Supp Pet for Instructions and Review of  
Compensation of Accountants' Fees and Costs

515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Telephone: 561-832-5900  
Facsimile: 561-833-4209  
primary e-mail: [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
secondary e-mail: [probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

IN RE: Estate of SIMON L. BERNSTEIN  
 File No.: 502012CP004391XXXXSB IH  
 Supp Pet for Instructions and Review of  
 Compensation of Accountants' Fees and Costs

**SERVICE LIST**

<p>Alan B. Rose, Esq.          Page, Mrachek, Fitzgerald &amp;          Rose, PA.          505 S. Flagler Dr., Suite 600          West Palm Beach, FL 33401          (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a></p> <p><b>Attorney for Ted S. Bernstein</b></p>	<p>John P. Morrissey, Esq.          330 Clematis St., Suite 213          West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p> <p><b>Attorney for Molly Simon et al</b></p>	<p>Donald R. Tescher, Esq.          Tescher &amp; Associates, P.A.          925 S. Federal Highway          Suite 500          Boca Raton, FL 33432          (561) 997-7008  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a></p> <p><b>Former PR of the Estate of          Simon L. Bernstein</b></p>
<p>Peter Feaman, Esq.          Peter M. Feaman, P.A.          3695 Boynton Beach Blvd., Suite          9          Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p> <p><b>Attorney for William          Stansbry</b></p>	<p>Shendell &amp; Pollock, P.L.          2700 N. Military Trail, suite 150          Boca Raton, FL 33431          241-2323 Fax: 241-2330          Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Matthew A. Tomincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p> <p><b>Attorney for Tescher and Spallina</b></p>	<p>Max Friedstein          2142 Churchill Lane          Highland Park, IL 60035</p> <p><b>Beneficiary</b></p>
<p>Eliot Bernstein and          Joshua, Jacob and Daniel          Bernstein, Minors          c/o Eliot and Candice Bernstein,          Parents and Natural Guardians          2753 N.W. 34<sup>th</sup> St.          Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p> <p><b>Pro Se</b></p>	<p>Pamela Beth Simon          950 N. Michigan Ave., Apt. 2603          Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p><b>Beneficiary</b></p>	<p>Lisa Friedstein and          Carley Friedstein, Minor          c/o Jeffrey and Lisa Friedstein          Parent and Natural Guardian          2142 Churchill Lane          Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p> <p><b>Beneficiary</b></p>
<p>Jill Iantoni and          Julia Iantoni, a Minor          c/o Guy and Jill Iantoni, her          Parents &amp; Natural Guardians          2101 Magnolia Lane          Highland Park, IL 60035  <a href="mailto:jilliantoni@gmail.com">jilliantoni@gmail.com</a></p> <p><b>Beneficiary</b></p>	<p>Brian M. O'Connell, Esq.          Ashley Crispin Ackal, Esq.          Ciklin Lubitz &amp; O'Connell          515 N. Flagler Dr., 20<sup>th</sup> FL          West Palm Beach, FL 33401  <a href="mailto:service@ciklinlubitz.com">service@ciklinlubitz.com</a>  <a href="mailto:probateservice@ciklinlubitz.com">probateservice@ciklinlubitz.com</a></p> <p><b>PR of the Estate of Simon L.          Bernstein</b></p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p> <p><b>Former PR of the Estate of          Simon L. Bernstein</b></p>

IN THE CIRCUIT COURT FOR PALM BEACH  
COUNTY, FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

SIMON L. BERNSTEIN  
Deceased.

FILE NO: 502012CP004391XXXXSB

**INVENTORY BY BRIAN M. O'CONNELL, AS  
SUCCESSOR PERSONAL REPRESENTATIVE**

The undersigned Successor Personal Representative of the estate of SIMON L. BERNSTEIN, deceased, who died September 12, 2012 submits this inventory of all the property of the estate, that has come into the hands, possession, control, or knowledge of this Personal Representative:<sup>1</sup>

REAL ESTATE IN FLORIDA -- Exempt (Protected) Homestead: NONE

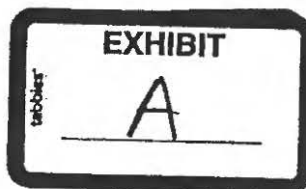
REAL ESTATE IN FLORIDA -- Non Exempt Homestead: NONE

*(Whether or not homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)*

OTHER REAL ESTATE IN FLORIDA: NONE

Total Real Estate in Florida -- Except Exempt (Protected) Homestead \$ 0.00

<sup>1</sup> This Inventory reports all assets which have come into the possession and knowledge of the undersigned as Successor Personal Representative as of this date. The undersigned plans on conducting discovery as to possible additional assets and an Amended Inventory will be filed, if necessary.



PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
Sabadell Bank -- estate checking account # 15346	\$ 11,735.84
JP Morgan -- estate checking account	25,531.59
JP Morgan -- estate inherited IRA account # 8004	559,217.78
Promissory Note dated July 1, 2008, payable to Decedent by Bernstein Family Realty LLC	365,000.00
Jewelry (as of 5/14/13 appraisal by A. Matteini & Co.)	63,205.00
Furniture & furnishings (as of 1/22/13 appraisal by Robert A. Hittel)	51,135.00
Reimbursements owed to the Estate by Bernstein Family Realty LLC for expenses and legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	25,500.00
Reimbursements owed to the Estate by the Simon Bernstein Insurance Trust for legal fees per Schedule D of the T&S Accounting and per Schedule E of the Amended Accounting of Curator	20,000.00
LIC Holdings, Inc. (Company stock held at corporate office per Schedule E of the Amended Accounting of Curator)	Unknown
Objection to the Final Accounting of Personal Representative for the time period of September 13, 2012 through February 28, 2014, dated August 13, 2014	Unknown
Claim for insurance proceeds pending under <u>Simon Bernstein Irrevocable Trust DTD 6/21/95 v. Heritage Union Life Insurance Company</u> , Case Number 13 cv 3643 (N.D. Ill., E. Div.)	Unknown
Total Personal Property -- Wherever Located	\$1,121,325.21

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE

(Except exempt (protected) homestead) \$ 1,121,325.21

All real estate located outside the State of Florida owned by the decedent of which the Personal Representative is aware, if any, is described on a schedule attached hereto, [If none, so indicate]

NONE KNOWN AT THIS TIME.

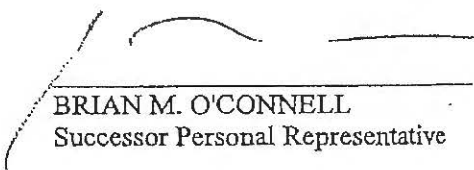


*NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the Personal Representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.*

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on December 1, 2014.

*FOR*  
  
94238  
\_\_\_\_\_  
ASHLEY N. CRISPIN  
Florida Bar # 37495  
CIKLIN, LUBITZ, MARTENS, & O'CONNELL  
515 North Flagler Drive, 20<sup>th</sup> Floor  
West Palm Beach, FL 33401  
Telephone No. (561) 832-5900  
Facsimile: (561) 833-4209  
Primary e-mail: [service@ciklinlubitz.com](mailto:service@ciklinlubitz.com)  
Secondary email: [probateservice@ciklinlubitz.com](mailto:probateservice@ciklinlubitz.com)

  
\_\_\_\_\_  
BRIAN M. O'CONNELL  
Successor Personal Representative

[Print or Type Names Under All Signature Lines]

RECEIVED  
JUL 21 2016

Simon Bernstein  
c/o Ciklin Lubitz Martnes & O'Connell  
Attn: Brian O'Connell  
515 North Flagler Drive, 20th Floor  
West Palm Beach, FL 33401

Statement Date: 07/18/2016

Client No.: 243070

STATEMENT

Invoice	Date	Description	Charge	Credit	Balance
Current Activity Through 07/18/2016					
117692	07/09/2014	Invoice	\$11,397.80	\$0.00	\$11,397.80
INTEREST	06/15/2016	Finance Charge	\$168.16	\$0.00	\$168.16
INTEREST	07/15/2016	Finance Charge	\$173.77	\$0.00	\$173.77
Current Balance					<u>\$11,739.73</u>

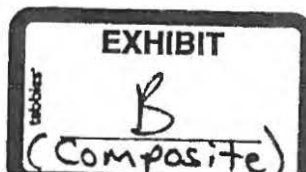
Thank You

You may receive invoices from Mayer Hoffman McCann P.C. for attest services and invoices from CBIZ for accounting tax and advisory services as set forth on the invoices. For your convenience you may pay with one check payable to CBIZ MHM, LLC

Please include the client number and invoice number with your payment:

Client No.: 243070

Amount: \_\_\_\_\_





CBIZ MHM, LLC

Simon Bernstein Estate (1040)  
c/o Ciklin Lubitz Martens & O'Connell  
Attn: Brian O'Connell  
515 North Flager Drive, 20th Floor  
West Palm Beach, FL 33401

Invoice No. 117692  
Date 07/09/2014  
Client No. 4001350.0  
Total Amount Due \$ 11,397.80

TO INSURE PROPER CREDIT, PLEASE WRITE INVOICE NUMBER ON CHECK

**Professional Services Rendered Through June 30, 2014**

Accumulation and analysis of information and preparation of U.S. Fiduciary Tax Return (Form 1041) for 2012.

Numerous communications with Attorney and Curator for information to file a complete and proper tax return.

\$ 11,397.80

0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
11,397.80	0.00	0.00	0.00	0.00	11,397.80

**Invoice Due Upon Receipt**

Payments Received Are Posted Through Above Invoice Date

Client Name: Simon Bernstein Estate (1040)  
Invoice No.: 117692

Client No: 4001350  
Invoice Date: 07/09/2014

**Make check payable to: CBIZ MHM, LLC**  
Remit payment to: PO Box 953152, St. Louis, MO 63195-3152  
Ph: 561.994.5050 ~ F: 561.241.0071 ~ www.cbizsouthflorida.com

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Estate of Simon Bernstein  
c/o Ciklin Lubitz Martnes & O'Connell  
Attn: Brian O'Connell  
515 North Flagler Drive, 20th Floor  
West Palm Beach, FL 33401

RECEIVED  
JUL 21 2016

Statement Date: 07/18/2016

Client No.: 247475

**STATEMENT**

<i>Invoice</i>	<i>Date</i>	<i>Description</i>	<i>Charge</i>	<i>Credit</i>	<i>Balance</i>
<b>Current Activity Through 07/18/2016</b>					
117691	07/09/2014	Invoice	\$18,489.95	\$0.00	\$18,489.95
INTEREST	06/15/2016	Finance Charge	\$272.80	\$0.00	\$272.80
INTEREST	07/15/2016	Finance Charge	\$281.90	\$0.00	\$281.90
<b>Current Balance</b>					<b>\$19,044.65</b>

**Thank You**

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**Please include the client number and invoice number with your payment:**

**Client No.:** 247475

**Amount:** \_\_\_\_\_



CBIZ MHM, LLC

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0 - 30	31 - 60	61 - 90	91 - 120	Over 120	Balance
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Client No: 4001350

Invoice No.: 117691

Invoice Date: 07/09/2014

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Invoice# 117691 dated 7/9/2014

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5/1/2014	THIERMAN	TAX	8855 - email from curator
5/5/2014	DEROSA/L	TAX	Start to organize workpapers
5/8/2014	MESSURI	TAX	discuss lth Abby & email to Ted Form for his signature
5/8/2014	DEROSA/L	ACCT	Organize all data, add barcodes for scanning, make additional changes to return send return to scanning. Discuss some open items with Abby and make phone call with Abby to Robert Spallina regarding questionable expenses.
5/9/2014	DEROSA/L	ACCT	Go thru Accounting of Personal Representative and determine if there were any additional expenses that need to be included on tax return.

Estate of Simon Bernstein  
Invoice# 117691 dated 7/9/2014

Date	Employee	Cat	Memo
5/12/2014	DEROSA/L	TAX	Prepare schedules of expenss received from attorneys in their final accounting. Make changes to the return, send to Abby for final review. Several phone calls and discusslons w/Abby regarding changes.
5/12/2014	LEWIS	TAX	assist Abby
5/13/2014	MESSURI	TAX	Review Comments
5/13/2014	THIERMAN	TAX	talk Marc, talk Robert Spallina, talk Ben Brown; issues re capital account, expenses from accounting; updating return 8855
5/15/2014	PERGAMENT	TAX	Return Processing
5/15/2014	PERGAMENT	TAX	Return Processing
5/16/2014	MESSURI	TAX	prepare tax return backup to send to atty. Per Abby Request
5/16/2014	THIERMAN	TAX	workpapers
5/20/2014	MESSURI	TAX	met with abby re estate & docs to provide to curator
6/5/2014	MESSURI	TAX	Email 2012 w/p's to curator ben Brown
6/9/2014	MESSURI	TAX	email to mark re curator request for returns. emial to curator to confirm returns he is requesting.
6/9/2014	THIERMAN	TAX	re prior year returns
6/10/2014	MESSURI	TAX	Email to Ben Brown copies of 2007 - 2011 Form 100 for Simon & Shirley
6/24/2014	THIERMAN	TAX	email from Ben Brown- email to Anthony re IRA
		Total Hours	80.60
		Total Billing	18,489.95

Bernstein Family Investments, LLLP  
c/o Ciklin Lubitz & O'Connell  
515 N Flagler Drive, 20th Floor  
West Palm Beach, FL 33401

RECEIVED  
JUL 21 2016

Statement Date: 07/18/2016

Client No.: 243057

**STATEMENT**

<i>Invoice</i>	<i>Date</i>	<i>Description</i>	<i>Charge</i>	<i>Credit</i>	<i>Balance</i>
<b>Current Activity Through 07/18/2016</b>					
104463	01/10/2013	Invoice	\$209.40	\$0.00	\$209.40
112664	11/27/2013	Invoice	\$19,994.20	\$0.00	\$19,994.20
117738	07/11/2014	Invoice	\$1,700.00	\$0.00	\$1,700.00
INTEREST	06/15/2016	Finance Charge	\$323.17	\$0.00	\$323.17
INTEREST	07/15/2016	Finance Charge	\$333.94	\$0.00	\$333.94
<b>Current Balance</b>					<b>\$22,560.71</b>

**Thank You**

You may receive invoices from Mayer Hoffman McCann P.C. for attest services and invoices from CBIZ for accounting tax and advisory services as set forth on the invoices. For your convenience you may pay with one check payable to CBIZ MHM, LLC

**Please include the client number and invoice number with your payment:**

**Client No.:** 243057

**Amount:** \_\_\_\_\_



**CBIZ MHM, LLC**

PO Box 953152  
St. Louis, MO 63195-3152  
Ph: 561-994-5050 F: 561-241-0071

Bernstein Family Investments LLLP  
c/o Ciklin Lubitz & O'Connell  
515 N Flagler Drive, 20th Floor  
West Palm Beach, FL 33401

Statement Date 2/29/2016  
Client No. 4002518.0

<b>Date</b>	<b>Description</b>	<b>Charge</b>	<b>Credit</b>	<b>Balance</b>
	Balance Forward			21,903.60
			<b>Current Balance</b>	<b>\$ 21,903.60</b>

<b>0 - 30</b>	<b>31 - 60</b>	<b>61 - 90</b>	<b>91 - 120</b>	<b>Over 120</b>	<b>Balance</b>
0.00	0.00	0.00	0.00	21,903.60	\$ 21,903.60

To ensure proper credit, please reflect invoice number on check, make check payable to:  
CBIZ MHM LLC (Boca GL) and remit payment to: PO Box 953152, St. Louis, MO 63195-3152.

*Payments received are posted through February 29, 2016*

Select Year:  

## The 2016 Florida Statutes

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[Title XLII](#)[Chapter 733](#)[View Entire Chapter](#)

### ESTATES AND TRUSTS PROBATE CODE: ADMINISTRATION OF ESTATES

**733.6175** Proceedings for review of employment of agents and compensation of personal representatives and employees of estate.—

(1) The court may review the propriety of the employment of any person employed by the personal representative and the reasonableness of any compensation paid to that person or to the personal representative.

(2) Court proceedings to determine reasonable compensation of the personal representative or any person employed by the personal representative, if required, are a part of the estate administration process, and the costs, including attorneys' fees, of the person assuming the burden of proof of propriety of the employment and reasonableness of the compensation shall be determined by the court and paid from the assets of the estate unless the court finds the requested compensation to be substantially unreasonable. The court shall direct from which part of the estate the compensation shall be paid.

(3) The burden of proof of propriety of the employment and the reasonableness of the compensation shall be upon the personal representative and the person employed. Any person who is determined to have received excessive compensation from an estate for services rendered may be ordered to make appropriate refunds.

(4) The court may determine reasonable compensation for the personal representative or any person employed by the personal representative without receiving expert testimony. Any party may offer expert testimony after notice to interested persons. If expert testimony is offered, a reasonable expert witness fee shall be awarded by the court and paid from the assets of the estate. The court shall direct from what part of the estate the fee shall be paid.

History.—s. 2, ch. 76-172; s. 1014, ch. 97-102; s. 143, ch. 2001-226.

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IN THE CIRCUIT COURT IN AND FOR THE 15<sup>TH</sup> JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXSB

Deceased.

ORDER ON SUPPLEMENTAL PETITION FOR INSTRUCTIONS AND REVIEW OF  
COMPENSATION OF ACCOUNTANTS' FEES & COSTS

THIS CAUSE coming before the Court on BRIAN M. O'CONNELL's as Successor Personal Representative of the Estate of Simon L. Bernstein, Supplemental Petition for Instructions and Review of Compensation of Accountants' Fees & Costs ("Supplemental Petition"), the Court having heard argument of counsel, and being otherwise fully advised, it is thereupon

ORDERED AND ADJUDGED that the Supplemental Petition is hereby GRANTED / DENIED. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DONE AND ORDERED in Palm Beach Gardens, Palm Beach County, Florida on this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
ROSEMARY SCHER, Circuit Judge

Copies furnished to:

All Counsel of Record and Parties listed on attached Service List

**SERVICE LIST**

<p>Alan B. Rose, Esq.          Page, Mrachek, Fitzgerald &amp;          Rose, PA.          505 S. Flagler Dr., Suite 600          West Palm Beach, FL 33401          (561) 355-6991  <a href="mailto:arose@mrachek-law.com">arose@mrachek-law.com</a>  <a href="mailto:mchandler@mrachek-law.com">mchandler@mrachek-law.com</a></p> <p><b>Attorney for Ted S. Bernstein</b></p>	<p>John P. Morrissey, Esq.          330 Clematis St., Suite 213          West Palm Beach, FL 33401  <a href="mailto:john@jmorrisseylaw.com">john@jmorrisseylaw.com</a></p> <p><b>Attorney for Molly Simon et al</b></p>	<p>Donald R. Tescher, Esq.          Tescher &amp; Associates, P.A.          925 S. Federal Highway          Suite 500          Boca Raton, FL 33432          (561) 997-7008  <a href="mailto:Dtescher@tescherlaw.com">Dtescher@tescherlaw.com</a>  <a href="mailto:ddustin@tescherlaw.com">ddustin@tescherlaw.com</a></p> <p><b>Former PR of the Estate of Simon L. Bernstein</b></p>
<p>Peter Feaman, Esq.          Peter M. Feaman, P.A.          3695 Boynton Beach Blvd., Suite 9          Boynton Beach, FL 33436  <a href="mailto:pfeaman@feamanlaw.com">pfeaman@feamanlaw.com</a></p> <p><b>Attorney for William Stansbury</b></p>	<p>Shendell &amp; Pollock, P.L.          2700 N. Military Trail, suite 150          Boca Raton, FL 33431          241-2323 Fax: 241-2330          Gary R. Shendell, Esq.  <a href="mailto:gary@shendellpollock.com">gary@shendellpollock.com</a>  <a href="mailto:estella@shendellpollock.com">estella@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Kenneth S. Pollock, Esq.  <a href="mailto:ken@shendellpollock.com">ken@shendellpollock.com</a>  <a href="mailto:britt@shendellpollock.com">britt@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a>          Matthew A. Tornincasa, Esq.  <a href="mailto:matt@shendellpollock.com">matt@shendellpollock.com</a>  <a href="mailto:robyne@shendellpollock.com">robyne@shendellpollock.com</a>  <a href="mailto:grs@shendellpollock.com">grs@shendellpollock.com</a></p> <p><b>Attorney for Tescher and Spallina</b></p>	<p>Max Friedstein          2142 Churchill Lane          Highland Park, IL 60035</p> <p><b>Beneficiary</b></p>
<p>Eliot Bernstein and Joshua, Jacob and Daniel Bernstein, Minors          c/o Eliot and Candice Bernstein, Parents and Natural Guardians          2753 N.W. 34<sup>th</sup> St.          Boca Raton, FL 33434  <a href="mailto:iviewit@iviewit.tv">iviewit@iviewit.tv</a></p> <p><b>Pro Se</b></p>	<p>Pamela Beth Simon          950 N. Michigan Ave., Apt. 2603          Chicago, IL 60611  <a href="mailto:psimon@stpcorp.com">psimon@stpcorp.com</a></p> <p><b>Beneficiary</b></p>	<p>Lisa Friedstein and Carley Friedstein, Minor          c/o Jeffrey and Lisa Friedstein Parent and Natural Guardian          2142 Churchill Lane          Highland Park, IL 60035  <a href="mailto:Lisa@friedsteins.com">Lisa@friedsteins.com</a>  <a href="mailto:Lisa.friedstein@gmail.com">Lisa.friedstein@gmail.com</a></p> <p><b>Beneficiary</b></p>
<p>Jill Iantoni and Julia Iantoni, a Minor</p>	<p>Brian M. O'Connell, Esq.          Ashley Crispin Ackal, Esq.          Ciklin Lubitz &amp; O'Connell          515 N. Flagler Dr., 20<sup>th</sup> FL</p>	<p>Robert Spallina, Esq.  <a href="mailto:rspallina@comcast.net">rspallina@comcast.net</a></p>