

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

U.S.C.A. - 7th Circuit
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APPEAL NO. 17-1461

SIMON BERNSTEIN IRREVOCABLE) Appeal from the United States
INSURANCE TRUST DTD. 6/21/95,) District Court, Northern District of
et al. ,) Illinois, Eastern Division.
Plaintiffs-Appellees,)
V.) LC No. 1:13-CV-O3643
) John Robert Blakey, Judge
HERITAGE UNION LIFE)
INSURANCE CO., et al.,)
Defendants-Appellees.) APPELLANT'S
) JURISDICTIONAL
) MEMORANDUM:
APPEAL OF:)
ELIOT BERNSTEIN,)
Cross and Counter-Claimant-)
)
Appellant.)

APPELLANT - CROSS AND COUNTERPLAINTIFF ELIOT I. BERNSTEIN,
PRO SE, hereinafter referred to as Appellant, respectfully submits the following
Jurisdictional Memorandum in response to this Court's Order of May 14, 2017
Order and shows this court as follows:

Appellant asserts that this Court has federal Appellate Jurisdiction under 28 USC
Sec. 1291 and 28 USC Sec. 1292(a)(1) as set out further herein.

BACKGROUND AND PROCEDURAL SUMMARY

This Statement of Jurisdiction is submitted in response to this Court's Order upon an Appeal of a Memorandum Opinion and Order of the District Court of the Northern District of Illinois, Hon. Judge Robert Blakey, presiding, dated Jan. 30, 2017 which Decided various Summary Judgment motions including Dismissing all of Appellant's claims in the nature of fraud, negligence, breach of fiduciary duty, conversion, abuse of legal process, legal malpractice, and civil conspiracy and also denying Summary Judgment to an Intervenor brought on behalf of the Estate of Simon Bernstein in relation to certain proceeds Deposited into the District Court Registry by an Insurance Carrier totaling just under \$2 Million US Dollars allegedly from a Life Insurance Policy for Appellant's Deceased father Simon Bernstein. See, Docket Entry #273.

As further discussed, this Order was in relation to "the Second Round" of Summary Judgment motions brought by Plaintiffs, this time moving for Summary Judgment dismissing Appellant's claims entirely after the US District Court had found substantial issues of material fact in denying Summary Judgment to the Plaintiffs initial filing.

All of the critical and undeniable material issues of fact raised by Appellant leading up to the Denial of Plaintiffs' Summary Judgment in their favor (on Summary Judgment "Round 1") remained material issues of fact in this "second round" of motions and remain open and existing material issues of fact to this day.

Plaintiffs had never overcome any of these issues of material fact in filing their motion against Appellant in Round 2, notably, that there is no "Trust" produced by Plaintiffs as the alleged Beneficiary of a Life Insurance Policy where Plaintiffs claim the Trust as "lost" or "missing" but Appellant alleges is intentionally "secreted", "withheld" or "destroyed". More importantly, there has been and remains no actual Life Insurance Policy (contract) produced by either the Plaintiffs or the involved Carriers where again Plaintiffs claimed this Policy is "lost" or "missing" despite having gone through a "Reinstatement" shortly prior to the passing of the Insured Simon Bernstein yet where again Appellant has claimed the Policy has been intentionally "secreted", "destroyed" or "withheld" and where this is a "first of its kind" case to Appellant's knowledge where a Carrier has "lost" a Life Insurance Policy being part of a highly regulated industry with rigid Record Keeping requirements. Despite having no actual "Policy" produced with full contractual provisions, riders, amendments and terms and conditions, all Carriers were "let out" of the case by the US District Court (prior Hon. Judge St. Eve) after depositing approximately \$1.7 Million into the Court Registry on an Interpleader complaint. The current US District Court (Hon. Judge Blakey) has repeatedly denied any Depositions and Discovery against the Carriers and denied Appellant's motions to be brought back into the case as parties "necessary" for a full determination on the merits despite evidence

in the Record that the Plaintiffs and their lawyers had communications about seeking or having a “friendly carrier”.

APPELLANT SOUGHT INJUNCTIVE RELIEF AT THE US DISTRICT COURT ON A MOTION UNDER THE ALL WRITS ACT FILED IN FEB. 2016 AND INTENDS TO APPLY AGAIN FOR A STAY AND INJUNCTIVE RELIEF UNDER THE RULES AND RESPECTFULLY URGES THIS COURT TO CAREFULLY EXAMINE THIS MOTION AS A “ROADMAP” TO THE CASE HEREIN

On Feb. 24, 2016 under District Court Docket Entry 214, Appellant had filed a detailed motion for a properly narrowly tailored Injunction under the All Writs act detailing in part how the core parties (and fiduciaries) involved in the District Court action through “extortive, abusive, orchestrated actions of continued abuse of process in the Florida Probate Courts and by the Florida Probate Courts in conspiracy and or acting in concert with fiduciaries, counsel and others that are interfering and threaten to further interfere with this Court’s jurisdiction and the ability to orderly decide the claims before it as there is a real and serious imminent threat and danger that critical evidence, documents, records, Discovery and real and personal properties will be permanently lost imminently preventing this Court from properly adjudicating claims before it while these parties are simultaneously hiding millions of dollars of assets as shown later herein wholly

Unaccounted for and retaliating against and threatening Appellant.” See, Par. 15,
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#:3641.

This motion went on to detail how both Ted Bernstein, the primary Plaintiff in this action claiming to be the “Trustee” of a “lost Trust” which is the “Beneficiary” of a “lost” Life Insurance Policy was also acting in concert with Fiduciary Personal Representative Brian O’Connell of the Estate of Simon Bernstein, to manipulate, control and orchestrate the Discovery and proceedings in the State Court of Florida to gain advantage through improper collateral estoppel by rushing to judgment.

While these parties at least on paper appear to be “adversaries” in the District Court, Appellant showed multiple orchestrated actions where BOTH Fiduciaries had intentionally failed to obtain Florida Court Ordered Discovery from the outgoing PRs and Co-Trustees attorneys Tescher and Spallina who were also the Estate Planners and Drafters for Simon and Shirley Bernstein and who, **presumably, as part of due diligence and common professional practices, would at least have actual copies of the operative documents, Trusts and Life Insurance policies now “alleged” to be “lost” and “missing” in this action.**

Tescher and Spallina had been allowed by the Florida Courts to “resign” from the Florida cases after Appellant filed several Emergency Motions for Injunction and Freezing of Assets after Tescher and Spallina’s office had been caught “forging”

and “falsifying” Notaries and documents under Simon Bernstein’s name and others in the Shirley Bernstein Estate case using Simon Bernstein to sign documents while then Deceased to such a degree that the Florida Judge had said twice on the record he had **sufficient information to read their “Miranda Warnings”**.

The All “Writs Motion for Injunction further detailed **“Missing Millions” unaccounted for, “Missing Originals” from related Trusts and Business entities, “Missing Discovery”, “Missing Witnesses”, failure to provide Accountings for years required by Florida Statutes** and further showed how fiduciary Ted Bernstein and PR Brian O’Connell had not only failed to obtain Court Ordered Discovery from Tescher and Spallina in the Florida State Court cases but had failed to seek Depositions and Discovery from Tescher and Spallina on the central operative documents claimed “lost” in this Insurance Action and **further sought to Enjoin and Preserve Evidence in aid of the District Court’s jurisdiction**. See, Docket Entry 214, Feb. 24, 2016.

While the District Court had Denied the Motion for Injunction under the All Writs finding in part improper Notice procedure used by Appellant, the District Court did not “strike” the pleading as requested by Plaintiffs and kept the All Writs Motion pleading in the Record. See Docket Entry 218, Feb. 25, 2016. The District Court then held several “status” conferences where direct inquiry was made by the District Court into the “status” of Florida proceedings leading Appellant to believe

there would be a basis to “renew” or “rehear” the All Writs Motion for Injunction at a later date.

**PRIOR HON. JUDGE ST. EVE HAD “STAYED” DISCOVERY UNTIL A
“PROPER TRUSTEE” WAS DETERMINED BUT LATER OPENED
DISCOVERY FOR A BRIEF TIME DESPITE NEVER DETERMINING A
PROPER “TRUSTEE”**

Just part of the Appellant’s application for Injunctive relief before the US District Court notified and reminded Hon. Judge Blakey in Paragraph 20 as follows:

“On Jan. 13, 2014 in Docket Entry 71, prior Judge St. Eve issued a Minute Entry Order which provided in part as follows, “**Discovery is hereby stayed until the proper Trustee is determined**” thus acknowledging that determination of a “proper Trustee” is an issue in the case, Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 9 of 132 PageID #:3643 Page 9 of 132 which remains disputed. The Trustee/Trust/Beneficiaries/Policy issues remains undetermined presently **and this Court’s jurisdiction is imminently threatened by the permanent loss of evidence, documents and discovery by the parties orchestrating proceedings in Florida where this evidence and the parties in possession of such evidence should be enjoined herein.**” See, Case: 1:13-cv-03643 Document #: 214 Filed: 02/24/16 Page 9 of 132 PageID #:3643. (emphasis added).

**ONLY EVER SO “MINIMAL” DEPOSITION OF TED BERNSTEIN ON
THE “SEARCH” FOR THE ALLEGED LOST TRUST, POLICY WHILE
NO OTHER**

Hon. Judge St. Eve had issued this “stay” upon Plaintiffs Ted Bernstein not being able to produce a “Trust” which he sued under as alleged “Trustee” claiming lost or missing. Only a very brief Deposition of Ted Bernstein occurred in this case where Appellant was afforded “minimal” time at all to question Ted Bernstein on the alleged “Search” for the “Missing Trust” and documents while multiple other parties should have Depositions on this topic alone such as Tescher & Spallina, Heritage, Jackson, Reassured America, PR Brian O’Connell and others.

Appellant’s claims in the nature of civil conspiracy, breach of fiduciary duties, negligence and abuse of process specifically referenced “delay” of inheritance and delay and denial of proper inheritance rights thus countering any finding that Appellant had not plead or shown “damages” as “delay damages” particularly in Life Insurance cases have been recognized by many Courts and thus Appellant will seek to fully brief the issues upon showing this Court that it has proper Subject Matter Jurisdiction to hear this Appeal.

Appellant appeared by Telephone in the regular course for a “Status Hearing” on Jan. 25, 2017, having been granted permission throughout the case to do so as Appellant lives in Boca Raton, Florida, a considerable distance from Chicago,

Illinois. This "Status Hearing" was set by the District Court on the Court's own Motion rescheduling a prior Status Hearing scheduled for Dec. 9, 2016. See, Docket Entry No. 270: "MINUTE entry before the Honorable John Robert Blakey: On the Court's own motion, the status hearing previously set for 12/9/2016 is reset for 1/25/2017 at 9:45 a.m. in Courtroom 1725. Mailed notice (gel,) (Entered: 12/06/2016)"

At the Jan. 25, 2017 Status Hearing, the Court "announced" that it had made a Decision on the Summary Judgment motions granting the Motion to Dismiss Appellant's claims and Denying the Estate's motion for Summary Judgment but the Decision was not ready yet, that there would be a long written analysis or words to that effect and the parties would receive the Decision soon. The Court then Scheduled ALL PARTIES to appear for a Feb. 21, 2017 Status Hearing to Schedule a Trial. At no time on Jan. 25, 2017 on the Status Conference Call Appellant appeared on did the Court Announce or indicate that Appellant was "Removed" from the case, and in fact Appellant asked the Court to clarify what was ruled upon and again did not Notice Appellant that he was not to Appear on Feb. 21, 2017 Status to Schedule a Trial along with the other parties and instead the District Court again reminded All of the parties of the upcoming Status Conference to "Schedule a Trial".

Appellant made a Jan. 30th, 2017 filing with the District Court under Docket No. 271 notifying the Court of: difficulties Appellant experienced in the last Conference call, Appellant's request to "ensure" the integrity of documents by a recent filing by Plaintiff's attorney Adam Simon due to multiple instances of "false" and "fraudulent" documents in the related actions, notifying the Court of upcoming Hearings in Florida before a new Judge Scher as Judge Phillips who had issued the Orders relied upon by the District Court for "collateral estoppel" had now recently and suddenly "retired" prematurely, and further notifying the Court of "collusion" between the PR of the Simon Bernstein Estate and primary Plaintiff in this action Ted Bernstein and counsel Alan Rose who were continuing to act in "unity" and raising **Conflicts of Interest** as had been raised by Appellant on **multiple occasions in the District Court particularly in a Motion for Injunctive Relief under the All Writs Act filed with the District Court** in Feb. of 2016. See, Docket Entry No. 271; All Writs Act Injunctive Relief Petition in the District Court Docket Entry No. 214, 215, 216.

Appellant did receive a copy of the Memorandum Opinion and Order which came out later on the same day Jan. 30, 2017 being on the Electronic ECF System with the District Court as Appellant had been granted permission to File Electronically in the District Court and receive Electronic Notices which typically is much easier being Pro se and not having to go to the Mail to file each document. The **express**

terms of the Summary Judgment Memorandum **did not Notify Appellant that he was somehow being “fully removed” from the case** and simply ended with:

“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.” See Docket Entry No. 273.

THE SUMMARY JUDGMENT DID NOT ADDRESS APPELLANT’S STATUS AS A DEFENDANT SUED IN THE INTERPLEADER

It is noted that Appellant was “sued” into the District Court action as a Defendant in an Interpleader action filed by insurance Carrier Jackson upon Removal to Federal Court by Jackson as Appellant is a natural child to Simon Bernstein with a potential claim to the proceeds and the Summary Judgment motions did not address or discuss in any way Appellant’s status as a Defendant in the Interpleader. Appellant had raised on multiple occasions in the District Court that **this status as a Defendant in the “Interpleader” action was Prejudicial as Appellant** became limited in pursuing Counterclaims, Cross claims and causes of action and should have been included as a proper Party in Plaintiffs’ original actions. See, Docket Entry No. 17 of June 26, 2013 Jackson Answer and Counterclaim for Interpleader action and Docket No. 273, the Memorandum Opinion and Order.

INSURANCE CARRIERS CHANGING “OWNERSHIP” IN LESS THAN 45 DAYS OF BEING SUED, NO “SUCCESSOR” INFORMATION PROVIDED AND RELEASED FROM THE ACTION WITH NO ACTUAL “POLICY” PROVIDED OVER OBJECTIONS OF APPELLANT:

As this Court will see, the Insurance Carrier sued by the Plaintiffs in the Cook County State Court “breach of contract” action was Heritage Union Life Insurance Company allegedly of Jacksonville, Illinois, being allegedly a Minnesota Corporation. See, Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13 Page 1 of 5 PageID #:4, showing Heritage sued as of April 5, 2013.

Despite being a natural child and natural Heir of Simon Bernstein, Appellant was not Named as a Party Plaintiff in the original Cook County State Court action Complaint that was Removed to Federal Court. Appellant had no knowledge that this action had even been filed **and in fact, none of the 5 children of Simon Bernstein were named as Parties or referenced in the original Cook County action** as at least Ted Bernstein was involved in this original action together with attorney Adam Simon suing under an alleged Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 with Ted Bernstein *claiming to be “Trustee” of a Trust which to this very day has never been Produced to the Court or parties, another allegedly “Missing” - “Lost” document in the Estates and Trusts of Simon and Shirley Bernstein.*

Yet, the Carrier who “removed” the action to Federal Court that Appellant was sued by in this Interpleader action is Jackson National Life Insurance Company, allegedly a Michigan corporation who claims to be “Successor in Interest” to “Reassure America Life Insurance Company”, a Dallas, Texas company who

allegedly is the “Successor in Interest” to Heritage. This occurred just over a month later on May 16, 2013 yet none of the Jackson filings show any Documentary proof of acquiring Reassure America or Heritage or the Successor information. See, Docket Entries No. 1, 4. 7. 17.

While the District Court Docket in some instances refers to “Heritage” as the filing party, the actual filing party is “Jackson”. See, example, Docket Entries No. 9, 10.

Further, “Jackson” filed a Notice of Appearance by Attorney Alexander David Marks (Docket Entry No. 3), while “Heritage” filed an Attorney Appearance Notice for Frederic A. Mendelsohn (Docket Entry No. 12).

Allegedly, an “AGREED ORDER” to Tender “Insurance Proceeds” into the Court was made on June 25, 2013, **BEFORE APPELLANT HAD EVEN BEEN “SUMMONED” TO APPEAR IN THE CASE.** SEE Docket Entry No. 16.

Appellant was first Summoned into the case the next day, June 26, 2013. See **6-26-13 Docket Entry With NO Docket Entry Number** after Docket Entry No. 18.

NOTE: NO CARRIER OR PARTY TO THE DISTRICT COURT ACTION HAS TENDERED OR PROVIDED AN ACTUAL LEGALLY BINDING LIFE INSURANCE POLICY, EITHER ORIGINAL, COPY OR OTHERWISE THAT IS ALLEGED TO BE THE SIMON BERNSTEIN LIFE INSURANCE POLICY NO. 100928,

Yet somehow the District Court below “accepted” the funds into the Registry as “Policy Proceeds” prior to Appellant’s entry into the case. To Appellant’s

knowledge, **this would be the first time in Industry History** that a Life Insurance carrier and Reinsurer “lost the policy” as the Industry is highly regulated with extensive Record Retention Rules.

Appellant asserts this is all part of the “insurance fraud” scheme which has been reported to Federal and State authorities. As shown by the Docket and Records of the case, there has been virtually **NO DISCOVERY allowed** on Record Retention practices and where the Policy is or has been although Appellant has repeatedly sought Discovery in the District Court.

Both Ted Bernstein suing as alleged “Trustee” of an alleged “lost” Trust and Attorney Adam Simon failed to notify the District Court or the Cook County Court that Ted Bernstein’s “other” Attorney Robert Spallina had attempted to claim the Policy proceeds first as “Trustee” of the same “lost trust” without Notifying the Insurance Carrier of allegations of possible “Murder” of Simon Bernstein made by Ted Bernstein at the Hospital on the Night of Simon Bernstein’s Passing and “Investigated” by the Palm Beach County Sheriff’s Office on Ted Bernstein’s Request and the Palm Beach Coroner’s office and Spallina was denied his claim by the carrier as he could not produce a trust showing he was Trustee;

The underlying original “action” was filed as a “breach of contract” action that was “removed” to Federal Court which was first filed in Cook County by attorney Adam Simon on behalf of Ted Bernstein who was now acting as the alleged “Trustee” of the alleged “Simon Bernstein Irrevocable Insurance Trust dated 6-21-95” not Spallina.

Par. 12 of the Complaint in Cook County falsely claims that “the BERNSTEIN TRUST, by and through its counsel in Palm Beach County, FL, submitted a death

claim to HERITAGE” yet fails to state that this “counsel”, one Robert Spallina, actually filed to get the death benefits paid acting also as “TRUSTEE” of this “Bernstein Trust” **which is also allegedly “missing” and “lost”**. See Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13 Page 2 of 5 PageID #:5

Par. 13 further goes on to state, “The Policy, by its terms, obligates HERITAGE to pay the death benefits to the beneficiary of the policy . . .” See,

Par. 14 continues that “HERITAGE has breached its obligations under the policy by refusing and failing to pay the Policy’s death benefits to the BERNSTEIN TRUST as beneficiary under the policy . . .” See, Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13 Page 3 of 5 PageID #:6

Upon information and belief, **at no time did Attorney Spallina notify the Carrier that allegations of possible “Murder” had been made by his client Ted Bernstein on the night of Simon’s Bernstein’s passing** such that not only was Appellant “blocked” by Hospital Security from initially getting back in to see Simon at the Hospital as he lay dying in a Code Blue recession state, but **further that the Palm Beach Sheriff’s Office hours later showed up at the Simon Bernstein home to “Investigate” the allegations of Murder which had not been “closed” at the time the death benefits were sought and Ted summoned the coroner to conduct an autopsy.**

The original Complaint *also does not allege that both the Policy and Trust were “lost” or “missing”*. See, Case: 1:13-cv-03643 Document #: 1-1 Filed: 05/16/13.

SIMON BERNSTEIN HOME COMPUTERS “WIPE CLEAN” ON THE NIGHT OF HIS PASSING ALLEGED AS A POSSIBLE “MURDER” WHILE OTHER DOCUMENTS GO OUT OF THE “HOME SAFE” ON THE NIGHT OF PASSING ALLEGEDLY TO TED BERNSTEIN VIA RACHEL WALKER; SIMON’S BODY THEREAFTER “GOES MISSING” AFTER BEING SENT FOR AUTOPSY AND REPORTS COME BACK WITH ELEVATED HEAVY METALS LEVEL BUT OF A 113 YEAR OLD MAN

See, All Writs Motion for Injunction (Docket Entry No. 214) and related filings for details on Simon Bernstein’s Home Computers found “wiped clean” on the night of his passing and his Body then “going missing” for a week after Palm Beach Sheriff’s Office (PBSO) investigating possible “Murder” which was not reported by Plaintiff Ted Bernstein or his stable of counsels to the Insurance Carriers.

This action has a complicated procedural history being first originally heard before US District Judge Hon. St. Eve starting on or around May of 2013 and then US District Judge Hon. Robert Blakey who was Assigned the case beginning on or around January 15, 2015. Throughout this time, related Estate Probate and Trust actions have been ongoing in the State of Florida in the Fifteenth Judicial Circuit in Palm Beach County where Appellant moved residency to several years ago from California at the specific request of his now deceased parents Shirley and Simon Bernstein who wanted to be close to Eliot, his wife and three children, Simon and

Shirley, who are originally from the Chicago, Illinois area for many years until moving to Boca Raton, Florida.

Simon Bernstein was a successful businessman in the Insurance industry since the 1970s, had earned tens of millions of dollars during his lifetime, set up multiple companies and eventually moved to Boca Raton, Florida with his wife Shirley who was also Appellant's natural mother.

Successes and Properties of Simon and Shirley Bernstein

Through these successes, Simon and Shirley Bernstein came to own several insurance businesses, trust companies, fully paid for real estate including an Oceanfront condo in Boca Raton, FL and Estate home in the prestigious St. Andrews Golf and Country Club where "Billionaires" are members, along with owning multiple luxury cars outright, millions of dollars in jewelry, art and furnishings, being "Private Banking" clients at leading US financial firms and having millions of dollars invested in blue chip stocks and other investments. Prior to his passing, Simon Bernstein had the fully paid for St. Andrew's Home appraised at approximately \$3.8 Million and the Oceanfront "Shirley" Condo appraised at approximately \$1.8 million dollars. The luxury cars included a fully paid Bentley and a fully paid leased Porsche. Simon and Shirley often travelled by Private Jet during their lifetime including with Appellant's children who were "minors" at the time and their lifestyle remained five star until the day they died.

Simon in the years before his death in 2012 in 2007-2008 declared income of \$3,756,299 in 2008 and \$2,374,392 in 2007 and this from only one of his many companies, LIC Holdings, Inc.

Direct Knowledge of Record Keeping Practices of Simon Bernstein

As stated in pleadings and in part by a sworn Declaration before the District Court, at one point in time, Appellant had been a “Top Seller” of Insurance through his independent agency as well working alongside his father Simon Bernstein’s companies and became intimately familiar with the meticulous Record Keeping practices required to be successful in the Insurance industry that his father taught him and was directly familiar with Simon’s multiple Record Keeping and Storage locations and practices in the Boca Raton, Florida area in the years prior to his passing. Simon was a leading Estate planner for Insurance products for his clientele primarily composed of millionaires and several billionaires and created sophisticated trusts and estate plans in conjunction with his products for his clients.

Other Business Agreements with Simon Bernstein and “Iviewit

Technologies”; Simon Bernstein’s “Missing Stock:

For further information, see All Writs Injunction Docket No. 214, Feb. 2016 as these interests and allegations help explain in part the purpose of the fraud schemes at play.

Appellant Eliot Bernstein later went on to become an “Inventor” of Backbone Technologies known as “Iviewit” involving the scaling of Digital and Video Imaging across the Internet and all other wired and wireless mediums, a business was formed with he and his father as partners and his father Chairman of the Board for several years.

Eliot Bernstein later entered into other Business agreements with his father in relation to the Intellectual Properties as Simon Bernstein became the seed Investor with a 30% IP interest and 30% Shareholder interest in the Iviewit companies and where the technologies had been valued in the hundreds of billions of dollars to “Priceless” over the lifetime of the Intellectual Property after being tested by Leading engineers and industry experts including at Lockheed Martin, the Intel Corporation, Real3D Inc, AOLTW, Warner Bros., Sony and others who all signed various licensing contracts with Appellant and his father’s companies dating back to the late 1990s through early 2000’s. The Intellectual Properties (Patents, Trademarks, Copyrights and Trade Secrets) were then discovered to be being stolen from the Iviewit Companies by some of the very lawyers retained to protect the Intellectual Properties and do the Corporate work to license them and these matters have since been the subject of open Federal investigations relating to the Thefts and Fraud at the US Patent Office where Appellant was specifically directed by Harry I. Moatz who headed the Office of Enrollment and Discipline (OED of

the USPTO) to file Fraud charges for Fraud against the United States and the true and proper inventors and owners of the IP, as the attorneys had filed fraudulent IP applications alleging themselves and others as the inventors on IP applications.

Where the Intellectual Properties have both massive Military and Civilian use across the globe they are now responsible for creating and distributing over 90% of all digital video and imaging transmissions sent worldwide. Because of the massive thefts and fraud, Appellant's companies were intentionally forced out of business and Appellant, other Shareholders and patent interest holders have not yet been able to monetize the IP Royalties as the Intellectual Properties were fraudulently placed into the names of others and subsequently suspended by the USPTO based upon ongoing investigations into the frauds committed by the attorneys who were USPTO Patent Bar members. These rogue attorneys at law have converted the royalty streams to themselves and their law firms through multiple Antitrust Violations, including Patent Pooling Schemes that Bundle & Tie the technologies into "standards" such as MPEG, blocking Appellant from market. Due to this most dangerous situation Appellant was cast into, Simon and Eliot Bernstein entered into agreements to provide for Eliot's family's welfare and safety while there are ongoing Federal investigations to regain the IP. Simon and Shirley therefore set up a monthly income stream to cover all of Eliot's family living expenses which had been in effect for many years prior to their deaths, they

set up multiple trusts and companies for he and his children to protect the assets put in their names and their estate plans have provisions to have maintained this for many years after their deaths. [NOTE: A source known as “DC No. 1” and by multiple other names is available upon proper Notice as a **Witness** in regard to the **Patent Frauds, IP frauds** and other Federal and State Corruption issues relevant herein. This source is also known, upon information and belief and in part direct knowledge, to have **special Security Access to Federal Courthouses, Chambers of US Judges, US Attorneys, 26 Federal Plaza of the FBI, NY, NY, Signal Intelligence information**, the “*bizarrely stalled FBI Investigation*” into the Iviewit Patent thefts, and is alleged to have worked with multiple Federal Agencies including the Treasury Department (IRS), US Postal Inspector’s Office, DOJ, and to have worked Federal Cases in the Chicago area, Boston area, NYC area and to have been able to use the Address of 1600 Pennsylvania Avenue, Washington, DC in Federal Court papers with no known sanctions.]

Specific Estate Planning by Simon Bernstein for the Benefit of Eliot Bernstein and Family:

Pleadings already exist in the Record showing that Appellant’s Family Mini-van was “Car Bombed” Iraqi style while pursuing rights to the Stolen Intellectual Properties while Shirley and Simon Bernstein were alive (see, www.iviewit.tv) and further that Plaintiff Ted Bernstein, Appellant’s brother, who was living with

his children in his parents' home and virtually broke prior to this Car bombing and closely involved with the last "arrangements" on the Mini Van ultimately Car bombed in Boynton Beach, Florida and who later became and remains close friends and business associates with the very same International law firms and others implicated in the Patent frauds against his brother Appellant and then he suddenly acquired a \$5 Million plus Intra-Coastal home in Palm Beach County after the bombing. Two of the law firms involved in the IP thefts are Proskauer Rose and Foley-Lardner who are now also directly implicated in the estate and trust proceedings in the Florida Courts and this District Court, as a Proskauer Will for Simon Bernstein and Trust from the year 2000 is involved and may be a beneficiary of the lost policy, as well as a Foley Lardner LLP trust that is missing yet is alleged to be the Plaintiff in this matter before this Court. No direct Discovery against these law firms was permitted or scheduled thus far in District Court proceedings or in any of the related Florida State Court proceedings. Simon's friend and Iviewit accountant, Gerald Lewin, CPA, is also implicated in the IP thefts and was the party to who brought his "friends" from Proskauer Rose in, Estate planner Albert Gortz and others, groundfloor to be a part of this revolutionary technology discovered by Appellant and all are small shareholders in the companies. As a result of dangers to Appellant's family from the Attempted Murder of his family, resulting Investigations and forced closing of the companies,

Appellant and Simon Bernstein entered into specific agreements and Planning designed to protect their families in the event Appellant or any of his family were murdered.

These business agreements between Appellant and Simon Bernstein included specific Estate Planning for Appellant's family and minor children and Simon and Shirley further wanted Appellant's family to live close to them in Boca Raton so a company was set up to Purchase Appellant's family home in Appellant's children's names and held in separate trusts created for the minor children at the time by Simon and Shirley in Boca Raton where Appellant and his wife and children enjoyed a close, loving and special relationship with Simon and Shirley until their passing. Thus, Appellant has a direct basis to be aware of the Record Keeping practices his father Simon Bernstein during his lifetime, but also reason to know and believe that Appellant is among the Beneficiaries of the various Estate Planning instruments by Simon and Shirley and someone whose family has claim to the Life Insurance proceeds.

Plaintiffs Ted Bernstein and Pamela Bernstein Simon with Direct Involvement in the Simon Bernstein Companies and Significant Insurance Contacts:

Plaintiffs Ted Bernstein and Pamela Bernstein Simon both worked significantly with Simon Bernstein for years and have decades of contacts in the Insurance industry.

JURISDICTIONAL STATEMENT

Jurisdiction of the District Court:

Federal Jurisdiction in the District Court was obtained under the Diversity statute 28 USC Sec. 1332(a) after the Insurance Carrier Heritage “removed” the State Court action in Cook County to federal Court filing an Interpleader action.

Appellant was named as a Defendant in the Interpleader action as a surviving child of Simon Bernstein who may have claim to the alleged Life Insurance policies at issue. Appellant should have been a named Plaintiff in the action with his other siblings but was Surreptitiously left off the filing as part of the alleged fraud by his siblings who initiated the action, Ted Bernstein and Pamela Simon.

Appellate Jurisdiction of the 7th Circuit Court of Appeals:

Appellant asserts federal appellate Jurisdiction under 28 U.S.C. Sec. 1291 as of right to review the Summary Judgment Decision and Minute Entry Orders thereafter as a “final” decision and for effectively being “out of court”. Appellant further asserts appellate Jurisdiction under 28 USC Sec. 1292(a)(1).

28 U.S.C. Sec. 1291

Under 28 U.S.C. § 1291, the court of appeals has jurisdiction over “all final decisions of the district courts . . . except where a direct review may be had in the Supreme Court.” Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 373 (1981). Section 1291 has been interpreted to confer appellate jurisdiction over a

district court decision that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978) (citations omitted).

Yet, as the US Supreme Court held in *EISEN v. CARLISLE & JACQUELIN*, “Restricting appellate review to “final decisions” prevents the debilitating effect on judicial administration caused by piecemeal appellate disposition of what is, in practical consequence, but a single controversy. While the application of 1291 in most cases is plain enough, determining the finality of a particular judicial order may pose a close question. No verbal formula yet devised can explain prior finality decisions with unerring accuracy or provide an utterly reliable guide for the future.

9 We know, of course, that 1291 does not [417 U.S. 156, 171] limit appellate review to “those final judgments which terminate an action . . .,” *Cohen v.*

Beneficial Loan Corp., 337 U.S., at 545 , but rather that the requirement of finality is to be given a “**practical rather than a technical construction.**” *Id.*, at 546. The inquiry requires some evaluation of the competing considerations underlying all questions of finality - “the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.” *Dickinson v.*

Petroleum Conversion Corp., 338 U.S. 507, 511 (1950) (footnote omitted).”, See, *EISEN v. CARLISLE & JACQUELIN*, 417 U.S. 156 (1974).

A district court decision may also be considered final where its result is that **appellant is “effectively out of court.”** *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 9 (1983) (citations omitted); see also *Blue Cross and Blue Shield of Alabama v. Unity Outpatient Surgery Center, Inc.*, 490 F.3d 718, 723-24 (9th Cir. 2007) (stating that “Moses H. Cone applies whenever there is a possibility that proceedings in another court could moot a suit or an issue, even if there is no guarantee that they will do so” and holding that “lengthy and indefinite stays place a plaintiff effectively out of court.”).

In this action, Appellant did not even know that he was “effectively out of court” by the written terms of the Summary Judgment Order on Appeal and in fact Appellant was on a Status Conference Call with the District Court and parties on or about Jan. 25, 2017 at which time the District Court effectively “announced” that a Decision had been reached on the second round of Summary Judgment motions, that a detailed written opinion would be forthcoming and that Trial dates would be established at the next Status Conference. At no time on this date was it announced to Appellant that he should not “appear” and be present to participate in the next Status Conference on picking a Trial date.

See, District Court Docket Entry: 272 Date: 01-25-2017

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,) (Entered: 01/30/2017)

It was not until the subsequent Status Conference on 2-21-17 where Appellant appeared by phone in the usual course as Appellant resides in Boca Raton, Florida and only after Appellant attempted to be Heard consistent with Due process on the scheduling of Trial and case management that the District Court questioned why Appellant was even on the phone as Appellant was "no longer in the case" or words to that effect.

The District Court then abruptly "terminated" the Call with Appellant and Appellant would later find that he was "Terminated" on the Docket page as well. See, Docket Case: 1:13-cv-03643. **It became crystal clear on 2-21-17 that the District Court deemed Appellant "effectively out of the case"** as Appellant was abruptly terminated from the Call with the District Court **denying Appellant's Opportunity to be heard entirely** having only recently Discovered "new evidence" from the State Court proceeding in PR Brian O'Connell issuing a formal Statement acknowledging that the Children of Simon Bernstein are beneficiaries ("devises" is the word of choice) and that this had been withheld and concealed

from the US District Court by Ted Bernstein's counsel Alan Rose and PR O'Connell and Peter Feaman, counsel for the Creditor since at least Dec. 22, 2016 when this Statement was allegedly emailed to the Creditor's attorney by Ted Bernstein's attorney. See, annexed Motion to Accept Late Filing and other relief. Appellant would then later find out after finally receiving some of this Court's Orders in the US Mails after substantial delay that Appellant had also been "blocked" or "terminated" from the ECF system by the US District Court (or otherwise being "hacked") as Appellant was not receiving ANY of this Court's Orders posted to the District Court Docket electronically in March of 2017. As the annexed Motion to Accept late filing shows, this case is for all practical purposes "over" and "completed" as the only parties remaining, the Ted Bernstein Plaintiffs and the PR of the Estate of Simon Bernstein as Intervenor are acting in "unity" and "collusion" in the Florida Courts even to the extent of Ted Bernstein's attorney Alan Rose moving in the Florida Court to "control" who the Estate is paying for this Chicago federal litigation, all indicative of "hidden" and "secret" "side deals" amongst the Parties with no real controversy left before the US District Court.

For these reasons and the reasons set out in the annexed Motion to accept Late filing and related relief, the case should be deemed "final" for purposes of Federal Appellate Jurisdiction and to further judicial economy and further the sorting out

of the frauds upon both the US District Court and this 7th Circuit as no party with knowledge of the falsehoods propagated that Appellant Eliot Bernstein is not a Beneficiary with Standing in the Simon Bernstein Estate have come forward before this Court or the District Court to notify and correct.

28 USC Sec. 1292(a)(1)

28 U.S.C. S 1292(a)(1) confers jurisdiction not only over orders concerning injunctions, but also over matters inextricably bound up with the injunctive order from which appeal is taken. *Transworld Airlines v. American Coupon Exch.*, 913 F.2d 676, 680 (9th Cir.'90).

In addition, other non-appealable orders may be reviewed along with the injunction order if they are closely related and considering them together is more economical than postponing consideration to a later appeal, or if the injunction turns on the validity of the other non-final orders. *Resolution Trust Corp. v. Ruggiero*, 994 F.2d 1221, 1225 (7th Cir. 1993); *Artist M. v. Johnson*, 917 F.2d 980, 986 (7th Cir. 1990), rev'd on other grounds sub nom., *Suter v. Artist M.*, 503 U.S. 347 (1992); *Elliott v. Hinds*, 786 F.2d 298, 301 (7th Cir. 1986); *Parks v. Pavkovic*, 753 F.2d 1397, 1402 (7th Cir. 1985). The Supreme Court, however, has questioned the expansion of the scope of an interlocutory appeal to include other orders not independently appealable. See *Swint v. Chambers County Commission*, 314 U.S. 35, 49-50 (1995). Nevertheless, the court reiterated that it will continue to exercise

jurisdiction over other rulings so long as those rulings are "inextricably bound" to the injunction, and will be reviewed as well as the injunction but only "to the extent necessary". *Tradesman International, Inc. v. Black*, 724 F.3d 1004, 1010-14 (7th Cir. 2013); *Jaime S. v. Milwaukee Public Schools*, 668 F.3d 481, 492-93 (7th Cir. 2012).

As shown in **Anil GOYAL, Plaintiff–Appellee, v. GAS TECHNOLOGY INSTITUTE** United States Court of Appeals, Seventh Circuit 2013

“We have appellate jurisdiction to review the district court's grant of Goyal's motion to quash the lien because the order operated in substance as an interlocutory injunction under 28 U.S.C. § 1292(a)(1). See *Union Oil Co. of California v. Leavell*, 220 F.3d 562, 566 (7th Cir.2000) (even though district judge “did not use the magic word ‘injunction,’ ” the order was injunctive in nature and appeal was therefore within appellate court's jurisdiction); *In re City of Springfield*, 818 F.2d 565, 567 (7th Cir.1987) (orders are “injunctions” under section 1292(a)(1) “if they effectively grant or withhold the relief sought on the merits and affect one party's ability to obtain such relief in a way that cannot be rectified by a later appeal”). Although the district court did not label its order granting Goyal's motion to quash as an injunction, the order had the effect of an injunction because it both required Gomberg to return the transferred funds and quashed an assignment to him of an equitable legal right—the lien. See *Home Fed. Sav. &*

Loan Ass'n of Centralia v. Cook, 170 Ill.App.3d 720, 121 Ill.Dec. 345, 525 N.E.2d 151, 153–54 (Ill.App.1988) (attorney liens create an “equitable assignment of a portion of the recovery, as opposed to a mere promise to pay” and can assert priority over other creditors); see also Eastman v. Messner, 188 Ill.2d 404, 242 Ill.Dec. 623, 721 N.E.2d 1154, 1156 (Ill.1999) (defining liens in Illinois as involving an equitable assignment of debt with a right to priority over other creditors). We therefore have appellate jurisdiction under 28 U.S.C. § 1292(a)(1). Further, in Elliott v. Hinds, 786 F.2d 298, 301 (7th Cir. 1986) “Cases applying § 1292(a)(1) have held that other incidental orders or issues non-appealable in and of themselves but in fact interdependent with the order granting or denying an injunction may also be reviewed, but only to the extent that they bear upon and are central to the grant or denial of the injunction.” Shaffer v. Globe Protection, Inc., 721 F.2d 1121, 1124 (7th Cir. 1983). See also Bittner v. Sadoff Rudoy Industries, 728 F.2d 820, 826 (7th Cir. 1984). Thus if we determine that injunctive relief is permissible on the Count I constitutional claims then we should reach the issue of whether the relief is otherwise precluded with respect to the defamation aspects of the count on the grounds that no cause of action exists under section 1983. On the facts of this case it would be inconsistent with Shaffer and Bittner to find as a matter of law that injunctive relief was available against the defendants while ignoring the additional impediment to such relief created by the trial court's

foreclosure of one of the substantive theories upon which the injunction could be based. This aspect of the appeal justifies the invocation of the doctrine that "a court of appeals may, in the interest of orderly judicial administration, review matters beyond that which supplies appellate jurisdiction." *Scarlett v. Seaboard Coast Line Railroad Co.*, 676 F.2d 1043, 1052 (5th Cir. 1982) (citing *Deckert v. Independence Shares Corp.*, 311 U.S. 282, 287, 61 S.Ct. 229, 232, 85 L.Ed. 189 (1940)). See *Bittner*, 728 F.2d at 826 (approving *Scarlett*).

It is unquestioned that the Motion for Injunctive Relief under the All Writs Act filed by Appellant in Feb. of 2016 is interdependent upon the Order on Summary Judgment and other interlocutory Orders herein and thus this Court has proper federal appellate jurisdiction. The All Writs Motion set out in further detail the fraudulent schemes at play and breaches of fiduciary duties and nature of the damages all relevant to Appellants' counterclaims and status as a Defendant in an interpleader action. This motion further provided the basis for Appellant to Amend his pleadings which Appellant sought and was improperly denied and further improperly denied Discovery which was relevant to the Summary Judgment determination removing Appellant from the case. Jurisdiction may also be found under the orderly judicial administration interest as set out above and will serve judicial economy and bring a central focus to the case.

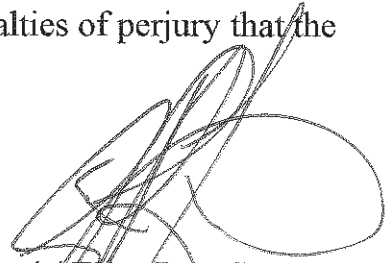
Appellant reserves the right to supplement this Statement as law and justice allows and fully seeks to brief the Appeal on the merits.

WHEREFORE, it is respectfully prayed for an Order upholding federal appellate jurisdiction herein and for such other and further relief as may be just and proper.

Declaration

I, Eliot I. Bernstein, declare, certify and state under penalties of perjury that the foregoing is true.

DATED: June 15, 2017



/s/ Eliot Ivan Bernstein

Cross and Counter-
Plaintiff, Appellant PRO

SE

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CERTIFICATE OF SERVICE

The undersigned, Eliot Ivan Bernstein, Pro Se certifies that he filed an APPELLANT'S JURISDICTIONAL MEMORANDUM, INDIGENT FORMS AND APPELLANTS MOTION TO ACCEPT LATE FILING AND OTHER RELIEF via Postal Mail with the Clerk of the 7th Circuit Court of Appeals, and served copies of same upon those listed below by Postal Mail on this 15th day of June, 2017.

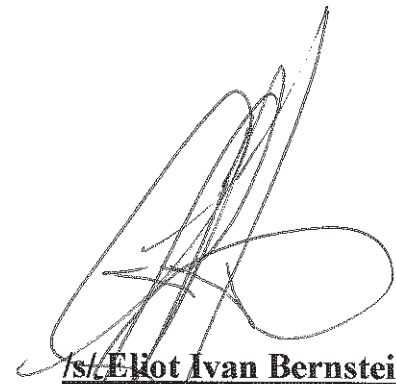
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