

APPEAL,ROWLAND,TERMED

**United States District Court**  
**Northern District of Illinois – CM/ECF LIVE, Ver 6.2.1 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:13-cv-03643**  
***Internal Use Only***

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 v.  
Heritage Union Life Insurance Company  
Assigned to: Honorable John Robert Blakey  
Case in other court: 17-01461  
17-03595  
Circuit Court of Cook County, 2013 L  
003498

Date Filed: 05/16/2013  
Date Terminated: 11/21/2017  
Jury Demand: None  
Nature of Suit: 110 Contract: Insurance  
Jurisdiction: Diversity

Cause: 28:1441 Petition for Removal

Date Filed	#	Page	Docket Text
05/16/2013	<u>1</u>	6	NOTICE of Removal from Circuit Court of Cook County, case number (2013 L 003498) filed by Jackson National Life Insurance Company Filing fee \$ 400, receipt number 0752-8351218. (Attachments: # <u>1</u> Exhibit Circuit Court Complaint and Summons)(Marks, Alexander) (Entered: 05/16/2013)
05/16/2013	<u>2</u>	14	CIVIL Cover Sheet (Marks, Alexander) (Entered: 05/16/2013)
05/20/2013	<u>5</u>	15	MINUTE entry before Honorable Amy J. St. Eve: Defendant has failed to allege subject matter jurisdiction. Defendant has until 5/24/13 to file an Amended Notice of Removal properly alleging diversity or some other basis for federal jurisdiction. Failure to do so will result in remand of the case to the Circuit Court of Cook County. [For further details, see minute order.] Mailed notice (kef, ) (Entered: 05/20/2013)
05/20/2013	<u>7</u>	16	NOTICE of Removal from Circuit Court of Cook County, case number (2013-L-003498) filed by Jackson National Life Insurance Company ( <i>amended notice</i> ) (Attachments: # <u>1</u> Exhibit 1 – Complaint and Summons)(Marks, Alexander) (Entered: 05/20/2013)
05/20/2013	<u>8</u>	24	MINUTE entry before Honorable Amy J. St. Eve: Initial status hearing set for 6/7/13 at 9:00 a.m. in courtroom 1241. Parties shall refer to Judge St. Eve's web page at <a href="http://www.ilnd.uscourts.gov">www.ilnd.uscourts.gov</a> and file a joint status report by 6/4/13 as set forth in the Initial Status Conferences procedure. Mailed notice (kef, ) (Entered: 05/20/2013)
05/23/2013	<u>9</u>	25	MOTION by Defendant Heritage Union Life Insurance Company for extension of time to file answer <i>and counterclaim to Plaintiff's Complaint</i> (Attachments: # <u>1</u> Exhibit 1- Eliot Bernstein Letter)(Marks, Alexander) (Entered: 05/23/2013)
05/23/2013	<u>10</u>	31	MOTION by Defendant Heritage Union Life Insurance Company to deposit funds (Marks, Alexander) (Entered: 05/23/2013)
05/28/2013	<u>14</u>	34	MINUTE entry before Honorable Amy J. St. Eve: Defendant's motion for an extension of time <u>9</u> is granted. Defendant shall answer or otherwise plead by

			6/27/13. Mailed notice (kef, ) (Entered: 05/28/2013)
05/29/2013	<u>15</u>	35	MINUTE entry before Honorable Amy J. St. Eve: Motion hearing held on 5/29/2013. Defendant's motion to tender insurance policy proceeds to Court <u>10</u> is granted. Parties shall submit an agreed proposed order to Judge St. Eve's proposed order email, the link for which can be found on her web page. Joint status report shall be filed by 7/12/13. Status hearing set for 6/7/13 is stricken and reset to 7/23/13 at 8:30 a.m. Mailed notice (kef, ) (Entered: 05/29/2013)
06/25/2013	<u>16</u>	36	AGREED ORDER for Defendant's Motion to Tender Insurance Policy Proceeds to Court Signed by the Honorable Amy J. St. Eve on 6/25/2013:Mailed notice(kef, ) (Entered: 06/25/2013)
06/26/2013	<u>17</u>	37	ANSWER to Complaint , THIRD party complaint by Heritage Union Life Insurance Company against Bank of America, Eliot Bernstein, United Bank of Illinois, Simon Bernstein Trust, N.A., Ted Bernstein, First Arlington National Bank ., COUNTERCLAIM filed by Heritage Union Life Insurance Company against Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 . by Heritage Union Life Insurance Company (Attachments: # <u>1</u> Exhibit 1)(Marks, Alexander) (Entered: 06/26/2013)
07/11/2013	<u>19</u>	49	MOTION by Defendant Heritage Union Life Insurance Company, Plaintiff Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for extension of time <i>to file initial status report (agreed)</i> (Marks, Alexander) (Entered: 07/11/2013)
07/11/2013	<u>21</u>	53	MINUTE entry before Honorable Amy J. St. Eve: Joint motion to extend <u>19</u> is granted. Joint status report shall be filed by 8/26/13. Status hearing set for 7/23/13 is stricken and reset to 8/29/13 at 8:30 a.m. No appearance is required on the 7/15/13 notice date. Mailed notice (kef, ) (Entered: 07/11/2013)
08/26/2013	<u>27</u>	54	STATUS Report ( <i>Initial</i> ) by Ted Bernstein, Heritage Union Life Insurance Company, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (Simon, Adam) (Entered: 08/26/2013)
08/29/2013	<u>28</u>	59	MINUTE entry before Honorable Amy J. St. Eve:Status hearing held on 8/29/2013 and continued to 9/25/2013 at 08:30 AM. Rule 26(a)(1) disclosures by 10/1/13. Written discovery shall be issued by 10/15/13. Fact discovery shall be completed by 2/17/14. Parties are directed to meet and confer pursuant to Rule 26(f) and exhaust all settlement possibilities prior to the next status hearing. Mailed notice (kef, ) (Entered: 08/29/2013)
08/30/2013	<u>29</u>	60	ANSWER to Third Party Complaint <i>and Counterclaims</i> by Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95(Simon, Adam) (Entered: 08/30/2013)
09/03/2013	<u>30</u>	73	MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead by 9/6/13. Mailed notice (kef, ) (Entered: 09/03/2013)
09/04/2013	<u>31</u>	74	MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead by 9/13/13.Mailed notice (kef, ) (Entered: 09/04/2013)
09/11/2013	<u>32</u>	75	MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead on or before 9/23/13. Mailed notice (kef, ) (Entered: 09/11/2013)

09/22/2013	<u>35</u>	76	ANSWER to Third Party Complaint , THIRD party complaint by Eliot Bernstein against Adam M Simon, National Service Association, Inc. (of Illinois), Donald R Tescher, Jill Marla Iantoni, Tescher & Spallina, P.A., The Simon Law Firm, David B Simon, S.B. Lexington, Inc. Employee Death Benefit Trust, Ted Bernstein, Robert L Spallina, S.T.P. Enterprises, Inc., Pamela Beth Simon, SB Lexington, Inc., Lisa Sue Friedstein, National Service Association, Inc. (Florida) ., CROSSCLAIM by Eliot Bernstein against Ted Bernstein ., COUNTERCLAIM filed by Eliot Bernstein against Ted Bernstein . by Eliot Bernstein(Bernstein, Eliot) (Entered: 09/22/2013)
09/25/2013	<u>36</u>	193	Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of Honorable Mary M. Rowland for the purpose of holding proceedings related to: settlement conference.(kef, )Mailed notice. (Entered: 09/25/2013)
09/25/2013	<u>37</u>	194	MINUTE entry before Honorable Amy J. St. Eve:Status hearing held on 9/25/2013 and continued to 11/21/2013 at 08:30 AM.Mailed notice (kef, ) (Entered: 09/25/2013)
09/25/2013	<u>38</u>	195	MINUTE entry before Honorable Mary M. Rowland:Initial status hearing set for 9/30/2013 at 9:00 AM before Magistrate Judge Mary M. Rowland for the purpose of scheduling a settlement conference. Parties are to bring dates when both clients and counsel will be available for a settlement conference. Judge Rowland generally conducts settlement conferences Mondays through Thursdays at 1:00 p.m. Other dates and times may be available as required by the Court or the parties. The parties are directed to review and to comply with Judge Rowland's Standing Order regarding Setting Settlement Conferences, which is available on Judge Rowland's webpage located on the Court's website at www.ilnd.uscourts.gov.Mailed notice (gel, ) (Entered: 09/25/2013)
09/30/2013	<u>39</u>	196	MINUTE entry before Honorable Mary M. Rowland:Status hearing held on 9/30/2013 and continued to 10/7/2013 at 09:15 AM. Mr. Eliot Bernstein must appear by telephone and should contact the court at 312-435-5857, at least one day before the next status with his telephonic information. Parties should be prepared to set a settlement conference at the next hearing. Mailed notice (gel, ) (Entered: 09/30/2013)
10/07/2013	<u>40</u>	197	MINUTE entry before Honorable Mary M. Rowland: Status hearing previously set for 10/7/2013 is reset for 10/16/2013 at 09:00 AM.Mailed notice (gel, ) (Entered: 10/07/2013)
10/08/2013	<u>41</u>	198	MOTION by Defendant Heritage Union Life Insurance Company to substitute party (Marks, Alexander) (Entered: 10/08/2013)
10/16/2013	<u>44</u>	202	ORDER Entered by the Honorable Amy J. St. Eve on 10/16/2013: Motion hearing held on 10/16/13. Defendant Jackson National Life Insurance Company's motion to substitute third-party defendant <u>41</u> is granted. The Clerk's Office is directed to substitute JPMorgan Chase Bank, N.A. for First Arlington National Bank as a third-party defendant. Mailed notice (tlm) (Entered: 10/17/2013)
10/22/2013	<u>45</u>	203	Rule 26(a)(1) Disclosure Response by Eliot Ivan Bernstein, Eliot Bernstein, Eliot Ivan Bernstein (Bernstein, Eliot) (Entered: 10/22/2013)
11/04/2013	<u>47</u>	212	ANSWER to Third Party Complaint <i>and Affirmative Defenses</i> by Ted Bernstein, Lisa Sue Friedstein, Jill Marla Iantoni, S.T.P. Enterprises, Inc., Adam M Simon,

			David B Simon, Pamela Beth Simon, The Simon Law Firm(Simon, Adam) (Entered: 11/04/2013)
11/19/2013	<u>51</u>	223	NOTIFICATION of Affiliates pursuant to Local Rule 3.2 by JPMorgan Chase Bank, N.A. (Heilizer, Glenn) (Entered: 11/19/2013)
11/19/2013	<u>52</u>	225	MOTION by Third Party Defendant JPMorgan Chase Bank, N.A. for extension of time <i>to respond to third-party complaint</i> (Heilizer, Glenn) (Entered: 11/19/2013)
11/20/2013	<u>54</u>	227	MINUTE entry before the Honorable Amy J. St. Eve: JP Morgan Chase Bank's motion for extension of time <u>52</u> is granted. JP Morgan shall answer or otherwise plead to the third-party complaint by 12/11/13. Mailed notice (kef, ) (Entered: 11/20/2013)
11/21/2013	<u>55</u>	228	MINUTE entry before the Honorable Amy J. St. Eve:Status hearing held on 11/21/2013 and continued to 1/22/2014 at 08:30 AM. Eliot Bernstein failed to appear. PNC Bank and Bank of America are given until 12/11/13 in which to answer or otherwise plead. Mailed notice (kef, ) (Entered: 11/21/2013)
12/05/2013	<u>56</u>	229	MOTION by Intervenor William E. Stansbury to intervene (Attachments: # <u>1</u> Exhibit Complaint, # <u>2</u> Exhibit Petition for Administration, # <u>3</u> Exhibit Statement of Claim by William Stansbury, # <u>4</u> Exhibit Letter of Robert Spallina, # <u>5</u> Exhibit Intervenor Complaint for Declaratory Judgment)(O'Halloran, John) (Entered: 12/05/2013)
12/08/2013	<u>58</u>	311	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Counter Claimant Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein to disqualify counsel A. <i>SIMON</i> (Bernstein, Eliot) (Entered: 12/08/2013)
12/11/2013	<u>59</u>	468	MINUTE entry before the Honorable Amy J. St. Eve:Motion hearing held on 12/11/2013. Motion to intervene by interested party William Stansbury <u>56</u> is entered. Response by 1/6/14. Reply by 1/13/14. Mailed notice (kef, ) (Entered: 12/11/2013)
12/11/2013	<u>60</u>	469	ANSWER to Third Party Complaint by JPMorgan Chase Bank, N.A.(Heilizer, Glenn) (Entered: 12/11/2013)
12/20/2013	<u>62</u>	480	MINUTE entry before the Honorable Amy J. St. Eve: The Court denies Cross-Plaintiff Eliot Ivan Bernstein's motion to strike and disqualify counsel <u>58</u> without prejudice for failure to notice the motion before the Court as required by Northern District of Illinois Local Rule 5.3 Mailed notice (kef, ) (Entered: 12/20/2013)
12/20/2013	<u>63</u>	481	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Counter Claimant Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein to disqualify counsel <i>Adam Simon, Esquire</i> (Bernstein, Eliot) (Entered: 12/20/2013)
01/03/2014	<u>65</u>	638	MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's motion to disqualify counsel <u>63</u> is entered. Response by 1/17/14. Reply by 1/24/14. No appearance is required on the 1/6/14 notice date. Mailed notice (kef, ) (Entered: 01/03/2014)

01/03/2014	<u>66</u>	639	MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file <i>First Amended Complaint</i> (Attachments: # <u>1</u> Exhibit Exh. A -- Form of Amended Complaint)(Simon, Adam) (Entered: 01/03/2014)
01/06/2014	<u>68</u>	656	MEMORANDUM by Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 in Opposition to motion to intervene, <u>56</u> (Attachments: # <u>1</u> Certificate of Service)(Simon, Adam) (Entered: 01/06/2014)
01/12/2014	<u>69</u>	668	MOTION by Third Party Defendants Eliot Ivan Bernstein, Eliot Bernstein, ThirdParty Plaintiff Eliot Bernstein, Counter Claimant Eliot Bernstein, Cross Claimant Eliot Bernstein, Plaintiffs Eliot Bernstein, Eliot Ivan Bernstein to strike MOTION by Plaintiffs Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 for leave to file <i>First Amended Complaint</i> <u>66</u> (Bernstein, Eliot) (Entered: 01/12/2014)
01/13/2014	<u>71</u>	771	MINUTE entry before the Honorable Amy J. St. Eve: Motion hearing held on 1/13/2014. Plaintiffs' motion for leave to file first amended complaint <u>66</u> is granted. Counsel shall separately file the amended complaint upon receipt of this order. Eliot Bernstein's motion to strike and for default judgment <u>69</u> is denied. Parties shall answer or otherwise plead to the amended complaint by 2/3/14. Discovery is hereby stayed until the proper Trustee is determined. Status hearing set for 1/22/14 is stricken and reset to 2/6/14 at 8:30 a.m. Mailed notice (kef, ) (Entered: 01/13/2014)
01/13/2014	<u>72</u>	772	REPLY by William E. Stansbury to MOTION by Intervenor William E. Stansbury to intervene <u>56</u> (O'Halloran, John) (Entered: 01/13/2014)
01/13/2014	<u>73</u>	777	<i>FIRST AMENDED</i> complaint by Ted Bernstein, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, Lisa Sue Friedstein, Jill Marla Iantoni, Pamela Beth Simon against Heritage Union Life Insurance Company (Attachments: # <u>1</u> Certificate of Service)(Simon, Adam) (Entered: 01/13/2014)
01/14/2014	<u>74</u>	792	ORDER Signed by the Honorable Amy J. St. Eve on 1/14/2014: The Court denies non-party William E. Stansbury's motion to intervene <u>56</u> . William E. Stansbury terminated. [For further details, see attached Order.] Mailed notice(kef, ) (Entered: 01/14/2014)

**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.	)	Case No. 13-cv-3643
	)	
HERITAGE UNION LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**NOTICE OF REMOVAL OF DEFENDANT  
JACKSON NATIONAL LIFE INSURANCE COMPANY**

Defendant, Jackson National Life Insurance Company ("Jackson Life"), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, by and through its undersigned attorneys, files this Notice of Removal pursuant to 28 U.S.C. §§ 1441 *et seq.*, to remove the above-titled matter from the Circuit Court of Cook County, Illinois, in which the case is now pending, to the United States District Court for the Northern District of Illinois, Eastern Division. In support thereof, Jackson states as follows:

1. On April 5, 2013, Plaintiff filed its complaint for breach of contract (the "Complaint") against Heritage Union Life Insurance Company in the Law Division of the Circuit Court of Cook County, Illinois, docket number 2013-L-003498.

2. Jackson Life, as successor in interest, was served with the Complaint on April 17, 2013. Jackson Life's Notice of Removal is timely pursuant to 28 U.S.C. 1446(b) because it is filed within 30 days after service of the Complaint. A copy of the Complaint, together with a copy of the process, is attached hereto as Exhibit 1, as required by 28 U.S.C. § 1446(a).

3. The Complaint states that the Plaintiff trust was a "common law trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the State of Illinois." Further, Ted. S. Bernstein is identified as the trustee of the trust. Mr. Bernstein is a resident of Florida.

4. Jackson Life is a Michigan corporation with its principal place of business in Lansing, Michigan.

5. The Complaint relates to a dispute over a life insurance policy, which the trust is the alleged beneficiary of, and which is alleged to have a value in excess of \$1,000,000.00 (Compl., para. 16).

6. District courts have original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. 1332(a).

7. Accordingly, as this matter involves diversity of citizenship, this Court has original jurisdiction.

8. Jackson Life intends to promptly give written notice of the filing of this Notice of Removal to Plaintiff and file a copy of the Notice with Clerk of the Circuit Court of Cook County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, defendant, Jackson National Life Insurance Company, respectfully requests that this action proceed in this Court as an action properly removed hereto.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that he caused a copy of the foregoing Notice of Removal to be filed electronically with the Northern District of Illinois, and manually with the Clerk of the Circuit Court of Cook County, Illinois, and served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

By regular mail, postage prepaid, this 16th day of May, 2013.

/s/ Alexander D. Marks

1418121.1



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

2018 APR -5 AM 11:15  
CLERK OF COURT  
COOK COUNTY ILLINOIS

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95 )  
 )  
Plaintiff )  
v. )  
 )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, a Minnesota corporation )  
 )  
Defendant. )

Case No.

**COMPLAINT AT LAW**

**NOW COMES** Plaintiff, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, ( "BERNSTEIN TRUST" or "Plaintiff"), by its attorney, Adam M. Simon and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, a Minnesota corporation ( "HERITAGE") and states as follows:

**COUNT I**

**BREACH OF CONTRACT**

1. At all relevant times, the BERNSTEIN TRUST was a common law trust established in Chicago, Illinois by the settlor, SIMON L. BERNSTEIN, and was formed pursuant to the laws of the state of Illinois.
2. Ted S. Bernstein is the Trustee of the BERNSTEIN TRUST.
3. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

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

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

6. HERITAGE subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

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

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

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

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

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

12. Following Simon L. 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 Simon L. Bernstein's death certificate and other documentation.

13. 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.

14. 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 of the Policy despite HERITAGE'S receipt of due proof of the Insured's death.

15. Despite the BERNSTEIN TRUST'S demands HERITAGE has not paid out the death benefits on the Policy to the BERNSTEIN TRUST.

16. As a direct result of HERITAGE's refusal and failure to pay the death benefits 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, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, prays for a judgment to be entered in its favor and against Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, for 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.

RESPECTFULLY SUBMITTED,

\_\_\_\_\_  
Attorney For Plaintiff

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive  
Ste. 210  
Chicago, IL 60601  
(312) 819-0730  
Firm. No. 34436

**VERIFICATION OF DAMAGES**

Adam M. Simon, an attorney, certifies that he reasonably believes that the damages incurred by Plaintiff as a result of the occurrence described in the attached complaint exceed \$1,000,000.00.

\_\_\_\_\_  
Adam M. Simon

2120 - Served 2121 - Served
2220 - Not Served 2221 - Not Served
2320 - Served By Mail 2321 - Served By Mail
2420 - Served By Publication 2421 - Served By Publication
SUMMONS ALIAS - SUMMONS

CCG N001-75M-2/28/05 (43480658)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DIVISION

(Name all parties)

Sumner Benjamin Tegamons, Inc.
v.

SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- Richard J. Daley Center, 50 W. Washington, Room 311, Chicago, Illinois 60602
District 2 - Skokie 5600 Old Orchard Rd. Skokie, IL 60077
District 3 - Rolling Meadows 2121 Euclid Rolling Meadows, IL 60008
District 4 - Maywood 1500 Maybrook Ave. Maywood, IL 60153
District 5 - Bridgeview 10220 S. 76th Ave. Bridgeview, IL 60455
District 6 - Markham 16501 S. Kedzie Pkwy. Markham, IL 60426
Child Support 28 North Clark St., Room 200 Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service. IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.:
Name:
Atty. for:
Address:
City/State/Zip:
Telephone:
Service by Facsimile Transmission will be accepted at:

WITNESS,
Clerk of Court
Date of service: 4/17, 2013
(To be inserted by officer on copy left with defendant or other person)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95

(b) County of Residence of First Listed Plaintiff Palm Beach County, Florida (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Adam Simon
The Simon Law Firm
303 E. Wacker Drive, Suite 210
Chicago, IL 60601

DEFENDANTS

Jackson National Life Insurance Co., successor in interest

County of Residence of First Listed Defendant Ingham County, Michigan (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Fred Mendelsohn and Alex Marks
Burke, Warren, MacKay & Serritella, P.C.
330 N. Wabash Ave., 21st Floor
Chicago, IL 60611

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, and Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, and OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

Removal of State Court action under 28 USC 1441

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

IX. RELATED CASE(S) IF ANY (See instructions):

JUDGE DOCKET NUMBER

X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE May 16, 2013

SIGNATURE OF ATTORNEY OF RECORD /s/ Alexander D. Marks

## United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Amy J. St. Eve	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	13 C 3643	DATE	5/20/2013
CASE TITLE	Simon Bertnstein Irrevocable Ins Trust vs. Jackson National Life Ins		

## DOCKET ENTRY TEXT

Defendant has failed to allege subject matter jurisdiction. Defendant has until 5/24/13 to file an Amended Notice of Removal properly alleging diversity or some other basis for federal jurisdiction. Failure to do so will result in remand of the case to the Circuit Court of Cook County .

■ [ For further details see text below.]

Notices mailed by Judicial staff.

## STATEMENT

Defendant Jackson National Life Insurance Company (“Jackson Life”), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance, has removed this breach of contract action to federal court. Defendant’s notice of removal is premised on diversity jurisdiction as the sole basis for subject matter jurisdiction. “It is axiomatic that a federal court must assure itself that it possesses jurisdiction over the subject matter of an action before it can proceed to take any action respecting the merits of the action. The requirement that jurisdiction be established as a threshold matter ‘springs from the nature and limits of the judicial power of the United States’ and is ‘inflexible and without exception.’” *Cook v. Winfrey*, 141 F.3d 322, 325 (7th Cir. 1998), *quoting Steel C. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998).

The Simon Bernstein Irrevocable Insurance Trust DTD 6/21/95 is the plaintiff in this lawsuit. The law is clear that “trusts don’t have their own citizenship; they take the citizenship of the trustee (or citizenships, if there are multiple trustees).” *White Pearl Inversiones S.A. (Uruguay) v. Cemusa*, 647 F.3d 684, 686 (7th Cir. 2011). Defendant correctly alleges that Ted S. Bernstein is the trustee of the Plaintiff Trust for citizenship purposes, however, Defendant alleges Mr. Bernstein’s residence as Florida. (R.1 at ¶ 3.) Allegations of residence, however, are insufficient to establish diversity. *Winforge, Inc. v. Coachmen Indus., Inc.*, 691 F.3d 856, 867 (7th Cir. 2013); *Heinen v. Northrop Grumman Corp.*, 671 F.3d 669, 670 (7th Cir. 2012). “It is well settled that [w]hen the parties allege residence but not citizenship, the court must dismiss the suit.” *Held v. Held*, 137 F.3d 998, 1000 (7th Cir. 1998) (citations and quotations omitted). Because Defendant only alleges the trustee’s residence and not his citizenship, the allegations do not establish diversity.

Accordingly, Defendant has until May 24, 2013 to file an Amended Notice of Removal properly alleging diversity or some other basis for federal jurisdiction. Failure to do so will result in remand of the case to the Circuit Court of Cook County.

Courtroom Deputy  
Initials:

KF

**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.	)	Case No. 13-cv-3643
	)	
HERITAGE UNION LIFE INSURANCE	)	
COMPANY,	)	
	)	
Defendant.	)	

**AMENDED NOTICE OF REMOVAL OF DEFENDANT  
JACKSON NATIONAL LIFE INSURANCE COMPANY**

Defendant, Jackson National Life Insurance Company ("Jackson Life"), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, by and through its undersigned attorneys, files this Amended Notice of Removal pursuant to 28 U.S.C. §§ 1441 *et seq.*, to remove the above-titled matter from the Circuit Court of Cook County, Illinois, in which the case is now pending, to the United States District Court for the Northern District of Illinois, Eastern Division. In support thereof, Jackson states as follows:

1. On April 5, 2013, Plaintiff filed its complaint for breach of contract (the "Complaint") against Heritage Union Life Insurance Company in the Law Division of the Circuit Court of Cook County, Illinois, docket number 2013-L-003498.

2. Jackson Life, as successor in interest, was served with the Complaint on April 17, 2013. Jackson Life's Notice of Removal is timely pursuant to 28 U.S.C. 1446(b) because it is filed within 30 days after service of the Complaint. A copy of the Complaint, together with a copy of the process, is attached hereto as Exhibit 1, as required by 28 U.S.C. § 1446(a).



3. The Complaint states that the Plaintiff trust was a "common law trust established in Chicago, Illinois, by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the State of Illinois." Further, Ted. S. Bernstein is identified as the trustee of the trust. Mr. Bernstein is a resident and citizen of Florida.

4. Jackson Life is a Michigan corporation with its principal place of business in Lansing, Michigan.

5. The Complaint relates to a dispute over a life insurance policy, which the trust is the alleged beneficiary of, and which is alleged to have a value in excess of \$1,000,000.00 (Compl., para. 16).

6. District courts have original jurisdiction over all civil actions where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. 1332(a).

7. Accordingly, as this matter involves diversity of citizenship, this Court has original jurisdiction.

8. Jackson Life has already given written notice of the filing of its Notice of Removal to Plaintiff and filed a copy of the Notice with the Clerk of the Circuit Court of Cook County, as required by 28 U.S.C. § 1446(d).

WHEREFORE, defendant, Jackson National Life Insurance Company, respectfully requests that this action proceed in this Court as an action properly removed hereto.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks

One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)

**NOTICE OF FILING AND CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that he caused a copy of the foregoing Amended Notice of Removal to be filed electronically with the Northern District of Illinois, and manually served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

By regular mail, postage prepaid, this 20th day of May, 2013.

\_\_\_\_\_  
/s/ Alexander D. Marks

1422634

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

2013 APR -5 PM 11:45  
Clerk of Cook County  
Illinois

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

Plaintiff )

v. )

Case No.

HERITAGE UNION LIFE INSURANCE )  
COMPANY, a Minnesota corporation )

Defendant. )

COMPLAINT AT LAW

**NOW COMES** Plaintiff, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, ( "BERNSTEIN TRUST" or "Plaintiff"), by its attorney, Adam M. Simon and complaining of Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, a Minnesota corporation (" HERITAGE") and states as follows:

COUNT I

**BREACH OF CONTRACT**

1. At all relevant times, the BERNSTEIN TRUST was a common law trust established in Chicago, Illinois by the settlor, SIMON L. BERNSTEIN, and was formed pursuant to the laws of the state of Illinois.

2. Ted S. Bernstein is the Trustee of the BERNSTEIN TRUST.

3. At all relevant times, the BERNSTEIN TRUST was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

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

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

6. HERITAGE subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

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

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

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

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

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

12. Following Simon L. 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 Simon L. Bernstein's death certificate and other documentation.

13. 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.

14. 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 of the Policy despite HERITAGE'S receipt of due proof of the Insured's death.

15. Despite the BERNSTEIN TRUST'S demands HERITAGE has not paid out the death benefits on the Policy to the BERNSTEIN TRUST.

16. As a direct result of HERITAGE's refusal and failure to pay the death benefits 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, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, prays for a judgment to be entered in its favor and against Defendant, HERITAGE UNION LIFE INSURANCE COMPANY, for 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.

RESPECTFULLY SUBMITTED,

\_\_\_\_\_  
Attorney For Plaintiff

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive  
Ste. 210  
Chicago, IL 60601  
(312) 819-0730  
Firm. No. 34436

**VERIFICATION OF DAMAGES**

Adam M. Simon, an attorney, certifies that he reasonably believes that the damages incurred by Plaintiff as a result of the occurrence described in the attached complaint exceed \$1,000,000.00.

\_\_\_\_\_  
Adam M. Simon

2120 - Served                      2121 - Served  
2220 - Not Served                2221 - Not Served  
2320 - Served By Mail            2321 - Served By Mail  
2420 - Served By Publication    2421 - Served By Publication  
SUMMONS                          ALIAS - SUMMONS

CCG N001-75M-2/28/05 (43480658)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, \_\_\_\_\_ DIVISION

(Name all parties)

\_\_\_\_\_  
v.

No. \_\_\_\_\_

A TRUE COPY  
ATTORNEY

SUMMONS

To each Defendant:

YOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise file your appearance, and pay the required fee, in the Office of the Clerk of this Court at the following location:

- Richard J. Daley Center, 50 W. Washington, Room \_\_\_\_\_, Chicago, Illinois 60602
- District 2 - Skokie  
5600 Old Orchard Rd.  
Skokie, IL 60077
- District 3 - Rolling Meadows  
2121 Euclid  
Rolling Meadows, IL 60008
- District 4 - Maywood  
1500 Maybrook Ave.  
Maywood, IL 60153
- District 5 - Bridgeview  
10220 S. 76th Ave.  
Bridgeview, IL 60455
- District 6 - Markham  
16501 S. Kedzie Pkwy.  
Markham, IL 60426
- Child Support  
28 North Clark St., Room 200  
Chicago, Illinois 60602

You must file within 30 days after service of this Summons, not counting the day of service.  
IF YOU FAIL TO DO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

To the officer:

This Summons must be returned by the officer or other person to whom it was given for service, with endorsement of service and fees, if any, immediately after service. If service cannot be made, this Summons shall be returned so endorsed. This Summons may not be served later than 30 days after its date.

Atty. No.: \_\_\_\_\_  
Name: \_\_\_\_\_  
Atty. for: \_\_\_\_\_  
Address: \_\_\_\_\_  
City/State/Zip: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Service by Facsimile Transmission will be accepted at: \_\_\_\_\_

WITNESS, \_\_\_\_\_

\_\_\_\_\_  
Clerk of Court  
Date of service: 4/17/13  
(To be inserted by officer on copy left with defendant or other person)

(Area Code) (Facsimile Telephone Number)

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd  
6/21/95

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J. St.  
Eve

Jackson National Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, May 20, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Initial status hearing set for 6/7/13 at 9:00 a.m. in courtroom 1241. Parties shall refer to Judge St. Eve's web page at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov) and file a joint status report by 6/4/13 as set forth in the Initial Status Conferences procedure. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).



**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.	)	Case No. 13 cv 3643
	)	
HERITAGE UNION LIFE INSURANCE	)	Honorable Amy J. St. Eve
COMPANY,	)	Magistrate Mary M. Rowland
	)	
Defendant.	)	

**JACKSON'S MOTION FOR AN EXTENSION OF TIME  
TO FILE ITS ANSWER AND COUNTERCLAIM TO PLAINTIFFS' COMPLAINT**

Defendant, Jackson National Life Insurance Company ("Jackson"), a corporation formed under the law of the State of Michigan, and with its principal place of business in Michigan, as successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), hereby moves for an extension of time to file its answer and counterclaim for interpleader as to the Complaint at Law (the "Complaint") underlying the above captioned action. In support of this Motion, Jackson states:

1. On April 5, 2013, the plaintiff filed its Complaint in the Law Division of the Circuit Court of Cook County, Illinois, case number 2013-L-003498. The Complaint was served on April 17, 2013, and timely removed by the proper party defendant – Jackson – by way of its Notice of Removal, filed on May 16, 2013, to this Court. Pursuant to Fed. R. Civ. P. 81(c), Jackson has seven (7) days after filing its Notice of Removal to file its answer to the Complaint.

2. The plaintiff in this action is alleged to be the Simon Bernstein Irrevocable Insurance Trust dated June 21, 1995 (the "Trust"), acting by its trustee, Ted S. Bernstein, and having been established in Chicago, Illinois. Ted Bernstein is one of several children of Simon

Bernstein, who is deceased, having passed away last year. At the time of his death, Simon Bernstein was resident of Florida. So, too, is Ted Bernstein, and his brother, Elliot I. Bernstein.

3. The sole cause of action alleged in the Complaint is breach of contract, relating to a life insurance policy (the "Policy") purportedly first issued by Capital Banker's Life Insurance Company to S.B. Lexington, Inc., a Voluntary Employees' Association Trust ("VEBA") as provided for under Section 501 of the Internal Revenue Code. According to the records of the Illinois Secretary of State, S.B. Lexington, Inc. was an Illinois corporation, whose President was Simon Bernstein (the deceased alleged insured), and whose registered agent is counsel to the plaintiff Trust.

4. The Complaint further details how, allegedly, Heritage came to acquire the book of business of Capital Banker's Life Insurance Company, and further how the Trust came to be beneficiary of the Policy, including allegations that the S.B Lexington, Inc. VEBA was dissolved and the Policy was assigned to Simon Bernstein, individually. Despite that the actual Trust document is not appended to the Complaint (as is required by the Section 2-606 of the Illinois Code of Civil Procedure when filing an action founded upon a written agreement in the absence of an affidavit detailing the failure to do so), the Trust is alleged to be the beneficiary of the Policy and entitled to payment of the death benefits thereunder which are alleged to exceed \$1 million (the "Policy Death Benefit"). In fact, the Policy Death Benefit is \$1.6 million.

5. The Trust asserts a breach of contract claim based on the failure of Heritage to pay the Policy Death Benefit to the Trust. Although not named in the Complaint, Jackson acknowledges that it is the successor in interest to Heritage, by virtue of its acquisition of the business of Reassure, and is the proper defendant in this case. Jackson, however, has received competing claims to the Policy Death Benefit, as it has been notified in writing by Eliot Bernstein, who claims to have an interest in the Policy, and to be a possible beneficiary of the

Policy, along with his children. A copy of Eliot Bernstein's claim letter is attached as *Exhibit 1*. At this point, Jackson does not know the number of children of Eliot Bernstein, but on information and belief understands them to be residents of Florida (and certainly non-residents of Michigan).

6. Given that Jackson (1) did not originally issue or administer the Policy, (2) does not know the extent of the Bernstein family tree, including the number of potential children asserted by Eliot Bernstein to be possible beneficiaries of the Trust, and (3) is still seeking to locate key records relevant to the Policy, such as the Trust, it does not know all potential known beneficiaries under the Policy. Nor does Jackson know if there are potential unknown beneficiaries of the Policy. As such, Jackson requires an extension of time to answer the Complaint (essentially on behalf of Heritage), and to ferret out those parties who need to be named in an interpleader action (filed as a counterclaim), which Jackson intends to file as to the Policy, seeking direction from this Court as to who are the proper beneficiaries of the Policy.

7. As to the Policy Death Benefit, Jackson has filed contemporaneous with this Motion for Extension its Motion to Tender Insurance Policy Proceeds to Court (the "Tender Motion"). By the Tender Motion, Jackson seeks to deposit, now, with the Clerk of this Court, the proceeds from the Policy, to avoid further disputes. Jackson is fully intent on seeking relief as to the Complaint by way of an interpleader action, such that no reason exists not to allow it to tender the Policy Death Benefit to the Clerk of this Court, while it further investigates and ultimately files its interpleader action.

8. In light of the foregoing, Jackson seeks an additional 30 days, without prejudice to its Tender Motion, to answer the Complaint and file as a counterclaim its interpleader action. The complexity of this matter clearly warrants the request made herein by Jackson, and such

request is not in any way made to unnecessarily delay these proceedings and/or prejudice the rights of any party, including those of self-identified competing beneficiaries.

WHEREFORE, Defendant, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully move this Court to extend the time for it to file its answer and counterclaim for interpleader as to the Complaint, 30 days after ruling hereon by this Court, and requests such other and further relief as the Court deems just and proper.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)



Friday, May 3, 2013

Reassure America Life Insurance Company  
J. L. McDonald, ALHC LTCP  
Vice President  
12750 Merit Drive  
Suite 600  
Dallas, TX 75251  
Telephone (972) 776-8535  
Fax (260) 435-8773

RE: URGENT RE Policy #1009208

Dear Mr. McDonald,

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. I am in receipt of your attached letter and I have retained counsel, Christine Yates at Tripp Scott in FL, for my children's interests in the policy and am currently seeking counsel regarding my interest in the policy and request that you send me and Yates a copy of the policy and all pertinent policy information immediately at the addresses below.

I have been told by the estate planning attorney, Robert Spallina, that he does not have a copy of the policy, schedules, riders, loans, attachments, etc. and that he is also missing a trust document that may have been the beneficiary. I am requesting that your company make NO distribution of any policy proceeds without both my written personal consent and my children's counsel consent, to any party. I am aware of claims that there is also a missing trust of Simon that may have been a Beneficiary and any information you maintain regarding the beneficiaries would be helpful in trying to establish who the rightful beneficiaries are. I, nor my children have consented to any agreements for distribution and have no proper paperwork to rely on.

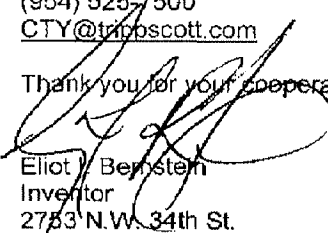
I have been informed that parties are attempting to make distribution without my or my children's counsel knowledge and consent.

Please contact me at your earliest convenience so that we may discuss this further or you can write or email at my addresses below.

Address information for Christine Yates,

Christine P. Yates  
Tripp Scott  
110 Southeast 6 Street  
Fort Lauderdale, FL 33301  
(954) 525-7500  
[CTY@trippscott.com](mailto:CTY@trippscott.com)

Thank you for your cooperation in these matters,

  
Eliot I. Bernstein  
Inventor  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245-8588 (o)  
(561) 886-7628 (c)  
(561) 245-8644 (f)  
[iViewit@iViewit.tv](mailto:iViewit@iViewit.tv)

**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.	)	Case No. 13 cv 3643
	)	
HERITAGE UNION LIFE INSURANCE	)	Honorable Amy J. St. Eve
COMPANY,	)	Magistrate Mary M. Rowland
	)	
Defendant.	)	

**DEFENDANT'S MOTION TO TENDER  
INSURANCE POLICY PROCEEDS TO COURT**

Defendant, Jackson National Life Insurance Company ("Jackson "), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, by its undersigned attorneys, moves this Court for an order authorizing it to tender the relevant insurance death benefit proceeds, which are at issue in this matter, to the registry of the Court. In support of this Motion, Jackson states:

1. On May 16, 2013, Jackson timely filed its Notice of Removal, thereby removing this matter to this Court, which involves a claim as to the payment of the death benefits under that certain life insurance policy, number 1009208 (the "Policy"), as more fully detailed in Jackson's Motion for an Extension of Time to File its Answer and Counterclaim to Plaintiff's Complaint (the "Extension Motion"). The death benefits in question are alleged to exceed \$1 million (the "Policy Death Benefit"), but in fact are \$1.6 million.

2. Jackson did not issue or administer the Policy, but rather acquired the Policy as part of its acquisition of the book of business of Reassure America Life Insurance Company. When coupled with the fact that Jackson as detailed in the Extension Motion (1) is aware of

competing claims to the Policy Death Benefit, (2) does not know the extent of the potential owners and/or beneficiaries of the Policy, and (3) is still seeking to locate key records relevant to the Policy, such as the Trust, Jackson intends to seek guidance from this Court as to distribution of the Policy Death Benefit (by way of a counterclaim for interpleader of said Benefit) when it answers the Complaint.

3. By the Extension Motion, Jackson seeks an additional thirty (30) days to file its answer and interpleader counterclaim (from the date of any order granting the Extension Motion). In the interim, Jackson seeks an order from this Court to tender the Policy Death Benefit into an account maintained by the Clerk of the Court, as Jackson is merely a stakeholder and is (and has been) ready, willing and able to make payment of the Policy Death Benefit upon proper order of Court.

WHEREFORE, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully requests that this Court enter an Order:

- (a) Authorizing Jackson to promptly deposit the Policy Death Benefit into the registry and/or a segregated account maintained by the Clerk of the Court; and
- (b) Granting such other and further relief as this Court deems just and proper.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)

1421240.1



CERTIFICATE OF SERVICE

The undersigned, an attorney, states that he caused a copy of the foregoing Motion to Tender Insurance Policy Proceeds to Court to be filed electronically with the Northern District of Illinois, and manually served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

By regular mail, postage prepaid, this ~~23<sup>rd</sup>~~ day of May, 2013.

/s/ Alexander D. Marks

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd  
6/21/95

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J. St.  
Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, May 28, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Defendant's motion for an extension of time [9] is granted. Defendant shall answer or otherwise plead by 6/27/13. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

Simon Bernstein Irrevocable Insurance Trust Dtd  
6/21/95

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J. St.  
Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, May 29, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Motion hearing held on 5/29/2013. Defendant's motion to tender insurance policy proceeds to Court [10] is granted. Parties shall submit an agreed proposed order to Judge St. Eve's proposed order email, the link for which can be found on her web page. Joint status report shall be filed by 7/12/13. Status hearing set for 6/7/13 is stricken and reset to 7/23/13 at 8:30 a.m. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

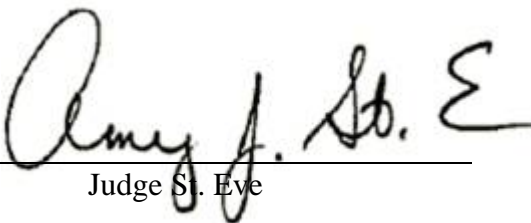
**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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

**AGREED ORDER FOR DEFENDANT'S MOTION TO  
TENDER INSURANCE POLICY PROCEEDS TO COURT**

This matter coming to be heard on the Motion by Defendant to tender the relevant insurance death benefit proceeds, which are at issue in this dispute, to the registry of the Court, due notice being given and the Court being fully advised in the premises, it is HEREBY ORDERED:

- 1) The motion is granted and Defendant is to tender the \$1,703,567.09 death benefit proceeds to the registry of the Court, which includes four percent (4%) interest from the date of death through June 25, 2013;
- 2) Plaintiff retains its rights to raise any further interest issues, including under the Illinois Insurance Code, 215 ILCS 5/224, at a later date; and,
- 3) Defendant's counsel to provide Plaintiffs' counsel with a receipt of deposit upon tender of the funds to the Court's registry.

  
\_\_\_\_\_  
Judge St. Eve

Date: June 25, 2013

Prepared By:

Frederic A. Mendelsohn  
Alexander D. Marks  
Burke, Warren, MacKay & Serritella, P.C. (#414704)  
330 N. Wabash Avenue, 21<sup>st</sup> Floor  
Chicago, IL 60611  
312-840-7000 (telephone)  
312-840-7900 (facsimile)



Life Insurance Company, makes the following (1) answer to Plaintiff's complaint and (2) counterclaim and third-party complaint for interpleader:

**ANSWER**

1. At all relevant times, the Bernstein Trust was a common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the State of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

2. Ted S. Bernstein is the Trustee of the Bernstein Trust.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. At all relevant times, the Bernstein Trust was a beneficiary of a life insurance policy insuring the life of Simon L. Bernstein, and issued as policy number 1009208 (the "Policy").

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

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

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

5. At the time of issuance and delivery of the Policy in 1982, CBLIC was an insurance company licensed and doing business in the State of Illinois, and the insured, Simon L. Bernstein, was a resident of the state of Illinois.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

6. Heritage subsequently assumed the Policy from Capital Bankers and thus became the successor to CBLIC as "Insurer" under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. In 1995, the VEBA, as owner of the Policy, executed a beneficiary change form naming LaSalle National Trust, N.A., as Trustee of the VEBA, as primary beneficiary of the Policy, and the Bernstein Trust as the contingent beneficiary.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

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

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. Upon the dissolution of the VEBA in 1998, the Policy ownership was assigned and transferred from the VEBA to Simon L. Bernstein, individually.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. At the time of his death, Simon L. Bernstein was the owner of the Policy, and the Bernstein Trust was the sole surviving beneficiary under the Policy.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

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

ANSWER: Jackson admits the allegation of this paragraph.

12. Following Simon L. 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 Simon L. Bernstein's death certificate and other documentation.

ANSWER: Jackson admits the allegation of this paragraph.

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

ANSWER: Jackson admits it, as a successor to Heritage, is obligated to pay the death benefits to the beneficiary(ies) of the Policy, but denies that the remainder of paragraph 13 accurately and fully states the obligations of a beneficiary in submitting a claim under the Policy, and/or when the obligation for Jackson to make such payment becomes due and therefore denies the same.

14. 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 of the Policy despite Heritage's receipt of due proof of the Insured's death.

ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

15. Despite the Bernstein Trust's demands Heritage has not paid out the death benefits on the policy to the Bernstein Trust.



ANSWER: Jackson lacks sufficient information and knowledge to form a belief as to the true beneficiary of the Policy, resulting in it tendering the death benefit funds to the Court and filing its interpleader counterclaim and third-party complaint, and thus it denies the allegation of this paragraph.

16. As a direct result of Heritage's refusal and failure to pay the death benefits 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.

ANSWER: Jackson denies the allegation of this paragraph.

WHEREFORE, Defendant, Jackson National Life Insurance Company, as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union Life Insurance Company, respectfully requests that it be dismissed from this lawsuit, and requests such other and further relief as the Court deems just and proper.

## **COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER**

### **INTRODUCTION**

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

### **PARTIES AND VENUE**

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the

subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein's son, presumably under the Bernstein Trust.

6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the purported trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

### **FACTS**

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the "Insured").

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National

Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or 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, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as *Exhibit 1*, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distributions of the Death Benefit Proceeds be made.

#### **COUNT I- INTERPLEADER**

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

WHEREFORE, counter- and third-party plaintiff Jackson National Life Insurance Company respectfully requests pursuant to 28 U.S.C. 1335 that this Court enter an Order:

- a. That counter-defendants be temporarily enjoined during the pendency of this suit and thereafter permanently and perpetually enjoined from commencing any proceedings or prosecuting any claim against Jackson in any state or federal court or other forum with respect to the Policy;
- b. That judgment be entered in favor of Jackson on the Complaint in Interpleader;
- c. That upon determination that the proper parties have been made subject to this suit, Jackson be excused from further attendance upon this case, be dismissed from this case with an express finding of finality pursuant to Rule 54(b) of the Federal Rules of Civil Procedure;
- d. That Jackson be awarded actual court costs and reasonable attorneys' fees incurred in connection with this interpleader action to be paid out of the admitted liability deposited by it with the Clerk of the Court; and
- e. That Jackson be granted such other and further relief as this Court deems just and appropriate.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY,**

By: /s/ Alexander D. Marks

One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that on June 26, 2013 he caused a copy of the foregoing Answer to Complaint and Counter-Claim and Third-Party Complaint for Interpleader to be filed electronically with the Northern District of Illinois electronic filing system, and electronically served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

/s/ Alexander D. Marks

1434759.1

Friday, May 3, 2013

Reassure America Life Insurance Company  
J. L. McDonald, ALHC LTCP  
Vice President  
12750 Merit Drive  
Suite 600  
Dallas, TX 75251  
Telephone (972) 776-8535  
Fax (260) 435-8773

RE: URGENT RE Policy #1009208

Dear Mr. McDonald,

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. I am in receipt of your attached letter and I have retained counsel, Christine Yates at Tripp Scott in FL, for my children's interests in the policy and am currently seeking counsel regarding my interest in the policy and request that you send me and Yates a copy of the policy and all pertinent policy information immediately at the addresses below.

I have been told by the estate planning attorney, Robert Spallina, that he does not have a copy of the policy, schedules, riders, loans, attachments, etc. and that he is also missing a trust document that may have been the beneficiary. I am requesting that your company make NO distribution of any policy proceeds without both my written personal consent and my children's counsel consent, to any party. I am aware of claims that there is also a missing trust of Simon that may have been a beneficiary and any information you maintain regarding the beneficiaries would be helpful in trying to establish who the rightful beneficiaries are. I, nor my children have consented to any agreements for distribution and have no proper paperwork to rely on.

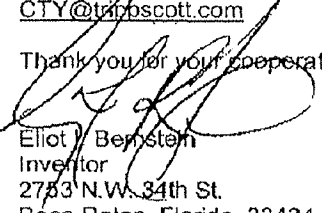
I have been informed that parties are attempting to make distribution without my or my children's counsel knowledge and consent.

Please contact me at your earliest convenience so that we may discuss this further or you can write or email at my addresses below.

Address Information for Christine Yates,

Christine P. Yates  
Tripp Scott  
110 Southeast 6 Street  
Fort Lauderdale, FL 33301  
(954) 525-7500  
[CTY@trippscott.com](mailto:CTY@trippscott.com)

Thank you for your cooperation in these matters,



Eliot I. Bernstein  
Inventor  
2753 N.W. 34th St.  
Boca Raton, Florida 33434-3459  
(561) 245-8588 (o)  
(561) 886-7628 (c)  
(561) 245-8644 (f)  
[iViewit@iViewit.tv](mailto:iViewit@iViewit.tv)



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. )

Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
 )  
Defendant. )

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

----- )  
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. )

**JOINT MOTION TO EXTEND TIME TO FILE INITIAL STATUS REPORT**

Defendant, Jackson National Life Insurance Company ("Jackson"), as successor in interest to Reassure America Life Insurance Company, successor in interest to Heritage Union

Life Insurance Company, and Plaintiff Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, jointly move for an extension of time to file their initial status report. In support thereof, the parties state:

1. On May 29, 2013, this Court ordered that the parties were to submit their joint initial status report by July 12, 2013.
2. Since that date, Jackson has filed a counterclaim and third-party complaint for interpleader, naming six new defendants.
3. Jackson has requested waiver of service from certain defendants, and has still not obtained service on other defendants.
4. The parties believe in the interest of judicial economy it is best to extend the status report deadline for 45 days to provide time for service and appearance of some or all of the other parties.

WHEREFORE, Defendant, Jackson National Life Insurance Company, and Plaintiff Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 respectfully request that this Court reset the deadline to submit a joint initial status report, and provide such other and further relief as the Court deems just and proper.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)

**Simon Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95**

By: /s/ Adam M. Simon  
One of its Attorneys

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that he caused a copy of the foregoing Joint Motion to Extend Time to File Initial Status Report to be filed electronically with the Northern District of Illinois, and manually served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

By U.S. mail, postage prepaid, this 11th day of July, 2013.

/s/ Alexander D. Marks

1454588.1

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, July 11, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Joint motion to extend [19] is granted. Joint status report shall be filed by 8/26/13. Status hearing set for 7/23/13 is stricken and reset to 8/29/13 at 8:30 a.m. No appearance is required on the 7/15/13 notice date. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**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 )  
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 Amy J. St. Eve  
Magistrate Mary M. Rowland

**INITIAL STATUS REPORT**

Pursuant to the court's standing order, counsel for the parties identified below participated in a conference to prepare the following Initial Status Report.

**I. The Nature of the Case**

**A. Attorneys for Parties of Record, including lead trial attorney**

- 1) Plaintiff, Simon Bernstein Irrevocable Trust dtd 6/21/95 (the "Bernstein Trust"), and Third-Party, Defendant, Ted Bernstein, individually are represented by Adam M. Simon whom will also be lead trial attorney.
- 2) Defendant Jackson National Insurance Company ("Jackson"), is successor to Heritage Union Life Insurance Company and the successor Insurer under the Life Insurance Policy. Jackson is represented by attorneys Frederic Mendelsohn and Alexander Marks. Frederic Mendelsohn will be the lead trial attorney (to the extent Jackson is not dismissed pursuant to its Interpleader action).

**B. Basis for Federal Jurisdiction.**

Jackson removed this action from the Circuit Court of Cook County, Illinois, and in its claim for Interpleader, Jackson asserts subject-matter jurisdiction under 28 U.S.C. §1335. Jackson also sets forth several potential claimants of diverse citizenship as a basis to assert jurisdiction under 28 U.S.C. §1335.

**C. Describe the nature of the claims asserted in the complaint and any counterclaims.**

The litigation originated by way of a breach of contract claim filed by the Bernstein Trust against Heritage Union Life Insurance Company. The original complaint was filed in the Circuit Court of Cook County and removed by Defendant, Jackson, as successor to Heritage Union Life Insurance Company. The breach of contract claims against Jackson arose out of Jackson's failure to pay death benefit proceeds from a life insurance policy (the "Policy") insuring the life of Simon Bernstein (the "Insured") whom passed away on September 13, 2012, based on Jackson's receipt of conflicting claims for the Policy proceeds (the "Death Benefit Proceeds"). Jackson has deposited the Death Benefit Proceeds, at issue, with the Registry of the Court.

The Bernstein Trust claims to be the sole surviving beneficiary of the Policy at the time of death of the Insured, and alleges that it has provided Jackson with due proof of the insured's death. At the time of his death, Simon Bernstein had five surviving adult children, and no surviving spouse.

Jackson removed the lawsuit to the United States District Court for the Northern District of Illinois based on diversity jurisdiction. Plaintiffs and Defendants are citizens of different states, and the amount in controversy equals the Death Benefit Proceeds which exceed \$1.6 million. Jackson filed an answer, counterclaim and third-party claim for interpleader, naming, The Bernstein Trust, Ted Bernstein, Eliot Bernstein and certain banks that were purportedly formerly Trustees of an SB Lexington VEBA Trust that was at one time a beneficiary of the Policy. Jackson also received correspondence from Eliot Bernstein (one of Simon Bernstein's adult children) asserting his interest and that of his children (Simon Bernstein's grandchildren) in the Death Benefit Proceeds.

Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment (Death Benefit Proceeds) under the Policy. Over the years the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and insurer has changed. Jackson also has not received an executed original or copy of the Bernstein Trust, and therefore is not even aware if such exists.

In its claim for Interpleader, Jackson alleges that it has received competing claims to the Death Benefit Proceeds. Jackson has named as Defendants to the Interpleader action all persons and entities that it believes have potential claims to the Death Benefit Proceeds, and seeks dismissal from the suit while the Court determines the proper beneficiary(ies) of the Death Benefit Proceeds.

#### **D. Major Factual Issues**

Plaintiff and Ted Bernstein believe that himself and three of his siblings, which represent 4/5ths of Simon Bernstein children, agree that The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/1995 was duly formed and at the time of Simon Bernstein's death was the sole surviving beneficiary of the Policy. Plaintiff believes the evidence will show that the Bernstein Trust beneficiaries were each of the five children who were to share equally in the death benefit proceeds pursuant to the terms of the Trust.

As the Bernstein Trust has not been located, Jackson raises factual issues as to the Trust's existence, its proper title, and who are the proper beneficiaries



of the Policy based on the conflicting claims.

**E. The relief sought by Plaintiffs**

Plaintiff is seeking the Court's determination that the Bernstein Trust is the sole surviving beneficiary of the insurance proceeds, and that the five surviving children of Simon L. Bernstein are the beneficiaries, in equal shares, of the Bernstein Trust.

Counter-plaintiff Jackson, now that it has deposited the Death Benefit Proceeds with the court, seeks dismissal from the suit.

**F. Named Parties that have not appeared as of the date of this report**

Eliot Bernstein has returned an executed a waiver of service, and has an answer due on August 30, 2013.

Bank of America, N.A. was served on or about 7/29/13, and was to file an answer by August 19, 2013. No answer or appearance has yet been filed.

United Bank of Illinois n/k/a as PNC Bank was served on or about 7/25/13 and had its answer due on August 15, 2013. No answer or appearance has yet been filed.

First Arlington Bank has not yet been served, and Jackson National has not yet been able to determine the current location, existence or successor of this bank.

**II. Pending Motions and Case Plan**

A. Pending Motions: None at this time.

B. Proposal for Discovery Plan:

- i) Primarily written discovery is required, however it is possible that Plaintiff anticipates that it may need to take approximately five depositions. Expert testimony is not anticipated at this time, but both parties reserve the right to conduct Expert discovery as set forth herein.
- ii) Rule 26(a)(1) Disclosures by October 1, 2013;
- iii) Written Discovery to be issued by October 15, 2013;
- iv) Fact discovery to be completed by February 17, 2013;
- v) Plaintiffs expert report shall be due by March 10, 2014;

- vi) Defendants expert report shall be due by March 31, 2014
- vii) Expert Discovery completed by April 30, 2014;
- viii) Dispositive Motions to be filed by May 30, 2014.

**III. Consent to Proceed Before a Magistrate Judge**

The parties do not unanimously consent to proceed before a magistrate judge.

Dated: 8/26/13

By: s/Adam M Simon  
Adam M. Simon (ARDC No. 6205304)  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773

*Attorneys for Plaintiff/Counter-defendant  
Simon Bernstein Irrevocable Trust Dtd 6/21/95  
and Third-Party Defendant, Ted Bernstein,  
individually.*

By: s/ Alexander D. Marks  
Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Wilson, MacKay and Serritella, PC  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, IL 60601  
Phone: 312-840-7000  
Fax: 312-840-7900

*Attorneys for Defendant/Counter-Plaintiff  
Jackson National Insurance Company*

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, August 29, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Status hearing held on 8/29/2013 and continued to 9/25/2013 at 08:30 AM. Rule 26(a)(1) disclosures by 10/1/13. Written discovery shall be issued by 10/15/13. Fact discovery shall be completed by 2/17/14. Parties are directed to meet and confer pursuant to Rule 26(f) and exhaust all settlement possibilities prior to the next status hearing. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**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 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland

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

Third-Party Defendants. )

**SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST DTD 6/21/95 (“BERNSTEIN TRUST”), AND TED BERNSTEIN’S, INDIVIDUALLY AND AS TRUSTEE OF THE BERNSTEIN TRUST, ANSWER TO COUNTERCLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER**

Plaintiff/Counter-Defendant, Simon Bernstein Irrevocable Trust dtd 6/21/95 (“Bernstein Trust”) and Third Party Defendant, Ted Bernstein, individually and as Trustee of the Bernstein Trust, by and through their attorney, Adam M. Simon, makes the following answer to Defendant/Counter-Plaintiff, Jackson National Insurance Company’s (“Jackson”) counterclaim and third-party complaint for interpleader:

**ANSWER TO COUNTER-CLAIM AND THIRD PARTY COMPLAINT  
FOR INTERPLEADER**

**INTRODUCTION**

1. Jackson National Life Insurance Company (“Jackson”) brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. §1335 (a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the “Death Benefit Proceeds”) have been tendered to this Court.

**ANSWER:** To the extent Par. 1 of Jackson’s counter-claim/third-party complaint contain conclusions of law, no response is required. Ted Bernstein and The Bernstein Trust admit that Jackson has tendered the death benefit to the court, but deny that a final determination has been made of the total interest due on the death benefit from the date of Simon Bernstein’s (“Insured”) death through the date of deposit.

**PARTIES AND VENUE**

2. Jackson, as successor in interest to Reassure America Life Insurance Company (“Reassure”), successor in interest to Heritage Union Life Insurance Company (“Heritage”), is a corporation organized and existing under the laws of the State of Michigan, with its principal

place of business located in Lansing, Michigan. Jackson did not originate or administer the subject life insurance policy, Policy Number 1009208 (the “Policy”), but inherited the Policy and the Policy records from its predecessors.

**ANSWER:** Ted Bernstein and The Bernstein Trust lack sufficient information to form a belief as to the allegations contained in Par. 2 but verily believes that Jackson is the successor-in-interest to Heritage Union Life Insurance as Insurer of the Policy and believes that Jackson administers the Policy. Ted Bernstein and The Bernstein Trust deny that Jackson “inherited” the Policy and Policy records from its predecessor.

3. The Simon Bernstein Irrevocable Trust Dtd 6/21/95 (the “Bernstein Trust”) is alleged in the underlying suit to be a “common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois”

**ANSWER:** Ted Bernstein and The Bernstein Trust admit the allegations contained in Par 3.

4. Ted S. Bernstein is a resident and a citizen of Florida. He is alleged in the underlying suit to be the “trustee” of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein’s son).

**ANSWER:** Ted Bernstein and the Bernstein Trust admit the allegations contained in Par. 4.

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein’s son, presumably under the Bernstein Trust.

**ANSWER:** Ted Bernstein and The Bernstein Trust admit that Eliot Bernstein is a resident and citizen of Florida. Ted Bernstein and The Bernstein Trust verily believe that Eliot Bernstein has communicated in writing and/or via email with Jackson regarding potential claims on the Policy, and affirmatively state that such written communications speak for themselves.

6. First Arlington Bank is upon information and belief, a bank in Illinois, that was, at one point, the purported trustee for the S.B. Lexington, Inc. Employee Death Benefit Trust” (the “Lexington Trust”). The Lexington Trust was, upon information and belief, created to provide employee death benefits to certain employees of S.B. Lexington, Inc., an insurance agency, but it is unclear if such trust was properly established.

**ANSWER:** Ted Bernstein and The Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 6 and to the extent such allegations contain conclusions of law regarding the “proper formation” of the Lexington Trust no response is required.

7. United Bank Of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

**ANSWER:** Ted Bernstein and The Bernstein Trust deny the allegations contained in Par. 7.

8. Bank of America, N.A. is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

**ANSWER:** Ted Bernstein and The Bernstein Trust deny the allegations contained in Par. 8.

9. The “Simon Bernstein Trust” is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

**ANSWER:** Ted Bernstein and The Bernstein Trust deny that that the Simon Bernstein Trust is a separate trust from The Bernstein Trust, but admit that The Bernstein Trust was named as a contingent beneficiary of the Policy.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

**ANSWER:** Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 10.

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

**ANSWER:** Ted Bernstein admits the allegations contained in Par. 11.



12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

**ANSWER:** Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 12.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist under the laws of and to be administered within this State.

**ANSWER:** Ted Bernstein and The Bernstein Trust admit only that personal jurisdiction is proper over Ted Bernstein and Eliot Bernstein. Ted Bernstein denies he has an ownership in the Bernstein Trust but affirmatively states he has a beneficial interest in the Bernstein Trust.

14. Venue is proper in this District pursuant to 28 U.S.C. §1391 (b) in that a substantial part of the event giving rise to this interpleader action occurred in this District.

**ANSWER:** Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 14.

15. On December 27, 1982 upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the “Insured”).

**ANSWER:** Ted Bernstein and The Bernstein Trust admit the allegations contained in Par. 15.

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National Trust, N.A., Trustee; LaSalle National Trust, N.A.; Simon Bernstein Insurance Trust dated 6/21/95; and "Simon Bernstein Trust, N.A."

**ANSWER:** Ted Bernstein and The Bernstein Trust (i) admit that over the years owners, beneficiaries and contingent beneficiaries may have changed; (ii) lack sufficient information to admit or deny which of the entities listed by Jackson in Par. 16 were named as beneficiaries from time to time over the life of the policy; and (iii) deny that the "issuer" changed.

17. At the time of the Insured's death, it appears LaSalle National Trust, N.A. was the named primary beneficiary of the Policy, and the Simon Bernstein Trust, N.A. was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

**ANSWER:** Ted Bernstein and The Bernstein Trust deny that LaSalle National Trust, N.A. was named the primary beneficiary of the Policy, and affirmatively state that to the extent LaSalle National Trust, N.A. was named as a beneficiary it was named solely in its capacity as Trustee of the SB Lexington VEBA Trust. Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny that (i) the Simon Bernstein Trust, N.A. was named a contingent of the Policy; or (ii) to admit or deny the exact amount of the death benefit.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as trustee of the Bernstein Trust. Ted Bernstein claimed that Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

**ANSWER:** Ted Bernstein and the Bernstein Trust admit Ted Bernstein submitted a claim through Florida counsel seeking payment of the Death Benefit Proceeds as trustee of the Bernstein Trust, and claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the sole surviving Policy beneficiary at the time of decedent's death, but deny all remaining allegations contained in Par. 18.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

**ANSWER:** Ted Bernstein and the Bernstein Trust admit that to its knowledge no one has been able to locate an executed original or an executed copy of the Bernstein Trust, but denies that no one has located a copy of the Bernstein Trust. Ted Bernstein and the Bernstein Trust neither admit nor deny the remaining allegations but state that any such correspondence dated January 8, 2013 speaks for itself.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Insurance Trust dated 6/21/95, Trust” as captioned herein, or 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, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant action on behalf of the Bernstein Trust.

**ANSWER:** Ted Bernstein and the Bernstein Trust admit only that neither an executed original nor an executed copy of the Bernstein Trust Agreement has been located. Ted Bernstein and the Bernstein Trust lack sufficient information regarding what Jackson “is aware of” in connection with the Trust or Trustee. Ted Bernstein and the Bernstein Trust deny that Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

21. In addition, it is not known whether “LaSalle National Trust N.A.” was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust) or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust which was allegedly dissolved.

**ANSWER:** Ted Bernstein and the Bernstein Trust deny the allegations contained in Par. 21.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as Exhibit 1, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distribution of the Death Benefit Proceeds be made.

**ANSWER:** Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations in Par. 22 and state that Exhibit 1 speaks for itself.

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

**ANSWER:** Ted Bernstein and the Bernstein Trust make no answer to the allegations in Par. 23 as they are conclusions of law.

24. Jackson does not dispute the existence of the Policy or its obligations to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

**ANSWER:** Ted Bernstein and the Bernstein Trust make no answer to the allegations in Par. 24 to the extent they contain conclusions of law, but admit that Death Benefit Proceeds were tendered into the registry of the court. Ted Bernstein and the Bernstein Trust have reserved their right to contest the amount of interest due on the Death Benefit Proceeds.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of LaSalle National Trust N.A. (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

**ANSWER:** Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 25.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

**ANSWER:** Ted Bernstein and the Bernstein Trust lack sufficient information to admit or deny the allegations contained in Par. 26.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

**ANSWER:** Ted Bernstein and the Bernstein Trust deny the allegations in Par. 27.

Wherefore, Plaintiff/Counter-Defendant, Bernstein Trust, and Third Party Defendant, Ted S. Bernstein respectfully request that this Court (i) enter judgment for Plaintiff on its complaint against Jackson, all Defendants, and Third Party Defendants; (ii) award the Death Benefit Proceeds to the Bernstein Trust; and grant Plaintiff such further relief as the court deems just and proper.

**Affirmative Defenses**

Ted Bernstein and the Bernstein Trust, for its affirmative defenses and without waiver of Jackson's obligation to prove each and every element of its counterclaim, states as follows:

1. To the extent any Third-Party Bank Defendant (i) cannot be located or found to exist by Jackson, and (ii) has not sent any claim for the Death Benefit Proceeds to Jackson, such Third-Party Bank Defendant should be dismissed from this action with prejudice because such party does not qualify as a "potential claimant" to the Death Benefit Proceeds.
2. Jackson's counterclaim and cross-claim for Interpleader arises out of its succession to and assumption of the Policy in the ordinary course of its business as an Insurer. Upon information and belief, Jackson became the successor Insurer of the Policy as a result of its purchase of the Policy from another insurance company, or by virtue of Jackson's acquisition of another life insurance company whom was the Insurer under the Policy. Because (i) the counterclaim for interpleader was filed in response to Plaintiff's breach of contract action and in order to protect Jackson from liability, (ii) such action is an ordinary part of its insurance business; and (iii) no extraordinary measures were taken, Jackson is not entitled to reimbursement of its attorney's fees and costs from the Death Benefit Proceeds pursuant to the Interpleader Act.

By: s/Adam M Simon

Adam M. Simon (ARDC No. 6205304)

The Simon Law Firm

303 E. Wacker Drive, Suite 210

Chicago, IL 60601

Phone: 312-819-0730

Fax: 312-819-0773

*Attorneys for Plaintiff/Counter-defendant*

*Simon Bernstein Irrevocable Trust Dtd 6/21/95  
and Third-Party Defendant, Ted Bernstein,  
individually.*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the foregoing Notice of Motion to be filed and served *via* electronic means with the Northern District of Illinois, pursuant to the Court's Electronic Case Filing (ECF) procedures and also served upon the following persons and entities *via* U.S. mail, proper postage prepaid:

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Wilson, MacKay and Serritella, PC  
330 N. Wabash Ave., 22nd Floor  
Chicago, IL 60601  
Phone: 312-840-7000  
Fax: 312-840-7900  
*Attorneys for Defendant/Counter-Plaintiff  
Jackson National Insurance Company*

on this 30th day of August, 2013.

By: s/Adam M Simon  
Adam M. Simon (ARDC No. 6205304)  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 312-819-0730  
Fax: 312-819-0773

*Attorneys for Plaintiff/Counter-defendant  
Simon Bernstein Irrevocable Trust Dtd 6/21/95  
and Third-Party Defendant, Ted Bernstein,  
individually.*



**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Tuesday, September 3, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead by 9/6/13. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, September 4, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead by 9/13/13. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, September 11, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Eliot Bernstein's oral request for an extension of time is granted. Eliot Bernstein shall answer or otherwise plead on or before 9/23/13. Mailed notice(kef, )

**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 an order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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 alleged Trustee of the Simon )

Bernstein Irrevocable Insurance Trust )

Dtd. 6/21/95, and ELIOT BERNSTEIN, )

Third-Party Defendants. )

----- )

Case No. 13-cv-03643

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





**ELIOT IVAN BERNSTEIN ("ELIOT") (1) ANSWER TO JACKSON NATIONAL LIFE INSURANCE COMPANY ("JACKSON") ANSWER AND COUNTER-CLAIM AND THIRD-PARTY COMPLAINT FOR INTERPLEADER AND (2) CROSS CLAIM**

ELIOT a third party defendant and an alleged beneficiary of a life insurance policy Number 1009208 on the life of Simon L. Bernstein ("Policy(ies)"), a "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" and a "Simon Bernstein Trust, N.A." that are at dispute in the Lawsuit, makes the following (1) Response to Jackson's Answer and Counterclaim and (2) Cross claim.

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant<sup>1</sup>:

**ANSWER TO JACKSON'S COUNTER-CLAIM AND THIRD PARTY COMPLAINT**  
**FOR INTERPLEADER**

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

---

<sup>1</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)."  
In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

**ELIOT ANSWER:** To the extent Par. 1 of Jackson's counter-claim/third-party complaint contain conclusions of law, no response is required. However, ELIOT denies that Jackson has tendered the death benefit to the court, as when ELIOT contacted Jackson's counsel Alexander David Marks ("MARKS") he stated at that time, after Jackson's Answer was filed, that the death benefit had not been paid to this Court.

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

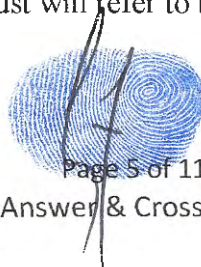
**ELIOT ANSWER:** ELIOT admits that Ted S. Bernstein ("TED") is a resident of Florida.

ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the

remainder of the allegations of this paragraph and therefore denies the same. That ELIOT claims that TED makes his claims in this Lawsuit acting as alleged “trustee” of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” but also TED alleges this trust and any executed copies cannot be located. Therefore, it would be almost impossible for TED to make assertions to who the true and proper trustees and beneficiaries of such lost trust are. ELIOT claims that the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” was not the final beneficiary of the Policy(ies). On information and belief the beneficiary of the Policy(ies) at the time of Simon L. Bernstein (“SIMON”) death, as according to Jackson’s Counter Claim the beneficiary at the time of death was the “Simon Bernstein Trust, N.A.” and thus the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” may have no valid claim as a prior beneficiary.

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy(ies) as Simon Bernstein's son, presumably under the Bernstein Trust.

**ELIOT ANSWER:** ELIOT admits residency and citizenry of Florida and that he has asserted that he and/or his children are potential beneficiaries as SIMON’s son and grandchildren. ELIOT denies his claims were made under the Bernstein Trust, which according to TED’s response to Jackson’s Counter Claim, “Ted Bernstein and the Bernstein Trust admit that to its knowledge no one has been able to locate an executed original or an executed copy of the Bernstein Trust, but denies that no one has located a copy of the Bernstein Trust.” In other words the executed “Bernstein Trust” is lost and no one has a copy and herein the term “lost” trust will refer to the “Bernstein Trust” and any other names it is referenced as.





6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the alleged trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

11. Personal jurisdiction is proper over Ted Bernstein because he, allegedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that TED cannot assert with any proof or contract or trust that he is the trustee of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” aka “Bernstein Trust” as TED claims the trust is lost and no executed copies exist.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph regarding personal jurisdiction and therefore

denies the same. ELIOT denies that TED or ELIOT can assert an ownership or beneficial interest in the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka "Bernstein Trust," as if the trust is lost they cannot prove through contract anyone's interests or rights.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the alleged insured (the "Insured").

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied information and documents to form any opinion on the validity of the claims.

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The Court should

note that after repeated attempts by ELIOT to secure copies of the underlying policies and trusts pertinent to this Lawsuit from the parties, he has been denied and refused all such suppressed and denied requested information and documents to form any opinion on the validity of the claims.

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations regarding the beneficiaries of the Policy(ies) and therefore denies the same. ELIOT denies that the Policy(ies) Death Benefit Proceeds are \$1,689,070.00, as it was initially represented by TED, Robert Spallina, Esq. ("SPALLINA") and others that the death benefit was \$2,000,000.00 less outstanding loans. When ELIOT asked TED and SPALLINA and others for copies of the policies loans or any other Policy(ies) information it was denied and suppressed. After repeated attempts by ELIOT to secure copies of the underlying policies, trusts and carrier information pertinent to this Lawsuit from the parties, he has been denied and refused all such requested information and documents to form any opinion on the validity of the claims.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel **(who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation)**, [emphasis added] submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in

1998, leaving the Bernstein Trust as the alleged sole surviving Policy beneficiary at the time of the Decedent's death.

**ELIOT ANSWER**: ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims, on information and belief that TED's counsel that withdrew from representation after advising TED that he **did not have "authority" to file this Lawsuit** is believed to be Robert Spallina, Esq. ("SPALLINA") and Donald Tescher, Esq. ("TESCHER") of Tescher & Spallina, P.A. ("TSPA"), who are acting as estate counsel for SIMON's estate and as alleged Personal Representatives for the estate of SIMON.

That ELIOT does not have the necessary files from this Court's records to determine whom the original counsel who drafted and filed this Lawsuit were and if withdrawal of counsel papers were filed after the filing of the suit or withdrawal was prior to filing. That ELIOT believes that any claims of any fiduciary capacities claimed by TED on behalf of any party that is a litigant in this Lawsuit are allegedly fraudulently acquired and are part of a larger **insurance fraud and fraud on the beneficiaries of the estate**. The alleged criminal acts are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate ("Probate Court") case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:

- i. May 6, 2013 ELIOT filed Docket #23 an "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 OF SHIRLEY BERNSTEIN AND MORE” (“Petition 1”).

- a. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
- b. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
- ii. May 29, 2013, ELIOT filed Docket #28 “RENEWED EMERGENCY PETITION” (“Petition 2”)
  - a. [www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf)
- iii. June 26, 2013, ELIOT filed Docket #31 “MOTION TO: CONSIDER IN ORDINARY COURSE THE 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 OF SHIRLEY BERNSTEIN AND MORE FILED BY PETITIONER” (“Petition 3”)
  - a. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf)
- iv. July 15, 2013, ELIOT filed Docket #32 “MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS” (“Petition 4”)
  - a. [www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf)
- v. July 24, 2013, ELIOT filed Docket #33 “MOTION TO REMOVE PERSONAL REPRESENTATIVES” **for insurance fraud and more.** (“Petition 5”)
  - a. [www.iviewit.tv/20130724SIMONMotionRemovePR.pdf](http://www.iviewit.tv/20130724SIMONMotionRemovePR.pdf)
- vi. August 28, 2013, ELIOT filed Docket #TBD “NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS” (“Petition 6”)

a. [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)

- vii. September 04, 2013, ELIOT filed Docket #TBD “NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. (“Petition 7”)

a. [www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf)

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, **we respectfully request a court order to enable us to process this claim.** [Emphasis Added]

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that the counsel referred to here as “Ted Bernstein’s counsel” is believed to be SPALLINA and TESCHER and the law firm of TSPA, as the Heritage Union Life Insurance Company’s letter referenced in Jackson’s response demands a “court order” to approve of the TSPA,

SPALLINA, TESCHER, TED and Pamela Beth Simon (“P. SIMON”) insurance trust and beneficiary scheme they presented in their death benefit claim. Other correspondences were sent to TSPA, SPALLINA and TESCHER directly by the carrier(s) in their capacity as counsel representing the estate of SIMON and as alleged Personal Representatives of the estate of SIMON.

However, instead of complying with the carriers request to obtain a “court order” to determine the beneficiaries, the instant Lawsuit was instead filed to try and reap the benefits through this Breach of Contract suit and without first obtaining a court order approving the beneficiaries as demanded by the carrier. The initial insurance and trust scheme prepared by TSPA is fully described, defined and exhibited in Petition 1, Section VII - “Insurance Distribution Scheme” Pages 30-37 and Pages 170-175, exhibit 7 - “Settlement Agreement and Mutual Release” (“SAMR”). The trust that would have been created under the SAMR to replace the lost “Bernstein Trust” aka “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is termed herein as the SAMR TRUST (“SAMR TRUST”). The SAMR TRUST was to act as the proposed trust instrument by which the alleged conversion of proceeds was to be used funneled to allegedly intentionally post mortem elected wrong beneficiaries, as defined more fully in Petition 1, Pages 142-168 and 258-259, exhibits 5, 6 and 25.

That TSPA, SPALLINA and TESCHER are SIMON’s estate counsel and alleged Personal Representatives of SIMON’s estate, and yet, also appear in this Lawsuit to have acted in apparent conflict with the estate beneficiaries, acting as TED’s counsel in this Lawsuit.

ELIOT claims these conflicts enable part of an alleged larger fraud against the estates of SIMON and SHIRLEY as further evidenced and exhibited in the Petitions 1-7 and Petition 1,



Section XIX. CONFLICTS OF INTEREST BY PERSONAL REPRESENTATIVES,  
ESTATE COUNSEL AND TRUSTEES DISCOVERED, Pages 88-90.

The documents giving TSPA, SPALLINA, TESCHER and TED fiduciary powers in the estates of SIMON and SHIRLEY are also currently under investigations and questioned as to their validity in complaints filed by ELIOT with the Governor of Florida Notary Public Division, the Palm Beach County Sheriff's Office, Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate and have been simultaneously been tendered to the US District Court of New York Southern District.

In the Notary Public investigation at the Florida Governor's Office, the Licensed Notary Public, who is an employee of TSPA, **ADMITTED TO ILLEGALLY NOTARIZING** documents and it is alleged that she forged documents after he was deceased and also improperly Notarized documents, including a Will and Amended Trust of SIMON and documents that allegedly grant Simon's estate counsel, TSPA, SPALLINA and TESCHER their fiduciary capacities as alleged Personal Representatives of the estates of SIMON.

That the Licensed Notary Public Kimberly MORAN ("MORAN"), admitted to committing six instances of Fraud by falsely Notarizing documents and allegedly Forged documents in the estate of SHIRLEY. The alleged forgeries included a document **ILLEGALLY NOTARIZED** in SIMON's name and with a fraudulent signature affixed, done two months after SIMON's passing and submitted to the Probate Court and others as part of official records in the estates. These acts are illegal felony crimes. The Notary Public MORAN's Response to the complaints filed against her with the Governor of Florida's office in an ongoing investigation, including her Admission to the allegations, the Response filed by

ELIOT to MORAN's Response and the original Notary Public original complaint, all can be found as exhibits in Petition 7, exhibits 1,2 &3.

20. Presently, the Bernstein Trust still has not been located. **Accordingly, Jackson is not aware whether the Bernstein Trust even exists,** [EMPHASIS ADDED] and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or 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.** [Emphasis Added] In conjunction, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that the "Bernstein Trust" is unknown if it exists. ELIOT admits that TED is questionably the trustee of the "Bernstein Trust" and believes TED has no basis or authority to file this Lawsuit or a death benefit claim with the carrier.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved."

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as Exhibit 1, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper

beneficiaries of the Policy), and requesting that no distributions of the Death Benefit proceeds be made.

**ELIOT ANSWER:** ELIOT admits in part and denies in part and lacks sufficient information and knowledge in part to form a belief as to the truth of the remainder of the allegations of this paragraph and therefore denies the same. ELIOT admits that he and/or his children are the beneficiaries. ELIOT denies sending correspondence to Jackson but instead sending such correspondence to Reassure America Life Insurance Company (“RALIC”) after failing to reach Heritage after several attempts. RALIC may have tendered the correspondence to Jackson without ELIOT authorization or knowledge. ELIOT admits stating that **NO DISTRIBUTION OF DEATH BENEFITS BE MADE** and further until both **CIVIL AND CRIMINAL REMEDIES ARE NOW RESOLVED**, regarding the Policy(ies).

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT makes no answer to the allegations in Par. 23 as they are conclusions of law.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT claims that Jackson has not tendered the Policy(ies) Proceeds to the registry of this Court after

conversations with Jackson's Attorney at Law, MARKS, who denied benefits have been paid into the registry of this Court at that time.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. ELIOT admits that "Jackson is presently unable to discharge its admitted liability under the Policy(ies)."

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy(ies), which Jackson has been unable to do by reason of uncertainty and potential competing claims. ELIOT claims the death benefit amount is unknown with conflicting claims as to the amount due to the to be determined beneficiaries and therefore cannot determine how much the admitted liability is. Until ELIOT receives all Policy(ies) records and information ELIOT denies that Jackson has no interest in the benefits payable under the Policy(ies) and thus should not be released from this Lawsuit at this time. There may also be other liabilities that are unknown at this time regarding record keeping of beneficiaries and more and these liabilities may be due to any of the parties of this Lawsuit and is yet still unknown, leaving further reason for this Court to leave Jackson a party to the Lawsuit.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

**ELIOT ANSWER:** ELIOT lacks sufficient information and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

ELIOT shall not be liable to Jackson for any fees or any type of damages.

#### **RELIEF**

**WHEREFORE,** ELIOT prays that:

- i. Even if this court comes to the conclusion that Jackson should be paid attorney fees, then these fees should be paid by TSPA, TESCHER, SPALLINA, TED, Simon Law Firm (“SLF”), David Simon (“D. SIMON”), Pamela Beth Simon (“P. SIMON”) and Adam Simon (“A. SIMON”) directly, as all these costs have resulted from the allegedly fraudulent and illegal acts of TSPA, SPALLINA, TESCHER, TED, P. SIMON, SLF D. SIMON and A. SIMON, in attempting to convert the Policy(ies) proceeds through an alleged Fraud on this Court and fraud on the true and proper beneficiaries of the Policy(ies).
- ii. ELIOT and his children be paid their legal share of the Policy(ies) proceeds as beneficiaries after a “court order” determining the beneficiaries is made.
- iii. under no circumstances should ELIOT or other beneficiaries or interested parties be made liable for attorney fees or any other damages to Jackson or any other party.

- iv. bonding be required if this Court finds that Abuse of Process has occurred in the filing of this Lawsuit.
- v. Jackson should not pay the Policy(ies) proceeds to this Court registry at this time until all beneficiary disputes are wholly resolved by a court of law.
- vi. this Court should not release Jackson from the remainder of the proceedings, as their interest in Heritage makes them a party to this suit and any damages, which may result from their actions or those of Heritage's are still unknown, and so it would be prudent to leave them in at the present time.
- vii. this Court demand all parties release all insurance policy(ies) records, trust documents and any other information regarding the Policy(ies) or any other insurance or other contracts held to ELIOT immediately so that he may better prepare pleadings for this Lawsuit as he has been denied all such records and information to this point, and,
- viii. leave to amend this Answer.

**CROSS CLAIM / COUNTER CLAIM**

**INTRODUCTION**

1. ELIOT brings this cross claim under FRC Rule 13(g) against the Cross Defendant Ted Stuart Bernstein ("TED") and requests this court under FRC Rule 19 to add Pamela B. Simon ("P. SIMON"), David B. Simon ("D. SIMON"), Adam Simon ("A. SIMON"), The Simon Law Firm ("SLF"), Tescher & Spallina P.A. ("TSPA"), Donald Tescher ("TESCHER"), Robert Spallina ("SPALLINA"), Jill Iantoni ("IANTONI"), Lisa Friedstein ("FRIEDSTEIN"), S.T.P. Enterprises ("STP"), S.B. Lexington, Inc. Employee Death Benefit Trust ("SBI"), SB

Lexington, Inc. (“SBL”), National Service Association, Inc. (of Florida) (“NSA”), National Service Association, Inc. (of Illinois) (“NSA2”) and John and Jane Doe’s to this case as additional Third Party Defendants and further requests this Court to:

- i. To seize all records and demand that all records of all parties concerning either Shirley Bernstein (“SHIRLEY”) or Simon Bernstein (“SIMON”) held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;
- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in **Petition 7. That in hearings held on SHIRLEY’s estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY’s estate two months after he was deceased and how there was a fraud upon his court and**

- himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing of the admitted criminal misconduct before his Court, twice in fact.**
- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court as further defined herein is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from further representing any parties, sanctioned and all Cross Defendants and Third Party Defendants forced to retain non conflicted counsel further in these proceedings.
- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
- vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
- vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions during this time period and ELIOT thanks Your Honor for the additional extensions in light of these medical maladies.



- viii. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

### **JURISDICTION**

2. Personal jurisdiction is proper over Ted S. Bernstein because he, allegedly claims to be Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.
3. Personal jurisdiction is proper over Pamela B. Simon, David. B. Simon, Adam Simon, Lisa S. Friedstein and Jill M. Iantoni to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have a beneficial interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State. Tescher & Spallina, P.A., Donald Tescher and Robert Spallina, as each are Personal Representatives, Trustees and estate counsel of the estate of SIMON.
4. Personal jurisdiction is proper over The Simon Law Firm, , S.T.P. Enterprises, S.B. Lexington, Inc. Employee Death Benefit Trust, SB Lexington, Inc., National Service Association, Inc. , of Florida, National Service Association, Inc. Illinois, and John and Jane Doe's to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have business in this State.

### **PARTIES AND VENUES**

5. Eliot Ivan Bernstein ("ELIOT") is a resident and citizen of Florida. ELIOT and/or his children are beneficiaries of the Policy(ies).
6. Theodore Stuart Bernstein is a resident and citizen of Florida. He is claiming to be Successor Trustee of the lost "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" aka

“Bernstein Trust” and alleging he is a beneficiary of the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” regarding Heritage Policy #1009208 (“Policy(ies)”). He is the son of SIMON and SHIRLEY.

3. David B. Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in The Simon Law Firm and married to P. SIMON , daughter of SIMON and SHIRLEY.
4. Adam Simon, Esq. is a resident and citizen of Illinois and an Attorney at Law. He is a partner in the SLF law firm and is brother to D. SIMON.
5. The Simon Law Firm is believed to be a law firm licensed in Illinois.
6. Pamela Beth Simon is a resident of Illinois and citizen of Illinois. She is daughter to SIMON and SHIRLEY and married to D. SIMON and sister-in-law to A. SIMON.
7. Tescher & Spallina, P. A. is believed to be a Florida law firm.
8. Robert L. Spallina, Esq. is a resident of Florida and citizen of Florida and an Attorney at Law.
9. Donald R. Tescher is a resident of Florida and citizen of Florida and an Attorney at Law.
10. Jill Marla Iantoni is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
11. Lisa Sue Friedstein is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.
12. S.T.P. Enterprises Inc. is believed to be an Illinois insurance agency believed to be owned by P. SIMON as President and D. SIMON as VP.
13. S.B. Lexington, Inc. Employee Death Benefit Trust, is a trust alleged to be managed by P. SIMON and D. SIMON.

14. S.B. Lexington, Inc. is an Illinois insurance agency managed by D. SIMON and P. SIMON.
15. National Service Association, Inc. is a Florida insurance consulting firm believed to be managed by SIMON prior to his death.
16. National Service Association, Inc. is an Illinois insurance consulting firm believed to be managed by P. SIMON and D. SIMON.

### FACTS

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief and as a Pro Se Litigant:

17. That the alleged criminal acts defined herein are more fully defined in the Petitions and Motions listed below with URL hyperlinks to the filings, whereby the documents contained at the hyperlinks are hereby incorporated in entirety by reference herein with all exhibits therein, and where the Petitions and Motions were filed in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida / Probate (“Probate Court”) case # 502012CP004391XXXXSB for the estate of Simon L. Bernstein, as follows:
  - i. May 6, 2013 ELIOT filed Docket #23 an “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 OF SHIRLEY BERNSTEIN AND MORE” (“Petition 1”).

- b. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
- c. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
- ii. May 29, 2013, ELIOT filed Docket #28 “RENEWED EMERGENCY PETITION” (“Petition 2”)
  - d. [www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf)
- iii. June 26, 2013, ELIOT filed Docket #31 “MOTION TO: CONSIDER IN ORDINARY COURSE THE 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 OF SHIRLEY BERNSTEIN AND MORE FILED BY PETITIONER” (“Petition 3”)
  - e. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf)
- iv. July 15, 2013, ELIOT filed Docket #32 “MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS” (“Petition 4”)
  - f. [www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf)
- v. July 24, 2013, ELIOT filed Docket #33 “MOTION TO REMOVE PERSONAL REPRESENTATIVES” **for insurance fraud and more.** (“Petition 5”)

g. [www.iviewit.tv/20130724SIMONMotionRemovePR.pdf](http://www.iviewit.tv/20130724SIMONMotionRemovePR.pdf)

- vi. August 28, 2013, ELIOT filed Docket #TBD “NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS” (“Petition 6”)

h. [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)

- vii. September 04, 2013, ELIOT filed Docket #TBD “NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. (“Petition 7”)

i. [www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf)

18. That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin ("Hon. Colin") told TED, SPALLINA, TESCHER and their counsel, Mark Manceri ("MANCERI"), that he should read them all their Miranda Rights after hearing their explanation how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased, Hon. Colin stated this fact twice in the hearings.
19. That further upsetting Hon. Colin in the hearing to the reopen the estate of SHIRLEY, which was ordered reopened, was that at no time after SIMON had passed had the court been notified by estate counsel of SIMON's death and that documents were being submitted to the Court after SIMON was deceased as if he was alive. The documents in SHIRLEY's ESTATE now admittedly fraudulently crafted by a TSPA contracted Legal Assistant/Notary Public and alleged forged after SIMON's death, were then filed with his Court and used to close the estate as if SIMON were alive at the time. Hon. Colin realized they had committed a fraud upon his court and him personally as he signed off to close the estate using these bogus documents.
20. From an excerpt from that hearing transcript, see attached, Exhibit 1 on September 13, 2013,

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the  
18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They  
1 should not have been notarized in the absentia  
2 of the people who allegedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you [ referring to TED, SPALLINA, TESCHER  
an MANCERI ] might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon  
1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.

12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes.



Page 29 of 117



21. That the alleged insurance fraud taking place through the instant Breach of Contract Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds described herein and in Petitions 1-7, again misusing their fiduciary and professional powers to convert estate assets and TED, A. SIMON, the SLF should all be removed from further representing any parties in this Lawsuit, sanctioned and forced to retain non conflicted counsel in these proceedings.
22. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and on the Hon. Colin's warning and act on its own motions to prevent any further possible criminal activities and damages to others being incurred, until these alleged criminal and civil matters are fully resolved by this Court, the Probate Court, the Palm Beach County Sheriff and Florida Governor Notary Public Division.

**FIRST ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT**

23. That the first attempt to convert the life insurance Policy #1009208 ("Policy(ies)) proceeds on SIMON's life by TSPA, TESCHER, SPALLINA, TED and P. SIMON took place on or about January 2013 when a death benefit claim was made according to Jackson National Insurance Company's ("Jackson") Counter Complaint for the Policy(ies) proceeds to be paid to a beneficial designations unknown by ELIOT.
24. That ELIOT and his children's former counsel after repeated requests have no records of the death benefit claim filed or any other records requested including the Policy(ies) and have been denied the information upon request by TSPA, TESCHER, SPALLINA, TED, P.

SIMON, Heritage Union Life Insurance Company (“Heritage”) and Reassure America Life Insurance Company (“RALIC”).

25. That Heritage refused to pay the Policy(ies) proceeds based on the death benefit claim filed, claiming it was legally deficient and they would therefore need a “court order” to determine if the beneficiary claimed was the legal beneficiary and thus the first attempt to claim the benefits failed.

**SECOND ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE SAMR & SAMR TRUST**

26. That the SAMR and SAMR TRUST is fully described, defined and exhibited in Petition 1, Section VII - “Insurance Distribution Scheme” Pages 30-37 and Pages 170-175, exhibit 7 - “Settlement Agreement and Mutual Release” (“SAMR”). The post mortem trust that would have been created under the SAMR to replace the lost “Bernstein Trust” aka “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is termed herein as the SAMR TRUST (“SAMR TRUST”).
27. That once the death benefit claim was denied and a “court order” was necessary to pay the Policy(ies) proceeds, the SAMR and SAMR TRUST insurance trust and beneficiary fraud scheme, as further defined herein, was then proposed to ELIOT by TSPA, TESCHER, SPALLINA, TED, P. SIMON and D. SIMON.
28. That the SAMR & SAMR TRUST was proposed as a post mortem trust replacement created to remedy for an allegedly lost trust created by SIMON that is claimed to be the alleged

beneficiary of the Policy(ies), the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95.”

29. That the SAMR TRUST was proposed by TSPA, SPALLINA, TESCHER, TED and P. SIMON as a means to convert the insurance proceeds from going to the estate of SIMON due to an alleged lost trust and where the proceeds under the SAMR TRUST they claimed would not go to the estate and would instead flow into the newly created post mortem SAMR TRUST, where a newly elected post mortem “trustee” TED, would then divvy it up to newly elected by TED beneficiaries of the SAMR TRUST.
30. That in this Court proceeding, in a response filed by A. SIMON, we learn who is divvying up the proceeds when he claims (“4/5”) of SIMON’s children, TED, P. SIMON, IANTONI and FRIEDSTEIN agree with the beneficiary designation that was filed in this Lawsuit.
31. That TSPA, TESCHER, SPALLINA, TED and P. SIMON further claimed that the SAMR TRUST was necessary to keep the proceeds estate tax free and free from creditors of the estate, despite that this would be a new post mortem trust designating new trustees and beneficiaries who were not elected by SIMON while he was alive.
32. That this post mortem SAMR TRUST was to be created without SIMON’s knowledge, consent or keeping with his wishes he documented while alive, as it was done post mortem and thus ELIOT claims that it could not then be used to escape estate taxes or creditors legally and would be construed as an artifice to defraud.
33. That ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED and P. SIMON and claimed that the SAMR TRUST appeared to be a sham trust and beneficiary scheme that was

potentially illegally attempting to circumvent SIMON's estate creditor liabilities and federal and state estate taxes.

34. That ELIOT refused to participate in the SAMR or SAMR TRUST and sent TSPA, SPALLINA, TESCHER, TED and P. SIMON a letter telling them to cease and desist any attempt at collection of the death benefit until ELIOT and his children could seek independent counsel to review the legality of the SAMR and SAMR TRUST.
35. That after ELIOT had the plan reviewed by legal counsel and was advised to not sign the SAMR or SAMR TRUST, as evidenced in Petition 1, and ELIOT sent letters to TSPA, SPALLINA, TESCHER, TED, P. SIMON and other potential beneficiaries notifying them of his findings that the SAMR and SAMR TRUST appeared a sham that could be construed as insurance fraud, tax evasion, creditor fraud and more.
36. That further ELIOT noticed them that no one appeared to be representing the grandchildren's alleged beneficial interests in the estate in the SAMR and SAMR TRUST, which was in conflict now with TED, P. SIMON, IANTONI and FRIEDSTEIN's interests beneficial interest to be gained in the Policy(ies) through the SAMR TRUST, as newly named trustees and beneficiaries in the SAMR TRUST.
37. That if the monies flowed to the estate and were paid to the estate beneficiaries, TED, P. SIMON, IANTONI and FRIEDSTEIN would not receive monies directly and only manage the money of their children as trustees for them and therefore since they would not be beneficiaries they were not in conflict but the SAMR TRUST or any scheme that inures Policy(ies) proceeds to them directly does put them in direct conflict and no one seemed to

be looking out for their own children, in fact, blindly looking the other way while attempting to convert the monies to themselves. This is an abomination of fiduciary duties and trust as trustees for their alleged children beneficiaries.

38. That IANTONI asked SPALLINA if she needed to get counsel for herself and her children due to conflicts created in the SAMR and SAMR TRUST, as ELIOT had stated her beneficial interests conflicted with her daughters beneficial interests, especially where the payout is substantially different depending on if her daughter received the benefit through the estate (1/10 share) or if she received it directly under the SAMR TRUST (1/5 share). The conflict here is significant and where IANTONI would favor the SAMR TRUST scheme versus a “court order,” which would favor her daughter.
39. That IANTONI further asked SPALLINA if her daughter could later sue her for taking the proceeds directly under the SAMR TRUST and SPALLINA stated that “only if she finds out” or words to that effect.
40. That SIMON’s daughter, P. SIMON, her husband D. SIMON and his brother A. SIMON through the SLF, believed to be A. SIMON and D. SIMON’s law firm that works out of P. SIMON’s offices at STP, worked with TSPA, SPALLINA, TESCHER, TED and P. SIMON in attempts to get the life insurance benefits of the Policy(ies) paid to the newly created post mortem SAMR TRUST created after SIMON’s death and go against the beneficial wishes and desires and estate contracts of SIMON and SHIRLEY, as designated in their estate plans.
41. That initially, the SAMR TRUST was proposed to replace an allegedly lost “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95,” with TED acting as the Trustee of the newly

created post mortem SAMR TRUST, as evidenced in the SAMR, by claiming he was the “trustee” of the lost trust that allegedly no executed copies exist for and therefore he was the “trustee” of the newly created SAMR TRUST with all the unknown fiduciary powers granted in the alleged lost trust, of which again, no executed copies or originals exist as claimed in TED’s response to Jackson’s Counter Claim.

42. That TED, TSPA, TESCHER, SPALLINA and P. SIMON all claimed that “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” was “lost” and that through TED, as the self-elected “trustee” of the new post mortem SAMR TRUST, they would then designate new beneficiaries that would replace the unknown ones in the lost trust. New beneficiaries designated by TED based on his belief that TED, P. SIMON, IANTONI and FRIEDSTEIN and possibly, without ELIOT’s knowledge or consent, ELIOT, were beneficiaries under the lost trust.
43. That TSPA, SPALLINA, TESCHER, TED and P. SIMON have various alleged fiduciary capacities as estate counsel, personal representatives and trustees responsible for keeping and maintaining records of the Policy(ies) and the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” that SPALLINA, TESCHER, TED, P. SIMON, D. SIMON and A. SIMON claimed was the last known beneficiary on the Policy(ies).
44. That P. SIMON over the years since the Policy(ies) was issued acted as a fiduciary of several of the trusts that controlled the Policy(ies) and the distribution of proceeds for beneficiaries who are elected as contingent beneficiaries by employees in a Voluntary Employee Beneficiary Association VEBA 501(c)(9) life insurance trust she controls, that held



SIMON's Policy(ies) and many other thousands of policies, through several companies owned and operated by SIMON and then P. SIMON and D. SIMON.

45. That TSPA, SPALLINA and TESCHER have various alleged fiduciary capacities regarding the Policy(ies) and the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" as they did the estate planning work concerning the Policy(ies) and trusts and failed to properly protect the beneficiaries of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and the estate beneficiaries by properly documenting the beneficiaries in the alleged Wills and Trusts of SIMON.
46. That by failing to properly document the beneficiaries of the lost trust, failing to maintain records of the Policy(ies) and trusts and failing to clearly define the beneficiaries, TSPA, SPALLINA and TESCHER have caused liabilities by damaging all of the beneficiaries of the estate and Policy(ies).
47. That TED has various alleged fiduciary capacities as the self-appointed alleged "trustee" of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95," including the alleged power to file suit on its behalf and yet TED has no documented evidence to support this claim according to Jackson. TED is misusing alleged fiduciary powers to convert Policy(ies) proceeds to himself, P. SIMON, IANTONI & FRIEDSTEIN, secreted from ELIOT and his counsel and to the disadvantage of ELIOT and his children.
48. That TED and P. SIMON both claim to have once upon a time been in possession of the "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and have claimed to have witnessed the language contained therein. From their recollections they claim recalling that

TED was “trustee” of the lost trust and they were named “beneficiaries.” These legally insufficient claims are also made by two people who stand to gain individually from their recollections putting them in conflict with other potential beneficiaries, including their own children.

49. That these alleged fiduciary roles of TED for the lost trust now are being asserted in attempts to process a death benefit claim without any signed or executed copy of the lost trust. From Jackson’s Counter Claim there appears to be insufficient evidence to pay a claim to this insurance trust and beneficiary fraud scheme.
50. That after claiming to have lost the Policy(ies) and trust and assigning TED alleged fiduciary responsibilities, TED and P. SIMON then attempt to redirect and convert benefits by naming themselves as newly elected post mortem designated beneficiaries of the Policy(ies). That ELIOT alleges that this misleading information in the death benefit claim may constitute a basis for insurance fraud and more.
51. That Bernstein family insurance agencies founded by SIMON allegedly sold the Policy(ies) and administered the trusts concerning the Policy(ies). Suddenly, when SIMON, a meticulous record keeper, passes away, all those with control of the Policy(ies) and who have fiduciary responsibilities and liabilities regarding the Policy(ies) and trusts involved in this Lawsuit, now claim that the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is missing and lost with no executed copies in existence and that it was the last known beneficiary.





52. That all parties with fiduciary responsibilities for the Policy(ies) and the trusts named in this Lawsuit are alleged to have fiduciary liabilities and in certain instances with the Attorneys at Law, professional liabilities, from the damages to the true and proper beneficiaries for their actions or inactions and for the damages caused by their breaches of fiduciary and professional responsibilities and alleged violations of law.
53. That ELIOT claims that TSPA, SPALLINA, TESCHER, TED and P. SIMON have allegedly instead **suppressed and denied** the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and have not “lost” it or found it to be “missing” as they claim and this was done with intent to commit fraud upon the true and proper beneficiaries of the Policy(ies), this Court and the estate beneficiaries.
54. That ELIOT states that TED and P. SIMON were excluded as beneficiaries of the Policy(ies) and trusts, as TED and P. SIMON were wholly excluded and disinherited from the estates of both SIMON and SHIRLEY and therefore allegedly excluded in all insurance contracts and policies thereunder.
55. That if the estate received the Policy(ies) proceeds and then determined the beneficiaries, there is very little likelihood that TED and P. SIMON would be entitled to any Policy(ies) proceeds in their name if they flowed into the estate to the estate beneficiaries, as they have been wholly excluded from the estates of both SIMON and SHIRLEY.
56. That it should be noted by this Court that TED and P. SIMON are alleged in Petition 1 to be the cause of attempting to force SIMON to allegedly change the beneficiaries in his estate

plan, in near deathbed changes allegedly made weeks before his death and while under extreme physical and emotional duress at the time.

57. That it is now unclear due to the Notary Public ADMITTED Fraud and alleged Forgery in the estate of SHIRLEY and the alleged Fraudulent and Legally Defective estate documents in SIMON, if SIMON actually signed any changes to his estate plan prior to his death or if the documents were signed and notarized for him after he died, in efforts to change SIMON's estate disposition and wants.
58. That prior to the alleged near deathbed changes made by SIMON, under duress, TED, P. SIMON and their children were wholly disinherited from the estates of both SIMON and SHIRLEY.
59. From the alleged May 20, 2008 "Shirley Bernstein Trust Agreement"<sup>2</sup> the language regarding beneficiaries is as follows,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my

---

<sup>2</sup> That Shirley's May 20, 2008 trust language was used here, as the May 20, 2008 "Simon Bernstein Trust Agreement" has been suppressed and denied to ELIOT by TSPA, TESCHER and SPALLINA for over a year now. They have refused to release the SIMON original trust despite repeated oral and written requests from ELIOT and his children's former counsel, Christine Yates at Tripp Scott law firm in Fort Lauderdale, FL. The language is presumed to be the same although cannot be verified at this time.

children, **TED S. BERNSTEIN ("TED") and P. SIMONELA B. SIMON ("P. SIMON")**, and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided[emphasis added], however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder."

60. From the alleged November 18, 2008 "First Amendment to Shirley Bernstein Trust Agreement" the language is as follows,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, **TED S. BERNSTEIN ("TED") and P. SIMONELA B. SIMON ("P. SIMON")**, shall be deemed to have predeceased the survivor of my spouse and me [emphasis added], provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and P. SIMON shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

61. That even after the near deathbed changes allegedly made by SIMON under duress or perhaps made post mortem, as now TSPA's Notary Public Kimberly Moran has admitted to notarizing documents in his name, months after his death, TED and P. SIMON were again wholly disinherited from the estates of SIMON and SHIRLEY and only their adult children are alleged beneficiaries.

62. That from the alleged July 25, 2012 "Simon L. Bernstein Amended and Restated Trust Agreement" the language is as follows,

"Children Lineal Descendants. The terms "child," "children," "grandchild," "grandchildren" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children born of female lineal descendants, and (c) children and their lineal

descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child. No such child or lineal descendant loses his or her status as such through adoption by another person. **Notwithstanding the foregoing, for all purposes of this Trust and the dispositions made hereunder, my children, TED S. BERNSTEIN, P. SIMONELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me as I have adequately provided for them during my lifetime [emphasis added].**

63. That the alleged Personal Representatives to the estates, TSPA, TESCHER and SPALLINA, have since SIMON's passing worked and shared information almost exclusively with TED and P. SIMON, the two children who were both wholly excluded from benefits of the estates of SIMON and SHIRLEY in any Will or Trust established. Both TED and P. SIMON are alleged to have been on bad terms with SIMON and SHIRLEY at the time of their deaths due to their exclusion from further benefits in the estates, as they already had been compensated while living as they inherited family businesses worth fortunes and ELIOT, IANTONI and FRIEDSTEIN did not.
64. That after SHIRLEY passed until the day of SIMON's death almost twenty two month, TED and P. SIMON led an assault on SIMON and recruited IANTONI and FRIEDSTEIN and together the four of them banned and precluded their seven children from seeing SIMON, their grandfather, claiming it was over his relationship with his companion, as fully defined in Petition 1. That this is why SIMON considered altering he and SHIRLEY's long established estate plans in May 10, 2012 and sought agreement from his children that if he chose to make any changes to his estate plan it would put an end to these disputes and torture of his soul.

65. That in a May 10, 2012 conference call with TSPA, TESCHER, SPALLINA, TED, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN, SIMON sought and received verbal agreement from his children to have ELIOT, IANTONI and FRIEDSTEIN give up their inheritances and divide it to the grandchildren equally to resolve any duress and disputes that were causing him pain and suffering.
66. That the disputes and banning of themselves and all their children of SIMON however did not stop after the May 10, 2012 meeting as agreed and SIMON appears to have had a change of mind and never made the changes to his or SHIRLEY's estate plans and the changes appear to have been done post mortem, as essential documents to the alleged changes are all Legally Defective and therefore NULL and VOID.
67. That despite repeated requests, TSPA, TESCHER, SPALLINA, TED and P. SIMON have shut out ELIOT and his children's counsel from virtually ALL estate information, documents and assets, including but not limited to, accountings, inventories, Policy(ies) information, insurance contracts, corporate accountings, asset liquidation details, accountings and legal documents, various trusts information and all assets of the SIMON and SHIRLEY estates.
68. That for over a year, with the aid of TSPA, TESCHER, SPALLINA, TED, P. SIMON and others have rushed to liquidate assets and looted the estate in a variety of schemes behind the backs of ELIOT and his children's former counsel and if it were not for Jackson's adding ELIOT as Defendant in the Lawsuit, ELIOT would never have known about this alleged fraudulent Lawsuit and the insurance policy and trust scheme being attempted to convert the Policy(ies) proceeds.



69. That this suppression and denial of virtually all information and documents in the estates from certain beneficiaries to the advantage of others, including this Lawsuit, which was filed without certain beneficiaries knowledge and consent , has gone on for almost three years in SHIRLEY's estate and over a year in SIMON's estate.
70. That it is alleged that these acts of suppression and denial of information and more are intended to hide criminal activities taking place to loot the estates through a variety of alleged financial and other crimes, as fully set forth in Petitions 1-7.
71. That the SAMR and SAMR TRUST that was proposed to ELIOT by TSPA, SPALLINA, TESCHER, TED and P. SIMON was never signed by ELIOT. ELIOT noticed all parties involved that he rejected such SAMR and SAMR TRUST as a scheme to reassign beneficiaries with post mortem designated beneficiaries through suppression and denial of trust documents that allegedly would constitute, Insurance Fraud, Conversion and more.
72. That ELIOT noticed all parties that he rejected such plan as an to attempt to improperly avoid Estate Taxes through a sham trust that was created post mortem and therefore how could SIMON have made it irrevocable or anything at all.
73. That ELIOT noticed all parties that he rejected such plan as an attempt to improperly attempt to hide assets from creditors of the estate using a post mortem trust to convert assets with known creditors to the estate.
74. That without ELIOT or his children's counsel approval of the SAMR and SAMR TRUST scheme and while ELIOT was led by TSPA, TESCHER, SPALLINA, TED, P. SIMON,

IANTONI and FRIEDSTEIN to believe that they were seeking a “court order” to approve their SAMR scheme and new and secreted plan was hatched.

**THIRD ATTEMPT TO FRAUDULENTLY CONVERT THE DEATH BENEFIT – THE JACKSON LAWSUIT FOR BREACH OF CONTRACT**

75. That without ELIOT and his children’s counsel knowledge or consent the third failed attempt to convert the Policy(ies) proceeds was hatched by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON, A. SIMON, IANTONI and FRIEDSTEIN working together and secreted from ELIOT and his children’s counsel with scienter.
76. That this third attempt to convert the Policy(ies) proceeds began with the filing of this frivolous “breach of contract” Lawsuit to attempt to convert the benefits against the wishes of SIMON’s beneficiary designation, in order to profit for themselves at the detriment of the true and proper beneficiaries, including allegedly their own children.
77. That once the SAMR and SAMR TRUST failed to get ELIOT or his children’s counsel approval, without notice and knowledge of ELIOT and other beneficiaries, TED, instead of seeking the demanded “court order” to determine the beneficiaries as requested by RALIC, claimed to be the “trustee” and a “beneficiary” of the “lost” trust, the “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” and instead filed this Lawsuit with TED acting in a self-professed and self-appointed fiduciary capacity for the “lost” trust and Policy(ies) and designating himself and others as newly elected beneficiaries.
78. That since claiming “Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” is “lost” and “missing” and then unable to get the SAMR/TRUST approved by all parties and the Probate

Court to be the beneficiary, TED represented by A. SIMON instead filed this Lawsuit demanding that Jackson now pay the death benefits based on a breach of contract suit for Jackson's refusal to pay the death benefit claim based on the legally deficient death benefit claim initially submitted, as indicated in Jackson's Counter Claim for damages.

79. That through this Lawsuit, TSPA, TESCHER, SPALLINA, TED and P. SIMON are now attempting to avoid having to obtain a court order as requested by RALIC, to first determine who the beneficiary(ies) is and instead are attempting to convert the Policy(ies) proceeds through this baseless breach of contract action that TED was advised by counsel he had no "authority" to file according to Jackson.
80. That ELIOT alleges that this Lawsuit is an attempt to have this Court pay the Policy(ies) proceeds to a newly created post mortem trust similar to the SAMR TRUST or other improper beneficiaries, through a smoke and mirrors illusion, mired in a "Name Game" further defined herein, using alleged former Policy(ies) beneficiaries names, including but not limited to the "lost" "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" in order to replace the allegedly unknown beneficiaries of the "lost" trust with newly elected beneficiaries, possibly in a new post mortem trust attempting to be inserted into this Lawsuit in the confusion created with the variety of names being asserted as beneficiary.
81. That Jackson claims in their Answer that they are unclear if TED has the alleged fiduciary capacities in the trusts and Policy(ies) he claims necessary to institute the Lawsuit or the death benefit claim and they are unclear of the names asserted in the complaint as they are confusing and even question the existence of certain trusts entirely.



82. That TED and P. SIMON are attempting to designate new beneficiaries after SIMON has passed, claiming that they “believe” they were beneficiaries of the “lost” trust and therefore they would be beneficiaries of two fifths of the Policy(ies) proceeds but providing no evidence or proof of such claims other than their beliefs.
83. That TED, P. SIMON, D. SIMON and A. SIMON are all career life insurance professionals with extensive trust knowledge and legal knowledge.
84. That TED is allegedly misusing his “alleged” fiduciary powers in the estates of SHIRLEY and SIMON, fully described in the Petitions 1-7 and in this Lawsuit where his fiduciary claims are imagined and undocumented.
85. That TED now makes efforts in this Lawsuit to assume fiduciary powers in handling assets of SIMON’s estate, based on his belief that he was “trustee” of the lost trust and on his own belief a “beneficiary” and where TED has no fiduciary capacities whatsoever in the estate of SIMON or through any trusts of SIMON that are not “lost.” That supporting TED’s beliefs and the actions taken based on those beliefs in effort to convert the Policy(ies) proceeds are P. SIMON, IANTONI and FRIEDSTEIN, all who stand to gain from such insurance beneficiary and trust scheme.
86. That TED’s filing of this Lawsuit as an imagined fiduciary of a “lost” trust is an attempt to convert benefits of the Policy(ies) for the benefit of TED and P. SIMON, by deceiving the beneficiaries of the Policy(ies), the beneficiaries of the estate of SIMON, deceiving insurance companies Heritage, RALIC and Jackson are all an attempt to perpetrate a fraud on, this

Court, the Probate Court, the true and proper beneficiaries of the estate of SIMON, the beneficiaries of the Policy(ies) and the beneficiaries of the trusts of SIMON.

87. That TSPA, SPALLINA, TESCHER, SLF, P. SIMON, D. SIMON, A. SIMON and TED have filed this Lawsuit without proper notice to all of the potential beneficiaries and on information and belief have worked together, with IANTONI and FRIEDSTEIN, to secret this Lawsuit from ELIOT and his children's former counsel.
88. That IANTONI and FRIEDSTEIN are also alleged in TED's Answer to Jackson's Counter Complaint to be part of "4/5" of SIMON's children (TED, P. SIMON, IANTONI & FRIEDSTEIN) who are in agreement with the payout to the proposed beneficiary of this Lawsuit and have conspired together to convert the Policy(ies) proceeds.
89. That the "4/5" of SIMON's children in agreement of the beneficiaries of the Policy(ies) includes themselves personally and is to the detriment of their own children who are alleged beneficiaries of the estate, where they are trustees to their children who would allegedly be entitled to the Policy(ies) proceeds if the estate were determined to be the beneficiary.
90. That TED has numerous conflicts of interest in acting in legal and fiduciary capacities in this Lawsuit with various parties. TED would be getting benefits directly to himself while acting as the "alleged" Trustee of the missing "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" and electing himself as a beneficiary to convert the funds, while also simultaneously acting as a trustee for his children beneficiaries of the estate of Simon and Shirley, where the children would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance fraud beneficiary and trust scheme.

91. That P. SIMON and D. SIMON would get benefits paid directly to their family from the efforts of D. SIMON's SLF law firm, as SLF represents TED in this Lawsuit and if they are successful in converting the benefits to the proposed insurance fraud beneficiary and trust scheme, SLF, P. SIMON and D. SIMON would benefit directly by splitting part of the loot, which poses conflicts in SLF and A. SIMON's representation of TED and the lost trust.
92. That additionally, P. SIMON and D. SIMON would be doing this conversion of benefits directly to themselves while acting as trustee for their child beneficiary of the estate of Simon and Shirley, where their child would get the Policy(ies) proceeds if they flowed through to the estate versus the insurance fraud beneficiary and trust scheme.
93. That neither TED nor P. SIMON would gain any benefits of the Policy(ies) without their attempted beneficiary and trust scheme because if the Policy(ies) benefits were paid instead to the estate, due to the missing and "lost" trust, the benefits would then distributed to either three of five of SIMON and SHIRLEY's children, ELIOT, IANTONI and FRIEDSTEIN or to SIMON or SHIRLEY's ten grandchildren in equal shares, again either way TED and P. SIMON are wholly excluded.
94. That ELIOT states on information and belief that a policy with a missing beneficiary(ies) would legally be paid to the estate and the Probate court would then rule on whom the final beneficiaries of the insurance proceeds would be.
95. That Jackson and Heritage and RILAC have found flaws in the death benefit claim filed for the Policy(ies) and have refused to pay claims based on fundamental deficiencies.

96. That this alleged shell “Name Game<sup>3</sup>” being played in this Lawsuit uses the names of trusts and beneficiaries and then attempts to confuse the names by renaming them in a confusing manner, in order to have the “lost” trust renamed under a variety of confusing names, as evidenced in Jackson’s Answer and then have the Court pay out an improper beneficiary(ies).
97. That the alleged intentional confusion and misdirection involving these names is what has caused the denial of payment of the proceeds in part by the carrier and ELIOT claims this insurance trust and beneficiary fraud naming scheme is being perpetrated in this Court with scienter, in efforts to mislead this Court and Jackson so that they may pay the wrong beneficiary(ies) the Policy(ies) proceeds and convert the Policy(ies) proceeds.
98. That this “Name Game” being attempted in this Lawsuit to confuse the parties through this trust and beneficiary insurance fraud naming scheme is also in efforts to have the Policy(ies) proceeds circumvent the Probate Court and the estate beneficiaries and get the Policy(ies) benefits instead paid through this Court to improper beneficiaries in substitution for the lost trust alleged beneficiaries and to evade seeking a “court order.”
99. That only if the Cross Defendants and Third Party Cross Defendants can confuse this Court to now payout the death benefit according to their insurance trust and beneficiary fraud scheme can they derive benefits from the Policy(ies), as their attempt to pull the wool over the insurance companies’ eyes and have the benefits paid to their alleged fraudulent death benefit claim and the designated new beneficiaries thereunder has failed and led to this baseless Lawsuit.

---

<sup>3</sup> <http://www.youtube.com/watch?v=GOgNkrQBrdu> “Name Game” performed by Jessica Lange for the television show “American Horror Story”

100. That in Petition 1, Pages 34-41 under Section “VII. INSURANCE PROCEED DISTRIBUTION SCHEME”, the proposed “Settlement Agreement and Mutual Release” agreement that would create the new SAMR TRUST to replace the lost trust is contained in Petition 1 on Pages 173-179 and titled "Settlement Agreement and Mutual Release", as exhibit 7 and ELIOT claims that the SAMR TRUST is being secreted into this Lawsuit in a confusing name with a prior beneficiary as a “lost” trust cannot be the beneficiary and therefore they must substitute a new trust identical or similar to the proposed SAMR TRUST or wholly new beneficiary designations that ELIOT is unaware of having not seen the death benefit claim submitted.
101. That the SAMR was drafted on or about December 06, 2012 by an unknown Attorney at Law and law firm, as no law firm markings are on any of the pages, however, on information and belief, the unknown law firm is believed to be TSPA and Attorneys at Law TESCHER and SPALLINA.
102. That the SAMR was distributed by TSPA, SPALLINA and TED to various parties through mail and wire.
103. That the names for the trusts in the “Name Game” being played in this Lawsuit as part of the alleged insurance and trust fraud scheme and their aliases are believed to be as follows:
- a. “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” alleged “lost” with no original executed document or copies of or as ELIOT claims, suppressed and denied. TED claims to be “Trustee” and a “Beneficiary” however, he cannot apparently prove these claims as the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” is

“lost” or suppressed and denied and therefore these claims to interests in the “lost” trust are merely conjecture. “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” is used interchangeably with the following trust names in this Lawsuit thus far,

1. “Bernstein Trust” abbreviated by TED in the initial complaint and
2. “Simon Bernstein Trust” according to Jackson’s response this trust MAY also be called “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95”see item 9 of their response.
3. “Simon Bernstein Insurance Trust dated 6/21/1995, Trust” (note the addition of the word Trust inside the quotations) is from Jackson Answer in 20 and is stated to be a former named beneficiary on the Policy(ies) and may refer to “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” That it is believed that this may be a variance in the name “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95”, however due to the variance in names it has been listed as a separate trust herein.
4. “The Bernstein Trust” with a capitalized T in the “The” within the quotations. This trust is never defined in the pleadings but is used in TED’s response to Jackson’s Counter Claim frequently and apparently interchangeably with the “Bernstein Trust.” This trust is almost identical in name to the “Bernstein Trust” and yet, perhaps they too are different as will be advanced further herein. However, due to the slight variance in titles it has been listed as a separate trust herein until properly defined.
5. “Simon Bernstein Trust” according to Jackson in 9 of their response, “is, upon information and belief, the Bernstein Trust listed in paragraph 3, [listed as the

“Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95 ” in paragraph 3] above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.” That ELIOT is uncertain at this time where Jackson pulled this reference to a “Simon Bernstein Trust” from, as it is undefined in any pleadings and suddenly falls from the sky in their response. What is this “Simon Bernstein Trust” and the Court should demand copies of any records relating to this trust be provided to all parties of the Lawsuit and have it properly defined in the pleadings.

- b. “Simon Bernstein Trust, N.A.” according to Jackson IS **the “Contingent Beneficiary” named at the time of SIMON’s death!**<sup>5</sup> However, in TED’s response to Jackson’s Counter Complaint, TED claims that the “lost” the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” was the “sole” Beneficiary at the time of SIMON’s death and according to Jackson’s records this is wholly untrue. This difference in beneficiaries at time of death is a major and significant discrepancy in who the actual beneficiaries are alleged to be by the parties to this Lawsuit.

That if Jackson is correct on the Policy(ies) primary and contingent beneficiaries at SIMON’s death, then the claim in TED’s response to Jackson, in the original complaint filed and further stated in written and oral statements by TSPA, TESCHER, SPALLINA, TED, P. SIMON, D. SIMON and A. SIMON, that the “sole” beneficiary was “Simon

---

<sup>5</sup> “LaSalle National Trust, N.A.” was according to Jackson the “primary beneficiary,” which they appear unclear if it was acting as trustee to the “SIMON Bernstein Trust, N.A.”

Bernstein Irrevocable Insurance Trust Dated 6/21/95” becomes a false and misleading statement as to the true and proper beneficiaries at the time of SIMON’s death.

That if the final primary beneficiary was “LaSalle National Trust, N.A.” and the final contingent beneficiary listed on the Policy(ies) is the “Simon Bernstein Trust, N.A.” the questions then are where are copies of the “Simon Bernstein Trust, N.A.,” who drafted and executed this trust and who are the trustees and beneficiaries of this trust and why has this information been suppressed and false and misleading information proposed instead?

That it therefore appears that the final Policy(ies) beneficiary(ies) must first be determined to be either “Simon Bernstein Trust, N.A.” or “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95, Trust” or “Simon Bernstein Insurance Trust dated 6/21/1995” or other unknown. If the contingent beneficiary at the time of death is determined to be according to Jackson’s account “Simon Bernstein Trust, N.A.,” then “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” and any variation of its title or any earlier beneficial interests become moot and this Lawsuit further becomes baseless and an Abuse of Process, other than as evidence of, an attempted insurance fraud on the “Simon Bernstein Trust N.A.” beneficiaries, Insurance Fraud on the insurance carriers, Fraud on this Court, Fraud on the Probate Court, Fraud on the estate beneficiaries of SIMON’s estate and more.

- c. “SAMR TRUST” – is the Settlement & Mutual Release Trust as exhibited in Petition 1 in a draft of the post mortem trust proposed to replace the “lost” trust and to present to a judge for a court order that never took place.



That ELIOT alleges that the SAMR TRUST or some variation of it, is being referred to in these pleading as “The Bernstein Trust” or the “Simon Bernstein Trust” or any of the UNDEFINED trusts referenced herein and in Jackson’s Answer, so as to cause confusion and hope no one notices that these undefined trusts actually reference the proposed SAMR TRUST or some similar trust and beneficiary scheme, with alleged new beneficiaries and trustees designated after SIMON’s passing by a “alleged trustee” of a “lost” trust.

That ELIOT refused to sign the SAMR as further defined herein and the undefined trusts attempting to claim benefits through this Lawsuit may be trusts done without his knowledge or consent and used in this Lawsuit to attempt to circumvent the true and proper beneficiaries on record with the insurance carriers through a cleverly crafted name game.

- d. “S.B. Lexington, Inc. Employee Death Benefit Trust” used interchangeably with the “Lexington Trust” by Jackson in their response.
- i. “LaSalle National Trust, N.A.” the “primary beneficiary” according to Jackson’s Counter Complaint at the time of SIMON’s death.
- e. “S.B. Lexington, Inc. 501(c)(9) VEBA Trust”

104. That the named beneficiaries of the Policy(ies) according to Jackson’s Counter Complaint are as follows,

- a. "Simon Bernstein " – This appears impossible however, as it would be impossible for one to name oneself as beneficiary of an insurance policy.

- b. "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"
  - c. "United Bank of Illinois"
  - d. "LaSalle National Trust, N.A."
  - e. "LaSalle National Trust, N.A., Trustee of the VEBA trust"
  - f. "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"
  - g. "Simon Bernstein Trust, N.A." the final "contingent beneficiary" according to Jackson that is listed on the Policy(ies) at the time of SIMON's death.
105. That according to Jackson at the time of SIMON's death the Primary Beneficiary is "LaSalle National Trust, N.A." and the Contingent Beneficiary is the "Simon Bernstein Trust, N.A."<sup>6</sup> Paragraph 15-16 of their response.
106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON's death to this Court.
107. That TED, TSPA, SPALLINA, TESCHER and P. SIMON have similarly given this allegedly misleading information regarding the beneficiary at the time of death to the beneficiaries of the estate and counsel for certain beneficiaries, while suppressing, denying and secreting the

---

<sup>6</sup> On information and belief, ELIOT claims that ELIOT and his wife Candice Bernstein and their three children were the named beneficiaries at the time of SIMON's death under whatever trusts were in existence at the time or directly, including but not limited to, the "SIMON Bernstein Trust, N.A." and that SIMON may have also added Maritza Puccio for a share of the benefits prior to his death.

legal named beneficiary “Simon Bernstein Trust, N.A.” and thereby secreting from the designated beneficiaries thereunder their interests.

108. That Jackson claims in Paragraph 18,

“Subsequent to the Insured's death, TED Bernstein, through his Florida counsel **(who later claimed Bernstein did not have authority to file the instant suit in Illiuois on behalf of the Bernstein Trust and withdrew representation)** [emphasis added], submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, allegedly as the trustee of the “Bernstein Trust.”

That ELIOT alleges that this Lawsuit was still filed after being advised by counsel of the legal defects but now with new conflicted counsel, SLF and A. SIMON, knowing of the lack of authority TED was advised by counsel of and this represents Abuse of Process.

109. That Jackson claims in Paragraph 19 that neither TED, nor anyone else, could locate the “Bernstein Trust” that TED claims is the beneficiary of the Policy(ies).

110. That instead of seeking the Probate Court determination and getting a “court order” as to who the beneficiaries would be in the event of a missing beneficiary designation and “lost” trust, this suit was instead filed in apparent effort to evade the determination of the Probate Court and secretly convert the Policy(ies) proceeds before ELIOT was alerted and despite his protestations that no distributions be made until he and his children’s counsel could review

their alleged insurance trust and beneficiary fraud scheme and approve of it with a “court order.”

111. That an old beneficiary designation of a “lost” trust is now being used to make claims for the Policy(ies) proceeds in this Lawsuit, instead of the beneficial designation with the insurance carriers at SIMON’s death, namely the “Simon Bernstein Trust, N.A.”
112. That therefore, despite whether the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” is “lost” or not or what it is called, **it was not the Beneficiary at the time of SIMON’s death according to Jackson** and therefore, would not be entitled to make a claim for the Policy(ies) proceeds. Perhaps this is why all of the records of the Policy(ies) and trusts have been secreted from certain estate beneficiaries and their counsel by TSPA, TESCHER, SPALLINA and TED, so as to hide from them whom the beneficiaries under the “Simon Bernstein Trust, N.A.” trust are to the advantages of some and disadvantage of others and mislead everyone by misrepresenting the real beneficiary(ies) and converting the Policy(ies) proceeds.
113. That ELIOT claims that Jackson, Heritage and RALIC should have copies of the “Simon Bernstein Trust, N.A.,” as well as, TSPA, SPALLINA and TESCHER and possibly P. SIMON and others named in the Lawsuit.
114. That ELIOT and others were misinformed, allegedly with intent, by TSPA, TESCHER, SPALLINA, TED and P. SIMON, that the beneficiary of the Policy(ies) was “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” aka “Bernstein Trust” at the time of SIMON’s death. Where they stated they had spoken to the carriers and were “friendly” with

them and received the beneficiary designations directly from the insurance carriers and at first claimed to have copies of the Policy(ies) and only later, when ELIOT began demanding to see the Policy(ies), did they then claim to have “lost” their copies or not possess them at all, similar to the “lost” trust claims.

115. That ELIOT alleges the copies of the Policy(ies) are instead suppressed and denied to the beneficiaries, in order to perfect their insurance and trust fraud scheme and deny the true and proper beneficiaries of the “Simon Bernstein Trust, N.A.” of the Policy(ies) proceeds and convert them to themselves and others.

116. That Jackson further asserts in Paragraph 20, “**Jackson is not aware whether the Bernstein Trust even exists,** and if it does whether its title is the ‘Simon Bernstein Insurance Trust dated 6/21/1995, Trust’ as captioned herein, or 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.” [emphasis added].

117. That the “otherwise” referenced by Jackson above, may be the SAMR TRUST or some variation of it, that is being allegedly secreted into this Lawsuit and again this may also be the undefined trusts or misnamed trusts referenced in pleadings by TED and causing Jackson to deny the claim and file a counter complain to this breach of contract Lawsuit.

118. That in TED’s August 30, 2013 Answer to Jackson’s Counter Complaint TED and A. SIMON start off the “Name Game” in the caption by using an abbreviated naming of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” naming it the “Bernstein Trust.” However, in their caption in their answer to Jackson, which is all capitalized and

reads, **THE BERNSTEIN TRUST**, it is impossible to tell whether this reference in the caption is the undefined “The Bernstein Trust” or if it is the “Bernstein Trust” due to the use of capitalization in the caption. Yet, if it is not the same, this changes everything in the pleading to read wholly different and who the beneficiaries are and who is making representations in the pleadings.

119. That TED then claims through his brother-in-law counsel that TED is the “trustee” of the “Bernstein Trust” and therefore trustee of the “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95.” Let this Court read their response without renaming the alleged “lost” “Simon Bernstein Insurance Trust dated 6/21/1995” as the renamed “Bernstein Trust” or any other abbreviation given, in order to clarify the matters and it then becomes apparent that a “lost” trust with no executed copies is attempting to make a claim for the Policy(ies), and where the lost trust was not even the beneficiary on the Policy(ies) at the time of SIMON’s death.
120. That this Court should note that no matter the name of the trust, if the trust is “lost” as alleged, how can anyone claim to be the “trustee” or be a “beneficiary” or know what the terms of the trust are with any certainty and why it is believed a “court order” was requested by the life insurance company HERITAGE.
121. That in their Answer to Jackson, in response to Jackson’s assertion 1, TED claims, “Ted Bernstein and “The Bernstein Trust” [emphasis added and note that The is within the quotations] admit that Jackson has tendered the death benefit to the court.” ELIOT states the “The Bernstein Trust” cannot make any claims or assertions in the pleadings when it has not been defined in the pleadings and thus does not exist.

122. That even if this “The Bernstein Trust” is a grammatical error in name used in the pleadings and it refers to the allegedly lost “Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95” defined as “Bernstein Trust” not “The Bernstein Trust” it would be unable to assert anything on anyone’s behalf, as there are no apparent records of it and just best guesses as to who the trustees and beneficiaries are and where it is not even the final beneficiary according to Jackson.
123. That with all these confusing names and baseless claims asserted in this Lawsuit, Jackson did not just pay the claim on demand for breach of contract but instead filed a counter complaint and thus the third attempt to convert the Policy(ies) proceeds to the wrong beneficiaries has hit another “bump in the road.”
124. That both D. SIMON and A. SIMON and the SLF law firm are conflicted from handling this Lawsuit and pleading in these matters, as D. SIMON would directly benefit from this scheme through conversion of the Policy(ies) proceeds to his wife and family directly, therefore neither his law firm or his brother, for similar conflicts, would be able to legally file this Lawsuit and thus may represent a knowing Abuse of Process.
125. That the failure to properly know whom the beneficiaries of the Policy(ies) are is primarily a result of TSPA, TESCHER and SPALLINA’s failure to legally document the beneficiaries of the Policy(ies) and maintaining copies of the trusts and Policy(ies) or other necessary documents to prove the beneficial interests in lieu of not possessing the key documents when preparing and executing the estate plans of SIMON and SHIRLEY.



126. That in an investigation with the Florida Governor's Office Notary Complaint Division pertaining to the documents that give TSPA, TESCHER, SPALLINA and TED alleged fiduciary powers in the estates of SIMON and SHIRLEY, the Licensed Notary Public who Notarized certain of the estates documents has now ADMITTED AND ACKNOWLEDGED that she has committed Fraud by ILLEGALLY NOTARIZING certain documents, including Fraudulently Notarizing SIMON's signature on a document and allegedly forging the signature months after he was deceased.
127. That these acts are illegal and the documents that give TSPA, TESCHER, SPALLINA and TED fiduciary powers in the estates of SIMON and SHIRLEY may have been illegally obtained after death of SIMON. ELIOT has produced the Response of the Notary Public, ELIOT's Response to the Notary and the original complaint filed against the Notary, in exhibits contained in Petition 7, exhibit No. 1, 2 & 3.
128. That it is alleged that the Cross Defendant and Third Party Defendants have committed Civil Conspiracy, Professional Malpractice, Insurance Fraud, Mail and Wire Fraud, Abuse of Legal Process, Fraud on Beneficiaries and Interested Parties and Fraud on the courts<sup>7</sup> in attempts to convert the Policy(ies) proceeds to themselves, against the wishes and desires and beneficiary designations made by SIMON prior to his death.

**COUNT I**

**FRAUD**

---

<sup>7</sup> Rule 11 of the Federal Rules of Civil Procedure prohibits the filing of lawsuits that are clearly frivolous or filed simply to harass someone. If the Court determines that you have filed a lawsuit for an improper or unnecessary reason, it may impose sanctions against you, including ordering you to pay any legal fees of the party that you sued.



**FRAUD ON BENEFICIARIES, JACKSON, HERITAGE AND COURTS**

129. That this is an action for Fraud within the jurisdiction of this Court. This is also a supplemental action for other civil claims of Fraud pursuant to the state laws of Illinois and Federal law.
130. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "129", as though fully set forth herein.
131. That Cross Defendants and Third Party Defendants filed this case without the knowledge and information of ELIOT, certain beneficiaries and interested parties of the estate of SIMON, with the intention allegedly to fraudulently convert ELIOT and other beneficiaries Policy(ies) proceeds.
132. That Cross Defendant and Third Party Defendants created a post mortem trust, assigning new post mortem beneficiaries or other unverifiable beneficiaries, allegedly fraudulently, to make illegal gains from the Policy(ies).
133. That the Cross Defendant and Third Party Defendants committed fraud on Cross Petitioner, ELIOT, by participating in fraud to deprive the beneficial rights of Cross Petitioner, his children, even their own adult and minor children and other rightful beneficiaries of the Policy(ies).
134. That as a direct and proximate result of such conduct on the part of Cross Defendant and Third Party Defendants, Cross Plaintiff, ELIOT, has been damaged by the alleged fraud and more committed by the conspiratorial actions of Cross Defendant and Third Party Defendants.

135. That this alleged Fraud was committed through an alleged Fraudulent legal proceeding before this Court, constituting not only an alleged Abuse of Process but an alleged Insurance Fraud and this should make this Court take Judicial Notice of the alleged crimes herein and in Petitions 1-7 and take immediate actions to notify all authorities, state and federal, of these alleged crimes, on its own motions.
136. That as a result of the acts of Cross Defendant and Third Party Defendants, Cross Plaintiff now suffers from delays in distribution of the Policy(ies) proceeds to the true and proper beneficiaries and he and his family will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

**COUNT II**

**BREACH OF FIDUCIARY & PROFESSIONAL DUTIES AS TRUSTEES, LEGAL COUNSEL & PERSONAL REPRESENTATIVES OF ESTATE OF SIMON**

137. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "136", as though fully set forth herein.
138. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm TSPA and Attorneys at Law, TESCHER and SPALLINA, acting as TED's Personal Counsel in this Lawsuit, as SIMON's estate counsel and tax attorney and as Personal Representatives of the SIMON estate, as per the state laws of Illinois and Federal law.

139. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants, the law firm SLF and Attorneys at Law, D. SIMON and A. SIMON as counsel in this Lawsuit in conflict and representing TED as Trustee of the Bernstein Trust as per the state laws of Illinois and Federal law.
140. That this is a supplemental action for breach of fiduciary duties and professional responsibilities by Cross Defendant and Third Party Defendants per the state laws of Illinois and Federal law.
141. That the Cross Defendant and Third Party Defendants have conspired and filed this case breaching their fiduciary and professional duties to defraud the Cross Plaintiff, ELIOT, and take away his and others rights to the benefits of the Policy(ies).
142. That Cross Plaintiff alleges through the conspiratorial actions of Cross Defendant and certain Third Party Defendants, through Abuse of Legal Process, Fraud on this Court, Violations of State and Federal Law, Breaches of Fiduciary Duties and Violations of Attorney Conduct Codes attempted to perpetrate an insurance fraud and more to defraud Cross Plaintiff.
143. As a result of Cross Defendant and Third Party Defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00), as well as, punitive damages, costs and attorney's fees.

**COUNT III**


**LEGAL MALPRACTICE**

144. That Cross Plaintiff, ELIOT, repeats and realleges each and every allegation contained in paragraph "1" through "143", as though fully set forth herein.
145. That this is a supplemental action for other civil claims for legal malpractice by Cross Defendant and Third Party Defendants, TSPA, TESCHER, SPALLINA, SLF, D. SIMON and A. SIMON pursuant to the state laws of Illinois and Federal law.
146. That the conspiratorial actions of the Third Party Defendants that are licensed to practice law and acted as Attorneys at Law or law firms in bringing this suit, whether withdrawn or admitted, or any other Attorney at Law that aided and abetted this alleged insurance fraud scheme and more in any way, have through the alleged crimes claimed already herein caused liabilities to Cross Plaintiff and others.
147. That as a result of the defendants acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

**COUNT IV**

**ABUSE OF LEGAL PROCESS**

148. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "147", as though fully set forth herein.

  
Page 65 of 117  
Answer & Cross Claim

149. That this is a supplemental action for other civil claims for abuse of legal process by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.
150. That Cross Defendant and Third Party Defendants have abused legal process to defraud Cross Plaintiff by misleading this court and others and filing this case without knowledge of Cross Plaintiff and against the advice of counsel and with knowledge of a different beneficiary designation than that they filed a death benefit claim for.
151. That as a result of the Cross Defendant and Third Party Defendants acts to Abuse Legal Process in order to perpetrate an alleged insurance fraud, Cross Plaintiff now suffer and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

**COUNT V**

**CIVIL CONSPIRACY**

152. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "151", as though fully set forth herein.
153. That this is a supplemental action for other civil claims for civil conspiracy by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.
154. That Cross Defendant and Third Party Defendants have conspired together to defraud Cross Plaintiff by misleading this court and others regarding the beneficiary(ies) of the Policy(ies) , who they knew had direct beneficial interests in the Policy(ies) and filing this case without

knowledge of Cross Plaintiff and his children's counsel in attempts to convert the Policy(ies) Proceeds.

155. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

### **COUNT VI**

#### **CONVERSION OF PROPERTY**

156. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "155", as though fully set forth herein.

157. That this is a supplemental action for Conversion of Property by Cross Defendant and Third Party Defendants pursuant to the state laws of Illinois and Federal law.

158. That Cross Defendant and Third Party Defendants have conspired together to deprive Cross Plaintiff of his right to Estate as a beneficiary by their fraudulent acts ad creating false documents.

159. That as a result of the defendants' acts, Cross Plaintiff now suffers and will continue to suffer irreparable injury and monetary damages, and that Cross Plaintiff is entitled to damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

### **COUNT VII**

**NEGLIGENCE**

160. That Cross Plaintiff repeats and realleges each and every allegation contained in paragraph "1" through "159", as though fully set forth herein.
161. At all times relevant herein, the Cross Defendant and Third Party Defendants, acting as trustees and representatives of Trusts and Insurance policies, had a duty to exercise reasonable care and skill to maintain the estate and to discharge and fulfill the other incidents attendant to the maintenance, accounting and servicing of the state on behalf of SIMON and the beneficiaries.
162. In taking the actions alleged above, and in failing to take the actions as alleged above, the Cross Defendant and Third Party Defendants breached their duty of care and skill towards maintenance of the estate. Cross Defendant and Third Party Defendants have mismanaged the estate of SIMON and fraudulently created documents and allegedly forged them without having the legal authority and/or proper documentation to do so.
163. As a direct and proximate result of the negligence and carelessness of the Cross Defendant and Third Party Defendants as set forth above, Cross Plaintiff suffered general and special damages in an amount to be determined by this Court or at trial.

**RELIEF**

**WHEREFORE**, Cross Plaintiff ELIOT prays to this Court:

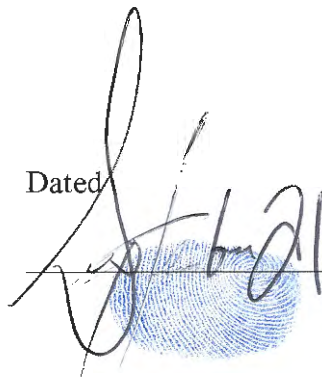
- i. To seize all records and demand that all records of all parties concerning either SHIRLEY or SIMON held by all parties be turned over to ELIOT, as NO documents have been tendered to him regarding these Policies;

- ii. Award Court Costs not from the Policy(ies) but from alleged conspirators and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless Lawsuit in efforts to perpetrate a fraud;
- iii. ELIOT has requested the Probate Court to remove TSPA, SPALLINA, TESCHER, TED and P. SIMON of any fiduciary capacities regarding the estates of SIMON and SHIRLEY on multiple legal grounds stated in said Petitions and Motion 1-7 and hereby requests this Court remove them as well from acting in any conflicting capacities or self-representations based on the Prima Facie evidence of Forgery, Fraud, Fraud on the Probate Court and Mail and Wire Fraud, already evidenced in Petition 7. **That in hearings held on SHIRLEY's estate on Friday, September 13, 2013 in the Probate Court, Honorable Judge Martin H. Colin told TED, SPALLINA, TESCHER and their counsel, Mark Manceri, that he [Hon. Judge Colin] should read them all their Miranda Rights right at that moment, after hearing how SIMON had notarized documents to close SHIRLEY's estate two months after he was deceased and how there was a fraud upon his court and himself personally as he closed the estate with the fraudulent documents and TSPA, TESCHER and SPALLINA did not think it important to note the Court of what they were doing. Hon. Colin's issued this stark Miranda Warning after hearing the criminal misconduct admitted to in his Court, twice in fact.**
- iv. That the alleged insurance fraud taking place through the instant Lawsuit in this Court is allegedly being committed by similar parties of the alleged estate frauds, again misusing their fiduciary and professional powers and they should be removed from



- further representing any parties, sanctioned and forced to retain non conflicted counsel further in these proceedings.
- v. ELIOT requests this Court take Judicial Notice of the alleged and admitted crimes herein and in Petitions 1-7 and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved.
  - vi. Allow ELIOT to ECF in this case due to health problems and expenses. In US District Court Scheindlin has ordered ELIOT access to ECF filing.
  - vii. Allow leave to amend this Cross Claim as it was served while ELIOT was recovering from a traumatic brain injury with bleeding on the brain, a fractured rib and bruised collar bone and in ICU for 3 days in Del Ray Beach, FL hospital and the recovery was almost two months during the time for response and therefore ELIOT would like an opportunity to perfect it. The Court granted several extensions and ELIOT thanks Your Honor for the additional extensions in light of this medical incident.
  - viii. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Dated

 2013

Respectfully submitted,

  
/s/ Eliot Ivan Bernstein

\_\_\_\_\_  
Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, US Mail and by E-mail on September 21, 2013 to the following parties:

**US Mail and Email**

Robert L. Spallina, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

Theodore Stuart Bernstein and  
National Service Association, Inc. (of Florida) ("NSA")  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

Lisa Sue Friedstein  
2142 Churchill Lane  
Highland Park IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com)  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Marla Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
[Iantoni\\_jill@ne.bah.com](mailto:Iantoni_jill@ne.bah.com)

Pamela Beth Simon and  
S.T.P. Enterprises,

  
Page 71 of 117  
Answer & Cross Claim

S.B. Lexington, Inc. Employee Death Benefit Trust,  
SB Lexington, Inc.,  
National Service Association, Inc. (of Illinois)  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)

Adam Simon and  
The Simon Law Firm  
General Counsel STP  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[asimon@stpcorp.com](mailto:asimon@stpcorp.com)

/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

**EXHIBIT 1**

**TRANSCRIPT OF ESTATE COURT HEARING ON SEPTEMBER 13, 2013**

In Re\_ The Estate of Shirley Bernstein.txt  
00001

1 IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

2 PROBATE/GUARDIANSHIP DIVISION IY

3 CASE NO.: 502011CP000653XXXXSB

IN RE: THE ESTATE OF:

4 SHIRLEY BERNSTEIN,

Deceased

5 \_\_\_\_\_/

ELIOT IVAN BERNSTEIN, PRO SE,

6 Petitioner,

vs.

7

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,  
8 ASSOCIATES AND OF COUNSEL); ROBERT L. SPALLINA  
(BOTH PERSONALLY & PROFESSIONALLY); DONALD

9 R. TESCHER (BOTH PERSONALLY & PROFESSIONALLY);

THEODORE STUART BERNSTEIN (AS ALLEGED PERSONAL  
10 REPRESENTATIVE, TRUSTEE, SUCCESSOR TRUSTEE) (BOTH  
PERSONALLY & PROFESSIONALLY); AND JOHN AND JANE

11 DOE'S (1-5000),

Respondents.

12 \_\_\_\_\_/

13 TRANSCRIPT OF PROCEEDINGS

14 BEFORE

15 THE HONORABLE MARTIN H. COLIN

16

17 South County Courthouse

200 West Atlantic Avenue, Courtroom 8

18 Delray Beach, Florida 33344

19

20 Friday, September 13, 2013

1:30 p.m. - 2:15 p.m.

21

22

23

24 Stenographically Reported By:

JESSICA THIBAUT

25

00002

1 APPEARANCES

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING  
Answer & Cross Claim



2

3 On Behalf of the Petitioner:

4 ELIOT IVAN BERNSTEIN, PRO SE

2753 NW 34th Street

5 Boca Raton, Florida 33434

6

Page 1

In Re\_ The Estate of Shirley Bernstein.txt

7

8 On Behalf of the Defendants:

9 LAW OFFICE OF MARK MANCERI, P.A.

2929 East Commercial Blvd., Ste. 702

10 Fort Lauderdale, Florida 33308

(954) 491-7099

11 mrmlaw@comcast.net

BY: MARK MANCERI, ESQ.

12

13

14

15

16

17

18

19

20

21 Also present:

22 Robert Spallina, Esq.

23 Theodore Bernstein

24 Mrs. Bernstein, Petitioner's wife

25

00003

1 P R O C E E D I N G S

2 THE COURT: All right, we're here on the

3 Shirley Bernstein estate, 2011CP000653.

4 Counsel, make your appearances.

5 MR. MANCERI: Good afternoon, your Honor,

6 Mark Manceri. I'm here on behalf of Robert

7 Spallina and Donald Tescher, named respondents.

8 MR. ELIOT BERNSTEIN: Good afternoon, your

9 Honor, my name is Eliot Bernstein, and I'm

10 representing myself pro se.

11 MR. THEODORE BERNSTEIN: Your Honor, Ted

12 Bernstein, trustee of the estate, and I'm here

13 representing myself today.

14 THE COURT: Okay, thanks.

15 Let me just get the case up on the

16 computer, please.

17 All right, so I set oral argument based

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



18 upon Mr. Bernstein's emergency motions, and I  
19 did so with the cautionary language in the  
20 notice of hearing that I assume both of you  
21 have, that indicates that I first want to hear  
22 what makes this matter emergency as defined by  
23 our law, so, because you're pro se,  
24 Mr. Bernstein, I want to make sure you're aware  
Page 2

In Re\_ The Estate of Shirley Bernstein.txt  
25 of that particular aspect of what I just said.  
00004

1 Counsel knows. This is not an emergency in  
2 your mind. It's an emergency as the law calls  
3 it an emergency. You're probably going to show  
4 me a case or an administrative order and tell  
5 me how this is an emergency.

6 The second part of it is what type of  
7 evidentiary hearing we need to have, so you're  
8 up first.

9 MR. ELIOT BERNSTEIN: Okay, you want me to  
10 step up or?.

11 THE COURT: You could do it right from  
12 there.

13 MR. ELIOT BERNSTEIN: It's an emergency  
14 because three of the beneficiaries --

15 THE COURT: Say again? I couldn't -- you  
16 mumbled, I couldn't hear you.

17 MR. ELIOT BERNSTEIN: It's an emergency  
18 because three of the beneficiaries of the  
19 estates lives have been put in danger.

20 THE COURT: Okay, so they're about to be  
21 killed?

22 MR. ELIOT BERNSTEIN: They're about to be  
23 cut off of school, insurance, the necessary  
24 care that was set aside in the estates.

25 THE COURT: So it's not physical harm?  
00005

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: So it's financial harm?

3 MR. ELIOT BERNSTEIN: Correct.

4 THE COURT: Educational harm?

5 MR. ELIOT BERNSTEIN: Correct.

6 THE COURT: Show me in either the law or  
7 the administrative order where that is defined  
8 as an emergency.

9 MR. ELIOT BERNSTEIN: If it's not then I  
10 made a mistake.

11 THE COURT: You're supposed to know that.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

A handwritten signature in blue ink is written over a circular blue ink stamp. The signature appears to be "E. Bernstein".

12 That's why we're having this hearing.  
13 MR. ELIOT BERNSTEIN: Well, I'm pro se.  
14 THE COURT: I know. We brought all this  
15 judicial effort here. No, sir, this is not a  
16 free shot for you.  
17 MR. ELIOT BERNSTEIN: I thought that it  
18 was an emergency.

Page 3

In Re\_ The Estate of Shirley Bernstein.txt

19 THE COURT: No, it's not your thought.  
20 MR. ELIOT BERNSTEIN: Okay.  
21 THE COURT: I cautioned you in the notice  
22 of hearing you so came today -- I kind of  
23 cautioned you whether this is an emergency,  
24 okay? So you need to demonstrate to me where  
25 under our laws this situation that you say the  
00006

1 evidence would show is imminently happening,  
2 imminent means today, okay, where an emergency  
3 exists.  
4 The last two emergencies I did, someone  
5 was on the way to the airport waiting to be  
6 taken illegally to Iran, a non-hate convention  
7 country. We had to get an order out so that  
8 Homeland Security would rush down with armed  
9 guards and protect a child from going overseas  
10 and never coming back to the U.S.  
11 The other one was we had to get an order  
12 so police could break down the door to prevent  
13 someone from being physically killed or harmed  
14 physically.

15 Those two were emergencies. Is this an  
16 emergency like that?  
17 MR. ELIOT BERNSTEIN: I believe so.  
18 THE COURT: Okay, all right, so let me  
19 tell you, I'm going to let you go forward. If  
20 I do not believe so, get your checkbook out.  
21 MR. ELIOT BERNSTEIN: Okay.

22 THE COURT: You're going to personally pay  
23 for the cost of this.

24 MR. ELIOT BERNSTEIN: Okay.

25 THE COURT: It doesn't seem so based upon  
00007

1 what you've told me, but you have this belief  
2 that it is. Remember, show me that it's a  
3 legal emergency like I gave the example of it.  
4 Someone is going to die, be taken out of the  
5 jurisdiction, someone's wellbeing today is



6 going to be -- you know, they're going to be  
7 without food, they'll be on the street  
8 tomorrow.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: So is that the type of hearing  
11 I need?

12 MR. ELIOT BERNSTEIN: Yes.

Page 4

In Re\_ The Estate of Shirley Bernstein.txt

13 THE COURT: Okay. So tell me how that --

14 what evidence is there that this is an  
15 emergency along those lines?

16 MR. ELIOT BERNSTEIN: Okay, the estate  
17 representatives when my parents died told us  
18 that they were understanding the special  
19 circumstances me and my three children are in,  
20 and that funds had been set aside and not to  
21 worry, there would be no delay of paying their  
22 living costs and everything that my father and  
23 mother had been paying for years to take care  
24 of them, and then they were paying that out of  
25 a bank account at Legacy Bank.

00008

1 THE COURT: Who is they?

2 MR. ELIOT BERNSTEIN: Mr. Spallina had  
3 directed Rachel Walker to pay the expenses of a  
4 Legacy bank account. It was being paid. And  
5 then Mr. Spallina stated that I should or that  
6 Rachel should -- she was fired, she should now  
7 turn the accounts over to my wife to start  
8 writing checks out of an account we've never  
9 seen.

10 So I said I didn't feel comfortable  
11 writing checks out of an account, especially  
12 where it appeared my dad was the signer, so I  
13 called Legacy Bank with Rachel and they were  
14 completely blown away that checks had been  
15 being written out of a dead person's account.  
16 Nobody had notified them that Simon had  
17 deceased. And that no -- by under no means  
18 shall I write checks out of that account, and  
19 so then Mr. Spallina told me to turn the  
20 accounts over to Janet Craig of Oppenheimer,  
21 and Oppenheimer was going to pay the bills as  
22 it had been done by Rachel in the past. And so  
23 we sent her the Legacy account. We thought all  
24 that was how things were being done and, you  
25 know, he doesn't give us any documents

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



00009

1 whatsoever in the estate, so we don't know, you  
2 know, what he's operating out of, but  
3 Oppenheimer then started to pay the things --  
4 first they said, wait a minute, these are  
5 school trust funds -- well, they actually said  
6 that after they started paying, and they were a  
Page 5

In Re\_ The Estate of Shirley Bernstein.txt  
7 little hesitant that these funds were being  
8 used for personal living expenses of everybody,  
9 which the other Legacy account had been paying  
10 for through an agreement between and my  
11 parents. And then what happened was  
12 Mr. Spallina directed them to continue, stating  
13 he would replenish and replace the funds if he  
14 didn't get these other trusts he was in the  
15 process of creating for my children in place  
16 and use that money he would replenish and  
17 replace it.

18 So the other week or two weeks or a few  
19 week ago Janet Craig said that funds are  
20 running low and she contacted Mr. Spallina who  
21 told her that he's not putting any money into  
22 those trusts and that there's nothing there for  
23 me, and that basically when that money runs out  
24 the kids' insurance, school, their home  
25 electricity and everything else I would

00010

1 consider an emergency for three minor children  
2 will be cut off, and that was not --

3 THE COURT: Let me ask you a question.

4 MR. ELIOT BERNSTEIN: Yes, sir.

5 THE COURT: At the time when you say  
6 things were as they should be, your parents  
7 were alive and they were paying bills of you  
8 and your children?

9 MR. ELIOT BERNSTEIN: Correct,  
10 100-percent, through an agreement.

11 THE COURT: An agreement with them?

12 MR. ELIOT BERNSTEIN: Yes.

13 THE COURT: Okay. Then who died first?

14 MR. ELIOT BERNSTEIN: My mom.

15 THE COURT: Because this is what -- you  
16 filed it under your mom's estate.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: Is your father alive or dead?

19 MR. ELIOT BERNSTEIN: My father is

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



20 deceased today a year ago.

21 THE COURT: All right. So you're saying  
22 that after your father died, however it  
23 happened, bills for you and your children  
24 continued to be paid somehow?

25 MR. ELIOT BERNSTEIN: First out of an

00011

Page 6

In Re\_ The Estate of Shirley Bernstein.txt

1 account that they shouldn't have been being  
2 paid out of.

3 THE COURT: And then it stopped?

4 MR. ELIOT BERNSTEIN: It stopped. Then it  
5 was transferred to Oppenheimer.

6 THE COURT: And they paid for a little  
7 while?

8 MR. ELIOT BERNSTEIN: Correct.

9 THE COURT: And when did that stop?

10 MR. ELIOT BERNSTEIN: Correct, just on  
11 August 28th, with one-day's notice.

12 THE COURT: Okay. So the bills that they  
13 were paying for you were what bills?

14 MR. ELIOT BERNSTEIN: All of them.

15 THE COURT: All the bills.

16 MR. ELIOT BERNSTEIN: Health insurance,  
17 electricity, water, food, clothing, everything,  
18 100-percent.

19 THE COURT: When did the emergency take  
20 place?

21 MR. ELIOT BERNSTEIN: On August 28th.

22 They told me if I didn't sign releases that  
23 Robert wanted me to sign and turn the money  
24 over to my brother, the remaining corpus of the  
25 trust, that they were going to shut the funds

00012

1 off as of that day.

2 THE COURT: And they did?

3 MR. ELIOT BERNSTEIN: I'm not 100-percent  
4 sure, because then I asked them for their  
5 operating documents that Mr. Spallina had sent  
6 them, and once again we've got un-notarized  
7 documents --

8 THE COURT: We'll talk about the notary  
9 thing in a second.

10 MR. ELIOT BERNSTEIN: Okay. Then we have  
11 new improperly notarized documents authorizing  
12 the trust to operate, and they sent me  
13 incomplete documents which are unsigned on

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



14 every page of the trust agreement, so they're  
15 telling me and I've asked them three times if  
16 they have signed copies and three times they've  
17 sent me unsigned copies.

18 THE COURT: Okay, but what bills today --

19 MR. ELIOT BERNSTEIN: All of them.

20 THE COURT: What bills are unpaid as  
21 overdo today?

Page 7

In Re\_ The Estate of Shirley Bernstein.txt

22 MR. ELIOT BERNSTEIN: Health insurance is  
23 one.

24 THE COURT: What's overdue today?

25 MR. ELIOT BERNSTEIN: Health insurance is  
00013

1 one.

2 THE COURT: All right, name the health  
3 insurance company.

4 MR. ELIOT BERNSTEIN: It's COBRA.

5 THE COURT: COBRA is not a company.

6 MR. ELIOT BERNSTEIN: Blue Cross.

7 THE COURT: Blue Cross, okay. How much is  
8 overdue to Blue Cross today?

9 MR. ELIOT BERNSTEIN: \$2,000 or so.

10 THE COURT: It's not \$2,000 a day.

11 MR. ELIOT BERNSTEIN: A month.

12 THE COURT: \$2,000 a month is the health  
13 insurance bill?

14 MR. ELIOT BERNSTEIN: Correct.

15 THE COURT: When was that bill due?

16 MR. ELIOT BERNSTEIN: Well, this is the  
17 problem. All of the bills are going to them  
18 and they don't share with me any of that.

19 THE COURT: So how do you know that you  
20 don't have health insurance coverage?

21 MR. ELIOT BERNSTEIN: Only because it's  
22 paid by them on that date. Usually on the  
23 first.

24 THE COURT: September 1st?

25 MR. ELIOT BERNSTEIN: Yes. As of  
00014

1 September 1st I don't believe they have --

2 THE COURT: Is the coverage in effect  
3 today?

4 MR. ELIOT BERNSTEIN: I don't know.

5 THE COURT: If you don't know, how do you  
6 know that it's an emergency?

7 MR. ELIOT BERNSTEIN: I just know they

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

A handwritten signature in blue ink is written over a circular blue ink stamp. The signature appears to be "E. Bernstein".

8 haven't paid it.

9 THE COURT: Okay, so --

10 MR. ELIOT BERNSTEIN: I don't have --

11 THE COURT: So you have coverage you said

12 as of August 31st you had coverage?

13 MR. ELIOT BERNSTEIN: We don't know. We

14 don't have an accounting if she stated that,

15 I'm sorry.

Page 8

In Re\_ The Estate of Shirley Bernstein.txt

16 THE COURT: Okay, so you may be covered,

17 you may not be covered?

18 MR. ELIOT BERNSTEIN: Correct.

19 THE COURT: What other bill is unpaid as

20 of today.

21 MR. ELIOT BERNSTEIN: And that's my wife

22 and my children too.

23 THE COURT: Okay.

24 MR. ELIOT BERNSTEIN: Again, they have all

25 the bills, so when they're due, like the

00015

1 electric was due on the 28th, then they usually

2 pay it. I don't even get the bills. So the

3 bills are going straight to Oppenheimer.

4 THE COURT: How do you know

5 authoritatively that they're not being paid?

6 Ma'am, you can't speak. You're not a

7 lawyer, right?

8 MRS. BERNSTEIN: No.

9 THE COURT: Up, move to the back.

10 MR. ELIOT BERNSTEIN: You want her to go

11 back?

12 THE COURT: Yes, because she's disruptive.

13 I can't speak to you and hear her.

14 MR. ELIOT BERNSTEIN: Okay.

15 THE COURT: So stay there in absolute

16 silence. You could write something if you

17 want, is that agreed?

18 MRS. BERNSTEIN: Yes.

19 THE COURT: Okay, go ahead. How do you

20 know these monthly bills are not being paid?

21 How do you know the way you know today is

22 Friday, you know what your name is, know

23 meaning indisputable knowledge.

24 MR. ELIOT BERNSTEIN: I can't say for

25 certainty since I don't receive it and manage

00016

1 and pay the bills.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



2 THE COURT: Well then how is it an  
3 emergency if you don't know?  
4 MR. ELIOT BERNSTEIN: Well, because we  
5 know that within this next month if electricity  
6 isn't paid and there's no money to pay it and  
7 he doesn't reimburse the trusts that all those  
8 bills on whatever date they were due were  
9 lapsing in the next few hours.

Page 9

In Re\_ The Estate of Shirley Bernstein.txt

10 THE COURT: From today?

11 MR. ELIOT BERNSTEIN: From the 28th.

12 THE COURT: The 28th of August?

13 MR. ELIOT BERNSTEIN: Correct, sir.

14 THE COURT: All right. So you don't know  
15 if they've been paid or not. You still have  
16 your electric on?

17 MR. ELIOT BERNSTEIN: Yes.

18 THE COURT: Are any services shut off?

19 MR. ELIOT BERNSTEIN: No.

20 MR. ROTHMAN: Maybe like things like lawn  
21 and stuff, the lawn guys have been coming, said  
22 we owe them money, which we've never heard that  
23 from this guy knocking on the door.

24 THE COURT: All right. Is the lawn an  
25 emergency situation?

00017

1 MR. ELIOT BERNSTEIN: No. You just asked  
2 if any bills --

3 THE COURT: These are not emergencies  
4 then.

5 MR. ELIOT BERNSTEIN: Okay.

6 THE COURT: Remember, you filed a motion  
7 that stopped the courthouse from working.

8 MR. ELIOT BERNSTEIN: I'm very sorry.

9 THE COURT: We thought you were ready to  
10 die on the day you filed the motion.

11 MR. ELIOT BERNSTEIN: I'm very sorry.

12 THE COURT: Okay.

13 MR. ELIOT BERNSTEIN: I believed it was an  
14 emergency. The minor children are in there.

15 THE COURT: Let me ask, how old are you?

16 MR. ELIOT BERNSTEIN: I'm 50.

17 THE COURT: Can you pay an electric bill?

18 MR. ELIOT BERNSTEIN: No.

19 THE COURT: Why not?

20 MR. ELIOT BERNSTEIN: I don't have any  
21 employment.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



22 THE COURT: Why not? If there's an  
23 emergency and you're not eating and you have  
24 children --

25 MR. ELIOT BERNSTEIN: It's very  
00018

1 complicated, but --

2 THE COURT: Well, could you work to pay  
3 your electric bill? If that made a difference?  
Page 10

In Re\_ The Estate of Shirley Bernstein.txt

4 MR. ELIOT BERNSTEIN: No, I haven't been  
5 able to gain employment due to  
6 Ricco-related-type crimes that have been  
7 committed against me and my family.

8 THE COURT: So your kids are without food,  
9 you would have them starve rather than go over  
10 to Burger King or Dunkin Donuts and get a job  
11 doing --

12 MR. ELIOT BERNSTEIN: I've tried all those  
13 things.

14 THE COURT: And they won't hire you?

15 MR. ELIOT BERNSTEIN: Let me explain.

16 THE COURT: Will they hire you to make  
17 enough money?

18 MR. ELIOT BERNSTEIN: No. And that's why  
19 my father and mother had set aside these funds  
20 to pay those bills because they understood the  
21 gravity --

22 THE COURT: So here's what we'll do, we're  
23 going to have a hearing, tell me if you're  
24 comfortable, whether there's any employment you  
25 could get, so I'm going to bring the people  
00019

1 from Florida State Employment who tell me  
2 there's hundreds of jobs today that you could  
3 work.

4 MR. ELIOT BERNSTEIN: Okay.

5 THE COURT: You could start today as a  
6 laborer right outside this courthouse. Why  
7 don't you do that?

8 MR. ELIOT BERNSTEIN: Well, because if I  
9 do that I have tax liens that are --

10 THE COURT: Who cares? You want to feed  
11 your children. They're going to pay you money  
12 to feed your children.

13 MR. ELIOT BERNSTEIN: Okay, I'll explain.

14 I have tax liens which are under investigation  
15 by the inspector general of the tax

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



16 administration department, currently ongoing,  
17 that were put on me as part of the efforts in a  
18 Ricco-related lawsuit that I'm involved in.  
19 These are just the facts, I'm just telling  
20 you --

21 THE COURT: What's to stop you from  
22 working as a laborer?

23 MR. ELIOT BERNSTEIN: Because they then  
24 attach my wages --

Page 11

In Re\_ The Estate of Shirley Bernstein.txt

25 THE COURT: They don't even know that  
00020

1 you're working, and you have an emergency, you  
2 could feed your children.

3 MR. ELIOT BERNSTEIN: They know I'm  
4 working.

5 THE COURT: How do they know you're  
6 working?

7 MR. ELIOT BERNSTEIN: Well, actually, if  
8 you read the last articles I put in the  
9 petition six or five, one of those two, I put  
10 in the articles that have been released in the  
11 press that say that they were misusing joint  
12 terrorism task force funds and resources to  
13 monitor and violate our rights through the  
14 Patriot Act violations, and that they have done  
15 that to me in the related cases in the federal  
16 court.

17 THE COURT: All right, whatever you say.  
18 I don't think you want -- if you want a hearing  
19 on whether you could go to work today,  
20 physically go to work and pay, I'll give you  
21 that hearing right now and I'll get someone  
22 from Florida Employment. Here's the deal, you  
23 lose all your motions as soon as they tell you  
24 that you could go outside and work.

25 Do you want that hearing or not? You  
00021

1 could physically earn enough money to pay for  
2 food for your children today, you tell me you  
3 can't do -- that someone is going to tackle you  
4 and stop you from working outside as a laborer  
5 to get enough money to feed your children?  
6 That's the emergency, your children are  
7 starving. You're a parent. You're going to  
8 tell me you're going to let your children  
9 starve and not work to earn enough money to

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



10 feed them, that's what you're telling me,  
11 correct?

12 MR. ELIOT BERNSTEIN: No. Well, I won't  
13 tell you that because, I guess, if you say  
14 there's some job that you could get me I'll get  
15 it.

16 THE COURT: There's tons of jobs.

17 MR. ELIOT BERNSTEIN: I know, I've applied  
18 for so many over the years --

Page 12

In Re\_ The Estate of Shirley Bernstein.txt

19 THE COURT: I mean maybe not as a CEO of a  
20 company. \$10, \$9.00 an hour jobs --

21 MR. ELIOT BERNSTEIN: I've applied for  
22 minimum wage and had trouble, believe me.

23 THE COURT: I'm talking about getting work  
24 today -- if you tell me you can't work today  
25 I'll have a hearing on that.

00022

1 MR. ELIOT BERNSTEIN: I can work today.

2 THE COURT: Well, then you could feed your  
3 children today.

4 MR. ELIOT BERNSTEIN: Okay, if I could get  
5 a job --

6 THE COURT: That's not an emergency. You  
7 might have a hearing on it down the line, but  
8 it's not an emergency.

9 MR. ELIOT BERNSTEIN: Okay.

10 THE COURT: An emergency means my kids are  
11 starving, they haven't eaten, there's no food,  
12 and I can't legally get them food because I  
13 can't work. I have people who are blind, who  
14 have no arms and legs, and they can't work.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: That's different, that's not  
17 you.

18 MR. ELIOT BERNSTEIN: Okay.

19 THE COURT: Okay. Can't work and don't  
20 want to work, think they're reasons not to work  
21 are two different things.

22 MR. ELIOT BERNSTEIN: Okay.

23 THE COURT: Okay. What's your position on  
24 the emergency before we go to some of these  
25 others issues which concern me about what he

00023

1 said.

2 MR. MANCERI: Good afternoon, your Honor.

3 As I stated in my opening, I represent Robert





4 Spallina and Mr. Tescher. I would like to

5 apologize --

6 THE COURT: So their roles are what in

7 this case?

8 MR. MANCERI: They were counsel or are

9 counsel for the estate of Shirley Bernstein, as

10 well as counsel for the estate of Simon

11 Bernstein, who is in front of Judge French.

12 THE COURT: Okay.

Page 13

In Re\_ The Estate of Shirley Bernstein.txt

13 MR. MANCERI: But before I make my

14 presentation, I would just like to apologize

15 for Mr. Tescher's absence. He's out of town

16 for the holiday.

17 THE COURT: Okay. Who are the PR's that

18 you represent?

19 MR. MANCERI: Well, Shirley Bernstein

20 there is no technically any PR because we had

21 the estate closed.

22 THE COURT: Okay.

23 MR. MANCERI: And what emanated from

24 Mr. Bernstein's 57-page filing, which falls

25 lawfully short of any emergency, was a petition

00024

1 to reopen the estate, so technically nobody has

2 letters right now.

3 Simon Bernstein, your Honor, who died a

4 year ago today as you heard, survived his wife,

5 Shirley Bernstein, who died December 10, 2010.

6 Simon Bernstein was the PR of his wife's

7 estate.

8 As a result of his passing, and in attempt

9 to reopen the estate we're looking to have the

10 estate reopened. So nobody has letters right

11 now, Judge. The estate was closed.

12 THE COURT: So you agree that in Shirley's

13 estate it was closed January of this year,

14 there was an order of discharge, I see that.

15 Is that true?

16 MR. ELIOT BERNSTEIN: I don't know.

17 THE COURT: Do you know that that's true?

18 MR. ELIOT BERNSTEIN: Yes, I believe.

19 THE COURT: So final disposition and the

20 order got entered that Simon, your father --

21 MR. ELIOT BERNSTEIN: Yes, sir.

22 THE COURT: -- he came to court and said I

23 want to be discharged, my wife's estate is

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

24 closed and fully administered.

25 MR. ELIOT BERNSTEIN: No. I think it  
00025

1 happened after --

2 THE COURT: No, I'm looking at it.

3 MR. ELIOT BERNSTEIN: What date did that  
4 happen?

5 THE COURT: January 3, 2013.

6 MR. ELIOT BERNSTEIN: He was dead.

Page 14

In Re\_ The Estate of Shirley Bernstein.txt

7 MR. MANCERI: That's when the order was

8 signed, yes, your Honor.

9 THE COURT: He filed it, physically came  
10 to court.

11 MR. ELIOT BERNSTEIN: Oh.

12 THE COURT: So let me see when he actually  
13 filed it and signed the paperwork. November.

14 What date did your dad die?

15 MR. ELIOT BERNSTEIN: September. It's

16 hard to get through. He does a lot of things  
17 when he's dead.

18 THE COURT: I have all of these waivers by

19 Simon in November. He tells me Simon was dead  
20 at the time.

21 MR. MANCERI: Simon was dead at the time,  
22 your Honor. The waivers that you're talking  
23 about are waivers from the beneficiaries, I  
24 believe.

25 THE COURT: No, it's waivers of  
00026

1 accountings.

2 MR. MANCERI: Right, by the beneficiaries.

3 THE COURT: Discharge waiver of service of  
4 discharge by Simon, Simon asked that he not  
5 have to serve the petition for discharge.

6 MR. MANCERI: Right, that was in his  
7 petition. When was the petition served?

8 THE COURT: November 21st.

9 MR. SPALLINA: Yeah, it was after his date  
10 of death.

11 THE COURT: Well, how could that happen  
12 legally? How could Simon --

13 MR. MANCERI: Who signed that?

14 THE COURT: -- ask to close and not serve  
15 a petition after he's dead?

16 MR. MANCERI: Your Honor, what happened  
17 was is the documents were submitted with the

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

A handwritten signature in blue ink is written over a circular blue ink stamp. The signature appears to be "MS".

18 waivers originally, and this goes to  
19 Mr. Bernstein's fraud allegation. As you know,  
20 your Honor, you have a rule that you have to  
21 have your waivers notarized. And the original  
22 waivers that were submitted were not notarized,  
23 so they were kicked back by the clerk. They  
24 were then notarized by a staff person from  
25 Tescher and Spallina admittedly in error. They  
00027

Page 15

In Re\_ The Estate of Shirley Bernstein.txt

1 should not have been notarized in the absentia  
2 of the people who purportedly signed them. And  
3 I'll give you the names of the other siblings,  
4 that would be Pamela, Lisa, Jill, and Ted  
5 Bernstein.

6 THE COURT: So let me tell you because I'm  
7 going to stop all of you folks because I think  
8 you need to be read your Miranda warnings.

9 MR. MANCERI: I need to be read my Miranda  
10 warnings?

11 THE COURT: Everyone of you might have to  
12 be.

13 MR. MANCERI: Okay.

14 THE COURT: Because I'm looking at a  
15 formal document filed here April 9, 2012,  
16 signed by Simon Bernstein, a signature for him.

17 MR. MANCERI: April 9th, right.

18 THE COURT: April 9th, signed by him, and  
19 notarized on that same date by Kimberly. It's  
20 a waiver and it's not filed with The Court  
21 until November 19th, so the filing of it, and  
22 it says to The Court on November 19th, the  
23 undersigned, Simon Bernstein, does this, this,  
24 and this. Signed and notarized on April 9,  
25 2012. The notary said that she witnessed Simon  
00028

1 sign it then, and then for some reason it's not  
2 filed with The Court until after his date of  
3 death with no notice that he was dead at the  
4 time that this was filed.

5 MR. MANCERI: Okay.

6 THE COURT: All right, so stop, that's  
7 enough to give you Miranda warnings. Not you  
8 personally --

9 MR. MANCERI: Okay.

10 THE COURT: Are you involved? Just tell  
11 me yes or no.



12 MR. SPALLINA: I'm sorry?

13 THE COURT: Are you involved in the  
14 transaction?

15 MR. SPALLINA: I was involved as the  
16 lawyer for the estate, yes. It did not come to  
17 my attention until Kimberly Moran came to me  
18 after she received a letter from the Governor's  
19 Office stating that they were investigating  
20 some fraudulent signatures on some waivers that  
21 were signed in connection with the closing of  
Page 16

In Re\_ The Estate of Shirley Bernstein.txt  
22 the estate.

23 THE COURT: What about the fact, counsel,  
24 let me see who signed this. Okay, they're all  
25 the same as to -- so let me ask this, I have a  
00029

1 document where Eliot, you're Eliot, right?

2 MR. ELIOT BERNSTEIN: Yes, sir.

3 THE COURT: Where you purportedly waived  
4 accounting, agreed to a petition to discharge  
5 on May 15th, and you signed that. Do you  
6 remember doing that? Do you remember that or  
7 not? I'm looking at it.

8 MR. ELIOT BERNSTEIN: I remember signing  
9 it and sending it with a disclaimer that I was  
10 signing it because my father was under duress  
11 and only to relieve this stress that he was  
12 being --

13 THE COURT: Well, I don't care -- I'm not  
14 asking you why you signed it.

15 MR. ELIOT BERNSTEIN: I also signed it  
16 with the expressed -- when I signed it I was  
17 coned by Mr. Spallina that he was going to send  
18 me all the documents of the estate to review.  
19 I would have never lied on this form when I  
20 signed it. It's saying that I saw and I never  
21 saw --

22 THE COURT: Let me ask you --

23 MR. ELIOT BERNSTEIN: I lied.

24 THE COURT: Did you have your signature  
25 notarized?

00030

1 MR. ELIOT BERNSTEIN: No.

2 THE COURT: Kimberly Moran never signed or  
3 notarized his signature?

4 MR. MANCERI: Yes, your Honor, and that's  
5 been addressed with the Governor's office.

EXHIBIT 1-- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

6 THE COURT: You need to address this with  
7 me.

8 MR. MANCERI: I am going to address it  
9 with you.

10 THE COURT: Here's what I don't understand  
11 because this is part of the problem here, is  
12 that Shirley has an estate that's being  
13 administered by Simon.

14 MR. MANCERI: Correct.

15 THE COURT: There comes a time where they  
Page 17

In Re\_ The Estate of Shirley Bernstein.txt

16 think it's time to close out the estate.

17 MR. MANCERI: Correct.

18 THE COURT: Waivers are sent out, that's  
19 kind of SOP, and people sign off on that.

20 MR. MANCERI: Right.

21 THE COURT: And why are they held up for  
22 six months, and when they're filed it's after  
23 Simon is already deceased?

24 MR. MANCERI: They were originally filed  
25 away, your Honor, under the signature of the  
00031

1 people.

2 THE COURT: No, they weren't filed, that's  
3 the whole thing. I'm looking at the file date,  
4 filed with The Court.

5 MR. MANCERI: No, they were returned by  
6 the clerk because they didn't have  
7 notarization. We have affidavits from all  
8 those people, Judge.

9 THE COURT: Well you may have that they  
10 got sent up here.

11 MR. MANCERI: We have affidavits from all  
12 of those people.

13 MR. ELIOT BERNSTEIN: Including Simon?

14 THE COURT: Slow down. You know how we  
15 know something is filed? We see a stamp.

16 MR. MANCERI: It's on the docket sheet, I  
17 understand.

18 THE COURT: So it's stamped in as filed in  
19 November. The clerk doesn't have -- now, they  
20 may have rejected it because it wasn't  
21 notarized, and that's perhaps what happened,  
22 but if in the meantime waiting cured the  
23 deficiency of the document, two things happen  
24 you're telling me, one, Simon dies.

25 MR. MANCERI: Correct.

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

00032

1 THE COURT: And when those documents are  
2 filed with the clerk eventually in November  
3 they're filed and one of the documents says, I,  
4 Simon, in the present.

5 MR. MANCERI: Of Ms. Moran.

6 THE COURT: No, not physically present, I  
7 Simon, I would read this in November Simon  
8 saying I waive -- I ask that I not have to have  
9 an accounting and I want to discharge, that  
Page 18

In Re\_ The Estate of Shirley Bernstein.txt

10 request is being made in November.

11 MR. MANCERI: Okay.

12 THE COURT: He's dead.

13 MR. MANCERI: I agree, your Honor.

14 THE COURT: Who filed that document?

15 MR. MANCERI: Robert, do you know who  
16 filed that document in your office?

17 MR. SPALLINA: I would assume Kimberly  
18 did.

19 MR. MANCERI: Ms. Moran.

20 THE COURT: Who is she?

21 MR. MANCERI: She's a staff person at  
22 Tescher and Spallina.

23 THE COURT: When she filed these, and one  
24 would think when she filed these the person who  
25 purports to be the requesting party is at least  
00033

1 alive.

2 MR. MANCERI: Understood, Judge.

3 THE COURT: Not alive. So, well -- we're  
4 going to come back to the notary problem in a  
5 second.

6 MR. MANCERI: Okay.

7 THE COURT: In the meantime, based upon  
8 all that I discharge the estate, it's closed.  
9 Here's what I don't understand on your  
10 side, you're representing yourself, but the  
11 rules still apply. You then file, Eliot  
12 Bernstein, emergency petitions in this closed  
13 estate, it's closed.

14 MR. ELIOT BERNSTEIN: You reopened it.

15 THE COURT: When did I reopen it?

16 MR. MANCERI: No, it hasn't been reopened,  
17 your Honor.

18 THE COURT: There's an order that I  
19 entered in May of 2013 denying an emergency

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



20 petition to freeze assets. You filed this one  
21 in May. Do you remember doing that?

22 MR. ELIOT BERNSTEIN: I believe so.

23 THE COURT: And what you said was there's  
24 an emergency in May, you want to freeze the  
25 estate assets appointing you PR, investigate  
00034

1 the fraud documents, and do a whole host of  
2 other things, and the estate had been closed.  
3 The reason why it was denied among other  
Page 19

In Re\_ The Estate of Shirley Bernstein.txt  
4 things, one, it may not have been an emergency,  
5 but, two, the case was not reopened. There's  
6 no reopen order.

7 MR. ELIOT BERNSTEIN: I paid \$50 to  
8 someone.

9 THE COURT: You may have paid to file what  
10 you filed, but there's no order reopening the  
11 estate.

12 MR. ELIOT BERNSTEIN: Okay, that's my  
13 mistake.

14 THE COURT: It's closed, the PR is  
15 discharged, they all went home.

16 MR. ELIOT BERNSTEIN: And I filed to  
17 reopen because we discovered the fraudulent  
18 documents.

19 THE COURT: But then you still had to ask  
20 to reopen --

21 MR. ELIOT BERNSTEIN: And notice, your  
22 Honor, that they haven't come to you in all of  
23 that time, he said he just got notified from  
24 the governor the other day about this fraud, I  
25 put it in your court and served him months ago  
00035

1 and he never came to me or you or anybody else  
2 to know that the police are calling him, the  
3 sheriff and the governor's Office.

4 THE COURT: Then you filed another  
5 emergency similarly, served you folks, Tescher  
6 and Spallina. I denied it because it wasn't an  
7 emergency because nothing was happening I  
8 thought had to happen on the day or two after.

9 MR. ELIOT BERNSTEIN: Well, now that I  
10 understand emergency --

11 THE COURT: The estate wasn't open and it  
12 really wasn't an emergency at the time. And  
13 then you filed a motion in the ordinary course



14 to have things heard, and a motion to -- bunch  
15 of other motions, to remove PR.  
16 MR. ELIOT BERNSTEIN: Well, with each  
17 successive crime we found -- by the way, that's  
18 kind of why this is an emergency because with  
19 the use of these fraudulent documents a bunch  
20 of other crimes are taking place.

21 THE COURT: Okay. Representing yourself  
22 is probably not the easiest thing.

23 MR. ELIOT BERNSTEIN: I had counsel, your  
24 Honor, but Mr. Spallina abused her so much and  
Page 20

In Re\_ The Estate of Shirley Bernstein.txt  
25 she ran up a \$10,000 bill.

00036

1 THE COURT: Doesn't help me.

2 MR. ELIOT BERNSTEIN: Doesn't help you,  
3 okay.

4 THE COURT: Then in August you started  
5 again, September you started again, and at  
6 least I set the hearing because it's kind of  
7 hard when I read your allegations I couldn't  
8 figure it out. Now I think, okay -- so now let  
9 me ask you this, counsel.

10 MR. MANCERI: Yes, sir.

11 THE COURT: So the pleadings get filed,  
12 the estate gets closed.

13 MR. MANCERI: Correct.

14 THE COURT: Simon dies. So what happened  
15 with Shirley's estate?

16 MR. MANCERI: Shirley's estate is closed,  
17 as you said.

18 THE COURT: I know the administration is  
19 closed. What happened with her estate? Where  
20 did that go? Did she have a will?

21 MR. MANCERI: Her assets went into trusts,  
22 and her husband had a power of appointment  
23 which he exercised in favor of Mr. Bernstein's  
24 children.

25 THE COURT: Okay.

00037

1 MR. MANCERI: And that leads to the trust  
2 that he mentioned at Oppenheimer which he  
3 misled The Court as to what's happening with  
4 that.

5 THE COURT: Let me slow you down.

6 MR. MANCERI: Okay.

7 THE COURT: So her estate assets went into

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim





8 a trust?

9 MR. MANCERI: Correct.

10 THE COURT: And that trust is --

11 MR. MANCERI: And Ted Bernstein, I

12 believe, is the trustee of that trust.

13 THE COURT: And you're brothers?

14 MR. THEODORE BERNSTEIN: That's correct.

15 THE COURT: All right. So then -- so

16 Simon really wasn't alive long when he died as

17 trustee?

18 MR. MANCERI: Not terribly long.

Page 21

In Re\_ The Estate of Shirley Bernstein.txt

19 THE COURT: All right. So he was a

20 trustee. Was she a trustee as well?

21 MR. MANCERI: He died, your Honor. Again

22 she died December 10, 2010. He died September

23 of 2012.

24 THE COURT: Right, but was he a trustee

25 also of Shirley's trust?

00038

1 MR. MANCERI: Yes.

2 THE COURT: So she dies, the estate is

3 closed, her assets are in a trust. Simon then

4 dies. What happened with his estate? Judge

5 French is hearing it, but tell me what

6 happened.

7 MR. MANCERI: My understanding is that

8 money went into a trust for the grandchildren.

9 THE COURT: Grandchildren of Eliot?

10 MR. MANCERI: Well there's actually ten of

11 them, ten grandchildren, which he has three.

12 THE COURT: So the beneficiary level for

13 Simon was he skipped over his children and gave

14 everything to the grandchildren?

15 MR. MANCERI: That's correct.

16 MR. ELIOT BERNSTEIN: No.

17 THE COURT: That's not what happened with

18 your father's estate?

19 MR. ELIOT BERNSTEIN: No.

20 THE COURT: That's not what the rule says

21 to do?

22 MR. ELIOT BERNSTEIN: No.

23 THE COURT: What does the rule say to do?

24 MR. ELIOT BERNSTEIN: The rule is not

25 properly notarized. He didn't appear --

00039

1 THE COURT: What did the will say that The

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

A handwritten signature in blue ink is written over a circular blue ink stamp. The signature appears to be 'G' or 'H' with a flourish. The stamp is partially obscured by the signature.

2 Court used?

3 MR. ELIOT BERNSTEIN: The Court filed a  
4 will and amended trust, both improperly  
5 notarized.

6 THE COURT: You didn't answer my question,  
7 so stop speaking.

8 MR. ELIOT BERNSTEIN: Okay.

9 THE COURT: If you don't answer me you  
10 give up your right to participate. Stop, don't  
11 speak, all right, because you waived your right  
12 because you refused to answer my question,

Page 22

In Re\_ The Estate of Shirley Bernstein.txt

13 okay. So I'll let you answer it.

14 MR. MANCERI: If I can, your Honor.

15 THE COURT: Go ahead.

16 MR. MANCERI: The ten grandchildren shares  
17 -- and I want to be clear on this, this  
18 gentleman is only a tangible personal property  
19 beneficiary. He and his own proper person.  
20 And the mother. That's all he's entitled to.  
21 No cash request, nothing directly to him,  
22 because of his financial problems among other  
23 issues.

24 THE COURT: Okay.

25 MR. MANCERI: He has been asked to  
00040

1 establish accounts for the benefit of his  
2 children and he refused to do it.

3 THE COURT: I'm not interested in that,  
4 here's what I'm interested in.

5 MR. MANCERI: All right.

6 THE COURT: So before this latest realm of  
7 pleadings were filed, both parents are  
8 deceased?

9 MR. MANCERI: Yes.

10 THE COURT: They both have trusts?

11 MR. MANCERI: Right.

12 THE COURT: Simon's trusts are for the  
13 benefit of the grandchildren?

14 MR. MANCERI: Correct.

15 THE COURT: And Shirley's trust is for the  
16 benefit of who?

17 MR. MANCERI: The grandchildren now  
18 because Simon died.

19 THE COURT: So children-level, Eliot, Ted  
20 were skipped over as beneficiaries?

21 MR. MANCERI: That's correct, your Honor.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

22 THE COURT: Now, tell me the best you can  
23 the way Eliot described that there was some  
24 deal that had been in effect with Shirley and  
25 Simon while they were alive that kept on going  
00041

1 after Shirley died to help support his  
2 children.

3 MR. MANCERI: That I can't comment on  
4 personally, your Honor, because I never met  
5 either one of them.

6 THE COURT: Do you know anything about  
Page 23

In Re\_ The Estate of Shirley Bernstein.txt  
7 that?

8 MR. MANCERI: He was the draftsman. His  
9 firm was the draftsman.

10 THE COURT: So did Shirley and --

11 MR. ELIOT BERNSTEIN: They didn't draft --

12 THE COURT: Stop. Next time you speak out  
13 of turn you will be held in contempt of court.

14 MR. ELIOT BERNSTEIN: Sorry.

15 THE COURT: Why get yourself in trouble?  
16 You're being rude.

17 MR. ELIOT BERNSTEIN: Sorry.

18 THE COURT: So is it true that when they  
19 were alive they were helping to support Eliot's  
20 family?

21 MR. SPALLINA: To the best of my  
22 knowledge, yes, sir.

23 THE COURT: So after Shirley died, did  
24 that continue?

25 MR. SPALLINA: Yes, I assume so, that Si  
00042

1 was paying bills.

2 THE COURT: And when he died in September  
3 of last year, what happened, if anything?

4 MR. SPALLINA: There was an account that  
5 we set up in the name of Bernstein Family  
6 Reality. That was owned by three old trusts  
7 not that we created, but were created by  
8 Mr. Bernstein in 2006 that owned the house that  
9 the family lives in, so there was an LLC that  
10 was set up, Bernstein Family Realty, LLC,  
11 there's the three children's trust that own the  
12 membership interest in that, and there was a  
13 bank account at Legacy Bank that had a small  
14 amount of money that Si's assistant Rachel had  
15 been paying the bills out of on behalf of the

A handwritten signature in black ink is written over a blue circular stamp. The signature appears to be "GT". The stamp is a circular ink impression, likely from a fingerprint scanner or a similar device.

16 trusts.

17 When Mr. Bernstein died, Oppenheimer, as  
18 trustee of the three trusts and in control of  
19 the operations of that entity, assigned  
20 themselves as manager, had the account moved  
21 from Legacy to Oppenheimer, and continued to  
22 pay the bills they could with the small amount  
23 of money that was in the Legacy account.  
24 At this time, the Legacy account was  
25 terminated because there were no funds left,  
00043

Page 24

In Re\_ The Estate of Shirley Bernstein.txt

1 they started using the funds inside the three  
2 trusts at Oppenheimer to pay for health,  
3 education, maintenance and support --

4 THE COURT: Of the grandchildren?

5 MR. SPALLINA: Of the grandchildren. And  
6 it was probably at the time that Mr. Bernstein  
7 died about \$80,000 in each of those trusts last  
8 September.

9 THE COURT: Okay, so then what happened?

10 MR. SPALLINA: So over the course of the  
11 last year -- the kids go to private school,  
12 that's an expensive bill that they pay, think  
13 it's approximately \$65,000. There were other  
14 expenses throughout the year. The trust assets  
15 as of this week I spoke to Janet Craig, have  
16 depleted down collectively across the three  
17 trusts for about \$25,000.

18 THE COURT: Total left?

19 MR. SPALLINA: Total left in the three  
20 trusts.

21 THE COURT: Any other trusts?

22 MR. SPALLINA: Again, this is not part of  
23 the estate right now, so let's leave the estate  
24 of Shirley and Si completely separate. Just  
25 trying to get to the issue that Mr. Bernstein  
00044

1 spoke about first.

2 THE COURT: Right.

3 MR. ELIOT BERNSTEIN: Oppenheimer called  
4 me and said that the trusts are coming to the  
5 end of their useful life, it doesn't pay to  
6 administer them anymore. They're going to make  
7 final distribution to Mr. Bernstein and his  
8 wife as the guardians of their children.  
9 They sent out standard waivers and

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



10 releases for him to sign in exchange for the  
11 remaining money that was there. There was a  
12 disagreement that ensued and I have the e-mail  
13 correspondence between Eliot and Janet Craig at  
14 Oppenheimer that this is extortion and that  
15 Mr. Spallina and you have devised a plan not to  
16 give us the rest of the money. That's not the  
17 case at all. In fact, we told them to  
18 distribute the rest of the money, there's been  
19 \$12,000 in bills submitted to them that they  
20 are either paying today or on Monday, and the  
21 \$14,000 or some-odd dollars that would be left  
Page 25

In Re\_ The Estate of Shirley Bernstein.txt  
22 are in securities that they have to liquidate,  
23 supposedly they would have good funds today,  
24 but there was some threats of litigation and so  
25 they said that it might be prudent to hold onto  
00045

1 this. There's also some expenses outstanding  
2 on accounting fees and tax preparation fees.

3 THE COURT: Let me ask you this, what's  
4 the other part of the estate planning that  
5 Shirley or Simon had, another trust?

6 MR. SPALLINA: Both of their estates say  
7 that at the death of the second of us to die,  
8 pursuant to Si's exercise over his wife's  
9 assets, that all of those assets would go down  
10 to ten grandchildren's trust created under  
11 their dockets.

12 Mr. Bernstein was on a call while his  
13 father was alive with his other four siblings  
14 where he had called me and said, Robert, I  
15 think we need to do a phone call with my  
16 children to explain to them that I'm going to  
17 give this to the ten grandchildren.

18 THE COURT: And that happened?

19 MR. SPALLINA: And that happened.

20 THE COURT: So right now the status,  
21 there's a trust that deals with that, or more  
22 than one trust.

23 MR. SPALLINA: There's both Si's estates  
24 and Shirley's estates basically say after and  
25 again there is some litigation.

00046

1 THE COURT: And that's different than this  
2 \$14,000 --

3 MR. SPALLINA: Yeah, those are three

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

4 trusts that were just designed to hold.

5 THE COURT: Who's administering those  
6 trusts?

7 MR. SPALLINA: Those trusts, Ted Bernstein  
8 is the trustee of his mother's trust and holds  
9 three assets.

10 THE COURT: Who is the trustee of the  
11 father's trust?

12 MR. SPALLINA: Don Tescher and myself.

13 THE COURT: And what are those trusts  
14 doing with trust assets?

15 MR. SPALLINA: On the estate side there

Page 26

In Re\_ The Estate of Shirley Bernstein.txt  
16 was a claim filed by a former employee of  
17 Mr. Bernstein for \$2.5 million-plus, so there's  
18 litigation that's been pending in the estate  
19 now for basically since this date, and those  
20 funds are just sitting in a partnership account  
21 at JP Morgan with no distributions that have  
22 been made at all.

23 THE COURT: So what's the total corpus of  
24 the what I'll call the ten grandchildren's  
25 trust of both grandparents?

00047

1 MR. SPALLINA: Not taking into account the  
2 litigation?

3 THE COURT: Well, no, you haven't paid  
4 anything out yet.

5 MR. SPALLINA: I would say it's  
6 approximately \$4 million.

7 THE COURT: So there's litigation going on  
8 in Simon's --

9 MR. SPALLINA: Estate.

10 THE COURT: And at some point when that  
11 claim is resolved the trust will then be  
12 administered by your firm and...

13 MR. SPALLINA: No, that's not the case.  
14 Each of the adult children for their own  
15 children are designated to serve as trustee of  
16 their children's trust.

17 THE COURT: So a distribution takes place  
18 then once the money gets to the trust age?

19 MR. SPALLINA: Correct, and today again  
20 the Shirley Bernstein trust does have liquid  
21 assets in it. There was two properties, real  
22 estate properties, the residential home and a  
23 condo on the beach. The condo on the beach



24 sold back in April or May. There were funds  
25 that came into the account at that time. Ted  
00048

1 was going to make partial distribution. He  
2 sent out an e-mail with tax I.D. numbers and  
3 the naming of the trust to the five children  
4 for the purposes of them opening up the  
5 accounts.

6 THE COURT: Okay, what happened?

7 MR. SPALLINA: Seven of ten accounts were  
8 opened and were actually funded this week with  
9 \$80,000.

Page 27

In Re\_ The Estate of Shirley Bernstein.txt

10 THE COURT: Total or each?

11 MR. SPALLINA: Each.

12 THE COURT: Three of Eliot's --

13 MR. SPALLINA: Are not open. And we've  
14 asked multiple --

15 THE COURT: And he executed documents to  
16 open \$240,000 immediately or very quickly go  
17 into those accounts?

18 MR. SPALLINA: Yes, sir.

19 THE COURT: Go ahead.

20 MR. SPALLINA: Now, there was a question  
21 from our client as trustee of his mother's  
22 trust because he has apprehension as do the  
23 other siblings as to whether or not  
24 Mr. Bernstein is the proper trustee for that  
25 trust.

00049

1 THE COURT: Okay, all right.

2 MR. SPALLINA: We had discussions about  
3 possibly making emergency distributions to pay  
4 the expenses, but not necessarily --

5 THE COURT: Not giving the money directly  
6 to him.

7 MR. SPALLINA: Not necessarily put in all  
8 \$80,000 in all three of those trusts.

9 THE COURT: Does the trust pay expenses  
10 directly or give money to the parent who pays  
11 the expenses? Do you pay the electric bill or  
12 do you give money to Eliot to pay the electric  
13 bill?

14 MR. SPALLINA: Today?

15 THE COURT: Now, how does that work with  
16 the others kids?

17 MR. SPALLINA: They were just funded, but



18 normally the trustee of the trust would pay for  
19 expenses on behalf of the beneficiary if  
20 they're minor children. Some of the children  
21 here are adults. So to the extent they're  
22 adults they would make distribution.

23 THE COURT: So what's the resolution of  
24 the notary problem? Has that been resolved?

25 MR. SPALLINA: I can speak to it.

00050

1 MR. MANCERI: Please, Robert, go ahead.

2 The Judge is addressing you, be my guest.

3 MR. SPALLINA: In April of last year we

Page 28

In Re\_ The Estate of Shirley Bernstein.txt

4 met with Mr. Bernstein in April of 2012 to

5 close his wife's estate.

6 THE COURT: No, I know that part.

7 MR. SPALLINA: Okay.

8 THE COURT: I mean everyone can see he

9 signed these not notarized. When they were

10 sent back to be notarized, the notary notarized

11 them without him re-signing it, is that what

12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with

15 that, where are they today?

16 MR. SPALLINA: Today we have a signed

17 affidavit from each of the children other than

18 Mr. Bernstein that the original documents that

19 were filed with The Court were in fact their

20 original signatures which you have in the file

21 attached as Exhibit A was the original document

22 that was signed by them.

23 THE COURT: It was wrong for Moran to

24 notarize -- so whatever Moran did, the

25 documents that she notarized, everyone but

00051

1 Eliot's side of the case have admitted that

2 those are still the original signatures of

3 either themselves or their father?

4 MR. SPALLINA: Yes, sir.

5 THE COURT: I got it.

6 MR. MANCERI: And we can file those

7 affidavits, Judge, at any time.

8 THE COURT: So now I'm trying to deal with

9 the oral argument for today.

10 So I only have in front of me Shirley's

11 estate. Shirley's estate is closed.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim





12 MR. MANCERI: Your Honor, could I bring  
13 you up to speed on one thing maybe you're not  
14 seeing on your docket.

15 THE COURT: Yes.

16 MR. MANCERI: We actually filed a motion  
17 to actually reopen the estate when we learned  
18 about the deficiency in the affidavit issue.

19 THE COURT: Okay.

20 MR. MANCERI: And that was signed  
21 August 28th of this year. Do you have a copy  
22 of that, Judge, can I approach?

23 THE COURT: Hold on, it should be here,  
24 but let's see. Because I have an August 28th  
Page 29

In Re\_ The Estate of Shirley Bernstein.txt  
25 file, I have that.

00052

1 MR. MANCERI: You have that.

2 THE COURT: Motion to reopen the estate.

3 MR. MANCERI: Right, your Honor. We set  
4 it for an evidentiary hearing.

5 THE COURT: When is it set?

6 MR. MANCERI: It's set for October 28th,  
7 your Honor, for an hour at 11:00 a.m.

8 THE COURT: I'm going to decide on  
9 Shirley's case whether to open it and how to  
10 deal with whatever issues pertain to this, but,  
11 Eliot, on your side you have an emergency  
12 motion to freeze assets of the estate, so I  
13 would say to you with a closed estate where the  
14 PR, Simon, has been already discharged, and a  
15 petition for discharge approved, what assets  
16 are there in a closed estate where the estate  
17 assets have already been distributed that I can  
18 now in your motion freeze?

19 MR. ELIOT BERNSTEIN: The petition --

20 THE COURT: Listen to my question. It's  
21 artful. What assets now that the estate's been  
22 closed, that the estate's been fully  
23 administered, and the estate has been  
24 discharged, can I freeze that I could identify  
25 still belong to Shirley's estate?

00053

1 MR. ELIOT BERNSTEIN: I can't tell you  
2 because I never got a document regarding the  
3 assets.

4 THE COURT: But when you say it's an  
5 emergency hearing --

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

6 MR. ELIOT BERNSTEIN: But I was supposed  
7 to get those documents, correct?  
8 THE COURT: Well, I don't know what  
9 documents --  
10 MR. ELIOT BERNSTEIN: I was a beneficiary,  
11 unlike they said, me, my brother was cut out of  
12 my mother's estate and my older sister.  
13 THE COURT: They said you were a  
14 beneficiary of personal property.  
15 MR. ELIOT BERNSTEIN: No, I was the third  
16 beneficiary to the entire estate.  
17 THE COURT: All right, I don't know.  
18 MR. SPALLINA: At one point he was.  
Page 30

In Re\_ The Estate of Shirley Bernstein.txt

19 MR. MANCERI: Early on, your Honor.  
20 THE COURT: But on the will that was  
21 probated?  
22 MR. MANCERI: No.  
23 THE COURT: Okay, so maybe you don't know  
24 then, your mother changed her will, they say.  
25 MR. ELIOT BERNSTEIN: Did my mother change  
00054  
1 her will?  
2 MR. SPALLINA: You know that your father  
3 did.  
4 MR. ELIOT BERNSTEIN: No, he asked if my  
5 mother did.  
6 MR. SPALLINA: Oh, yes.  
7 THE COURT: Okay, all right --  
8 MR. ELIOT BERNSTEIN: After she was dead  
9 using alleged --  
10 THE COURT: Not after she was dead.  
11 MR. ELIOT BERNSTEIN: No, your Honor, my  
12 father went back into my mother's estate and  
13 made changes after we believe he was dead using  
14 documents that are signed forged, by the way  
15 those documents you're looking at --  
16 THE COURT: Here's the thing.  
17 MR. ELIOT BERNSTEIN: Yes.  
18 THE COURT: You want me to freeze assets  
19 of an estate that's already been fully  
20 probated. I can't freeze something that  
21 doesn't exist.  
22 MR. ELIOT BERNSTEIN: Can you reopen it  
23 because it was closed on fraudulent documents?  
24 THE COURT: They asked for the estate to  
25 be reopened. They want to have a hearing on

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



00055

1 that.

2 MR. ELIOT BERNSTEIN: Okay.

3 THE COURT: Do you have responses to your  
4 motion?

5 MR. MANCERI: Mr. Spallina filed it, but I  
6 don't believe so yet, your Honor.

7 THE COURT: So we know one person wants to  
8 reopen it, Eliot, correct? Who did you notice  
9 of that motion?

10 MR. MANCERI: This motion was served on  
11 Ted Bernstein, Pamela --

12 THE COURT: Ted, do you want the estate  
Page 31

In Re\_ The Estate of Shirley Bernstein.txt  
13 reopened, Shirley's estate reopened?

14 MR. THEODORE BERNSTEIN: I think you're  
15 asking me a legal question, your Honor.

16 THE COURT: Does anyone represent you?

17 MR. MANCERI: Not at the moment, your  
18 Honor. I may depending on how far this goes.

19 THE COURT: All right, well, what I'm  
20 getting at is, is anyone opposing the reopening  
21 of the estate?

22 MR. MANCERI: No, your Honor. We want to  
23 open it to cure what his allegation is.

24 THE COURT: First step, one, is reopen.

25 MR. MANCERI: Correct.

00056

1 THE COURT: So why do we have to wait  
2 until the end of October to reopen the estate  
3 when we could do that in mid-September?

4 MR. MANCERI: No reason, your Honor.

5 THE COURT: Any reason why we need to  
6 wait?

7 MR. ELIOT BERNSTEIN: No.

8 THE COURT: All right, so...

9 MR. MANCERI: You haven't heard any  
10 objections to this from anybody else, have you  
11 Robert?

12 MR. SPALLINA: No.

13 THE COURT: All right, so get me up an  
14 agreed order that I could open up the estate.

15 MR. MANCERI: Okay, you'll take care of  
16 that, Robert?

17 MR. SPALLINA: Uh-Huh.

18 MR. MANCERI: We'll take the October  
19 hearing off your docket.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

20 THE COURT: You don't need an evidentiary  
21 hearing to prove it, I'm going to do it, and  
22 under these circumstances that makes sense.

23 Okay, so I'm going to have it reopen the  
24 estate. So now the question is --

25 MR. MANCERI: Your Honor, just so I'm

00057

1 clear.

2 THE COURT: Yes, Shirley's estate.

3 MR. MANCERI: The reason we asked to

4 reopen it is to cure or address this alleged

5 fraud.

6 THE COURT: But all I'm physically doing

Page 32

In Re\_ The Estate of Shirley Bernstein.txt

7 is saying, Rich, reopen.

8 MR. MANCERI: Agreed. I just wanted to be

9 clear.

10 THE COURT: I don't want you to get rid of

11 the hearing.

12 MR. MANCERI: Oh, you don't, okay.

13 THE COURT: So at the hearing whatever it

14 is in relief that you want now that the estate

15 is open, I'll hear that.

16 MR. MANCERI: Okay.

17 THE COURT: And, Mr. Bernstein, whatever

18 you want relief-wise to happen with respect to

19 Shirley's estate, not Shirley's trust, but

20 Shirley's estate, you could have a hearing on

21 that. I'll combine everyone who has an

22 interest in getting some relief.

23 MR. MANCERI: Only thing I was going to

24 say, your Honor, after this was noticed I got

25 into this matter. I have a conflict on the

00058

1 28th at that hour. If we could move it to the

2 afternoon I'd appreciate it.

3 THE COURT: I'll get my book and see.

4 Maybe I can, I don't know.

5 MR. MANCERI: That's my only issue on the

6 28th.

7 THE COURT: I don't know, I'll look.

8 So let me try to make some progress, all

9 right.

10 So today is whether in Shirley's estate

11 there's an emergency, here is my order, no.

12 Okay?

13 MR. MANCERI: Okay.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



14 THE COURT: Next, whether -- what type of  
15 evidentiary hearing, if any, needs to be held.  
16 For Shirley's estate purposes I guess I have to  
17 figure out the following: It appears that  
18 there could be some problem in the documents  
19 that took place to lead Shirley's estate to be  
20 closed and distributed as it took place, okay  
21 because --

22 MR. MANCERI: Right.

23 THE COURT: It took place pursuant to  
24 documents that may have been improperly  
25 notarized. Now. That doesn't mean that  
00059

Page 33

In Re\_ The Estate of Shirley Bernstein.txt

1 anything happened, it just means the documents  
2 may have a taint to them themselves.

3 MR. MANCERI: Right.

4 THE COURT: But I'll take a look at it and  
5 see whether there's anything that has to happen  
6 differently than what already happened with  
7 respect to that.

8 MR. MANCERI: Judge, in furtherance in  
9 making that determination, would you like us to  
10 submit these to you?

11 THE COURT: What are those?

12 MR. MANCERI: These are the original  
13 affidavits. I haven't made copies.

14 THE COURT: File them.

15 MR. MANCERI: Just file them, okay. Very  
16 good, we'll file them and serve them.

17 THE COURT: Mr. Bernstein, I want you to  
18 understand something. Let's say you prove what  
19 seems perhaps to be easy, that Moran notarized  
20 your signature, your father's signature, other  
21 people's signatures after you signed it, and  
22 you signed it without the notary there and they  
23 signed it afterwards. That may be a wrongdoing  
24 on her part as far as her notary republic  
25 ability, but the question is, unless someone  
00060

1 claims and proves forgery, okay, forgery,  
2 proves forgery, the document will purport to be  
3 the document of the person who signs it, and  
4 then the question is, will something different  
5 happen in Shirley's estate then what was  
6 originally intended? Originally intended they  
7 say, the other side, was for Simon to close out

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



8 the estate. The estate they say was small.  
9 The estate gave everything to the trust and  
10 that's what it did, and that was the end of the  
11 estate.

12 Remember, this is not everything about  
13 your parents and their estate planning. This  
14 is one small component, Shirley's estate alone,  
15 not her trust, and nothing to do with what  
16 happened with Simon, okay, because that's not  
17 before me. Simon's case is before Judge  
18 French.

19 Having said that, one of the other reasons  
20 why I have to consider whether your matter is  
21 an emergency, even if there was something that  
Page 34

In Re\_ The Estate of Shirley Bernstein.txt  
22 I could enter an order on or have a hearing on  
23 immediately that could free up money from  
24 Shirley that you personally would be entitled  
25 to, you tell me you don't even know that you  
00061

1 were not a beneficiary of the estate, so  
2 certainly you're not doing your groundwork to  
3 tell me if it's an emergency or not because it  
4 could be an emergency if you were a beneficiary  
5 of her will that was probated, but you don't  
6 even know one way or the other. So you could  
7 be a stranger to the estate. She may have  
8 disinherited you from the estate. She may have  
9 chosen to only give you personal property. So  
10 if you're not entitled to anything, you don't  
11 have an emergency. You're not entitled to  
12 anything. Go ahead.

13 MR. ELIOT BERNSTEIN: I never was  
14 noticed --

15 THE COURT: It doesn't matter.

16 MR. ELIOT BERNSTEIN: -- by the estate  
17 planner when she died.

18 THE COURT: Okay.

19 MR. ELIOT BERNSTEIN: So he's supposed to  
20 notify the beneficiaries.

21 THE COURT: Who?

22 MR. ELIOT BERNSTEIN: Mr. Spallina.

23 THE COURT: Of what?

24 MR. ELIOT BERNSTEIN: That there are  
25 beneficiaries of the estate.

00062

1 THE COURT: But what if you weren't a

A handwritten signature in blue ink is written over a circular blue ink stamp. The signature appears to be "gt".

2 beneficiary?

3 MR. ELIOT BERNSTEIN: I was at that time.

4 My dad doesn't change that until a  
5 year-and-a-half later. Are you following?

6 THE COURT: This may be about it, but  
7 you're interested in some financial relief. If  
8 you don't want to go out and get a laborer job  
9 today to feed your children that's your choice.

10 MR. ELIOT BERNSTEIN: I didn't say that.

11 THE COURT: I'm not in charge of feeding  
12 your children or paying your electric bills,  
13 you are. You have to do what a parent does to  
14 take care of their children. It doesn't sound  
15 like you're doing everything that you can, but  
Page 35

In Re\_ The Estate of Shirley Bernstein.txt

16 that's technically not before me.

17 But in the meantime not knowing a whole  
18 lot about this case, it's my first time I'm  
19 really having this type of dialogue. I heard  
20 some voice that said there's cash to feed your  
21 children that could become readily in your  
22 pocket or in someone's pocket to pay bills that  
23 could help your children. I heard that. They  
24 say the stumbling block to your children  
25 getting the benefit of that money is you. I  
00063

1 don't know whether that's true or not, but if  
2 you want your children to imminently get money  
3 and they have imminent money to give your  
4 children, maybe you want to sit with Ted and  
5 that other side and see if there's some money  
6 that could come to your children.

7 MR. ELIOT BERNSTEIN: Excuse me.

8 THE COURT: Sure.

9 MR. ELIOT BERNSTEIN: That's like asking  
10 me to participate in what I allege is a fraud.

11 THE COURT: No, it doesn't --

12 MR. ELIOT BERNSTEIN: Listen, if the money  
13 comes to my children and it was supposed to  
14 have gone to me, and these documents that are  
15 all shady and unsigned wills with --  
16 un-notarized wills and trusts don't stand. The  
17 money comes to me personally, Eliot Bernstein.

18 MR. MANCERI: Your Honor --

19 THE COURT: Let me just say this to you.

20 Maybe two, three years from now as a result of  
21 the same trust litigation you'll be right, but

EXHIBIT 1 -- SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



22 in the meantime according to you there's money  
23 that could feed your children that you don't  
24 want to touch because you think the money  
25 should go to you instead of your children that  
00064

1 they're willing to --

2 MR. ELIOT BERNSTEIN: Well, I think there  
3 are other beneficiaries.

4 THE COURT: -- put in accounts to go for  
5 the benefit of your children.

6 MR. ELIOT BERNSTEIN: I think there are  
7 other beneficiaries that are also --

8 THE COURT: They signed off.

9 MR. ELIOT BERNSTEIN: No, just their  
Page 36

In Re\_ The Estate of Shirley Bernstein.txt  
10 parents have. The children don't even know.  
11 They're not even represented.

12 THE COURT: Well, the parents represent  
13 the child.

14 MR. ELIOT BERNSTEIN: No, but they have  
15 conflicting interests.

16 THE COURT: Well, you say that --

17 MR. ELIOT BERNSTEIN: Our attorney wrote a  
18 subpoena and said it. I had to get two lawyers  
19 because my attorney couldn't represent both  
20 sides of this.

21 MR. MANCERI: I'm very concerned about  
22 something Mr. Bernstein just told The Court.  
23 He's the one objecting they're in conflict,  
24 he's stating from what I'm piecing together  
25 that he believes that his children are getting  
00065

1 money that the parents really was supposed to  
2 go to him personally. He's got the inherent  
3 conflict with that mindset.

4 MR. ELIOT BERNSTEIN: I'm not saying I  
5 don't.

6 THE COURT: Okay, here's the point, if  
7 you're at a point where you're asking The Court  
8 for an emergency because you can't feed  
9 children, and there's someone around the corner  
10 that's holding out a \$20 bill and says you  
11 could have it to feed your children, and you  
12 go, you know, I'm not going to take that to  
13 feed my children because I want to have a court  
14 determine that it really was mine, then I don't  
15 know that you're treating this as an emergency.

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim



16 Emergencies mean you figure out a way of  
17 getting the money to your children sooner than  
18 later, and they say it's happening imminently,  
19 cash that could pay bills for your children.  
20 That's what they say. If it's an emergency and  
21 your kids are starving, and you as the parent  
22 say that might be my money and not my kids', so  
23 I want to wait for two or three years and let  
24 the money stay in a bank account until I could  
25 figure it out, and not feed my children, I  
00066

1 think you need to reflect upon some of your  
2 decisions.

3 MR. MANCERI: Your Honor --

Page 37

In Re\_ The Estate of Shirley Bernstein.txt

4 THE COURT: What?

5 MR. MANCERI: I'm not saying we're going  
6 to do this, Judge, but this sounds like this  
7 may need an ad litem for these kids.

8 THE COURT: Well, I don't know, let's not  
9 add fuel to the fire.

10 MR. MANCERI: Because I'm troubled by what  
11 he's saying.

12 THE COURT: All right, so --

13 MR. ELIOT BERNSTEIN: Here's why I have  
14 not taken that money.

15 THE COURT: Why?

16 MR. ELIOT BERNSTEIN: Because if you told  
17 me, your Honor, that you just murdered him, and  
18 here's \$20 from his pocket to feed your kids  
19 from the crime --

20 THE COURT: If they were starving I would  
21 take the \$20.

22 MR. ELIOT BERNSTEIN: On that advice, I'll  
23 take the money.

24 THE COURT: If they were starving --

25 MR. ELIOT BERNSTEIN: On that advice --

00067

1 THE COURT: Your kids are starving. I'm  
2 not giving you advice.

3 MR. ELIOT BERNSTEIN: On that advice, I  
4 will --

5 THE COURT: The \$20 didn't murder anybody,  
6 did it? Did the \$20-bill murder someone?

7 MR. ELIOT BERNSTEIN: It's stealing money  
8 from people.

9 THE COURT: They're not -- this isn't

EXHIBIT 1 – SEPTEMBER 13, 2013 PROBATE COURT HEARING

Answer & Cross Claim

10 stolen money. This is your parents' money.

11 MR. ELIOT BERNSTEIN: If I take that money  
12 and put it in my kids' accounts, it's actually  
13 taking money from what we believe are the true  
14 and proper beneficiaries --

15 THE COURT: Which is you.

16 MR. ELIOT BERNSTEIN: No, through -- one  
17 of, through --

18 THE COURT: So meanwhile if your kids are  
19 starving and you don't take the money, all I  
20 could say to you, there's obviously -- if you  
21 look at the documents I mean you're not going  
22 to confess to killing Kennedy as part of  
23 receiving the money, but if they want to give  
24 you money for your children and you don't want  
Page 38

In Re\_ The Estate of Shirley Bernstein.txt  
25 to take it because you think it's yours, and  
00068

1 you want to wait years --

2 MR. ELIOT BERNSTEIN: That's not why I  
3 want to dispute it.

4 THE COURT: You think that there's some --

5 MR. ELIOT BERNSTEIN: I think that it's  
6 part of a fraud that forged documents were used  
7 to --

8 THE COURT: But it's still your parents  
9 money --

10 MR. ELIOT BERNSTEIN: -- convert estate  
11 assets to the wrong beneficiary.

12 THE COURT: But they want to now get it to  
13 you.

14 MR. ELIOT BERNSTEIN: No, not me.

15 THE COURT: To your children.

16 MR. ELIOT BERNSTEIN: Listen, I'll take  
17 the money without explanation on it. I agree.  
18 Listen, the only reason I didn't want to take  
19 the money was so I wouldn't be part of a fraud.

20 THE COURT: You're not, obviously no one  
21 is accusing you of fraud. If they give you  
22 money to care for --

23 MR. ELIOT BERNSTEIN: But then I could  
24 accuse them of fraud if I'm participating.

25 THE COURT: I mean all you're doing is  
00069

1 signing a receipt. You don't know where the  
2 money came from. You're not signing off --  
3 you're not saying that you make a declaration

4 that the money came from them, the other side  
5 to you in only legal means. You're just  
6 signing a receipt.

7 MR. MANCERI: But he is signing off on  
8 that he's going to honor the terms of the  
9 trust. If he is signing off to that --

10 THE COURT: If it comes to you as trustee  
11 for your children, you are -- you have a duty  
12 to only use it for the children, not yourself.  
13 Not you. You still have to work for you. Now,  
14 you don't have to work for your children,  
15 maybe. You still have to support yourself.

16 MR. ELIOT BERNSTEIN: Yeah.

17 THE COURT: The money has to get spent on  
18 your children if that's how you get it.

Page 39

In Re\_ The Estate of Shirley Bernstein.txt

19 MR. ELIOT BERNSTEIN: Right.

20 THE COURT: That's all we're talking about  
21 is money to feed your children.

22 MR. ELIOT BERNSTEIN: You see, if the  
23 money came to me, it's also for me and my wife  
24 and feeds our children.

25 THE COURT: That's not what they said. It  
00070

1 does not go to support you and your wife.

2 MR. ELIOT BERNSTEIN: If the money comes  
3 to me as a beneficiary, it does. If all these  
4 nonsense documents that are forged and --

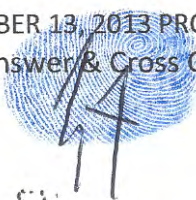
5 THE COURT: If they want to give it to you  
6 only under their condition this is because  
7 their version is it belongs to your children.

8 MR. ELIOT BERNSTEIN: Right.

9 THE COURT: Don't accept it, you don't get  
10 it. If you accept it, it goes to your  
11 children. You may not like that, but it only  
12 could be used for your children, because that's  
13 the deal that they make. You take that deal  
14 because you don't want your kids to starve.

15 You may not like it, you want to be  
16 supported too, but they don't want to support  
17 you. They don't think it's your money, they  
18 think it's your children's money. So why turn  
19 that -- maybe you're entitled to it, but why  
20 turn down money that could help support your  
21 children in the meantime.

22 MR. ELIOT BERNSTEIN: If your logic is  
23 correct, your Honor, I agree.

A handwritten signature in blue ink is written over a circular blue stamp. The signature appears to be 'M.A.' or similar initials. The stamp is partially obscured by the signature.

24 THE COURT: Well, I don't know if my logic  
25 is correct.

00071

1 MR. ELIOT BERNSTEIN: Here's the legal  
2 problem --

3 THE COURT: Stop, no, the hearing is over.  
4 I'm not giving more legal advice. Your hearing  
5 goes on, okay, see you.

6 MR. MANCERI: Your Honor, any chance of  
7 resetting it?

8 THE COURT: I'm going to ask my office to  
9 flip it around to the afternoon. I'll take  
10 care of that.

11 MR. MANCERI: Thank you, your Honor.  
12 We'll submit an order to your Honor.

Page 40

In Re\_ The Estate of Shirley Bernstein.txt

13 THE COURT: Okay, clear it with him and  
14 see if you could actually get something that  
15 makes sense. It's really narrow.

16 MR. MANCERI: It's very narrow. We've got  
17 the transcript, Judge.

18 THE COURT: It's only really that there's  
19 no emergency here. Everything everyone raises  
20 on the 28th.

21 MR. MANCERI: Very good, Judge. Do you  
22 think we can do it in an hour, Judge?

23 THE COURT: We'll try.

24 MR. MANCERI: Okay.

25 MR. ELIOT BERNSTEIN: I'm sorry, your  
00072

1 Honor, for calling an emergency.

2 THE COURT: All right. Just there's a lot  
3 of work when you call something an emergency.

4 MR. ELIOT BERNSTEIN: I didn't understand  
5 what you go through.

6 THE COURT: Okay, bye.

7 MR. MANCERI: It's an evidentiary, Judge,  
8 we're going to call witnesses.

9 THE COURT: Witnesses and evidence.

10 MR. MANCERI: Very good.

11 - - -

12 (The proceeding was concluded at 2:15 p.m.)

13

14

15

16

17

18  
19  
20  
21  
22  
23  
24  
25

00073

1 CERTIFICATE OF REPORTER

2

3 STATE OF FLORIDA )

4 COUNTY OF PALM BEACH )

5

6 I, Jessica Thibault, a Court Reporter,

Page 41

In Re\_ The Estate of Shirley Bernstein.txt

7 certify that I was authorized to and did

8 stenographically report the proceedings in the

9 above-styled cause before the Honorable Martin H.

10 Colin, pages 1 through 72; and that the transcript

11 is a true record of my stenographic notes.

12

13 I further certify that I am not a

14 relative, employee, attorney, or counsel of any of

15 the parties, nor am I a relative or employee of any

16 of the parties' attorneys or counsel connected with

17 the action, nor am I financially interested in the

18 action.

19

20 Dated this 17th day of September, 2013.

21

22 \_\_\_\_\_

23 Jessica Thibault

Court Reporter

24

25

Page 42

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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, )

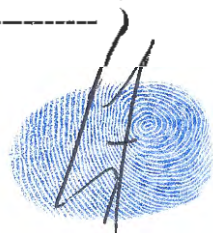
FIRST ARLINGTON NATIONAL )  
BANK, as Trustee of S.B. Lexington, )  
Inc. Employee Death Benefit Trust, )  
UNITED BANK OF ILLINOIS, BANK )  
OF AMERICA, successor in interest to )  
LaSalle National Trust, N.A., )  
SIMON BERNSTEIN TRUST, N. A., )  
TED BERNSTEIN, individually and )  
as alleged Trustee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

Third-Party Defendants. )  
----- )

Case No. 13-cv-03643

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

NOTICE OF APPEARANCE



**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, INC. )  
(OF FLORIDA) NATIONAL )  
SERVICE ASSOCIATION, INC. )  
(OF ILLINOIS) AND )  
JOHN AND JANE DOE'S** )

**Third Party Defendants.** )

A handwritten signature in black ink is written over a circular blue ink fingerprint impression. The signature appears to be 'H' or 'LH'.

**NOTICE OF APPEARANCE**

TO THE CLERK OF THE ABOVE COURT:

You will please enter my appearance of record Pro Se as third party Defendant and Cross Plaintiff in the above styled cause.

Dated this 21 Day of September, 2013

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein, Pro Se

Address

2753 NW 34<sup>th</sup> St.

Boca Raton, FL 33434

(561) 245-8588

By

Date

9/21/13



**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**ORDER REFERRING A CIVIL CASE TO THE  
DESIGNATED MAGISTRATE JUDGE**

Pursuant to Local Rule 72.1, this case is hereby referred to the calendar of  
Honorable Mary M. Rowland for the purpose of holding proceedings related to: settlement  
conference.(kef, )Mailed notice.

Dated: September 25, 2013

/s/ Amy J. St. Eve

United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, September 25, 2013:

MINUTE entry before Honorable Amy J. St. Eve: Status hearing held on 9/25/2013 and continued to 11/21/2013 at 08:30 AM. Mailed notice(kef, )

**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 an order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, September 25, 2013:

MINUTE entry before Honorable Mary M. Rowland: Initial status hearing set for 9/30/2013 at 9:00 AM before Magistrate Judge Mary M. Rowland for the purpose of scheduling a settlement conference. Parties are to bring dates when both clients and counsel will be available for a settlement conference. Judge Rowland generally conducts settlement conferences Mondays through Thursdays at 1:00 p.m. Other dates and times may be available as required by the Court or the parties. The parties are directed to review and to comply with Judge Rowland's Standing Order regarding Setting Settlement Conferences, which is available on Judge Rowland's webpage located on the Court's website at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov). 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 an order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, September 30, 2013:

MINUTE entry before Honorable Mary M. Rowland: Status hearing held on 9/30/2013 and continued to 10/7/2013 at 09:15 AM. Mr. Eliot Bernstein must appear by telephone and should contact the court at 312-435-5857, at least one day before the next status with his telephonic information. Parties should be prepared to set a settlement conference at the next hearing. 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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, October 7, 2013:

MINUTE entry before Honorable Mary M. Rowland: Status hearing previously set for 10/7/2013 is reset for 10/16/2013 at 09:00 AM.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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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.

Case No. 13 cv 3643

HERITAGE UNION LIFE INSURANCE
COMPANY,
Defendant.

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

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.

MOTION TO SUBSTITUTE THIRD-PARTY DEFENDANT

Defendant, Jackson National Life Insurance Company ("Jackson"), as successor in
interest to Reassure America Life Insurance Company, successor in interest to Heritage Union

Life Insurance Company, moves to substitute JPMorgan Chase Bank, N.A. as a third-party defendant. In support thereof, Jackson states as follows:

1. Plaintiff filed the instant lawsuit relating to the death benefit proceeds of a life insurance policy.

2. As the proper beneficiary(ies) to the policy proceeds are in dispute, Jackson filed a counterclaim and third-party complaint for interpleader, naming six new third-party defendants that may have a potential interest in the proceeds.

3. One of the third-party defendants named was First Arlington National Bank. After further investigation, it is believed that First Arlington National Bank was in fact named First American National Bank, which was based in Arlington Heights, Illinois, and changed its name to American National Bank of Arlington Heights in 1983. In 1993, it merged and subsequently operated as American National Bank of Chicago, which merged into Bank One in 2002, which merged into JPMorgan Chase Bank, N.A. in 2004.

4. Accordingly, Jackson seeks leave to substitute JPMorgan Chase Bank, N.A. in for First Arlington National Bank as a third-party defendant.

5. No party will be prejudiced by the substitution.

WHEREFORE, Defendant, Jackson National Life Insurance Company respectfully request that this Court permit Jackson to substitute JPMorgan Chase Bank, N.A. in for First Arlington National Bank as a third-party defendant, and provide such other and further relief as the Court deems just and proper.

**JACKSON NATIONAL LIFE INSURANCE  
COMPANY**

By: /s/ Alexander D. Marks  
One of Its Attorneys

Frederic A. Mendelsohn (ARDC No. 6193281)  
Alexander D. Marks (ARDC No. 6283455)  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22<sup>nd</sup> Floor  
Chicago, Illinois 60611  
312-840-7000  
312-840-7900 (facsimile)



**CERTIFICATE OF SERVICE**

The undersigned, an attorney, states that he caused a copy of the foregoing Joint Motion to Extend Time to File Initial Status Report to be filed electronically with the Northern District of Illinois, and electronically served upon the following:

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601

and served via U.S. mail, postage prepaid, this 8th day of October, 2013 upon the following:.

Eliot Bernstein  
2753 NW 34th Street  
Boca Raton, FL 33434

/s/ Alexander D. Marks

1507456

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

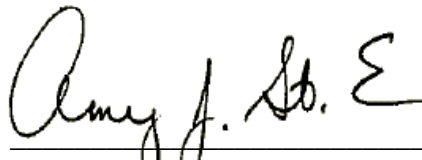
Simon Bernstein Irrevocable Ins Trust	)	Case No: 13 C 3643
	)	
v.	)	
	)	Judge Amy J. St. Eve
Heritage Union Life Ins Co. et al.	)	
	)	
	)	

**ORDER**

(0:03) Motion hearing held on 10/16/13. Defendant Jackson National Life Insurance Company's motion to substitute third-party defendant [41] is granted. The Clerk's Office is directed to substitute JPMorgan Chase Bank, N.A. for First Arlington National Bank as a third-party defendant.

**Dated:** October 16, 2013

**ENTERED**



---

**AMY J. ST. EVE**

**United States District Court Judge**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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 alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust )  
Dtd. 6/21/95, and ELIOT BERNSTEIN, )  
Third-Party Defendants. )  
----- )

Case No. 13-cv-03643

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

Rule 26(a)1 Disclosures by  
Eliot Ivan 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., NATIONAL )  
 SERVICE ASSOCIATION, INC. )  
 (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC. )  
 (OF ILLINOIS) AND )  
 JOHN AND JANE DOE'S )  
 )  
 Third Party Defendants. )  
 )

**DEFENDANT'S FED. R. CIV. P. 26(a)(1) DISCLOSURES**

**TO: ALL PARTIES LISTED ON THE ATTACHED CERTIFICATE OF SERVICE**

Cross-Plaintiff and Third Party Defendant, Eliot Ivan Bernstein, pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure hereby submits the following initial disclosures:

**(i) Persons with relevant information**

1. Heirs and relatives of Simon Bernstein, decedent, including but not limited to, Ted Bernstein, Pamela Simon, Jill Iantoni, Lisa Friedstein, David Simon and Adam Simon may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
2. Unknown former and current employees of Heritage Union Life Insurance Company and its successors (and including all successor insurers to Capitol Bankers Life Insurance Company as the issuing insurer of the Policy) and Jackson National Insurance Company may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
3. Unknown former employees of United Bank of Illinois, First American National Bank, J.P. Morgan and LaSalle Bank may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
4. Attorneys, Robert Spallina and Donald Tescher of the law firm Tescher & Spallina, P.A. and Albert Gortz of the law firm Proskauer Rose, in Florida handling the Estate of Simon Bernstein, decedent, may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.

5. Accountant Gerald Lewin of Florida and accountant for Simon Bernstein, decedent, may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
6. Henry "Hank" Devos Lawrie Jr., formerly with Hopkins & Sutter law firm, now Foley & Lardner may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
7. Rachel Walker, former assistant to Simon and Shirley Bernstein may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
8. Diana Banks, former secretary to Simon Bernstein may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
9. William Stansbury, former employee of Simon Bernstein may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
10. Kimberly Moran, legal assistant and notary public for Tescher & Spallina, P.A. may have discoverable information relating to the subject life insurance policy; its

- administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
11. Lindsay Baxley, Ted Bernstein employee and notary public may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.
  12. Unknown former and/or current employees of S.B. LEXINGTON, INC. EMPLOYEE DEATH BENEFIT TRUST, S.T.P. ENTERPRISES, INC., S.B. LEXINGTON, INC., Bernstein Holdings, LLC, Bernstein Family Investments, LLLP, Bernstein Family Realty, LLC, LIC Holdings Inc., Life Insurance Concepts, Life Insurance Concepts (UC), Life Insurance Concepts, LLC, Life Insurance Concepts, Inc., Life Insurance Connection Inc., Life Insurance Innovations, Inc., Total Brokerage Solutions, LLC, Telenet Systems, Arbitrage International Marketing Inc., Arbitrage International Management, LLC, National Service Association Inc., National Service Corporation (Florida), Cambridge Financing Company,
  13. Goldstein Lewin fka CBIZ may have discoverable information relating to the subject life insurance policy; its administration; its owners, trustees and beneficiary designations; and the issues raised in the pending claims, counterclaims and third-party claims.

**(ii) Relevant documents to be used as proof in Eliot's possession**

Eliot hereby produces the following documents located at the following URL's hereby incorporated in entirety by reference herein @

1. May 6, 2013 ELIOT filed Docket #23 an “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 OF SHIRLEY BERNSTEIN AND MORE” (“Petition 1”).
  - i. [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court and
  - ii. [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Pages 156-582
2. May 29, 2013, ELIOT filed Docket #28 “RENEWED EMERGENCY PETITION” (“Petition 2”).
  - i. [www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf](http://www.iviewit.tv/20130529RenewedEmergencyPetitionSIMON.pdf)
3. June 26, 2013, ELIOT filed Docket #31 “MOTION TO: CONSIDER IN ORDINARY COURSE THE 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 OF SHIRLEY BERNSTEIN AND MORE FILED BY PETITIONER” (“Petition 3”).
  - i. [www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf](http://www.iviewit.tv/20130626MotionReconsiderOrdinaryCourseSIMON.pdf)
4. July 15, 2013, ELIOT filed Docket #32 “MOTION TO RESPOND TO THE PETITIONS BY THE RESPONDENTS” (“Petition 4”).
  - i. [www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf](http://www.iviewit.tv/20130714MotionRespondPetitionSIMON.pdf)
5. July 24, 2013, ELIOT filed Docket #33 “MOTION TO REMOVE PERSONAL REPRESENTATIVES” **for insurance fraud and more.** (“Petition 5”).
  - i. [www.iviewit.tv/20130724SIMONMotionRemovePR.pdf](http://www.iviewit.tv/20130724SIMONMotionRemovePR.pdf)
6. August 28, 2013, ELIOT filed Docket #TBD “NOTICE OF MOTION FOR: INTERIM DISTRIBUTION FOR BENEFICIARIES NECESSARY LIVING EXPENSES, FAMILY ALLOWANCE, LEGAL COUNSEL EXPENSES TO BE



PAID BY PERSONAL REPRESENTATIVES AND REIMBURSEMENT TO BENEFICIARIES SCHOOL TRUST FUNDS” (“Petition 6”)

i. [www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf](http://www.iviewit.tv/20130828MotionFamilyAllowanceSHIRLEY.pdf)

7. September 04, 2013, ELIOT filed Docket #TBD “NOTICE OF EMERGENCY MOTION TO FREEZE ESTATES OF SIMON BERNSTEIN DUE TO ADMITTED AND ACKNOWLEDGED NOTARY PUBLIC FORGERY, FRAUD AND MORE BY THE LAW FIRM OF TESCHER & SPALLINA, P.A., ROBERT SPALLINA AND DONALD TESCHER ACTING AS ALLEGED PERSONAL REPRESENTATIVES AND THEIR LEGAL ASSISTANT AND NOTARY PUBLIC, KIMBERLY MORAN: MOTION FOR INTERIM DISTRIBUTION DUE TO EXTORTION BY ALLEGED PERSONAL REPRESENTATIVES AND OTHERS; MOTION TO STRIKE THE MOTION OF SPALLINA TO REOPEN THE ESTATE OF SHIRLEY; CONTINUED MOTION FOR REMOVAL OF ALLEGED PERSONAL REPRESENTATIVES AND ALLEGED SUCCESSOR TRUSTEE. (“Petition 7”)

[www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf](http://www.iviewit.tv/20130904MotionFreezeEstatesSHIRLEYDueToAdmittedNotaryFraud.pdf).

8. September 10, 2013 Motion Re Hearing Attorneys Tescher and Spallina and Ted Bernstein threatened by Judge Martin H. Colin with Miranda Warnings.

[www.iviewit.tv/20131010MotionCompelFreezeYouHaveTheRighttoRemainSilent.pdf](http://www.iviewit.tv/20131010MotionCompelFreezeYouHaveTheRighttoRemainSilent.pdf)

Eliot Ivan Bernstein reserves the right to supplement this response as additional documents become known or which may be used in the prosecution or defense of claims asserted, unless solely for impeachment.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

Dated October 22, 2013

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Rule 26 Disclosure was served by ECF and by E-mail on October 22, 2013 to the following parties:

**Email**

Robert L. Spallina, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

Theodore Stuart Bernstein and  
National Service Association, Inc. (of Florida) ("NSA")  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

Lisa Sue Friedstein  
2142 Churchill Lane  
Highland Park IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com)  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Marla Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
[iantoni\\_jill@ne.bah.com](mailto:iantoni_jill@ne.bah.com)

Pamela Beth Simon and  
S.T.P. Enterprises, Inc.,  
S.B. Lexington, Inc. Employee Death Benefit Trust,  
SB Lexington, Inc.,  
National Service Association, Inc. (of Illinois)

303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)

Adam Simon and  
The Simon Law Firm  
General Counsel STP  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[asimon@stpcorp.com](mailto:asimon@stpcorp.com)

Jackson National Insurance Company  
Heritage Union Insurance Company  
(and including all successor insurers to Capitol Bankers Life Insurance Company  
as the issuing insurer of the Policy)  
c/o Alexander D. Marks and Frederic A. Mendelsohn  
Burke, Warren, MacKay & Serritella, PC  
330 N. Wabash Ave.  
22nd Floor  
Chicago, IL 60611 -3607  
312-840-7000  
[amarks@burkelaw.com](mailto:amarks@burkelaw.com)

/s/ Eliot Ivan Bernstein

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588

**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 cv 3643  
Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland**

v. )  
 )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )  
HERITAGE UNION LIFE INSURANCE )  
COMPANY )

**Ted Bernstein, Individually;  
Pamela B. Simon, Jill Iantoni, Lisa  
Friedstein, David Simon, Adam Simon,  
The Simon Law Firm, and STP  
Enterprises, Inc.**

Counter-Plaintiff )

**ANSWER AND AFFIRMATIVE  
DEFENSES TO ELIOT IVAN  
BERNSTEIN’S CROSS-CLAIMS,  
COUNTERCLAIMS AND/OR THIRD  
PARTY CLAIMS**

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. )  
 \_\_\_\_\_ )

**ANSWER AND AFFIRMATIVE DEFENSES OF THIRD-PARTY AND CROSS-DEFENDANTS, TED BERNSTEIN, PAMELA B. SIMON, JILL IANTONI, LISA FRIEDSTEIN, DAVID SIMON, ADAM SIMON, THE SIMON LAW FIRM, AND STP ENTERPRISES, INC. TO COUNTER-CLAIMS, CROSS-CLAIMS AND/OR THIRD-PARTY CLAIMS ASSERTED BY ELIOT IVAN BERNSTEIN**

NOW COMES, TED BERNSTEIN, PAMELA B. SIMON, JILL IANTONI, LISA FRIEDSTEIN, DAVID SIMON, ADAM SIMON, THE SIMON LAW FIRM AND STP ENTERPRISES, INC. (hereinafter the “Answering Defendants”), by and through each of their respective attorneys, Adam M. Simon, and state as their Answer and Affirmative Defenses in response to ELIOT IVAN BERNSTEIN’S cross-claims, counterclaims and/or third-party claims, as follows:

### **Introduction**

Eliot Ivan Bernstein has filed claims, counterclaims and/or third party claims against the Answering Defendants, all of whom are represented by attorney, Adam Simon (defined above as the “Answering Defendants”). Eliot Ivan Bernstein has filed claims against certain other parties, including but not limited to S.B. Lexington Employee Death Benefit Plan, S.B. Lexington, Inc., National Service Association and others whom are not represented by Adam Simon nor are they party to these Answers and Affirmative Defenses.

Eliot Ivan Bernstein has also named attorney, Adam Simon as a counter-defendant, cross defendant and/or third-party defendant. For this reason, Adam Simon is also acting and appearing on his own behalf as his own attorney and is one of the Answering Defendants.

For purposes of this Answer, Eliot Ivan Bernstein’s cross-claims, counterclaims and/or third-party claims shall be referred generally as the “EB Claims”.

**ANSWER**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in the EB Claims, and each cause of action therein, except as specified below:

**Jurisdictional and Venue Allegations**

2. Personal jurisdiction is proper over Ted S. Bernstein because he, allegedly claims to be Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

**Answer:** Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dated 6/21/95 has been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95) as beneficiary of the Policy .

3. Personal jurisdiction is proper over Pamela B. Simon, David. B. Simon, Adam Simon, Lisa S. Friedstein and Jill M. Iantoni to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have a beneficial interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State. Tescher & Spallina, P.A., Donald Tescher and Robert Spallina, as each are Personal Representatives, Trustees and estate counsel of the estate of SIMON.

**Answer:** Answering Defendants do not dispute the existence of personal jurisdiction over each of the Answering Defendants in the United States District Court, Northern District of Illinois.

4. Personal jurisdiction is proper over The Simon Law Firm, , S.T.P. Enterprises, S.B. Lexington, Inc. Employee Death Benefit Trust, SB Lexington, Inc., National Service Association, Inc. , of Florida, National Service Association, Inc. Illinois, and John and Jane Doe's to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have business in this State.

**Answer:** Answering Defendants do not dispute the existence of personal jurisdiction over each of the Answering Defendants in the United States District Court, Northern District of Illinois.

6. Pamela Beth Simon is a resident of Illinois and citizen of Illinois. She is daughter to SIMON and SHIRLEY and married to D. SIMON and sister-in-law to A. SIMON.

**Answer:** Admit.

10. Jill Marla Iantoni is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.

**Answer:** Admit.

11. Lisa Sue Friedstein is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.

**Answer:** Admit.

12. S.T.P. Enterprises Inc. is believed to be an Illinois insurance agency believed to be owned by P. SIMON as President and D. SIMON as VP.

**Answer:** Admit.

83. That TED, P. SIMON, D. SIMON and A. SIMON are all career life insurance professionals with extensive trust knowledge and legal knowledge.

**Answer:** Ted Bernstein admits he is a career life insurance professional. Adam Simon and David Simon admit that they are career insurance professionals, and both are licensed attorneys in the State of Illinois.

106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON' s death to this Court.

**Answer:** Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dtd 6/21/95 has



been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95) as beneficiary of the Policy .

109. That Jackson claims in Paragraph 19 that neither TED, nor anyone else, could locate the "Bernstein Trust" that TED claims is the beneficiary of the Policy(ies).

**Answer:** Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dated 6/21/95 has been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95) as beneficiary of the Policy .

**COUNT I**

**(FRAUD)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count I (unless such allegation was specifically addressed above).

**COUNT II**

**(BREACH OF FIDUCIARY DUTIES AS TRUSTEE, LEGAL COUNSEL AND PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count II (unless such allegation was specifically addressed above).

**COUNT III**

**(LEGAL MALPRACTICE)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count III (unless such allegation was specifically addressed above).

**COUNT IV**

**(ABUSE OF LEGAL PROCESS)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count IV(unless such allegation was specifically addressed above).

**COUNT V**

**(CIVIL CONSPIRACY)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count V (unless such allegation was specifically addressed above).

**COUNT VI**

**(CONVERSION OF PROPERTY)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count VI (unless such allegation was specifically addressed above).

**COUNT VII**  
**(NEGLIGENCE)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count VII (unless such allegation was specifically addressed above).

**AFFIRMATIVE DEFENSES**

1. EB Claims fail to state a claim upon which relief may be granted.
2. To the extent Eliot Ivan Bernstein has failed to bring this Action within the time required under the applicable statute of limitations, EB's claims for relief are barred.
3. EB Claims are barred, in whole or in part, by Eliot Ivan Bernstein's own conduct, and inactions that constitute a release or disclaimer of the purported causes of action and any relief sought in EB's claims.
4. EB Claims fail because any alleged action or failure to act on the part of any of the Answering Defendants was not the proximate cause of any injuries or damages that Eliot Ivan Bernstein claims to have suffered.
5. To the extent that Eliot Ivan Bernstein has suffered any damages, such damages were caused by and are the responsibility of persons, parties or entities other than the Answering Defendants and over whom the Answering Defendants exercised no control.
6. EB Claims are barred in whole in part because Eliot Ivan Bernstein failed, refused or neglected his duty to mitigate or avoid any injuries or damages that he claims to have suffered.
7. EB Claims are barred, in whole or in part, by the doctrine of laches due to Eliot Ivan Bernstein's acts or omissions.

8. EB Claims are barred, in whole or in part by the doctrine of estoppel due to Eliot Ivan Bernstein's acts or omissions.
9. EB Claims are barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata to the extent (i) court orders in other litigation between one or more of the Answering Defendants and Eliot Ivan Bernstein negate some or all of EB Claims; (ii) EB Claims relate to the estates of Simon and/or Shirley Bernstein which have been or are being probated in courts located in Palm Beach County, Florida.
10. EB Claims are barred, in whole or in part, by the doctrine of waiver due to Eliot Ivan Bernstein's acts or omissions.
11. EB Claims are barred, in whole or in part, by release due to Eliot Ivan Bernstein's acts or omissions.
12. EB Claims are barred, in whole or in part, by the doctrine of contributory negligence due to Eliot Ivan Bernstein's acts or omissions.
13. EB Claims are barred, in whole or in part, by the doctrine of unclean hands due to Eliot Ivan Bernstein's acts or omissions.
14. EB Claims are barred, in whole or in part, by illegality due to Eliot Ivan Bernstein's acts or omissions.
15. EB Claims are barred, in whole or in part, because Eliot Ivan Bernstein lacks standing to bring one, more or all of EB claims.
16. EB Claims, and each of them, fail to state facts sufficient to state a claim that would support an award of actual, compensatory, punitive, exemplary or any other damages against any of the Answering Defendants.

17. EB Claims, and each of them fail, under the doctrines of set-off, and accord and satisfaction. On or about August 15, 2007 Eliot Ivan Bernstein and his wife, Candace, signed off on a letter agreement regarding advances he would receive from his parents for payment of Eliot Bernstein's living expenses and health insurance. Ted Bernstein, Pamela B. Bernstein, Jill Iantoni, Lisa Friedstein and David Simon reasonably believe that the total amount Eliot Ivan Bernstein received from Simon and/or Shirley Bernstein, pursuant to this advance agreement totaled hundreds of thousands of dollars or more. The Letter Agreement expressly stated that any sums received by Eliot Ivan Bernstein during Shirley and Simon's lifetimes would off-set any amounts "dollar-for-dollar" left for Eliot Ivan Bernstein by Shirley and Simon's after their deaths. The letter agreement which Eliot Ivan Bernstein and Candace Bernstein signed off-on regarding the advance payments they received provided in pertinent part as follows:

3. The health insurance premiums and the monthly payments will reduce dollar-for-dollar the amount that you will ultimately inherit when your parents die.

18. EB Claims, and each cause of action, fail to state a valid claim for attorney's fees or costs.

**REQUEST FOR RELIEF**

WHEREFORE, the Answering Defendants, respectfully request that this Honorable court enter judgment against Eliot Ivan Bernstein, dismissing the EB Claims, and each of them in their entirety, and for an award of costs and disbursements incurred in the defense of the EB Claims.

Dated: November 4, 2013

/s Adam M. Simon

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
Attorney for Answering Defendants  
*Simon L. Bernstein Irrevocable Insurance Trust  
Dtd 6/21/95; Ted Bernstein as Trustee, and  
individually, Pamela B. Simon, David Simon,  
Adam Simon, The Simon Law Firm and STP  
Enterprises, Inc.*

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. )

Case No. 13 cv 3643

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

----- )  
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. )

**FEDERAL RULE 7.1 AND LOCAL RULE 3.2 DISCLOSURE STATEMENT**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Local Rule 3.2 of the Local General Rules, third-party defendant JPMorgan Chase Bank, National Association states it is a subsidiary of JPMorgan Chase & Co.

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION

By: /s/ Glenn E. Heilizer  
One of their attorneys

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue  
Suite 1304  
Chicago, Illinois 60602  
312-759-9000  
ARDC No. 6196412

Dated: November 19, 2013





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 ) No. 13 cv 3643  
COMPANY, )  
 )  
Defendant. ) Honorable Amy I. St. Eve  
----- ) Magistrate Mary M. Rowland  
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. )

**JPMORGAN CHASE BANK'S MOTION FOR EXTENSION  
OF TIME TO RESPOND TO THIRD-PARTY COMPLAINT**

Third-Party Defendant JPMorgan Chase Bank, National Association, by its attorney, Glenn E. Heilizer, respectfully move for an extension of time, 21 days, to respond to the third-party complaint. In support of this motion, JPMorgan Chase Bank states as follows:

1. JPMorgan Chase Bank was served with the summons and third-party complaint on October 28, 2013.
2. Additional time reasonably is required to investigate the allegations of the third-party complaint, and to determine how to respond.
3. No party will be prejudiced by the granting of this motion.

Wherefore, third-party defendant JPMorgan Chase Bank, National Association respectfully requests an extension of 21 days to respond to the third-party complaint.

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION

By:           /s/ Glenn E. Heilizer            
One of their attorneys

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue  
Suite 1304  
Chicago, Illinois 60602  
312-759-9000  
ARDC No. 6196412

Dated: November 19, 2013

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, November 20, 2013:

MINUTE entry before the Honorable Amy J. St. Eve: JP Morgan Chase Bank's motion for extension of time [52] is granted. JP Morgan shall answer or otherwise plead to the third-party complaint by 12/11/13. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Thursday, November 21, 2013:

MINUTE entry before the Honorable Amy J. St. Eve: Status hearing held on 11/21/2013 and continued to 1/22/2014 at 08:30 AM. Eliot Bernstein failed to appear. PNC Bank and Bank of America are given until 12/11/13 in which to answer or otherwise plead. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

**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 )  
TRUST DTD 6/21/95, )  
 )  
Counter-Defendant )

and, )

JPMORGAN CHASE BANK, N.A., )  
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 Amy J. St. Eve  
Magistrate Mary M. Rowland**

**MOTION TO INTERVENE  
PURSUANT TO FED. R. CIV.  
P. 24 BY INTERESTED PARTY  
WILLIAM E. STANSBURY**

\_\_\_\_\_ )  
 )  
 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. )

William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 24, files this Motion to Intervene in this action and in support states as follows:

1. Stansbury filed a lawsuit the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect

compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars. (A copy of the Complaint is attached as Exhibit "A").

2. Simon Bernstein died in September of 2012. A Petition for Administration was filed on October 2, 2012, and is pending in the Circuit Court of Palm Beach County, Florida, under the Court No. 502012 CP 4391XXXXSB. (A copy of the Petition for Administration is attached hereto as Exhibit "B"). Simon Bernstein's estate was substituted as a party defendant in Stansbury's lawsuit.

3. Stansbury also asserted claims against the Estate of Simon Bernstein (the "Estate") in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate. (A copy of Stansbury's claim filed in the Probate Court against the Estate is attached hereto as Exhibit "C").

4. The alleged beneficiary of the life insurance policy that is at issue in the instant litigation is designated as the "Simon Bernstein Irrevocable Insurance Trust" (the "Trust"), established June 21, 1995, with Simon Bernstein's wife, Shirley Bernstein, identified as Trustee. Shirley Bernstein predeceased Simon Bernstein in 2010. The Trust is the Plaintiff in the instant action.

5. Representatives of the Trust claim that Shirley Bernstein was the initial beneficiary of the Trust, but she predeceased Simon Bernstein. The representatives also claim that the children of Simon and Shirley Bernstein are the secondary beneficiaries of the Trust, but they also acknowledge that the written Trust document cannot be found. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit "D"). Thus, the Trust no longer exists.

6. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. Harris v. Byard, 501 So.2d 730, 12 Fla. L. Weekly 429.

7. Under the circumstances of this case the proceeds of the life insurance policy should be paid to the Estate and made available to pay creditors such as Stansbury.

8. Stansbury is entitled to Intervention of Right under Fed. R. Civ. P. 24(a)(2) in that Stansbury, as a substantial creditor of the Estate, claims an interest in the life insurance proceeds that are the subject of this action and is so situated that disposing of this action without his intervention may as a practical matter impair Stansbury's ability to protect his interest in the life insurance proceeds that are or may be payable to the Estate and available to pay creditors such as Stansbury.

9. The parties to this action will not adequately represent Stansbury's interest in this litigation. The proponents of the Trust and the children of Simon Bernstein will advocate that the Trust exists and that the children are the proper beneficiaries, which means the life insurance proceeds will be paid directly to the children and outside the Probate Estate, making the life insurance proceeds unavailable to pay creditors of the Estate such as Stansbury. None of the current parties, upon information and belief, will advocate that the life insurance proceeds at issue are and should be payable to the Estate and made available to pay creditors such as Stansbury.

10. Stansbury is also entitled to Permissive Intervention under Fed. R. Civ. P. 24(b)(1)(B) in that Stansbury has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds that are the subject of this action.



11. Plaintiff is alleged to be a Trust formed in Chicago, Illinois. Defendant is a Minnesota corporation and Stansbury is a resident of the State of Florida. Therefore, Stansbury's intervention will not destroy diversity of citizenship.

12. A pleading that sets out the claim for which intervention is sought is attached hereto as Exhibit "E".

WHEREFORE, proposed Intervenor, William E. Stansbury 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).

**WILLIAM E. STANSBURY**

By: /s/ John M. O'Halloran  
John M. O'Halloran (02095076)

McVEY & PARSKY, LLC  
Attorney for Plaintiff  
30 North LaSalle Street  
Suite 2100  
Chicago, IL 60602  
joh@mcveyparsky-law.com  
Tel: 312-551-2130  
Fax: 312-551-2131

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 5, 2013, 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 for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

Alexander D. Marks  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22nd Floor  
Chicago, Illinois 60611  
[amarks@burkelaw.com](mailto:amarks@burkelaw.com)

Frederic A. Mendelsohn  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22nd Floor  
Chicago, Illinois 60611  
[fmendelsohn@burkelaw.com](mailto:fmendelsohn@burkelaw.com)

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
[asimon@chicago-law.com](mailto:asimon@chicago-law.com)

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

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue, Ste. 1304  
Chicago, Illinois 60602  
312-759-9000  
[glenn@heilizer.com](mailto:glenn@heilizer.com)

McVEY & PARSKY, LLC  
Attorney for Plaintiff  
30 North LaSalle Street  
Suite 2100  
Chicago, IL 60602  
[joh@mcveyparsky-law.com](mailto:joh@mcveyparsky-law.com)  
Tel: 312-551-2130  
Fax: 312-551-2131

By: /s/ John M. O'Halloran  
John M. O'Halloran (02095076)

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

WILLIAM E. STANSBURY,  
Plaintiff,

vs.

Case No.

50 2012 CA013 93 3XXXXNB

TED S. BERNSTEIN;  
SIMON BERNSTEIN;  
LIC HOLDINGS, INC.; and  
ARBITRAGE INTERNATIONAL  
MANAGEMENT, L.L.C., f/k/a  
ARBITRAGE INTERNATIONAL  
HOLDINGS, L.L.C.,  
Defendants.

AA  
COPY  
RECEIVED FOR FILING

JUL 30 2012

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

COMPLAINT  
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF"), by and through his undersigned co-counsel,  
hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.
4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.
5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants



BERNSTEIN”) are, respectively, one another’s father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another’s alter egos.

7 The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients’ financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept (“the said concept”), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff’s knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals..

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than \$1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff's money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up

his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied, or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

**I. ACCOUNTING**  
**(Against LIC and ARBITRAGE, for Accounting**  
**as to Withholding of Money Due Plaintiff)**

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by



Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

## **II. ACCOUNTING**

### **(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting as to Money Due to Plaintiff Which Said Defendants Converted)**

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31. The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

**III. BREACH OF ORAL CONTRACT**  
(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contact between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

#### **IV. BREACH OF IMPLIED COVENANT OF GOOD FAITH and FAIR DEALING**

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

#### **V. BREACH OF FIDUCIARY DUTY**

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47 Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

**VI. CIVIL THEFT**  
**Against All Defendants**

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

**VII. FRAUD**  
**(Against All Defendants)**

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated

herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.



### VIII. EQUITABLE LIEN

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

#### **IX. CONTRACT IMPLIED IN LAW**

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

#### **X. CONSTRUCTIVE TRUST**

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

## XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.

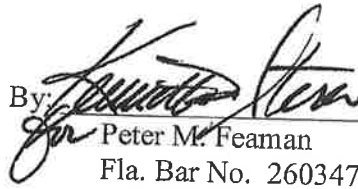
78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from


and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

*July 30, 2012*

Peter M. Feaman, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel: 561-734-5552 Fax: 561-734-5554  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

By:   
Peter M. Feaman  
Fla. Bar No. 260347

Kenneth D. Stern, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel: 561-740-1413 Fax: 561-734-5554  
[kdstern@gmail.com](mailto:kdstern@gmail.com)

By:   
Kenneth D. Stern  
Fla. Bar No. 0244929

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12.

SIMON L. BERNSTEIN, File No. \_\_\_\_\_

Deceased.

502012 e.p00 4391 XXXX SB

2012 OCT - 2 AM 8:58  
SHARON A. BOCA, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

PETITION FOR ADMINISTRATION  
(testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 <sup>th</sup> St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult



Lisa S. Friedstein 2142 Churchill Lane daughter adult  
Highland Park, IL 60035

Robert L. Spallina and Donald R. Tescher, 4855 Technology Way, Trust  
co-Trustees of the Simon L. Bernstein Suite 720  
Amended and Restated Trust Agreement Boca Raton, FL 33431  
dated July 25, 2012

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of his death.

5. Robert L. Spallina and Donald R. Tescher, whose addresses are listed above, and who are qualified under the laws of the State of Florida to serve as co-personal representatives of the decedent's estate are entitled to preference in appointment as co-personal representatives because they are the persons designated to serve as co-personal representatives under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than \$ Unknown.

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated July 25, 2012, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.


Petitioner requests that the decedent's Will be admitted to probate and that Robert L. Spallina and Donald R. Tescher be appointed as co-personal representatives of the estate of the decedent.


Under penalties of perjury, we declare that we have read the foregoing Petition for Administration, and the facts alleged are true, to the best of our knowledge and belief.

Signed on Oct. 1, 2012.

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

By:  
ROBERT L. SPALLINA, ESQUIRE  
Attorney for Petitioner  
Florida Bar No. 0497381  
4855 Technology Way, Ste. 720  
Boca Raton, FL 33431  
561-997-7008  
Email: rspallina@tescherspallina.com

  
Robert L. Spallina, Petitioner

  
Donald R. Tescher, Petitioner





502012CP004391XXXXSB

I2

WILL OF

SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

Prepared by:

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
www.tescherspallina.com

LAW OFFICES  
TESCHER & SPALLINA, P.A.

---

WILL OF

SIMON L. BERNSTEIN

---

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

**ARTICLE I. TANGIBLE PERSONAL PROPERTY**

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

**ARTICLE II. EXERCISE OF POWER OF APPOINTMENT**

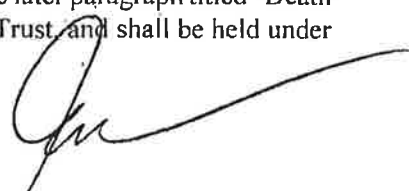
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

**ARTICLE III. RESIDUE OF MY ESTATE**

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

LAST WILL  
OF SIMON L. BERNSTEIN

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



the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

#### ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL  
OF SIMON L. BERNSTEIN

-2-

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



estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL  
OF SIMON L. BERNSTEIN

-3-

LAW OFFICES

TESCHER & SPALLINA, P.A.



operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

LAST WILL  
OF SIMON L. BERNSTEIN

-4-

LAW OFFICES  
TESCHER & SPALLINA, P.A.



k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL  
OF SIMON L. BERNSTEIN

-5-

LAW OFFICES

TESCHER & SPALLINA, P.A.



interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

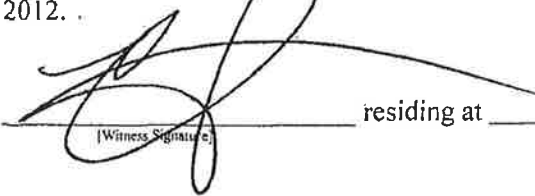
*[remainder of page intentionally left blank]*



I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.

  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 24 day of July, 2012.

  
[Witness Signature]

residing at

**ROBERT L. SPALLINA**  
**7387 WISTERIA AVENUE**  
**PARKLAND, FL 33076**

[Witness Address]

  
[Witness Signature]

residing at

**Kimberly Moran**  
**6362 Las Flores Drive**  
**Boca Raton, FL 33433**

[Witness Address]



State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

*[Signature]*  
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

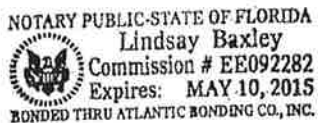
*[Signature]*  
Witness

Kimberly Moran  
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

*[Signature]*  
Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]



LAST WILL  
OF SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 50201201004391  
*IZ* *XXXXSB*

Deceased.

2012 OCT -2 AM 9:31  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED

**LETTERS OF ADMINISTRATION**

TO ALL WHOM IT MAY CONCERN

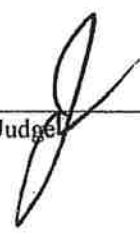
WHEREAS, Simon L. Bernstein, a resident of Palm Beach County, died on September 13, 2012, owning assets in the State of Florida, and

WHEREAS, Robert L. Spallina and Donald R. Tescher have been appointed as co-Personal Representatives of the Estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Robert L. Spallina and Donald R. Tescher as duly qualified under the laws of the State of Florida to act as co-Personal Representatives of the Estate of Simon L. Bernstein, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

DONE and ORDERED in Chambers at Delray, Palm Beach County, Florida, on this 2 day of Oct, 2012.

**Estate must be closed 12 months from the date of order**

Circuit Judge 

Bar Form No. P-J.0420  
© Florida Lawyers Support Services, Inc.  
Text Revised October 1, 1998

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

IN RE: **Case No. 502012CP004391 SB**

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

**Division: IZ**

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIVED

NOV 06 2012

SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

**STATEMENT OF CLAIM BY WILLIAM E. STANSBURY**

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.


5. The claim is not secured.

*[Signature page follows this page]*

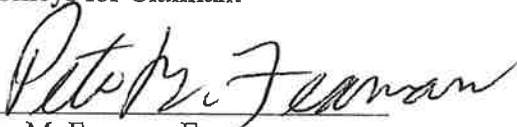


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.

  
William E. Stansbury, Claimant

Attorneys for Claimant



Peter M. Feaman, Esq.  
Florida Bar No.: 260347  
PETER M. FEAMAN, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Phone: (561) 734-5552  
Facsimile: (561) 734-5554  
Primary Electronic Mail Address:  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

Copy mailed to attorney for Personal  
Representative on \_\_\_\_\_  
2012.

**MUST BE FILED IN DUPLICATE**

TESCHER & SPALLINA, P.A.

BOCA VILLAGE CORPORATE CENTER 1  
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.

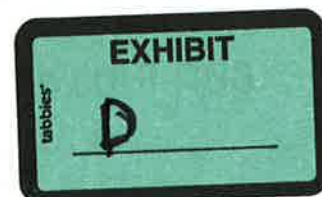
If you have any questions with regard to the foregoing, please do not hesitate to contact me.

Sincerely,

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

RLS/km

Enclosures



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 )  
TRUST DTD 6/21/95, )

Counter-Defendant )

and, )

JPMORGAN CHASE BANK, N.A., )  
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

INTERVENOR COMPLAINT FOR  
DECLARATORY  
JUDGMENT PURSUANT TO  
FED. R. CIV. P. 57



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. )

\_\_\_\_\_)  
WILLIAM E. STANSBURY )

Intervenor )

William E. Stansbury (“Stansbury”), by and through his undersigned counsel, as Intervenor, hereby files, pursuant to Fed. R. Civ. P. 57, this Complaint for Declaratory Judgment against the Simon Bernstein Irrevocable Trust DTD 6/21/95 (the “Trust”) and Heritage Union Life Insurance Company (the “Insurance Company”), and alleges as follows:

### **INTRODUCTION**

1. This is a declaratory judgment action filed pursuant to Fed. R. Civ. P. 57 seeking a declaration that the Trust, which is the party plaintiff in this action, either no longer exists, or if it does exist, the proper beneficiary of the Trust, and therefore the proper recipient of the life insurance proceeds at issue, is the Estate of Simon Bernstein (the “Estate”), currently pending in the Circuit Court of Palm Beach County, Florida. As a result, the Insurance Company should be directed by Order of this Court to pay the life insurance proceeds directly to the Estate.

### **THE PARTIES AND JURISDICTION**

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

3. The Simon Bernstein Irrevocable Insurance Trust, as alleged in the original Complaint, was a trust established in Chicago, Illinois.

4. Heritage Union Life Insurance Company issued life insurance insuring the life of Simon Bernstein and is a Minnesota corporation. The death benefit payable under the life insurance policy exceeds \$1 million dollars.

5. District Courts have original jurisdiction over all civil action where the matter in controversy exceeds \$75,000 and is between citizens of different states. 28 U.S.C. §1332(a).



6. The death benefit payable under the life insurance policy exceeds \$1 million dollars. Additionally, the parties to this action are all residents of different states. Therefore, this Court has original diversity jurisdiction.

### **BACKGROUND**

7. Stansbury filed a lawsuit in the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein and several corporate defendants in August of 2012 to collect compensation and corporate distributions due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals. Stansbury claims damages in excess of two million dollars. (A copy of the Complaint is attached as Exhibit “A.”)

8. Simon Bernstein died in September of 2012. A Petition For Administration was filed on October 2, 2012 and is pending in the Circuit Court of Palm Beach County, Florida, under the Court No. 502012 CP 4391XXXXSB. (A copy of the Petition For Administration is attached hereto as Exhibit “B.”). Simon Bernstein’s estate was substituted as a party defendant in Stansbury’s lawsuit.

9. Stansbury also asserted claims against the Estate of Simon Bernstein (the “Estate”) in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate. (A copy of Stansbury’s claim filed in the Probate Court against the Estate is attached hereto as Exhibit “C.”)

10. The beneficiary of the life insurance policy that is at issue in the instant litigation is designated as the “Simon Bernstein Irrevocable Insurance Trust” (the “Trust”).

11. Representatives of the Trust claim that Shirley Bernstein was the initial beneficiary of the Trust, who predeceased Simon Bernstein. The representatives also claim that the children of Simon and Shirley Bernstein are the secondary beneficiaries of the Trust, but they also acknowledge that the written Trust document cannot be found. (See letter of Third Party Defendant Robert Spallina, Esq. to Defendant Heritage Union Life Insurance Company, attached as Exhibit "D.")

12. Since the written Trust cannot be found, the proponents of the Trust must prove, by clear and convincing evidence, the continued existence of the Trust and the identity of the intended beneficiaries.

13. Failure by the proponents of the Trust to establish the continued existence of the Trust and the identity of the beneficiaries will mean the Trust has terminated. As a result, the proceeds of the life insurance policy will be payable to the Estate, not the Trust, and the proceeds will be available to pay creditors of the Estate such as Stansbury.

14. The existing parties to this action will not adequately represent Stansbury's interest in this litigation. The proponents of the Trust and the children of Simon Bernstein, who are all parties to this primary litigation, will advocate that the Trust exists and that the children are the proper beneficiaries, which means the life insurance proceeds are to be paid directly to the children and outside the Estate, making the life insurance proceeds unavailable to pay creditors of the Estate such as Stansbury. None of the current parties, upon information and belief, will advocate that the life insurance proceeds at issue are and should be payable to the Estate and made available to pay creditors such as Stansbury.

15. Stansbury seeks from this court a judgment declaring that the Trust either no longer exists, or that the intended beneficiaries cannot be identified, which means the Trust has

terminated. In such event, the proceeds of the life insurance policy are payable to the Estate.

WHEREFORE Intervenor, William E. Stansbury requests this Court to enter judgment as follows:

- A. Declare that the Simon Bernstein Trust has terminated;
- B. Declare that, as a result of the termination of the Trust, the identified beneficiary on the life insurance policy no longer exists;
- C. Declare that the policy proceeds are payable to the Estate of Simon Bernstein;
- D. For Stansbury's costs herein expended, including reasonable attorneys' fees, and such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ John M. O'Halloran  
John M. O'Halloran (02095076)

McVEY & PARSKY, LLC  
Attorney for Plaintiff  
30 North LaSalle Street  
Suite 2100  
Chicago, IL 60602  
joh@mcveyparsky-law.com  
Tel: 312-551-2130  
Fax: 312-551-2131

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

WILLIAM E. STANSBURY,  
Plaintiff,

vs.

Case No.

50 2012 CA013 93 3XXXXNB

TED S. BERNSTEIN;  
SIMON BERNSTEIN;  
LIC HOLDINGS, INC.; and  
ARBITRAGE INTERNATIONAL  
MANAGEMENT, L.L.C., f/k/a  
ARBITRAGE INTERNATIONAL  
HOLDINGS, L.L.C.,  
Defendants.

AA  
COPY  
RECEIVED FOR FILING

JUL 30 2012

SHARON R. BOCK  
CLERK & COMPTROLLER  
CIRCUIT CIVIL DIVISION

COMPLAINT  
And JURY DEMAND

WILLIAM STANSBURY (PLAINTIFF"), by and through his undersigned co-counsel,  
hereby demanding trial by jury of all issues so triable, hereby sues the Defendants, and says

1. This is an action for money damages in excess of \$15,000, and for equitable relief.
2. Plaintiff is *sui juris*, and a resident of Palm Beach County, Florida.
3. Defendants TED S. BERNSTEIN ("TED BERNSTEIN"), and SIMON BERNSTEIN are both *sui juris*, and are both residents of Palm Beach County, Florida.
4. The corporate Defendants, LIC HOLDINGS, INC.; and ARBITRAGE INTERNATIONAL MANAGEMENT, L.L.C., f/k/a ARBITRAGE INTERNATIONAL HOLDINGS, L.L.C., are entities organized and existing under the laws of the State of Florida, all do business in the State of Florida and all have their principal offices in the State of Florida, and in Palm Beach County, Florida.
5. Defendants SIMON BERNSTEIN and TED BERNSTEIN (collectively "Defendants



BERNSTEIN”) are, respectively, one another’s father and son. They both own and control all of the corporate Defendants, and work closely together with respect thereto. In all matters involved herein, they worked closely together and were virtually one another’s alter egos.

7 The acts and incidents giving rise to these causes of action occurred in Palm Beach County, Florida.

Background

8. Plaintiff has worked in the insurance field virtually all his adult life, and by 2003 had become well-known and highly regarded by major insurance companies, their principals, and by others throughout the insurance industry, at all levels thereof, as well as by professionals, including attorneys, CPAs, financial advisors, wealth managers and others who were involved in serving, or otherwise dealing with, insurers and insurance brokers.

9. SIMON BERNSTEIN dealt at high levels of the insurance industry, and specialized in developing and marketing insurance concepts suitable for persons of high net worth to incorporate in their wealth management and estate planning.

10. TED BERNSTEIN was actively involved in selling life insurance products in conjunction with attorneys, CPAs and other professionals, to be incorporated into clients’ financial planning.

11. In 2003, TED BERNSTEIN approached Plaintiff, urging Plaintiff to spearhead the marketing of a unique insurance concept (“the said concept”), newly developed by a prominent law firm, which was designed for use in the financial and estate planning of wealthy individuals.

12. TED BERNSTEIN told Plaintiff that he knew of Plaintiff’s knowledgeability, and reputation in the insurance and related industries and professions, and that Plaintiff was skilled

at, and accustomed to, speaking and marketing insurance products to, large groups of professionals, and that he realized that Plaintiff, because of his knowledgeability, reputation and abilities, would be ideal to market this concept nationwide, through prominent and experienced professionals..

13. SIMON BERNSTEIN proposed that Plaintiff work as an independent contractor for the Corporate Defendants, marketing the product to the above-described He offered Plaintiff an arrangement whereby Plaintiff would receive twenty percent (20%) of all net retained amounts of commissions received from insurance companies and general agents' overrides (hereinafter, "commissions") which chose to issue policies of the type to be marketed, for use in the said financial and estate planning, and all other sales by the companies. Plaintiff would receive no other salary remuneration, but would have his travel and marketing expenses advanced or reimbursed. In time, when Plaintiff agreed to become an employee rather than an independent contractor, he agreed to a salary of the equivalent of 15% of commissions received on all products.

14. After reviewing the concept and considering the terms of the arrangement offered by SIMON BERNSTEIN, Plaintiff agreed with BERNSTEIN to accept the proposal described in preceding paragraph 13, and all the parties proceeded to act in accordance therewith.

15. Thereafter, Plaintiff worked with diligence and skill, traveling throughout the United States, generating ever increasing sales, and generating very large commissions for Defendants and for Plaintiff, who received the agreed salary equal to 15% thereof. By 2006, the parties hereto began receiving checks, not only for commissions on new policies sold, but also renewal commissions. Initially, the Plaintiff and Defendants BERNSTEIN, and one secretary, comprised the entire workforce. At the height of the sales campaign, Defendants' staff for serving the

business generated by Plaintiff consisted of more than 40 individuals.

16. In 2005, the Plaintiff was paid his commissions in the form of two IRS forms 1099, from National Services Association, and from Defendant ARBITRAGE INTERNATIONAL MARKETING, INC. for his services as an independent contractor.

17. In 2006, Plaintiff received his agreed salary as an employee, reflected in two IRS forms W-2., One W-2 was from ARBITRAGE INTERNATIONAL MARKETING, INC., and the other was from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC.

18. Also in 2006, SIMON BERNSTEIN told Plaintiff that Plaintiff, was being rewarded for the explosive growth of business, through receiving a 10% interest in LIC.

19. In 2007, Plaintiff received his agreed salary as an employee, which salary was reflected in an IRS Form W-2.

20. With the economic downturn in 2008, Defendants looked for ways to withhold from Plaintiff compensation to which he was entitled, and to deceive him into believing that the money which would have been paid to both Defendants as well as to Plaintiff as compensation, was instead being held in the company's coffers.

21. In order to hide from Plaintiff the real fact that Defendants were paying to Defendants BERNSTEIN the full earnings received as commissions, and thereby depriving Plaintiff of the 15% thereof to which he was entitled, they knew they had to terminate Plaintiff's function of calculating each person's entitlement to payment out of commissions received. Therefore, in early 2008, SIMON BERNSTEIN told Plaintiff that the Defendants BERNSTEIN felt that Plaintiff was spending too much time on making the said calculations, and that Plaintiff's time would be better spent in building the business. SIMON BERNSTEIN told

Plaintiff that he and TED BERNSTEIN had decided to pay themselves and Plaintiff identical salaries of not less than \$1,000,000 each for 2008, and to distribute any profits beyond the total thus paid to the three owners, the Defendants BERNSTEIN and Plaintiff, according to their respective percentages of ownership, Plaintiff's share being 10%. Plaintiff, having thus far believed he was receiving whatever compensation he was entitled to, and having no reason to realize that this was a ruse to keep him in the dark as to the true state of affairs, readily acceded to his being relieved of the bookkeeping duties regarding calculating the disposition of moneys received.

22. Through misrepresentations made from 2008 through the date of filing of this Complaint, Defendants knowingly made false statements to Plaintiff to hide their scheme to withhold from Plaintiff's money to which he was entitled. For example, at times they claimed that money being received was not being paid as salary or distributions to either of Defendants BERNSTEIN but was being withheld and placed in company accounts, for eventual distribution. As Plaintiff and Defendants could afford to wait until year's end to be paid their distributions, and as Defendants BERNSTEIN assured Plaintiff that the payment arrangement would apply to all three equally, Plaintiff did not question the truthfulness of their representations..

23. In furtherance of their scheme to deprive Plaintiff of salary he had earned and to which he was entitled, Defendants intercepted mail addressed to Plaintiff, removed therefrom commission checks representing full commissions, deposited the same to their own accounts or otherwise converted the funds,, and willfully withhold from Plaintiff his salary. Defendants BERNSTEIN also opened Plaintiff's mail containing checks payable to him which were unrelated to Defendants' business.

24. In 2011, the Defendants BERNSTEIN decided to deceive Plaintiff into giving up



his 10% share in the business. Although he had never seen a stock certificate, Plaintiff had in fact been given K-1 statements reflecting his salary, which appeared to approximate 10% of the net profits or losses of LIC, after salary was paid. TED BERNSTEIN told Plaintiff that their accountants had discovered a taxable event which could cause all the owners of the company to have to pay taxes, and that they thought it would be unfair for Plaintiff to have to pay 10% of that tax, so TED BERNSTEIN promised that if Plaintiff would sign a paper ceding his 10% interest, TED BERNSTEIN would simply hold it and it would not become operative unless the tax liability came to exist. Plaintiff was assured that nothing would happen with the stock ownership until Plaintiff and the Defendants BERNSTEIN discussed the situation further after the Holiday Season.

25. Because of the misrepresentations, willful concealments of material facts, duplicity and deceit practiced by Defendants upon Plaintiff as described in preceding paragraphs 20 through 24, Plaintiff was reasonably of the belief that Defendants had complied, or intended to comply, with their material obligations to Plaintiff under the contract between them, and therefore was prevented from knowing, for a period of years, that these causes of action existed. The acts of Defendants in making false statements and withholding material information continues from its inception to the date of the filing hereof.

**I. ACCOUNTING**  
**(Against LIC and ARBITRAGE, for Accounting**  
**as to Withholding of Money Due Plaintiff)**

26. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

27. The relationship between Plaintiff and the Defendants, particularly as affected by

Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

28, The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just

and appropriate.

**II. ACCOUNTING**  
**(Against TED S. BERNSTEIN and SIMON BERNSTEIN, for Accounting**  
**as to Money Due to Plaintiff Which Said Defendants Converted)**

29. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

30. The relationship between Plaintiff and the Defendants, particularly as affected by Defendants' acts described in preceding paragraphs 20 through 25, inclusive, created a situation where Defendants had sole access to, receipts generated by Plaintiff's efforts, and to books and records reflecting said receipts and the other information from which can be calculated all moneys due to Plaintiff under his arrangement with Defendants.

31. The period of time during which Plaintiff has been deprived of moneys due him spans approximately four and a half years, the numerosity of the sources of receipts by Defendants of moneys from which the amounts due Plaintiff may be calculated, and the changes in the formula under which, and manner in which, Plaintiff was to be paid, all involve extensive and complicated accounts, and Plaintiff's remedy at law could not be as full, adequate and expeditious as it is in equity.

WHEREFORE, Plaintiff prays for an adjudication of Plaintiff's right to a full and complete accounting from Defendants, and for such orders of Court as will require the Defendants to provide Plaintiff with all records and copies of documents, dated from the date in 2003 when Plaintiff first began his efforts to generate sales of the concept described in paragraph 11 above to the present, as will reveal his right to, and the amount of, all amounts: (a) received as commissions on said concepts or any other commissions as to which Plaintiff was entitled to a

share; (b) due to Plaintiff, whether paid or not; (c) paid to Plaintiff, whether for commissions, salary, distributions, expenses or any other reason; (d) paid to each of the Defendants out of moneys received as said commissions; (e) deposits of any and all moneys received as commissions by any Defendants to any accounts, including the name of the entity whose account was involved, the number(s) of each such account; the address of the branch or other facility through which any Defendant dealt with such entity; (f) calculations as to moneys paid, to be paid, or not to be paid to Plaintiff, together with such other and further relief as the Court may deem just and appropriate.

**III. BREACH OF ORAL CONTRACT**  
(Against All the Defendants)

32. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

33. The arrangement between Plaintiff and Defendants as described in paragraphs 11 and 13 above, and as modified by the parties as further described above, constituted a contract between them.

34. An express term of that contract involved the commitment of Defendants to calculate, and to pay to Plaintiff, fully and timely, all sums due to him under the parties' contract, whether as commissions, salary, distributions, expenses or any other reason

35. The parties initially performed the duties required of them under said contract.

36. However, as described above in paragraphs 20 through 25, inclusive, Defendants willfully and maliciously agreed to breach their contract with Plaintiff by withholding from Plaintiff moneys due him under the contract.

37. Defendants did withhold such moneys due Plaintiff.

38. The withholding of such moneys constituted a material breach of the contact between Plaintiff and Defendants.

39. There is therefore due to Plaintiff from Defendants all amounts due under said contract, together with prejudgment and post-judgment interest on said amounts.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

**IV. BREACH OF IMPLIED COVENANT OF GOOD FAITH and FAIR DEALING**

40. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 33 through 38, inclusive.

41. The said contract, as a matter of law, contained an implied covenant of good faith and fair dealing, obligating the parties to honor every express term of the agreement..

42. Among the express terms of the oral contract between the parties were (a) that Plaintiff would be constantly apprised, either through being permitted to calculate all amounts due the Defendants out of commissions, or through being advised of all receipts of commissions and the disposition thereof, or the amounts due to Plaintiff for any reason under the terms of the contract; and (b) that Plaintiff would be fully and promptly paid all such amounts due him.

43. Through their actions as described in preceding paragraphs 20 through 25, inclusive, the Defendants willfully breached the said express of the contract.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for

the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

#### **V. BREACH OF FIDUCIARY DUTY**

41. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

42. Plaintiff reposed full confidence in the defendants BERNSTEIN, and trusted them and relied on them to be as good as their word and to deal honestly with him, for a variety of reasons. Plaintiff knew of SIMON BERNSTEIN as a major figure in the insurance industry, prior to their becoming parties to the agreement involved herein. Moreover, Plaintiff and the Defendants BERNSTEIN had formed a social relationship which had grown into what Plaintiff regarded as friendship. Moreover, as the initial situation under their contractual relationship had Plaintiff receiving all information as to commissions received and calculating the amount of money due to Plaintiff and the Defendants BERNSTEIN, as mentioned in preceding paragraphs 21 and 22, and also because Plaintiff was told he had been given a minority shareholder interest in LIC, Plaintiff reasonably felt that the Defendants would deal with Plaintiff honestly and fairly, and that the Defendants had no intention of hiding from Plaintiff any information as to the amounts due Plaintiff or as to the Defendants' intention of paying said amounts to Plaintiff

43. Moreover, when Defendants proposed to Plaintiff that Plaintiffs cease being the one to calculate moneys due the parties out of commissions received, the Plaintiff trusted Defendants to make proper, accurate and complete calculations, as Plaintiff had done, and to pay Plaintiff accordingly.

44. Furthermore, when Defendants BERNSTEIN made statements to Plaintiff as to why payments due him were not being paid, as described, for example, in preceding paragraphs 22 through 25, inclusive, and 42, he trusted Defendants to be telling Plaintiff the truth,

45. As a result of the foregoing, a fiduciary relationship existed between Defendants BERNSTEIN and Plaintiff, and there existed in Plaintiff complete confidence and trust in the said Defendants, of which confidence and trust said Defendants were well aware.

46. Defendants BERNSTEIN accepted the trust which Plaintiff reasonably placed in them.

47 Through Defendants' willful misrepresentations and withholding of material information as to their intentions and the purposes for which Plaintiff's payments were not being paid, and through their diversion from Plaintiff of amounts which should have been paid to him, Defendants abused and betrayed Plaintiff's trust and confidence in them, to Plaintiff's great detriment, in that he has been deprived of the said amounts due him, the precise amount of which cannot be calculated without access to Defendants' books and records, and a full accounting by them.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

**VI. CIVIL THEFT**  
**Against All Defendants**

48. This is an action for Civil Theft under Chapter 772, Florida Statutes, more

specifically §772.11, Fla.Stats.

49. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

50. All funds which Defendants' records will reveal are due to Plaintiff but which have been deposited to any of the Defendants' accounts or which have been received by any Defendant or diverted by any Defendant to any recipient but Plaintiff are the specific funds to which this Count relates.

51. By refusing to pay to Plaintiff funds due him under their agreement, and by paying said sums to themselves or to others, Defendants have been guilty of criminal theft by conversion, which has been and continues to be performed by Defendants with the criminal intent of stealing his money and depriving him of the possession and use thereof.

52. Written demand for payment of all amounts due Plaintiff has been made to Defendants, more than 30 days preceding the filing of this Complaint, to no avail.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for three times the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, and such other remedies as may be awarded Plaintiff under other Counts herein, together with such other and further relief as the Court may deem just and appropriate, together with such other and further relief as the Court may deem just and appropriate.

**VII. FRAUD**  
**(Against All Defendants)**

53. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated



herein, preceding paragraphs 1 through 24, inclusive.

54. Defendants, with the intent to defraud Plaintiff by preventing his receipt of moneys due him from Defendants as commissions, salary, distributions, expenses, and otherwise, made false statements to him and withheld material information from him, all as specifically set forth in preceding paragraphs 20 through 24 above.

55. At the time said statements were made, Defendants knew that they were material and false, and that Plaintiff would rely thereon. At the time said material information was withheld from Plaintiffs, Defendants knew that the information being withheld was material, and that the withholding of the information would cause Plaintiff to rely on the absence of said information

56. Defendants intended for Plaintiff to rely on said false statements of material fact and to rely on the absence of the material facts which were withheld.

57. Plaintiff did rely on the false statements and the withholding of material information, and was damaged thereby. Through the loss the possession and use of moneys due him but withheld by Defendants under their scheme to defraud him of said money.

58. The behavior of Defendants in deceiving Plaintiff and in abusing the trust they had engendered in Plaintiff, as set forth in preceding paragraphs 42 through 47, which are incorporated herein by reference as if expressly restated herein, was in willful and conscious disregard of his rights, and was of such a concerted, premeditated, and outrageous nature as to go beyond the bounds of decency, and constituted rampant fraud.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

**VIII. EQUITABLE LIEN**

59. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive, and paragraphs 54 through 58, inclusive.

60. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

61. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish an equitable lien in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the

diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

#### **IX. CONTRACT IMPLIED IN LAW**

62. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 25, inclusive.

63. By keeping the moneys due Plaintiff, Defendants have been unjustly enriched.

64. By agreeing to permit Defendants to receive, possess and control the paperwork revealing commissions received, and by agreeing that Defendants would assume the function of calculating amounts due the parties, Plaintiff conferred on Defendants the benefit of controlling the disposition of the funds received, including those due Plaintiff. The Defendants, having induced Plaintiff to confer said benefit, knew of the benefit and accepted and retained the benefit and abused it to defraud the Plaintiff.

65. The Circumstances are such that it would be inequitable for the Defendants to retain the benefit of the possession and use of funds due Plaintiff

WHEREFORE, Plaintiff prays for judgment that there exists a contract implied in law with the terms against Defendants described above, and for judgment against all Defendants, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts, together with such other and further relief as the Court may deem just and appropriate.

#### **X. CONSTRUCTIVE TRUST**

66. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

67. The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended by Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore should be, charged by this Court with the obligation of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.

68. Any and all other accounts into which were deposited said commissions or any part thereof, out of which Plaintiff was to be paid, should, out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings, be charged with the obligation of paying Plaintiff.

.WHEREFORE, Plaintiff prays for judgment against Plaintiffs, jointly and severally, for the full amount of moneys due to Plaintiff under the terms of their contract, including agreed-upon modifications thereof, together with prejudgment and post-judgment interest on said amounts. Plaintiff further prays for the Court to declare and establish a constructive trust in favor of Plaintiff on all the accounts described in preceding paragraphs 60 and 61, and for all other accounts into which said commissions have been or will be wholly or partly diverted, and on all assets of Defendants or third parties which have been purchased wholly or partly with the diversion of said funds due Plaintiff. Plaintiff further prays for such other and further relief as the Court may deem just and appropriate.

## XI. INDEMNIFICATION

69. Plaintiff hereby reiterates and incorporates herein by reference, as if fully restated herein, preceding paragraphs 1 through 24, inclusive.

70. When Defendants entered the arrangement with Plaintiff described in preceding paragraph 13, SIMON BERNSTEIN, acting for himself and on behalf of the corporate Defendants and TED BERNSTEIN, and for their collective and shared benefit, told Plaintiff that it would be better for the simplicity of administration, if Plaintiff would arrange for all commissions, paid by insurance companies for sales of the said product by the Defendant companies, to be paid in the name of Plaintiff., even though Plaintiff would ultimately receive only 15% thereof.

71. Plaintiff, believing the representation that this was being requested solely to simplify bookkeeping and administration, agreed to receive all commissions in his own name, even though the bulk of each commission would become the property of the various Defendants.

72. At the time Defendants, through SIMON BERNSTEIN, represented to Plaintiff that the reason for their request that Plaintiff receive all commissions solely in his own name was for administrative simplicity, they knew that they had an ulterior motive in making this request. Their said motive was that, in the event any insurance company which had paid a commission for sale of the said product were to request a full refund of the commission on the ground that the insurance client or the broker had falsified the application for the policy, Defendants intended to disclaim liability therefor, and to avoid personal and corporate responsibility for any requests for refund of commissions paid, even though they collectively have received 85% of each such commission.

73. Plaintiff, acting in good faith, did not realize that Defendants were concealing this motive, or that such was their motive, and he reasonably relied on their representations as to the reason for the request, to his detriment.

74. As a direct and proximate result of the Defendants' representations, Plaintiff will have nominal full liability for refund of any commissions thus sought to be refunded as described in preceding paragraph 72. Such liability creates the certainty that requests for refunds will be made solely to Plaintiff, even though Defendants received 85% of the commissions.. Such disproportionate and unfair liability has been caused by the willful misrepresentation by Defendants.

75. Plaintiff was without fault in reasonably relying on the said representations.

76. Defendants were solely at fault in creating the said liability.

77. There was a special relationship between Plaintiff and the Defendants, because Plaintiff was acting as the nominal agent for Defendants in receiving in his name 100% of the commissions, making him vicariously liable for the refund of the 85% of commissions which were retained by Defendants for their own benefit.


78. Moreover, Defendants had ceased to pay Plaintiff any commissions. Instead, as an employee he was now receiving a salary. To reflect Plaintiff's successful generation of Defendants' business, Defendants made Plaintiff's salary approximate 15% of the amount of commissions received. Nonetheless, as Plaintiff was not receiving any share of commissions *per se*, he should not have his indemnification limited to 85%, but rather it should be to the full 100% of all commissions being refunded.

WHEREFORE, Plaintiff prays for a Judgment in his favor, and against all Defendants, Adjudicating them under an obligation to defend, hold harmless and indemnify Plaintiff from


and against refund claims for said commissions, to the extent of 100% thereof, and for such other and further relief as the Court shall deem just and appropriate.

*July 30, 2012*

Peter M. Feaman, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel: 561-734-5552 Fax: 561-734-5554  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

By:   
Peter M. Feaman  
Fla. Bar No. 260347

Kenneth D. Stern, P.A.  
3615 W. Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Tel: 561-740-1413 Fax: 561-734-5554  
[kdstern@gmail.com](mailto:kdstern@gmail.com)

By:   
Kenneth D. Stern  
Fla. Bar No. 0244929

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION 12

SIMON L. BERNSTEIN, File No. \_\_\_\_\_

Deceased.

502012 e.poo 4391 XXXXSB

2012 OCT -2 AM 8:58  
SHARON R. BODA, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

PETITION FOR ADMINISTRATION  
(testate Florida resident)

Petitioners, ROBERT L. SPALLINA and DONALD R. TESCHER, allege:

1. Petitioners have an interest in the above estate as the named co-personal representatives under the decedent's Will. The Petitioner's addresses are 7387 Wisteria Avenue, Parkland, FL 33076 and 2600 Whispering Oaks Lane, Delray Beach, FL 33445, respectively, and the name and office address of petitioners' attorney is set forth at the end of this Petition.

2. Decedent, SIMON L. BERNSTEIN, whose last known address was 7020 Lions Head Lane, Boca Raton, Florida 33496, whose age was 76, and whose social security number is [REDACTED], died on September 13, 2012, at his home at 7020 Lions Head Lane, Boca Raton, Florida 33496, and on the date of death decedent was domiciled in Palm Beach County, Florida.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationship to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult
Pamela B. Simon	950 North Michigan Ave. Suite 2603 Chicago, IL 60606	daughter	adult
Eliot Bernstein	2753 NW 34 <sup>th</sup> St. Boca Raton, FL 33434	son	adult
Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult





Lisa S. Friedstein 2142 Churchill Lane daughter adult  
Highland Park, IL 60035

Robert L. Spallina and Donald R. Tescher, 4855 Technology Way, Trust  
co-Trustees of the Simon L. Bernstein Suite 720  
Amended and Restated Trust Agreement Boca Raton, FL 33431  
dated July 25, 2012

4. Venue of this proceeding is in this county because decedent was a resident of Palm Beach County at the time of his death.

5. Robert L. Spallina and Donald R. Tescher, whose addresses are listed above, and who are qualified under the laws of the State of Florida to serve as co-personal representatives of the decedent's estate are entitled to preference in appointment as co-personal representatives because they are the persons designated to serve as co-personal representatives under the decedent's Will.

6. The nature and approximate value of the assets in this estate are: tangible and intangible assets with an approximate value of less than \$ Unknown.

7. This estate will not be required to file a federal estate tax return.

8. The original of the decedent's last will, dated July 25, 2012, is being filed simultaneously with this Petition with the Clerk of the Court for Palm Beach County, Florida.

9. Petitioner is unaware of any unrevoked will or codicil of decedent other than as set forth in paragraph 8.

Petitioner requests that the decedent's Will be admitted to probate and that Robert L. Spallina and Donald R. Tescher be appointed as co-personal representatives of the estate of the decedent.


Under penalties of perjury, we declare that we have read the foregoing Petition for Administration, and the facts alleged are true, to the best of our knowledge and belief.

Signed on Oct. 1, 2012.

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

By:  
ROBERT L. SPALLINA, ESQUIRE  
Attorney for Petitioner  
Florida Bar No. 0497381  
4855 Technology Way, Ste. 720  
Boca Raton, FL 33431  
561-997-7008  
Email: rspallina@tescherspallina.com

  
Robert L. Spallina, Petitioner

  
Donald R. Tescher, Petitioner



502012CP004391XXXXSB

I2

WILL OF

SIMON L. BERNSTEIN

2012 OCT -2 AM 9:32  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

Prepared by:

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
www.tescherspallina.com

LAW OFFICES  
TESCHER & SPALLINA, P.A.

---

**WILL OF**

---

**SIMON L. BERNSTEIN**

---

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN.

**ARTICLE I. TANGIBLE PERSONAL PROPERTY**

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

**ARTICLE II. EXERCISE OF POWER OF APPOINTMENT**

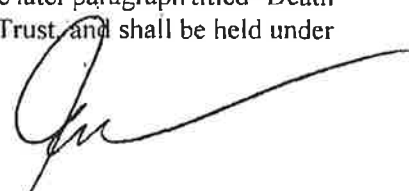
Under Subparagraph E.1. of Article II. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "*Shirley Trust*"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and the Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining trust assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

**ARTICLE III. RESIDUE OF MY ESTATE**

I give all the residue of my estate, including my homestead, to the Trustee then serving under my revocable Trust Agreement dated May 20, 2008, as amended and restated from time to time and on even date herewith (the "*Existing Trust*"), as Trustee without bond, but I do not exercise any powers of appointment held by me except as provided in Article II., above, and in the later paragraph titled "Death Costs." The residue shall be added to and become a part of the Existing Trust, and shall be held under

LAST WILL  
OF SIMON L. BERNSTEIN

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



the provisions of said Agreement in effect at my death, or if this is not permitted by applicable law or the Existing Trust is not then in existence, under the provisions of said Agreement as existing today. If necessary to give effect to this gift, but not otherwise, said Agreement as existing today is incorporated herein by reference.

#### ARTICLE IV. PERSONAL REPRESENTATIVES

1. **Appointment and Bond.** I appoint ROBERT L. SPALLINA and DONALD R. TESCHER to serve together as my co-Personal Representatives, or either of them alone as Personal Representative if either of them is unable to serve (the "*fiduciary*"). Each fiduciary shall serve without bond and have all of the powers, privileges and immunities granted to my fiduciary by this Will or by law, provided, however, that my fiduciary shall exercise all powers in a fiduciary capacity.

2. **Powers of Personal Representatives.** My fiduciary may exercise its powers without court approval. No one dealing with my fiduciary need inquire into its authority or its application of property. My fiduciary shall have the following powers:

a. **Investments.** To sell or exchange at public or private sale and on credit or otherwise, with or without security, and to lease for any term or perpetually, any property, real and personal, at any time forming a part of my probate estate (the "*estate*"); to grant and exercise options to buy or sell; to invest or reinvest in real or personal property of every kind, description and location; and to receive and retain any such property whether originally a part of the estate, or subsequently acquired, even if a fiduciary is personally interested in such property, and without liability for any decline in the value thereof; all without limitation by any statutes or judicial decisions, whenever enacted or announced, regulating investments or requiring diversification of investments.

b. **Distributions or Divisions.** To distribute directly to any beneficiary who is then entitled to distribution under the Existing Trust; to make any division or distribution pro rata or non-pro rata, in cash or in kind; and to allocate undivided interests in property and dissimilar property (without regard to its tax basis) to different shares, and to make any distribution to a minor or any other incapacitated person directly to such person, to his or her legal representative, to any person responsible for or assuming his or her care, or in the case of a minor to an adult person or an eligible institution (including a fiduciary) selected by my fiduciary as custodian for such minor under the Uniform Transfers to Minors Act or similar provision of law. The receipt of such payee is a complete release to the fiduciary.

c. **Management.** To manage, develop, improve, partition or change the character of or abandon an asset or interest in property at any time; and to make ordinary and extraordinary repairs, replacements, alterations and improvements, structural or otherwise.

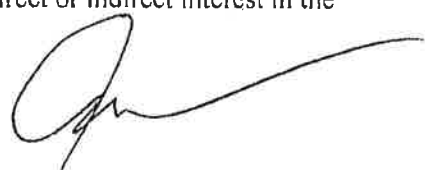
d. **Borrowing.** To borrow money from anyone on commercially reasonable terms, including a fiduciary, beneficiaries and other persons who may have a direct or indirect interest in the

LAST WILL  
OF SIMON L. BERNSTEIN

-2-

LAW OFFICES

TESCHER & SPALLINA, P.A.



estate; and to mortgage, margin, encumber and pledge real and personal property of the estate as security for the payment thereof, without incurring any personal liability thereon and to do so for a term within or extending beyond the terms of the estate and to renew, modify or extend existing borrowing on similar or different terms and with the same or different security without incurring any personal liability; and such borrowing from my fiduciary may be with or without interest, and may be secured with a lien on the estate assets or any beneficiary's interest in said assets.

e. Lending. To extend, modify or waive the terms of any obligation, bond or mortgage at any time forming a part of the estate and to foreclose any such mortgage; accept a conveyance of encumbered property, and take title to the property securing it by deed in lieu of foreclosure or otherwise and to satisfy or not satisfy the indebtedness securing said property; to protect or redeem any such property from forfeiture for nonpayment of taxes or other lien; generally, to exercise as to such bond, obligation or mortgage all powers that an absolute owner might exercise; and to loan funds to beneficiaries at commercially reasonable rates, terms and conditions.

f. Abandonment of Property. To abandon any property or asset when it is valueless or so encumbered or in such condition that it is of no benefit to the estate. To abstain from the payment of taxes, liens, rents, assessments, or repairs on such property and/or permit such property to be lost by tax sale, foreclosure or other proceeding or by conveyance for nominal or no consideration to anyone including a charity or by escheat to a state; all without personal liability incurred therefor.

g. Real Property Matters. To subdivide, develop or partition real estate; to dedicate the same to public use; to make or obtain the location of any plats; to adjust boundaries; to adjust differences in valuations on exchange or partition by giving or receiving consideration; and, to grant easements with or without consideration as they may determine; and to demolish any building, structures, walls and improvements, or to erect new buildings, structures, walls and improvements and to insure against fire and other risks.

h. Claims. To enforce, compromise, adjust, arbitrate, release or otherwise settle or pay any claims or demands by or against the estate.

i. Business Entities. To deal with any business entity or enterprise even if a fiduciary is or may be a fiduciary of or own interests in said business entity or enterprise, whether operated in the form of a corporation, partnership, business trust, limited liability company, joint venture, sole proprietorship, or other form (all of which business entities and enterprises are referred to herein as "**Business Entities**"). I vest the fiduciary with the following powers and authority in regard to Business Entities:

i. To retain and continue to operate a Business Entity for such period as the fiduciary deems advisable;

ii. To control, direct and manage the Business Entities. In this connection, the fiduciary, in its sole discretion, shall determine the manner and extent of its active participation in the

LAST WILL  
OF SIMON L. BERNSTEIN

-3-

LAW OFFICES

TESCHER & SPALLINA, P.A.



operation and may delegate all or any part of its power to supervise and operate to such person or persons as the fiduciary may select, including any associate, partner, officer or employee of the Business Entity;

iii. To hire and discharge officers and employees, fix their compensation and define their duties; and similarly to employ, compensate and discharge agents, attorneys, consultants, accountants, and such other representatives as the fiduciary may deem appropriate; including the right to employ any beneficiary or fiduciary in any of the foregoing capacities;

iv. To invest funds in the Business Entities, to pledge other assets of the estate or a trust as security for loans made to the Business Entities, and to lend funds from my estate or a trust to the Business Entities;

v. To organize one or more Business Entities under the laws of this or any other state or country and to transfer thereto all or any part of the Business Entities or other property of my estate or a trust, and to receive in exchange such stocks, bonds, partnership and member interests, and such other securities or interests as the fiduciary may deem advisable;

vi. To treat Business Entities as separate from my estate or a trust. In a fiduciary's accounting to any beneficiary, the fiduciary shall only be required to report the earnings and condition of the Business Entities in accordance with standard business accounting practice;

vii. To retain in Business Entities such net earnings for working capital and other purposes of the Business Entities as the fiduciary may deem advisable in conformity with sound business practice;

viii. To sell or liquidate all or any part of the Business Entities at such time and price and upon such terms and conditions (including credit) as the fiduciary may determine. My fiduciary is specifically authorized and empowered to make such sale to any person, including any partner, officer, or employee of the Business Entities, a fiduciary, or to any beneficiary; and

ix. To guaranty the obligations of the Business Entities, or pledge assets of the estate or a trust to secure such a guaranty.

j. Life Insurance. With respect to any life insurance policies constituting an asset of the estate to pay premiums; to apply dividends in reduction of such premiums; to borrow against the cash values thereof; to convert such policies into other forms of insurance including paid-up insurance; to exercise any settlement options provided in any such policies; to receive the proceeds of any policy upon its maturity and to administer such proceeds as a part of the principal of the estate or trust; and in general, to exercise all other options, benefits, rights and privileges under such policies; provided, however, no fiduciary other than a sole fiduciary may exercise any incidents of ownership with respect to policies of insurance insuring the fiduciary's own life.

LAST WILL  
OF SIMON L. BERNSTEIN

-4-

LAW OFFICES  
TESCHER & SPALLINA, P.A.



k. Reimbursement. To reimburse itself from the estate for all reasonable expenses incurred in the administration thereof.

l. Voting. To vote and give proxies, with power of substitution to vote, stocks, bonds and other securities, or not to vote a security.

m. Ancillary Administration. To appoint or nominate, and replace with or without cause, any persons or corporations, including itself, as ancillary administrators to administer property in other jurisdictions, with the same powers, privileges and immunities as my fiduciary and without bond.

n. Tax Elections. To file tax returns, and to exercise all tax-related elections and options at their discretion, without compensating adjustments or reimbursements between any accounts or any beneficiaries.

3. Survivorship. A beneficiary is not deemed to survive me unless he or she survives me by five days.

4. Death Costs. My fiduciary shall pay (a) from the residuary estate my debts which are allowed as claims against my estate, (b) from the residuary estate my funeral expenses without regard to legal limitations, (c) from the residuary estate the expenses of administering my estate and (d) from the residuary estate other than the portion of the residuary estate qualifying for the marital deduction under the laws then in effect, without apportionment, all estate, inheritance and succession taxes (excluding generation-skipping taxes other than with respect to direct skips), and interest and penalties thereon, due because of my death and attributable to all property whether passing under this Will or otherwise and not required by the terms of the Existing Trust to be paid out of said trust. However, such taxes, penalties and interest payable out of my residuary estate shall not include taxes, penalties and interest attributable to (i) property over which I have a power of appointment granted to me by another person, (ii) qualified terminable interest property held in a trust of which I was the income beneficiary at the time of my death (other than qualified terminable interest property held in a trust for which an election was made under Code Section 2652(a)(3)), and (iii) life insurance proceeds on policies insuring my life which proceeds are not payable to my probate estate. My fiduciary shall not be reimbursed for any such payment from any person or property. However, my fiduciary in its discretion may direct that part or all of said death costs shall be paid by my Trustee as provided in the Existing Trust, and shall give such direction to the extent necessary so that the gifts made in Article I of this Will and the gifts made in any codicil hereto shall not be reduced by said death costs. If the amount of the above-described taxes, and interest and penalties arising by reason of my death (without regard to where payable from under the terms of this paragraph or applicable law) is increased because of the power of appointment granted to me under Subparagraph II.E.1. of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, I hereby appoint to my probate estate from the property subject to such power (to the extent allowable under such power) the amount of such increase (calculating such increase at the highest applicable marginal rates) and exercise such power to this extent only, and notwithstanding the other provisions of this paragraph further direct my fiduciary to make payment of such increase in taxes,

LAST WILL  
OF SIMON L. BERNSTEIN

-5-

LAW OFFICES

TESCHER & SPALLINA, P.A.



interest and penalties to the appropriate taxing authorities from the appointed property or the proceeds thereof. Any trustee holding such appointive property may pay to my fiduciary the amount which my fiduciary certifies as due under this paragraph and is not responsible for the correctness or application of amounts so paid.

5. **Reimbursement for Debts and Expenses.** My fiduciary shall promptly reimburse my friends and members of my family who have disbursed their own funds for the payment of any debts, funeral expenses or costs of administration of my estate.

6. **Expenses of Handling Tangible Personal Property.** All expenses incurred by my fiduciary during the settlement of my estate in appraising, storing, packing, shipping, delivering or insuring an article of tangible personal property passing under this Will shall be charged as an expense of administering my estate.

7. **Dealing with Estate.** Each fiduciary may act under this Will even if interested in my estate in an individual capacity, as a fiduciary of another estate or trust (including any trust identified in this Will or created under the Existing Trust) or in any other capacity. Each fiduciary may in good faith buy from, sell to, lend funds to or otherwise deal with my estate.

8. **Spouse.** The term "*spouse*" herein means, as to a designated individual, the person to whom that individual is from time to time married.

9. **Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein, (a) no provision of this Will shall revoke or modify any beneficiary designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or insurance contract; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any of such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons and in the manner provided in such designation which is incorporated herein by this reference.

*[remainder of page intentionally left blank]*

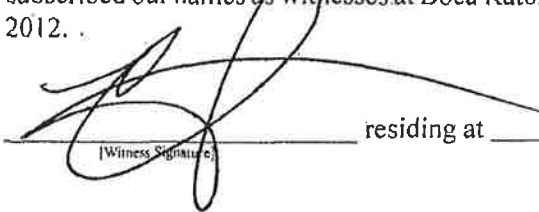




I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.

  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.

  
[Witness Signature]

residing at

**ROBERT L. SPALLINA**  
**7387 WISTERIA AVENUE**  
**PARKLAND, FL 33076**

[Witness Address]

  
[Witness Signature]

residing at

**Kimberly Moran**  
**6362 Las Flores Drive**  
**Boca Raton, FL 33433**

[Witness Address]

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]  
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran,

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

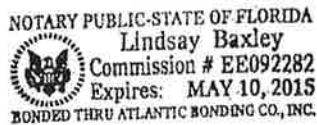
[Signature]  
Witness

Kimberly Moran  
Witness

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

[Signature]  
Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public



LAST WILL  
OF SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 50201209004391  
*JZ* *XXXXSB*

Deceased.

2012 OCT -2 AM 9:31  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH - FILED

**LETTERS OF ADMINISTRATION**

TO ALL WHOM IT MAY CONCERN

WHEREAS, Simon L. Bernstein, a resident of Palm Beach County, died on September 13, 2012, owning assets in the State of Florida, and

WHEREAS, Robert L. Spallina and Donald R. Tescher have been appointed as co-Personal Representatives of the Estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Robert L. Spallina and Donald R. Tescher as duly qualified under the laws of the State of Florida to act as co-Personal Representatives of the Estate of Simon L. Bernstein, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

DONE and ORDERED in Chambers at Delray, Palm Beach County, Florida, on this 2 day of Oct, 2012.

Estate must be closed 12 months from the date of order

Circuit Judge 



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

IN RE: Case No. 502012CP004391 SB

ESTATE OF SIMON  
BERNSTEIN,  
Deceased.

Division: IZ

**COPY**  
SOUTH COUNTY BRANCH OFFICE  
ORIGINAL RECEIVED

NOV 06 2012

SHARON R. BOCK  
CLERK & COMPTROLLER  
PALM BEACH COUNTY

STATEMENT OF CLAIM BY WILLIAM E. STANSBURY

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis for the claim is the action pending in Palm Beach County, Florida, *Stansbury v. Bernstein, et. al*, Case No. 502012CA 013933XXXX MB (the "Pending Action"). A true and correct copy of the Complaint filed by claimant that initiated the Pending Action is attached hereto as Exhibit "A" and is hereby incorporated by reference herein (the "Complaint").

2. The name and address of the claimant are William E. Stansbury, 6920 Caviro Lane, Boynton Beach, Florida 33437, and the name and address of the claimant's attorney is set forth below.

3. The amount of the claim is in excess of \$2.5 million dollars, which the Claimant is entitled to recover under the claims set forth in the Complaint, which amount the Claimant believes is now due.

4. The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action. The specific amount of Claimant's claim will be determined in Pending Action and the Claimant expects to recover in excess of \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs.

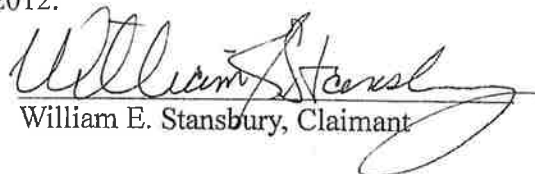
5. The claim is not secured.

*[Signature page follows this page]*

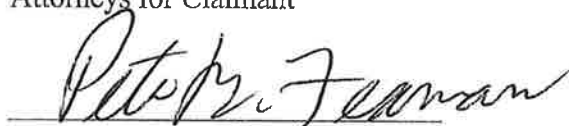


Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on November 6, 2012.

  
William E. Stansbury, Claimant

Attorneys for Claimant



Peter M. Feaman, Esq.  
Florida Bar No.: 260347  
PETER M. FEAMAN, P.A.  
3615 West Boynton Beach Blvd.  
Boynton Beach, FL 33436  
Phone: (561) 734-5552  
Facsimile: (561) 734-5554  
Primary Electronic Mail Address:  
[pfeaman@feamanlaw.com](mailto:pfeaman@feamanlaw.com)

Copy mailed to attorney for Personal  
Representative on \_\_\_\_\_  
2012.

**MUST BE FILED IN DUPLICATE**

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**

Atn: 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



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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 alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust )  
Dtd. 6/21/95, and ELIOT BERNSTEIN, )**

**Third-Party Defendants. )**  
----- )

**Case No. 13-cv-03643**

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

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, INC. )  
 (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC. )  
 (OF ILLINOIS) AND )  
 JOHN AND JANE DOE'S )  
 )  
 Third Party Defendants. )

**POTENTIAL BENEFICIARIES<sup>1</sup>:**

---

<sup>1</sup> Parents act as beneficiary Trustees in the estate of Simon L. Bernstein to their children, where Simon's estate may be the ultimate beneficiary of the policy and their children named below would be the ultimate beneficiaries of the policy proceeds. The failure of the grandchildren to be represented in these matters and listed as potential beneficiaries is due to an absolute conflict with their parents who are trying to get the benefits paid to them directly. This is gross violations of fiduciary duties and may be viewed as criminal in certain aspects as the lawsuit attempts to convert the benefits from the grandchildren to 4/5 of the children of SIMON by failing to inform their children (some minors) or have them represented in these matters. The Court should take Judicial Notice of this,



**JOSHUA ENNIO ZANDER BERNSTEIN  
(ELIOT MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN  
(ELIOT MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO  
BERNSTEIN (ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (TED  
ADULT CHILD);  
ERIC BERNSTEIN (TED ADULT  
CHILD);  
MICHAEL BERNSTEIN (TED ADULT  
CHILD);  
MATTHEW LOGAN (TED'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA  
ADULT CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR  
CHILD;  
CARLY FRIEDSTEIN – LISA MINOR  
CHILD;**

**INTERESTED PARTIES:**

**DETECTIVE RYAN W. MILLER –  
PALM BEACH COUNTY SHERIFF  
OFFICE;  
ERIN TUPPER - FLORIDA GOVERNOR  
OFFICE NOTARY EDUCATION - THE  
OFFICE OF THE GOVERNOR OF  
FLORIDA RICK SCOTT**

**(1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL**

---

especially in the interests of the minor grandchildren who may lose their benefits if the proceeds of the insurance policy are converted to the knowingly wrong parties.

Eliot Ivan Bernstein (“ELIOT”) a third party defendant and his three minor children, Joshua, Jacob and Daniel Bernstein, are alleged beneficiaries of a life insurance policy Number 1009208 on the life of Simon L. Bernstein (“Policy(ies)”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” and a “Simon Bernstein Trust, N.A.” that are at dispute in the Lawsuit, makes the following (1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL.

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief as a Pro Se Litigant<sup>2</sup>:

### **BACKGROUND**

1. That after reviewing discovery documents tendered by JACKSON in this Lawsuit, it was discovered that a **fraudulent insurance claim** to the Policy(ies) benefits was made by defendant, Attorney at Law, SPALLINA, with the life insurance carrier HERITAGE,

---

<sup>2</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991).” In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)“The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

whereby SPALLINA acted under a false fiduciary capacity on behalf of an alleged missing and lost trust, the “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that SPALLINA claimed fraudulently to be the “Trustee” for when filing the fraudulent insurance claim form.

2. That ELIOT’S position, as a non-lawyer, is that in the event of a lost beneficiary or trust for an insurance policy, the benefits are to be paid to the estate of the decedent. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. *Harris v. Byard*, 501 So.2d 730, 12 Fla. L. Weekly 429.
3. That defendant A. SIMON knowing this law as an Attorney at Law should never have filed this frivolous, vexatious and abusive Lawsuit, as defined further herein.
4. The SPALLINA’S fraudulent insurance claim acting as Trustee of the lost trust was DENIED by HERITAGE and a request for a Court Order was issued by the carrier to SPALLINA to approve of the trust and beneficiary scheme purported by SPALLINA.  
EXHIBIT 1 – SPALLINA FRAUDULENT CLAIM FORM AND CARRIER REQUEST.
5. That EXHIBIT 1 shows that on November 01, 2012, SPALLINA tendered a letter written by Kimberly Moran (“MORAN”) with a Claimant Statement to HERITAGE that on page 5 of the form SPALLINA fraudulently signed as the “Trustee” of the LOST “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that he knew he was not a “Trustee” of, as evidenced herein.
6. That the cover letter prepared by MORAN for SPALLINA claims that “We are unable to locate a copy of the original insurance policy” and then in a December 06, 2012 letter included in EXHIBIT 1, SPALLINA further states, “We are unable to locate the Simon

Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.”

7. That this Court should note that defendants’ TSPA, SPALLINA and TESCHER’S notary public, MORAN, while working for the law firm TSPA as a legal assistant/notary public, did admit to authorities that she had FORGED and FRAUDULENTLY altered six documents to fraudulently close the estate of SHIRLEY and then attempts were made to change her beneficiaries POST MORTEM using other alleged fraudulent documents currently under investigation. EXHIBIT 2 – MORAN SUSPENSION and EXHIBIT 3 – PALM BEACH COUNTY SHERIFF ARREST REPORT.
8. That due to a lost policy and lost trust, the insurance carrier denied SPALLINA’S claim that he was the “Trustee” of the lost trust and demanded valid legal documentation of such claim or a probate court order to approve of the beneficiary scheme he was proposing in his alleged capacity as “Trustee” of a lost trust.
9. That defendant SPALLINA knew he was not the “Trustee” of the lost trust, as he has claimed repeatedly that he has NEVER ever seen a copy of the lost trust and everything therefore was a “best guess” as evidenced in Exhibit 1 herein, claiming “Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.” If the beneficiaries of the lost trust are at best a “best guess,” so would who the trustees would be. This is Prima Facie evidence of INSURANCE FRAUD and as

such the claim was denied when none of the claim form information requested by the carrier was provided to prove the trusteeship or beneficial interests and thus there was no way for Heritage to legally pay the benefits to the true and proper beneficiaries, so new schemes were hatched by SPALLINA, TED, P. SIMON, A. SIMON and others to try to abscond with the insurance benefits outside of the estate of Simon, including this instant baseless and vexatious Breach of Contract Lawsuit.

10. That when his claim failed, SPALLINA then prepared a Settlement Agreement and Mutual Release (“SAMR”) scheme, evidenced in Exhibit 5, for the children of SIMON to sign in efforts to have the benefits paid to a newly created POST MORTEM trust, with new beneficiaries made on a “best guess” formed on beliefs that defendants SPALLINA, TED and P. SIMON claimed where known from their long ago memories of who they thought were the trustees and beneficiaries of the missing and lost trust and Policy(ies).
11. That SPALLINA was going to take that SAMR trust scheme to the Probate Court in Palm Beach County for approval by the Probate court judge and then was going to tender the SAMR, once it was signed by ALL the beneficiaries, to the carrier.
12. That when the SAMR was presented to ELIOT and his children’s counsel TRIPP SCOTT, there were multiple problems found with the legality of the document, including but not limited to the fact that in a lost beneficiary situation the proceeds should be paid to the estate and this scheme to end around that law, then put ELIOT and his children in a conflict over who would receive the benefits, the estate beneficiaries or others.
13. That ELIOT notified SPALLINA and all of SIMON’S children of the problems with the SAMR and the need according to Tripp Scott for each child of SIMON’S to get counsel for their children as possible beneficiaries, separate than any counsel they might get for

themselves as potential beneficiaries, as it appeared that the beneficiaries could either be the children of Simon, if this SAMR scheme held up or if it failed the grandchildren who are alleged to be beneficiaries of the estate of SIMON. The children of SIMON in the SAMR were going to act simultaneously as direct beneficiaries of the insurance proceeds to themselves and waive their children's rights to the benefits acting as trustees for their children under the estate.

14. That due to problems caused in part by the estate planners TESCHER and SPALLINA, including but not limited to in this insurance scheme, missing insurance policies and missing trusts and where it is alleged that this lost trust is instead suppressed by TSPA, TESCHER and SPALLINA intentionally, creates now disputes and conflicts between SIMON'S children and their children for the insurance benefits. By the estate planners failing to secure the necessary documents for the insurance proceeds and protecting the beneficiaries, as was their duty in preparing alleged 2012 estate planning documents, massive liabilities have now been caused. Due to the conflicts of interest caused, ELIOT was advised by counsel to then have his children represented by separate counsel and ELIOT was then left representing his interests without counsel in the insurance matters.
15. That the estate Personal Representatives (TESCHER and SPALLINA) of SIMON'S estate have refused to pay for counsel for the parties despite the need arising due to the estate planners TSPA, TESCHER and SPALLINA'S Willful, Wanton, Reckless, and Grossly Negligent acts in violation of Law in preparing the estate plan for SIMON and neglecting to protect the beneficiaries of the Policy(ies) and trusts.
16. That SPALLINA claimed in letters that he was aware of whom the beneficiaries were intended by SIMON to be but then failed to get copies or any documentation regarding these

claims. Even failing to include these alleged wishes of SIMON in his ALLEGED Will and Amended Trust, done supposedly only weeks before SIMON died when he was physically and emotionally under great duress. That these documents have also been submitted to civil and criminal authorities for further investigation as MORAN and SPALLINA are again involved in improper documentation with estate documents.

17. That this Court should note that NOBODY is representing the estate of SIMON or the alleged beneficiaries of SIMON'S estate in this matter and where SPALLINA and TESCHER are the alleged Personal Representatives of SIMON'S estate and thus indispensable parties in this lawsuit, perhaps in violation of Rule 19 of Federal Procedures, where they must be joined. Despite being aware that the beneficiaries of the estate may be harmed and despite being sued by ELIOT in these matters, TSPA, TESCHER and SPALLINA failed to enter into this Lawsuit on any parties' behalf, including themselves, only further complicating the problems they are already largely responsible for creating.
18. That the Personal Representatives of SIMON'S estate, TESCHER and SPALLINA are indispensable parties to this action and because under Florida law where a trust is the designated beneficiary of an insurance policy and the trust cannot be located or is lost and the proceeds are then payable to the estate through the Personal Representatives accordingly, appropriate and complete relief cannot be granted in this Lawsuit without the Personal Representatives as parties to this action, thus this aspect of the case regarding the proceeds of the policy must be dismissed without prejudice to ELIOT'S cross claims and damages and relief sought.
19. That TED, P. SIMON, D. SIMON, IANTONI and FRIEDSTEIN are acting as alleged trustees for their children in the estates over their minor and adult children's trusts and yet

failed to have their children included in this Lawsuit as well, knowing they are potential beneficiaries of the now lost or suppressed Policy(ies) if the proceeds were to flow to the estate, as they should. Where each child of SIMON'S now stands in direct conflict with SIMON'S grandchildren, their own children, for inheritance of the benefits and where none of the other children, other than ELIOT, has had their children represented in the insurance matters that have now metamorphosed into this baseless, vexatious and frivolous, Breach of Contract Lawsuit.

20. That ELIOT is unaware if his siblings children even know they are possible direct beneficiaries of the Policy(ies) and trusts, as evidence exists that efforts were made to keep these insurance matters from their children (and it is known that this Lawsuit was kept secret from ELIOT'S children counsel and ELIOT), in order to prevent lawsuits by their children in the future by intentionally not disclosing the conversion of the benefits to themselves to their children.

21. That legal advice to conceal the insurance scheme from their children was given to TED, P. SIMON, ELIOT, IANTONI and FRIEDSTEIN by SPALLINA who advised them to keep it a secret from their children in a meeting. Where in that meeting SPALLINA was acting adversely as Personal Representative to the estate beneficiaries, allegedly the grandchildren. SPALLINA, who claims the beneficiaries are the grandchildren, was working against their interests by making these claims to secret the information from them, in order to advantage his very close personal friend and business associate, TED, to the disadvantage of his own children. SPALLINA did not like that TED and P. SIMON were excluded from the estates entirely and even stated he was trying to get them paid, in opposite of the desires and wishes of SIMON and SHIRLEY. Other witnesses were present on the calls when SPALLINA



made these claims when proposing the SAMR scheme. EXHIBIT 4 - TRIPP SCOTT  
CONFLICT LETTER.

22. That knowing that the grandchildren were possible beneficiaries of the Policy(ies), A. SIMON and TED filed this Lawsuit and intentionally failed to notify and include possible beneficiaries of the Insurance Claim or this Breach of Contract Lawsuit. They also failed to include the Personal Representatives as indispensable parties with scienter.
23. That the actions alleged herein may also invoke the Probate Exception to Federal Jurisdiction in this matter and further evidences fraudulent intent in filing this Lawsuit by A. SIMON and TED who both knew the grandchildren of SIMON may be beneficiaries and filed this Lawsuit without their knowledge or consent and without forcing the estate representatives into the Lawsuit. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim.
24. That the SAMR scheme attempted to convert the assets of the estates from the grandchildren to the children of SIMON without the grandchildren's knowledge and consent and where the parents were going to sign off rights on behalf of their children, acting as "Trustees" for them, in order to release the insurance proceeds to themselves. The breaches of fiduciary duties from this Willful, Wanton, Reckless, Grossly Negligent and alleged unlawful behavior of TED, P. SIMON, IANTONI and FRIEDSTEIN as trustees for their children as the estate beneficiaries constitutes alleged fraud, conversion of estate assets and more. SEE EXHIBIT 5 – ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE FRAUD SCHEMES.

25. That in a lost beneficiary situation the proceeds of the Policy(ies) appear to legally flow to the estate for distribution to the estate beneficiaries, where TED and P. SIMON would be wholly excluded from ANY of the insurance benefits, as both TED and P. SIMON were wholly disinherited from both of their parents estates and trusts and therefore have promulgated failed scheme after failed scheme to try and redirect the insurance benefits and other estate assets to themselves, aided and abetted by TED'S very close personal and business associates, TESCHER and SPALLINA.
26. The reason the beneficiaries of the estates are alleged to be beneficiaries at this time and are not known exactly, is due to revelations in the probate hearings before Judge Martin Colin in SHIRLEY'S estate of forgery, fraud, identity theft and more to close SIMON'S wife estate and attempt to change her beneficiaries POST MORTEM and also change SIMON'S beneficiaries post mortem. Due to an alleged fraudulent Will and Amended and Restated Trust in SIMON'S estate, which are both being challenged and investigated by state authorities currently, as they too are improperly notarized, witnessed and drafted by SPALLINA and TESCHER, it is unclear at this time whom the ultimate beneficiaries of the estates will be.
27. That it was learned in a September 13, 2013 hearing and an October 28, 2013 Evidentiary Hearing that SPALLINA and TESCHER used SIMON post mortem as if he were alive to file a series of documents to close SHIRLEY'S estate and pulled a fraud on the court, whereby Judge Colin stated he had enough evidence at that time that he should read SPALLINA, TESCHER and TED their Miranda Warnings when he discovered these crimes upon his court and the ultimate beneficiaries. The closed estate of SHIRLEY was then reopened and remains open today.

28. That MORAN has been arrested and admitted to filing forged and fraudulent documents in SHIRLEY'S estate on six different documents for six different people, including SIMON who was deceased at the time his name was forged and used in probate court filings. From her statement to Palm Beach County Sheriff officers, "Moran stated that at this time, **she took it upon herself to trace [aka FORGE] each signature of the six members of the Bernstein family** onto another copy of the original waiver document. She then notarized them and resubmitted them to the courts." This statement contradicts her prior statement to the Governor's Notary Public office where she claimed the documents were identical other than her notary stamp, thus the crime of perjury and/or false statements in official proceedings are now being pursued as well with authorities. This lie about the documents not being forged was also echoed by MORAN'S employer, SPALLINA in the September 13, 2013 hearing before Colin when SPALLINA knowingly lied to the judge and claimed the signatures were also not forged,

8 THE COURT: I mean everyone can see he [ELIOT]  
9 signed these not notarized. When they were  
10 sent back to be notarized, the notary notarized  
11 them without him re-signing it, is that what  
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with  
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed  
17 affidavit from each of the children other than  
18 Mr. Bernstein that the original documents that  
19 were filed with The Court were in fact their  
20 original signatures which you have in the file  
21 attached as Exhibit A was the original document  
22 that was signed by them.

23 THE COURT: It was wrong for Moran to  
24 notarize -- so whatever Moran did, the  
25 documents that she notarized, everyone but

00051

1 Eliot's side of the case **have admitted that**  
2 **those are still the original signatures of**  
3 **either themselves or their father?**

4 MR. SPALLINA: **Yes, sir.**

5 THE COURT: I got it.

From MORAN'S statement to the Sheriff's office we see that MORAN did not send back the documents sent back to her by the probate court and merely rubber stamped a notary on it but in fact recreated each of the documents from scratch, then allegedly "traced" aka **forged** the signatures, including one for SIMON post mortem, then affixed her notary stamp and resubmitted them to the court. Where SPALLINA perjuriously told Judge Colin the opposite knowing of her statement to the Sheriff already but knowing the truth in court would invalidate the documents wholly and FORGERY was a far more serious crime with far more serious ramifications according to Judge Colin.

17 THE COURT: Mr. Bernstein, I want you to  
18 understand something. Let's say you prove what  
19 seems perhaps to be easy, that Moran notarized  
20 your signature, your father's signature, other  
21 people's signatures after you signed it, and  
22 you signed it without the notary there and they  
23 signed it afterwards. That may be a wrongdoing  
24 on her part as far as her notary republic  
25 ability, but the question is, unless someone

00060

1 claims and proves forgery, okay, forgery,  
2 proves forgery, the document will purport to be  
3 the document of the person who signs it

29. Further, from Judge Colin's order dated November 14, 2013, "1. The Estate shall remain open pending the filing of a Petition for Discharge by Ted Bernstein, as Successor Personal Representative **and any disposition thereof pursuant to probate rules and statutes.**" The bolded text was added to the order in handwriting by Judge Colin and indicates that all rules of probate must be followed now to close the estate, including now giving the beneficiaries/interested parties all accountings, inventories, attorney records, etc. according to probate rules and statutes.
30. That SHIRLEY'S estate was subsequently reopened due to these forgeries and frauds. These matters are not yet fully resolved in the probate courts of Judge Colin and Judge French in Florida or with state authorities. Therefore, who the ultimate beneficiaries of the estates will be remains unclear as was further learned in an Evidentiary Hearing held in SHIRLEY'S estate on October 28, 2013. If the currently alleged beneficiaries were so effectuated through a series of fraudulent documents and acts done to seize Dominion and Control of the estates illegally and change the beneficiaries, in efforts to loot the estate through a variety of fraudulent acts, insurance benefits paid to this Court in this Lawsuit should not be distributed to any parties until all matters are fully resolved both criminally and civilly in the estates first and determination by this Court instantly if this suit is an Abuse of Process and part of an insurance fraud.
31. That the benefits deposited with this Court by JACKSON should be returned to the insurance carrier immediately until it can be determined if this Court is even the proper court to determine the beneficiaries of the missing and lost trust, the missing and lost insurance Policy(ies) and who the beneficiaries of the estates are and if these matters are legally under the jurisdiction of the Florida state probate court handling the estate. This Court must also

determine instantly if this Lawsuit is and was filed legally or is merely an intentional abuse of process to facilitate a fraud.

32. That ELIOT and his children's counsel were told that the SAMR trust was being submitted to the probate court for approval as requested by HERITAGE and once approved it would be submitted for approval and signature by ELIOT and his children's counsel before any distributions would be made. However, during that time, without informing ELIOT or his children's counsel, this Breach of Contract lawsuit was filed with consent of "4/5" of SIMON'S children, as stated in the original complaint filed and was filed intentionally behind ELIOT and his children's counsel backs with scienter by TED acting as Trustee of the lost trust.
33. That of interest to this Court is that TED filed the lawsuit as a Breach of Contract lawsuit and acted as Trustee on what they allege is the failure to pay of HERITAGE on a claim form filed by SPALLINA as Trustee only weeks earlier. Why would SPALLINA have not filed this Breach of Contract as Trustee of the lost trust on a claim he was denied on, not TED?
34. That it was learned that meetings were held without ELIOT or his children's counsel present, to conspire how to get the proceeds paid to ELIOT'S siblings without informing ELIOT and the grandchildren, without now the need for the SAMR, which resulted in this cleverly concealed baseless lawsuit to knowingly commit insurance fraud and further failing to include all possible beneficiaries of the Policy(ies).
35. That ELIOT would never have even known of this Lawsuit without JACKSON suing ELIOT as a third party defendant and this Court could have paid out the benefits and circumvented the true and proper beneficiaries and none of these parties with interests would have known until after the proceeds were distributed, if ever.

36. That knowing the SAMR would never get approval by the probate court and ELIOT, that scheme was discarded and this new vexatious, frivolous and abuse of process scheme to convert the benefits fraudulently was then hatched and facilitated through this meritless and baseless Breach of Contract lawsuit brought on behalf of an alleged lost trust by an alleged Trustee, either SPALLINA or TED, as both have made separate claims that they are the Trustee of the lost trust knowing full well that they are not Trustees and cannot be of a lost contract.
37. That this Lawsuit is actually a clever Legal Abuse of Process, which uses this Court to facilitate the crime of Insurance Fraud through a Fraud on a Federal Court, an Insurance Carrier, estate beneficiaries and estate creditors, that attempts to convert the insurance benefits to imagined beneficiaries, with no legally valid contracts to prove their claims, concocted together by Defendants TED, P. SIMON, D. SIMON, A. SIMON, IANTONI, FRIEDSTEIN, TSPA, TESCHER, SPALLINA, et al.
38. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was "involved" with MORAN in her fraud and forgery.
39. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify that court that SIMON was dead at the time he was using him as if he were alive, thus acknowledging that he perpetrated a Fraud on the

Court and more in the closing of SHIRLEY'S estate with a dead Personal Representative and Trustee, SIMON.

40. That in an October 28, 2013 Evidentiary Hearing before Judge Colin, it was learned that TED had been acting in fiduciary capacities that he did not have prior, including acting as Personal Representative and Trustee for the estate of SHIRLEY. Due to the FRAUD ON THE COURT using SIMON'S identity, after he was deceased as if alive, to close the estate of SHIRLEY, no successors were elected or appointed by the court after he died and SIMON was continued to be used as if alive. SPALLINA, acting as estate counsel failed to notify the court that SIMON, the Personal Representative and Trustee was dead and continued for four months to use SIMON and file documents on his behalf, filed as if SIMON were still alive to close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate.
41. That it is alleged that to make POST MORTEM beneficiary changes to SHIRLEY'S estate they needed to make it look like SIMON was alive when he closed SHIRLEY'S estate, so that they could then attempt to change her beneficiaries POST MORTEM through a combination of the forged and fraudulent documents in SHIRLEY'S estate combined with the alleged FORGED and FRAUDULENT alleged Will and Amended and Restated Trust filed in SIMON'S estate.
42. That the Will and Amended and Restated Trust of SIMON are improperly drafted, notarized and witnessed and are now being investigated by authorities in Florida. MORAN and SPALLINA are both involved in the documents in question in SIMON'S estate as well, as they improperly witnessed them and more and where MORAN and SPALLINA have admitted involvement in forged and fraudulent documents already in SHIRLEY'S estate,



nothing they have done, past, present or future can be trusted or relied upon without forensic evaluation and more.

43. That the Court should note that SPALLINA witnesses these documents, the alleged Will and Amended and Restated Trust of SIMON, documents he drafted and which gave him fiduciary powers and financial gain, as they elect him and his partner defendant Donald Tescher as Co-Personal Representatives of SIMON'S estate, allowing them to seize Dominion and Control of the estates, these problems make the documents further legally invalid, not just for the improper notarizations but for the improper witnessing by SPALLINA.
44. That MORAN, who already has been arrested for fraud and forged documents in the estate of SHIRLEY, also witnesses these documents in SIMON'S estate and nothing she has done can be relied upon. What unfolds when looking at all of these alleged fraudulent documents and those already admitted forged and fraudulent, is a pattern and practice of fraudulent documents that combine to allow SPALLINA and TESCHER to illegally seize dominion and control of the estates of SIMON and SHIRLEY and then using their illegally gained fiduciary powers to change beneficiaries to the advantage of some parties and disadvantage of others and then loot the estates and covert assets to the wrong beneficiaries (primarily their close personal friend and business associate TED) in a variety of alleged felony crimes, including insurance fraud and fraud upon this Court, fraud upon the Florida Probate courts and fraud on the beneficiaries of the Policy(ies) through this baseless Breach of Contract suit and more.

**STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS.**

45. That when SPALLINA'S insurance fraud failed, this frivolous and baseless instant Breach of Contract lawsuit was instituted before this Court with TED now suddenly and bizarrely claiming to be the alleged "Trustee" of the lost trust. A. SIMON claiming TED now instead of SPALLINA is the "Trustee" of the lost trust and as such stating TED can elect new beneficiaries POST MORTEM for SIMON. SPALLINA now disappears as "Trustee" for this lawsuit and magically transfers trusteeship to TED in an unknown transaction to any alleged beneficiaries and TED then through his brother-in-law, D. SIMON'S brother and P. SIMON'S brother-in-law, A. SIMON who acts as counsel now for TED as alleged "Trustee" and also represents the lost trust as his client and then files this lawsuit to fraudulently attempt to convert the death benefits. Again, ELIOT reminds the Court that all of these bogus claims are being made on behalf of a lost trust on a lost insurance Policy(ies) and no one to date has produced for this Court any legal and binding contracts to prove their claims.
46. That ELIOT alleges that the trusts and Policy(ies) are being suppressed and denied by the parties responsible for maintaining them, in order to change the beneficiaries and convert the funds illegally to themselves. That it was learned in letters from SPALLINA that P. SIMON had good relationships at one of the insurance carriers involved in the claim and that she could facilitate payment of the claim to their SAMR scheme, despite the obvious illegality of the scheme, in the end this failed.
47. P. SIMON and SIMON sold the "lost" insurance Policy(ies) on SIMON, acting as the broker and agent of record and also maintained and setup the VEBA trust through trust companies they operate that paid the insurance proceeds to the plan participants.
48. That D. SIMON, A. SIMON and TSL provided legal counsel to the businesses and trusts involved in this lawsuit and are alleged to be suppressing records relating to the "lost"

insurance Policy(ies) and “lost” trust and more, with intent to conceal and illegally change the beneficiaries of SIMON’S policy(ies) to their immediate family members to the detriment of other beneficiaries and potential creditors of the estate.

49. That defendant A. SIMON and his law firm, defendant TSL, are directly involved as counsel to many of these trusts and the insurance agencies involved that are Bernstein family owned companies and they are located in the same offices. That A. SIMON and P. SIMON have had access to all these records, including the policies and various trusts over the years and it should be noted that when producing documents for this lawsuit, they have failed to include all of the VEBA trust documentation that was responsible for beneficiary designations of the VEBA plan. The VEBA paid the insurance benefits of the plan to the employees elected beneficiaries under the plan. The Policy(ies) direct beneficiaries in the VEBA are trust companies, not typically individuals or their personal trusts. The VEBA trust receives the benefits and then pays the plans beneficiaries designated under the VEBA trust who are not typically listed on the underlying Policy(ies). This appears to be the case with the Policy(ies) claimed in this lawsuit and why the primary beneficiary is LaSalle National Trust, N.A. and the contingent beneficiary is SIMON BERNSTEIN TRUST N.A. Nowhere is the lost “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” trust named as a beneficiary of the Policy(ies), as it was a beneficiary of the VEBA plan and would have been so listed in the documentation of the VEBA trust not on the Policy(ies).

50. That to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the beneficiary was changed to the lost trust in 1995. Yet, in JACKSON’S discovery documents produced thus far, evidence is found that SIMON was sent a letter April 23, 2010, which

stated, "Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance Company. Our records indicate the following beneficiary designation for the above referenced contract number:

Primary Beneficiary/Beneficiaries: Lasalle National Trust, N.A.

Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A."

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

51. That it should be noted by this Court, that after thousands of pages of discovery were sent to ELIOT by defendants A. SIMON and JACKSON in these matters, **NEITHER PARTY SENT A COPY OF THE POLICY AND A VALID LEGAL TRUST DOCUMENT WITH CLAIMS TO THE POLICY.** Where this may be the first such case where all responsible parties to maintain insurance contracts and trusts appear to be missing the insurance contract and trusts entirely, no valid copies even tendered, indicating further alleged insurance fraud and massive liabilities since the suppression of these documents benefits directly those alleged to be suppressing them. Where ELIOT has worked in the insurance and estate planning industry and sold hundreds of millions of dollars of premium to billionaires and multimillionaires for over 20 years and has never heard of a "lost" trust and missing Policy(ies), where no one, including the policyholder, the estate planners, the fiduciaries of the trusts and Policy(ies) and even the INSURANCE CARRIER claim to have original contracts, copies of originals, valid drafts or anything of substantive legal contractual value for making a claim or paying a claim. That the insurance carrier claims not to have a copy of the Policy(ies) and thus far has provided only a specimen contract and claims to not have a single page of the any of the trusts claimed to be beneficiaries and this may expose

them to liabilities and reason they should not be allowed of these matters until they are fully resolved.

52. That also missing from the records sent to ELIOT thus far are the entire records of the VEBA TRUST maintained by P. SIMON, D. SIMON and A. SIMON for SIMON that supposedly was dissolved according to the original complaint in this matter, including but not limited to the annual VEBA trust statements, information pertaining to the dissolution of the VEBA, conversion policies, the sold case information that was maintained by P. SIMON and D. SIMON'S companies and what SIMON and SHIRLEY'S total beneficial interest in the VEBA plan were, including other policies and other assets.
53. That the VEBA TRUST was written for companies owned by SIMON, insuring all the employees of his company and where SIMON was a Pioneer of the life insurance VEBA plans.
54. That also missing at this time is any information from other defendants involved in these matters who have not yet responded to the complaint or answered the actions and have not disclosed under Rule 26, including trust companies and other law firms involved that are largely responsible to the beneficiaries of the VEBA TRUST and Policy(ies), including but not limited to, the estate planners, TSPA, TESCHER and SPALLINA, who are largely responsible for this insurance fraud and the estate planning fraud already discovered in the estate of SHIRLEY.
55. That from the records sent thus far by JACKSON, it appears that the last named alleged beneficiary and contingent beneficiary on the Policy(ies), according to JACKSON is not the lost trust claimed by SPALLINA, TED, P. SIMON and A. SIMON, the "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" but instead the primary beneficiary appears to be

LaSalle National Trust and the contingent beneficiary appears to be another lost trust where no records were tendered to ELIOT by JACKSON or A. SIMON, the "Simon Bernstein Trust, N.A." Therefore, at this time it does not appear relevant who the trustee or the beneficiaries of the "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" are in this lawsuit, as this trust is not a primary or contingent beneficiary on the Policy(ies) according to JACKSON, even if it were the contingent beneficiary there is no legally valid controlling document produced to claim the benefits. Thus, the lost trust serves no purpose to establish a claim as it is not a beneficiary, other than to prove the attempted Insurance Fraud, Abuse of Process and Fraud on this Court taking place to attempt to convert the benefits illegally. Further, in the 2500 page document dump thus far, no clear beneficiary forms have been evidenced for "Simon Bernstein Trust, N.A." showing how this entity became the contingent beneficiary or what it is.

56. That this Willful, Wanton, Reckless, and Grossly Negligent illegal behavior of the Attorneys at Law, TSPA, TESCHER and SPALLINA who have largely caused this mess of unknown beneficiaries and missing trusts and missing Policy(ies) in the estate, by failing to protect the beneficiaries through the extensive estate planning that SIMON and SHIRLEY contracted and paid them do, have still not answered this lawsuit at this time as they were served a courtesy copy to respond to without forcing process serving and more costs to their victims and delaying the ability to settle these matters or litigate them timely and further causing damages to the true and proper beneficiaries of the Policy(ies) who have been denied benefits by these fraudulent insurance and estate schemes and frauds for over a year now.

57. That in filing this instant action, A. SIMON knew that SPALLINA had fraudulently filed a claim as Trustee of the lost trust, which his client TED claims now to be Trustee of the same

lost trust claimed in this Lawsuit. Where A. SIMON knew SPALLINA was not the “Trustee” and could never have been the “Trustee” of the lost trust, as SPALLINA himself claimed never to have seen a copy and A. SIMON knowing of this fraudulent claim failed to notify the proper authorities of this Insurance Fraud by another Attorney at Law as required by state and federal Ethics Codes and Law. A. SIMON has also failed to notify this Court of the fraudulent attempt by SPALLINA to collect the benefits acting as “Trustee” of the lost trust. A. SIMON, filed a Breach of Contract lawsuit for TED on a failed claim of SPALLINA’S and “who’s on first.”

58. That instead of doing what was required by Law when someone attempts to make a fraudulent insurance claim while acting in a false capacity and reporting the crime to the proper authorities, A. SIMON further conspired with TED and SPALLINA to then file this FRAUDULENT BREACH OF CONTRACT LAWSUIT ON A US FEDERAL COURT switching the trustee of the lost trust with intent.
59. That two other documents presented to this Court in Motions and Discovery deserve special note, as they were drafted by **anonymous** Attorneys at Law, no markings of who the draftsmen were and what law firm prepared them, in fact, no identifying marks upon them as to the author(s) at all. The first document is the SAMR trust agreement already exhibited herein, in EXHIBIT 5 and the Court should demand to know who the draftsmen of this document are, so as any legal liabilities or evidence of fraud can be identified to the proper parties.
60. That the second document that deserves further scrutiny was submitted by A. SIMON on behalf of his clients, the lost trust and TED, via discovery in this lawsuit, a document which attempts to now be inserted into the record as some kind of parole evidence of the lost trust,

alleged to be a draft of the lost trust. SEE EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST. This document lacks any identifying marks as to who the Attorneys at Law were that drafted it. The document is unsigned and bears no markings that it was ever sent to any party, it is also undated and has absolutely no legal validity and represents an attempt to fool this Court into believing this document validates the lost trust scheme's trustees and beneficiaries proposed in this baseless Lawsuit. Again, this Court should demand to know who the legal draftsmen of the document are so that any legal liabilities or evidence of further fraud can be identified to the proper parties. It is not standard operating procedure for law firms to send out documents, especially estate planning documents, even a draft, without the proper nomenclature identifying their works. This blank un-authored document is worthless to establish a legal claim to the proceeds and proves nothing but another attempted alleged fraud, this time to fulfill Your Honor's request at the last hearing for a copy of the signed lost trust that has been missing since the start of this action.

61. That both TED and P. SIMON were aware that their signatures had been forged on fraudulent documents for both themselves and their father SIMON in the estate of SHIRLEY in May of 2012. Despite knowing their signatures were forged and fraudulent in documents that materially affected the estate beneficiaries, forcing SHIRLEY'S estate to be reopened by Judge Colin, they failed to take any actions to rectify these felony criminal acts with the proper authorities and Probate court for months and further concealed this information, while they rushed to liquidate assets of SHIRLEY'S estate.

62. That not until Florida state investigators from the Governor's office and Palm Beach Sheriff's office came knocking on the door of SPALLINA, MORAN and ELIOT'S siblings in regard to the forgeries and fraud in documents in the estate of SHIRLEY and the jig was



up, did TED and P. SIMON come forward on September 13, 2013, immediately prior to the first hearing on the fraudulent documents of MORAN and expose their concealed knowledge. Five months after they learned of the forgeries and fraud in their names and in their deceased father's name, they then attempt to claim that the felony crimes were OK by them, including the fact that their signatures and their father's signature were forged on fraudulent documents. Simon's signature was forged and the document created POST MORTEM and then filed along with other documents filed in Simon's name for several months after his death, all filed as if Simon were alive at the time, used to close the estate of SHIRLEY and attempt to change the beneficiaries. These crimes appear OK by TED, as stated in a recent email, sent to ELIOT on 12/06/2013 at 10:16PM EST, "You pursued and caused to be arrested a paralegal that our parents loved and without ill-intent, only tried to help a situation along because of dad's death, and it now appears that you are in the process of trying that again with my assistant who has done nothing wrong. You continue to drag Don and Robert through the mud, both of whom our parents were very fond of and who did very good work for our family, notwithstanding your relentless and slanderous accusations."

63. That it should be noted that TED in the hearings before Judge Colin was found making false statements to the Court regarding his fiduciary roles in the estate of SHIRLEY, prior to September 2013, when he made multiple fraudulent transactions using these knowingly false fiduciary titles, even stating to judge Colin that he was the Trustee of the Estate of Shirley on September 13, 2013 and where it was later learned in that hearing that due to the Fraud on the Court where SIMON was used dead as if alive and serving as Personal Representative and Trustee to close the estate and thus no successors had been chosen when SIMON died, due to the fraud.

64. That in an Order dated, November 14, 2013 in SHIRLEY'S estate, Judge Martin Colin ruled, "2. The Court has determined that it will take no action regarding the form of the pleadings or other documents that were submitted to the Court to close the Estate while Simon Bernstein was serving as Personal Representative." What is important to note is that in the September 13, 2013 hearing it was learned that the estate of SHIRLEY was closed in January 2013, months after SIMON was dead, with SPALLINA and TESCHER using ILLEGALLY SIMON as the Personal Representative while he was dead, as if he were alive. Therefore, the estate was illegally closed by a dead person who could not be "serving" as Personal Representative while dead as only living people can serve in any capacity. This exchange at the hearing is what led to Judge Colin asking the attorneys, defendants SPALLINA and TESCHER (through his counsel) at the September 13, 2013 hearing, how this could be legally possible and then stating he should read them their Miranda Warnings for the fraud upon the court and beneficiaries. Therefore, Colin's Order claims that any documents submitted while SIMON was "serving" as Personal Representative are not actionable and those documents filed POST MORTEM for SIMON by others while he was dead and not legally "serving," remain actionable.

65. That it should be noted that the documents SIMON signed and filed while alive have not been questioned at this time for forgery and fraud, only the documents that appear signed and forged and incomplete in the estates that were filed for him illegally by SPALLINA and TESCHER POST MORTEM are being questioned. See EXHIBIT 7 - PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM. Virtually all of these POST MORTEM documents filed with the court appear legally invalid, as they are improperly notarized, witnessed and more and when combined together attempt to make POST

MORTEM changes to the beneficiaries in SIMON and SHIRLEY'S estates that counteract those SIMON and SHIRLEY made while alive. The changes appear made after they were both deceased, by those who were cut out of the estates, TED and P. SIMON, similar to what is going on in this lawsuit in attempts to convert the insurance proceeds of the estate of SIMON against SIMON'S wishes through suppression of documents and fraud.

66. Another question for this Court to determine is how the lost trust that was being replaced with the SAMR, due to the fact that no one can determine who the trustee and beneficiaries are of the lost trust, now files a suit against the carrier, if it was unknown who the trustees and beneficiaries were prior to the lawsuit? If the trustee and beneficiaries are a "best guess" according to SPALLINA as evidenced in EXHIBIT 5, how can a lost trust with no valid legal contractual rights sue anyone, when TED or SPALLINA or Alice in Wonderland could be the trustee and beneficiaries and no valid binding documents exist?
67. That William Stansbury, a creditor in the estate of SIMON, has filed a Motion to Intervene in this Lawsuit and claims that this action is merely an attempt to defraud him as creditor in the estate, further supporting the claim of ELIOT that this Lawsuit was filed steeped in attempted fraud on beneficiaries and now a creditor of the estate of SIMON.
68. That for all of these reasons defined herein, this Court should strike the pleadings filed by A. SIMON and remove A. SIMON from legal representations in the Lawsuit other than as a Defendant for Fraud on the Court and Abuse of Process for his knowing violations of law in filing this Lawsuit and more.

**REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL**

69. That A. SIMON in two hearings held already before this Court appears to have personal feelings and emotions involving ELIOT as an extended family member that interfere with his ability to act independently and without malice towards ELIOT as an adversary in these proceedings. It should be noted that defendant A. SIMON has an adverse and conflicting interest in these proceedings as he is now a defendant and ELIOT is alleging that he is committing Insurance Fraud, Abuse of Process and Fraud on the Court, as he and his law firm are involved directly in the lost/suppressed Policy(ies) and trusts and now is found attempting to convert the funds to his brother's wife/employer P. SIMON through this fraudulent Lawsuit.
70. That for these reasons and more A. SIMON and his law firm TSL'S partners, including defendant D. SIMON, will be deposed and called as witnesses in these matters, regarding direct involvement in the lost Policy(ies) and trusts and for knowingly fraudulently filing this Lawsuit with no basis in law and all of these personal and professional reason make his representations and pleadings far from impartial on behalf of both his clients, the lost trust, TED, P. SIMON, FRIEDSTEIN and IANTONI, his law firm TSL, his brother D. SIMON and himself both Personally and Professionally. Defendant A. SIMON can no longer be unbiased either in his representations as counsel for himself or others, especially where there is adverse interest in the matter that could put him behind bars for felony crimes alleged herein that he is a central party to.
71. That defendant A. SIMON appears to have responded to ELIOT'S answer and cross claim representing himself as his own attorney personally and it is further unclear if he is attempting to represent himself professionally, as he was sued in both capacities and may need separate counsel to represent each capacity independently.

72. That in a hearing before this Court, defendant A. SIMON admitted to Your Honor that he was conflicted once he became a defendant and claimed to this Court that ELIOT sued him only to conflict him from further representation. Where this admission of his conflict, despite the claimed reason, is cause for Defendant A. SIMON to withdraw as counsel for any party or be removed from further representing himself and any other parties by this Court. It should be noted that ELIOT sued defendant A. SIMON for good reason and cause, as he is not impartial to these matters and has sued knowing there was no basis to the claims, knowing that he was filing without noticing ELIOT or other potential beneficiaries of this Lawsuit to abscond with the proceeds of the Policy(ies), knowing that SPALLINA had already made a claim as Trustee of the lost trust to the carrier and failed to notify this court or authorities that SPALLINA was not the Trustee and had committed insurance fraud and finally, as he knew in a lost beneficiary situation Florida law has the insured's estate as the beneficiary.

73. That defendant D. SIMON is represented by defendant A. SIMON and again defendant D. SIMON was sued in both his personal and professional capacities and it is unclear which capacity defendant A. SIMON will be attempting to represent his brother in these matters.

74. That defendant A. SIMON for reasons stated herein and in the cross claim should be removed from acting as a counsel for TED or any other party and seek legal counsel for both himself, personally and professionally, and for his law firm, as they have all now been sued in this lawsuit as Cross Claim Defendants, with good cause. Where this Court may find that A. SIMON and other parties may need separate counsel to represent themselves in each capacity sued, prior to further adjudication.

75. That before ELIOT is compelled by this Court to respond to ANY further improper pleadings, wasting thousands of dollars more and further share information with defendants A. SIMON as counsel, this Court should first determine if there is any basis to this Lawsuit and if A. SIMON is conflicted from representing anyone other than himself Pro Se. This Court should note that in JACKSON'S Answer and Counter Complaint, they claim that TED was advised by counsel that he had no basis to file this Lawsuit in the first place and then TED sought out a family member with interests, defendant A. SIMON, whose brother has an interest in the Policy(ies) through his wife P. SIMON an alleged beneficiary, to knowingly file this fraudulent Lawsuit.
76. That if this Lawsuit is found to have no basis in law, then A. SIMON, SPALLINA, TESCHER and TED should be sanctioned and reported to the proper authorities for insurance fraud, fraud on the Court and more and this Court should take Judicial Notice of these alleged crimes and act on its own motions to report and stop this abuse, awarding a Default Judgment and all reliefs and damages requested by ELIOT.
77. That in any event this Court must first determine if A. SIMON can continue to represent himself personally and professionally and others in their varied capacities they were sued under or if he and the parties he represents need to seek independent non-conflicted counsel before proceeding further **for each capacity they were sued under.**

**RELIEF**

**WHEREFORE**, Cross Plaintiff ELIOT prays to this Court:

- i. FOR AN ORDER TO STRIKE PLEADINGS BY A. SIMON FOR FRAUD ON THE COURT AND ABUSE OF PROCESS;

- ii. FOR AN ORDER TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL;
- iii. That all filings of A. SIMON should be withdrawn and disqualified from this proceeding and ELIOT should not be obligated to respond to improper pleadings, until non conflicted counsel can file the pleadings properly;
- iv. This Court should order that TED, P. SIMON, LANTONI, D. SIMON and FRIEDSTEIN find new non conflicted counsel to represent their interests in this FRIVOLOUS, ABUSIVE OF PROCESS AND FRAUDULENT Breach of Contract Lawsuit in each capacity;
- v. That each defendant party represented by defendant A. SIMON seek independent non-conflicted counsel and separate and independent counsel be demanded by this Court for their children who should be entered in this case as possible beneficiaries of the proceeds;
- vi. For sanctions to be levied against A. SIMON, D. SIMON, TSPA, TESCHER and SPALLINA for abuse of process and fraud on the court. That according to JACKSON'S original complaint, TED was advised by counsel, alleged to be SPALLINA, that he had no basis to file this lawsuit, and yet, defendant A. SIMON filed the action on behalf of a "lost" trust and with TED as alleged trustee of said "lost" trust and to further benefit his sister-in-law/employer, P. SIMON.
- vii. That this Court take Judicial Notice of the criminal activities alleged herein and the Fraud and Forgery already proven in the estate of SHIRLEY and act on its own

Motions to stop further criminal activity and damages to the beneficiaries of the estate of SIMON and report these matters to state and federal authorities.

- viii. Award Court Costs not from the Policy(ies) but directly from alleged conspirators of this Fraud on the Court and Abuse of Process and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless and vexatious Lawsuit in efforts to perpetrate a fraud;
- ix. ELIOT requests this Court take Judicial Notice of the alleged Fraud on the Court and Fraud on the Beneficiaries of the Policy(ies) through this criminal abuse of process by Attorneys at Law violating ethical codes of conduct and law and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved and report these alleged criminals with attorney at law degrees and all of them to the proper state and federal bar associations as required by Judicial Cannons and Attorney Conduct Codes.
- x. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Dated

December 08, 2013

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.

Boca Raton, FL 33434

(561) 245-8588



**Certificate of Service**

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on December 08, 2013 to the following parties:

**Email**

Robert L. Spallina, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

Theodore Stuart Bernstein and  
National Service Association, Inc. (of Florida) ("NSA")  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

Lisa Sue Friedstein  
2142 Churchill Lane  
Highland Park IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com)  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Marla Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
[Iantoni\\_jill@ne.bah.com](mailto:Iantoni_jill@ne.bah.com)

Pamela Beth Simon and  
S.T.P. Enterprises, Inc.,

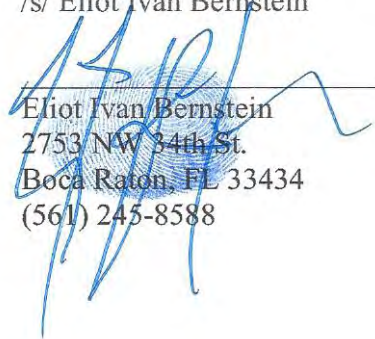
S.B. Lexington, Inc. Employee Death Benefit Trust,  
SB Lexington, Inc.,  
National Service Association, Inc. (of Illinois)  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)

Adam Simon and  
The Simon Law Firm  
General Counsel STP  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[asimon@stpcorp.com](mailto:asimon@stpcorp.com)



/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588



**EXHIBIT 1 – SPALLINA CLAIM FORM WITH SPALLINA AS TRUSTEE OF THE  
“LOST” TRUST**



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

BOCA VILLAGE CORPORATE CENTER I  
4935 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33433

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

TEL: 561-997-7600  
FAX: 561-997-7378  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SUPPORT STAFF  
DIANE DOWD  
KIMBERLY MORAN  
SUZANNE TESCHER

November 1, 2012

**VIA FEDERAL EXPRESS**  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, IL 62651

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

Dear Sir or Madam:

Enclosed is the Claimant's Statement for the above referenced policy, together with an original death certificate for the insured, Simon Bernstein. We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which is the trust listed as beneficiary of the above referenced policy. We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post. We are unable to locate a copy of the original insurance policy.

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

Sincerely,

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

RLS/km

Enclosures

km = Kimberly  
Moran

## CLAIMANT STATEMENT

Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

### INSTRUCTIONS

The following items are required for all claims:

- An original certified death certificate showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).

If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special Instructions and additional requirements may apply:

- If the beneficiary is the Estate of the Insured, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- If the beneficiary is a trust, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- If the beneficiary is a minor, we will require evidence of court appointed guardianship of the Minor's Estate.
- If the policy is collaterally assigned, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- If the primary beneficiary(ies) is (are) deceased, we will require a death certificate for each deceased beneficiary.
- If the policy has a split dollar agreement associated with it, we will require a copy of said agreement.
- If the policy is subject to a Viatical or a Life Settlement transaction, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete questions 19 and 30.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.

## CLAIMANT STATEMENT

### **FRAUDULENT INFORMATION**

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

CLAIMANT STATEMENT

**DECEDENT INFORMATION**

1. Name of Deceased (Last, First, Middle)  
 Bernstein, Simon Leon

2. Last 4 digits of Deceased's Social Security No: 5211

3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below

4. Policy Number(s) 1009208

5. If policy is lost or not available, please explain  
 Unable to locate, policy is 30 years old

6. Deceased's Date of Death 09/13/12

7. Cause of Death natural causes

8.  Natural  Accidental  
 Suicide  Homicide  
 Pending

**CLAIMANT INFORMATION**

9. Claimant Name (Last, First, Middle): If trust, please list trust name and complete Trustee Certification section.  
 Simon Bernstein Irrevocable Insurance Trust

10. Street Address

11. City

12. State and Zip

13. Daytime Phone Number

14. Date of Birth

15. Social Security or Tax ID Number

16. Relationship to Deceased

17. I am filing this claim as:  
 an individual who is named as a beneficiary under the policy  
 a Trustee of a Trust which is named as a beneficiary under the policy  
 an Executor of Estate which is named as a beneficiary under the policy  
 Other

18. Are you a U.S. Citizen?  Yes  No  
 If "No" please list country of citizenship.

19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?  
 Yes  No

**CLAIMANT INFORMATION (to be completed by 2<sup>nd</sup> claimant, if any)**

20. Claimant Name (Last, First, Middle): If trust, please list trust name and complete Trustee Certification section.

21. Street Address

22. City

23. State and Zip

24. Daytime Phone Number

25. Date of Birth

26. Social Security or Tax ID Number

27. Relationship to Deceased

28. I am filing this claim as:  
 an individual who is named as a beneficiary under the policy  
 a Trustee of a Trust which is named as a beneficiary under the policy  
 an Executor of Estate which is named as a beneficiary under the policy  
 Other

29. Are you a U.S. Citizen?  Yes  No  
 If "No" please list country of citizenship.

30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?  
 Yes  No

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.  
 G-991F-01F-Claimant Statement No 7-7-1773-2011 Page 1

G009590.0002710







**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

October 9, 2017

LASALLE NATIONAL TRUST N.A. TRUSTEE  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09765315

Dear Trustee:

We are writing in response to your notification of the death of Simon Bernstein. Our sincere condolences go to the family for their loss.

In order to proceed with our review of the claim, we require the following items to be submitted:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- A certified death certificate. This should indicate cause of death, manner of death, date of birth and Social Security Number.
- Return the original policy -- If the original policy cannot be located, please note on the Claimant Statement (Page 3, Item 4).
- Trust Documentation -- Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.
- Letter of representation or written authorization signed by the beneficiary authorizing information to be released on the above referenced policy.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. A valid claim will include interest due and payable from the date of death at a rate of 10% if we do not pay the claim within 31 days from the latest of 1) the date that we receive proof of death, 2) the date we receive sufficient information to determine our liability and the appropriate beneficiary(ies) entitled to the proceeds; or 3) the date that any legal impediments are resolved.

If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

Diane Henderson  
Claims Manager

Enclosure(s): Life Claimant Statement No RAA

AWT History for work object key 2012-10-04-10.38.59.016241101

JLIFE - DTHCLM - CLLEGAL - CLIENT - Updateable

- 1009208 - - BERNSTEIN - SIMON - 14 - SRDC00014031

Social Security Num: [REDACTED] Policy Number: 1009208

Agent Number: [REDACTED] Insured's Last Name: BERNSTEIN

Printed on Tuesday, May 07, 2013 at 3:01:53PM

Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-17                      Flags:  
Begin Time: 16:49:34                      DTM Job Name:  
User Id: SMCDOJL                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area:                          DTM Next Task:  
Type:                                      End Date: 2013-01-17  
Status:                                    End Time: 16:49:34  
Queue:  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments: Received a call from attorney Spallina. He wants to talk to in-house counsel about not filing dec action because of expense. Sent Jackson legal message to call me or Spallina. JLM

Begin Date: 2013-01-17                      Flags: 000000  
Begin Time: 16:47:32                      DTM Job Name:  
User Id: SMCDOJL                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area: JLIFE                      DTM Next Task:  
Type: DTHCLM                              End Date: 2013-01-17  
Status: CLREVIEW                          End Time: 16:48:22                      ↑  
Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-15                      Flags:  
Begin Time: 11:50:00                      DTM Job Name:  
User Id: JWALKK                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area:                          DTM Next Task:  
Type:                                      End Date: 2013-01-15  
Status:                                    End Time: 11:50:00  
Queue:  
User Name: WALKER, KELLIE  
DTM Description:  
Comments: faxed client letter to Robert Spallina and advised of court order required. faxed to 561-997-7308

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32251  
Phone 800-825-0003 Fax 803-433-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

November 29, 2012

JASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
DOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09801925

Dear Trustee:

We are writing to remind you that we have not received the previously requested items necessary to proceed with our review of the pending claim on the above referenced policy. The required items are:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

V02091806

Sincerely,

D. Henderson  
Claims Services

Enclosure(s): IL Department of Insurance Notification  
Life Claimant Statement No RAA

JCK001290

DEC-05-2012 04:34PM FROM:TESCHER & SPALLINA

+5619977308

T-834 P.001/009 F-356

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: Brec  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 62651

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

Dear Brec:

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

JCK001297

From (561) 997-7008  
Kimberly Moter  
TESCHER & SPALLONE  
4555 Technology Way  
Suite 720  
BOCA RATON, FL 33431

Origin ID: PHKA

FedEx  
Express



JAN2012 08000325

Ship Date: 21DEC12  
Net Wgt: 1.0 LB  
CAD: 1544076/NETJSCC

Delivery Address Bar Code

Rel # Bernstein 11187.908  
Invoice #  
PC #  
Dept #

SHIP TO: (800) 825-0803

BILL SENDER

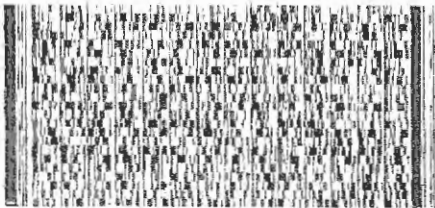
Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

JACKSONVILLE, IL 62651

MON - 24 DEC AA  
STANDARD OVERNIGHT

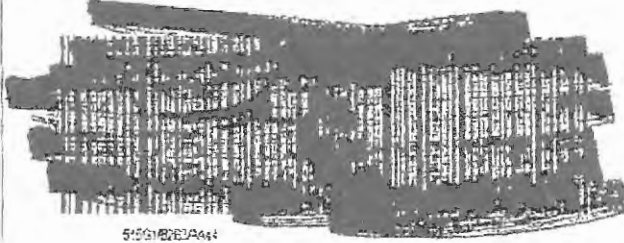
TRK# 7943 7521 3807

1020



SH SPIA

62651  
IL US  
STL



545618261A44


JCK001308

## Eliot Bernstein

---

**Subject:** FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

**From:** Robert Spallina [<mailto:rspallina@tescherspallina.com>]  
**Sent:** Tuesday, October 23, 2012 2:34 PM  
**To:** Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein  
**Subject:** RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form. 

Thank you for your help.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.



**EXHIBIT 2 – MORAN SUSPENSION**

A handwritten signature in blue ink, appearing to be 'A', is centered at the bottom of the page. The signature is written over a faint, circular, textured background.



RICK SCOTT  
GOVERNOR

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

www.flgov.com  
850-488-7146  
850-487-0801 fax

October 14, 2013

Via Certified Mail

Ms. Kimberly Moran  
6362 Las Flores Drive  
Boca Raton, Florida 33433

Dear Ms. Moran:

Enclosed is a copy of Executive Order Number 13-291 issued by Governor Rick Scott on October 14, 2013. This Executive Order suspends your notary public commission pursuant to section 117.01(4)(c), Florida Statutes. As a result, the Executive Office of the Governor requires your notary commission certificate to be relinquished to this Office, in the self-addressed envelope enclosed. Additionally, you are required to destroy your notary stamp.

If you have any additional questions, please contact our office at (850) 717-9529 or via email at [NOTARY@eog.myflorida.com](mailto:NOTARY@eog.myflorida.com).

Sincerely,

A handwritten signature in blue ink that reads "Erin Tupper".

Erin Tupper  
Notary Coordinator  
Executive Office of the Governor, Notary Section

Enclosures

cc: **Eliot Bernstein**  
Notary Public Underwriters

**STATE OF FLORIDA**  
**OFFICE OF THE GOVERNOR**  
**EXECUTIVE ORDER NUMBER 13-291**  
(Executive Order of Suspension)

**WHEREAS**, Kimberly Moran, is presently serving as a Notary Public of the State of Florida;  
and

**WHEREAS**, this Office received a complaint reporting Kimberly Moran for notary  
misconduct; and

**WHEREAS**, the complainant states that Kimberly Moran notarized a signature on a document  
when the signing party was not in her presence at the time of the notarization, and made a false or  
fraudulent acknowledgement of that signed instrument, and made changes to the instrument after the  
party had signed, in violation of Sections 117.107(9), 117.105, and 117.107(7), Florida Statutes; and

**WHEREAS**, in a sworn written statement, dated August 8, 2013, Kimberly Moran confirmed  
the above-stated violations of notarial statutes; and

**WHEREAS**, it is in the best interests of the citizens of the State of Florida that Kimberly  
Moran be immediately suspended from the public office, which she now holds, upon the grounds set  
forth in this Executive Order;

**NOW, THEREFORE, I, RICK SCOTT**, Governor of Florida, pursuant to Article IV, Section  
7 of the Florida Constitution and Section 117.01(4), Florida Statutes, find and state as follows:

- A. Kimberly Moran is a duly appointed Notary Public of the State of Florida, pursuant to  
Section 117.01, Florida Statutes.
- B. Kimberly Moran is commissioned as a Florida notary public from April 29, 2012, through  
April 28, 2016.
- C. Kimberly Moran admitted to notarizing a document when the signers were not in her  
presence at the time of the notarization, in violation of Section 117.107(9), Florida Statutes.

D. Kimberly Moran admitted to making a false or fraudulent acknowledgment of the instrument being notarized, in violation of Section 117.105, Florida Statutes.

E. Kimberly Moran amended the instrument after the party had signed, in violation of Section 117.107(7), Florida Statutes.

**BEING FULLY ADVISED** in the premise, and in accordance with the Florida Constitution and the laws of the State of Florida, this Executive Order is issued

Section 1. Kimberly Moran is suspended from the public office which she now holds: Notary Public of the State of Florida.

Section 2. Kimberly Moran is prohibited from performing any official act, duty, or function of this public office; from receiving any pay or allowance; and from being entitled to any of the emoluments or privileges of this public office during the period of suspension, which period shall begin, today, until further Executive Order is issued, or as otherwise provided by law.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 14<sup>th</sup> day of October, 2013.

Handwritten signature of Rick Scott in black ink.

RICK SCOTT, GOVERNOR

ATTEST:

Handwritten signature of Ken Retzner in black ink.  
SECRETARY OF STATE

FILED  
2013 OCT 14 AM 9:40  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

**EXHIBIT 3 – PALM BEACH COUNTY SHERIFF REPORT**



11/01/2013

11-17-56-6023153

Case: 17-3595 Document: 12-2

CENTRAL RECORDS

Filed: 03/12/2018

Pages: 795

#6144 P.001/011

Page 1 of 11

CASE NO. 13097087 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: ROAD PATROL

911:  
IMPRENTE PUB OF \*  
SIGNAL CODE: 53 \* CRIME CODE: 4 NON CRIME CODE: \* CODE: 260D, 07/15/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7657 NAME: LONGSWORTH BRITA ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17501 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

NAME LIST:  
ROLE:

COMPLAINANT ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 245-8588  
BUSINESS PHONE: 561 886-7628  
OTHER ROBERT L SPALLINA DOB: 06/09/1965  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 4855 TECHNOLOGY WY BOCA RATON FL 33431 HOME PHONE: 561 997-7008  
BUSINESS PHONE: 561 000-0000  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 800 BERKELEY ST BOCA RATON FL 33484 HOME PHONE: 561 988-8984  
BUSINESS PHONE: 561 000-0000  
OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 800-0000  
ARRESTEE KIMBERLY MORAN DOB: 10/24/1972  
SEX: F RACE: W HT: 505 WT: 135 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 6362 LAS FLORES DR APT. 4 BOCA RATON FL 33433 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
OFFENSE REPORT

PAGE 2  
CASE NO. 13097087

DISPOSITION: OPEN

ROLE:

OTHER ROLE NO. 4

\*NAMES\* LAST  
REAL... SIMON

FIRST  
PAMELA

MIDDLE

J/S R/S  
W F

DOB

\*ADDRESS\* NO. STREET  
BUSINESS 950 MICHIGAN

SEX DIR APT#  
AV N 2603

CITY  
CHICAGO

ST ZIP  
IL 60035

\*PHONE #S\*

HOME  
000 0000

OTHER  
000 0000

BUSINESS  
(312) 819 7474

ROLE:

OTHER ROLE NO. 5

\*NAMES\* LAST  
REAL... IANTONI

FIRST  
JILL

MIDDLE

J/S R/S  
W F

DOB

\*ADDRESS\* NO. STREET  
BUSINESS 2101 MAGNOLIA

SEX DIR APT#  
LA

CITY  
HIGHLAND PARK

ST ZIP  
IL 60035

\*PHONE #S\*

HOME  
(847) 831 4915

OTHER  
000 0000

BUSINESS  
(312) 804 2318

ROLE:

OTHER ROLE NO. 6

\*NAMES\* LAST  
REAL... FRIEDSTEIN

FIRST  
LISA

MIDDLE  
S

J/S R/S  
W F

DOB

\*ADDRESS\* NO. STREET  
BUSINESS 2142 CHURCHILL

SEX DIR APT#  
LA

CITY  
HIGHLAND PARK

ST ZIP  
IL 60035

\*PHONE #S\*

HOME  
(847) 877 4633

OTHER  
000 0000

BUSINESS  
(312) 000 0000

OFFENSE INDICATOR: OFFENSE 1  
VICTIM TYPE: UNKNOWN  
RESIDENCE TYPE: NOT APPLICABLE

VICTIM NUMBER: 1  
RESIDENCE STATUS: NOT APPLICABLE

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
OFFENSE REPORT

PAGE: 3  
CASE NO. 13097087

DISPOSITION: OPEN

EXTENT OF INJURY: NONE  
INJURY TYPE(1): NOT APPLICABLE  
INJURY TYPE(2): NOT APPLICABLE  
VICTIM RELATION: NOT APPLICABLE

ON 071513, I RESPONDED TO THE DISTRICT VII SUBSTATION LOCATED AT 17901 SOUTH STATE ROAD 7, UNINCORPORATED BOCA RATON, FLORIDA IN REFERENCE TO A REPORT OF FRAUD.

UPON ARRIVAL, I MADE CONTACT WITH THE COMPLAINANT INSIDE OF THE DISTRICT VII LOBBY. THE COMPLAINANT VERBALLY IDENTIFIED HIMSELF AS ELLIOT I. BERNSTEIN. ELLIOT STATED THAT SINCE SEPTEMBER OF 2012 THERE HAVE BEEN SEVERAL FRAUDULENT AND FORGED DOCUMENTS THAT HAVE BEEN FILED IN THE SOUTH COUNTY COURTHOUSE LOCATED AT 200 WEST ATLANTIC AVENUE, DELRAY BEACH, FLORIDA. ELLIOT ADVISED THAT THESE FRAUDULENT/FORGED DOCUMENTS WERE FILED WITH THE SOUTH COUNTY COURTHOUSE TO MISAPPROPRIATE ASSETS ILLEGALLY FROM THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN (DECEASED PARENTS). ELLIOT TOLD ME THAT THESE DOCUMENTS WERE PREPARED AND EXECUTED BY ATTORNEYS DONALD TESCHER AND ROBERT SPALLINA OF TESCHER AND SPALLINA AND THAT THESE DOCUMENTS WERE FOR POWER OF ATTORNEY OVER THE TWO (2) ESTATES WHICH WERE VALUED BETWEEN 20 TO 50 MILLION DOLLARS. ACCORDING TO ELLIOT, HIS BROTHER, THEODORE STUART BERNSTEIN, ALSO HAD INVOLVEMENT WITH THE FILING OF THESE FRAUDULENT/FORGED DOCUMENTS.

WHILE SPEAKING TO ELLIOT, HE SHOWED ME SEVERAL COURT DOCUMENTS WHICH HE ALLEGED ARE COPIES OF THE FRAUDULENT/FORGED DOCUMENTS THAT WERE FILED AT THE COURT HOUSE. ELLIOT COMPLETED A SWORN WRITTEN STATEMENT AND I COMPLETED A VICTIM/WITNESS CASE INFORMATION FORM IN WHICH ELLIOT WAS GIVEN ALONG WITH COPIES OF HIS FOUR (4) PAGE SWORN WRITTEN STATEMENT.

DUE TO THE MONETARY AMOUNT AND THE ALLEGATIONS THAT WERE MADE REGARDING THE FILING OF FRAUDULENT/FORGED DOCUMENTS AT THE SOUTH COUNTY COURTHOUSE, THIS CASE WILL BE FORWARDED TO THE FBI'S FINANCIAL CRIMES DIVISION. THIS CASE WAS COMPLETED AT THIS TIME FOR DOCUMENTATION PURPOSES ONLY.

D/S B.E. LONGSWORTH/ID 7657/TRANS:072313/ALS  
DICT:071613/2115HRS.

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM



PAIN BEACH COUNTY SHERIFF'S OFFICE PAGE: 01  
CASE NO. 13097087 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: ZULU  
DIVISION: DETECTIVE  
911:  
IMPERMTE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 260D 08/14/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1216 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498  
NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0  
OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS CASE,  
I ATTEMPTED TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE ON BOTH 08/13/13  
AND 08/14/13. MESSAGES WERE LEFT FOR HIM TO CONTACT ME ON BOTH NUMBERS  
PROVIDED IN THE ORIGINAL REPORT. THIS CONCLUDES MY SUPPLEMENTAL REPORT.  
DETECTIVE RYAN W. MILLER #7704  
08/14/13 @ 1241 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/15/2013/MDR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:34AM

CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 13097087 SUPPLEMENT 2 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:  
IMPRSNTE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: \* \* \* \* \*  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1213 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: F7901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0  
OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS INCIDENT, I WAS ABLE TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE. ELLIOT SUPPLIED ME WITH AN E-MAIL WHICH CONTAINED 567 DOCUMENTS WHICH HE STATES ARE PERTINENT TO THIS CASE. I AM CURRENTLY REVIEWING THE DOCUMENTS AND STATEMENT HE PROVIDED. FURTHER INVESTIGATION WILL CONSIST OF MEETING WITH ELLIOT IN THE NEAR FUTURE TO GO OVER HIS STATEMENT AND THE DOCUMENTS HE SUPPLIED. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
08/20/13 @ 1430 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/21/2013/MDR/#6405

Printed by Employee Id #: 3264 on November 01, 2013 11:10:31AM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE: 1  
CASE NO. 13097087 SUPPLEMENT 3 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:

IMPRINTE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 260D 09/25/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TYME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 \* 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO. :  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON AUGUST 23, 2013 I MET WITH ELIOT BERNSTEIN REFERENCE HIS COMPLAINT. HE STATED THAT DUE TO SOME DOCUMENTS BEING FRAUDULENTLY NOTARIZED A LARGER FRAUD HAS OCCURRED. HE SUPPLIED ME WITH COPIES OF A DOCUMENT TITLED: WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE: WAIVER OF SERVICE OF PETITION FOR DISCHARGE: AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE FOR THE ESTATE OF SHIRLEY BERNSTEIN WHO IS ELIOT'S DECEASED MOTHER.

ELIOT STATED THAT IN THE FIRST PART (BELIEVED TO BE APRIL) OF 2012, HIS FATHER HAD A MEETING WITH HIM AND HIS FOUR SIBLINGS (TED, PAMELA, JILL, & LISA). I HAVE SINCE FOUND OUT THAT THIS WAS A CONFERENCE CALL WHICH TOOK PLACE AT THE OFFICE OF ATTORNEY ROBERT SPALLINA, WHO IS/WAS THE ATTORNEY FOR SIMON AND SHIRLEY BERNSTEIN. IT SHOULD BE NOTED THAT SIMON HAS SINCE PASSED, WHICH OCCURRED ON OR ABOUT SEPTEMBER 13, 2012. AT THIS CONFERENCE CALL, WHICH WAS IN THE FIRST PART OF 2012, SIMON BERNSTEIN REVEALED TO HIS CHILDREN THAT HE WOULD LIKE THEM TO SIGN THE AFOREMENTIONED WAIVER. IT IS BELIEVED THAT THERE WAS ALSO SOME DISCUSSION OF INHERITANCE AND WHO WAS TO GET WHAT UPON SIMON'S PASSING.

INVESTIGATION REVEALED THAT ALL FIVE CHILDREN AND SIMON SIGNED THE AFOREMENTIONED WAIVER THAT WAS SENT TO THEM BY SPALLINA'S LEGAL ASSISTANT, KIMBERLY MORAN. I SPOKE WITH MORAN ON 09/24/13 AND SHE ADMITTED TO SENDING OUT THE WAIVER AS TOLD TO BY HER BOSS. THE WAIVERS WERE THEN SIGNED AND RETURNED. SIMON'S WAS SIGNED ON 04/09/12 AND ELIOT'S ON MAY 15, 2012. IT WAS FOUND THAT THE OTHER SIBLINGS DID NOT RETURN THEIR DOCUMENT FOR SEVERAL MONTHS. MORAN STATED SHE HAD TO CONDUCT FOLLOW-UP E-MAILS AND PHONE CALLS TO GET THE

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
CASE NO. 13097087 SUPPLEMENT 3 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: OPEN

DOCUMENTS RETURNED. THEY WERE FINALLY RETURNED IN AUGUST AND OCTOBER OF 2012. MORAN STATED SHE FILED THE DOCUMENTS WITH THE COURT IN OCTOBER OF 2012. SHE RECEIVED A MEMORANDUM FOR JUDGE MARTIN COLIN'S CASE MANAGER, ASTRIDE LIMOUZIN, STATING THE DOCUMENTS WERE NOT NOTARIZED AND THEY NEED TO BE. MORAN STATED THAT AT THIS TIME, SHE TOOK IT UPON HERSELF TO TRACE EACH SIGNATURE OF THE SIX MEMBERS OF THE BERNSTEIN FAMILY ONTO ANOTHER COPY OF THE ORIGINAL WAIVER DOCUMENT. SHE THEN NOTARIZED THEM AND RESUBMITTED THEM TO THE COURTS. WHEN I INTERVIEWED HER ON 09/24/13, SHE STATED SHE DID NOT REALLY HAVE A REASON WHY SHE FORGED THE SIGNATURES, OTHER THAN TO MAYBE SAVE TIME.

I SPOKE WITH LISA AND JILL VIA PHONE ON SEPTEMBER 10, 2013. THEY STATED THAT AS FAR AS THEY KNOW, THE FRAUDULENT NOTARIZATION CHANGED NOTHING WITH THE ESTATE SINCE THEY WILLINGLY AND KNOWINGLY SIGNED THE ORIGINAL DOCUMENTS. THEY STATED THAT THEY DO NOT WISH TO PURSUE ANYTHING CRIMINALLY. I SPOKE WITH TED ON 09/24/13. HE ALSO STATED THAT THE MISTAKE DID NOT AFFECT THE ESTATE AND DOES NOT WISH TO PURSUE ANYTHING CRIMINALLY. TO DATE PAMELA HAS NOT RESPONDED TO MY PHONE MESSAGES OR E-MAILS.

D/S MARK BEREY WAS PRESENT DURING MY INTERVIEWS WITH MORAN, TED, AND SPALLINA. WE SPOKE TO MORAN ALONE. THE INTERVIEW WAS RECORDED. SHE ADMITTED TO MAKE A POOR DECISION, BUT STATED SHE DID NOT BENEFIT FINANCIALLY FROM HER ACTIONS. WE ALSO SPOKE WITH SPALLINA ALONE. SPALLINA STATED HE WAS NOT AWARE OF MORAN'S ACTIONS UNTIL SHE TOLD HIM. MORAN STATED SHE WAS MADE AWARE THAT OTHERS HAD CAUGHT ONTO WHAT SHE DID ONCE SHE RECEIVED NOTICE FROM THE GOVERNOR'S OFFICE, NOTARY EDUCATION DIVISION. ELIOT FILED A COMPLAINT ON HER WITH THE STATE. I WAS SUPPLIED WITH A COPY OF THE COMPLAINT AND CORRESPONDENCE BY ELIOT. I ALSO SPOKE WITH ERIN TUPER MAKING HER AWARE OF MY INVESTIGATION. ELIOT SUPPLIED A SWORN WRITTEN STATEMENT TO THE ORIGINAL REPORTING DEPUTY, STATING THAT HE WISHES TO PURSUE CRIMINAL CHARGES. ELIOT ALSO TOLD ME HIMSELF THAT HE WISHES TO PURSUE CHARGES ANY CRIMINAL WRONGDOINGS IN THIS CASE. IN SPEAKING WITH SPALLINA, WE FOUND THAT THE DOCUMENT IN QUESTION CHANGES THE INHERITANCE OF PERSONAL PROPERTY IN THE ESTATE OF SHIRLEY BERNSTEIN FROM SIMON AND SHIRLEY'S CHILDREN TO THEIR GRANDCHILDREN.

D/S BEREY AND I ALSO REVIEWED ALL E-MAILS AND ATTACHMENTS (MAINLY COURT DOCUMENTS) SUPPLIED BY ELIOT. WE FOUND THAT MOST OF THE INFORMATION WAS RELATED TO THE ONGOING CIVIL CASE INVOLVING THE TRUSTS AND ESTATES OF SHIRLEY AND SIMON BERNSTEIN. THE ONLY CRIMINAL WRONGDOINGS FOUND ARE THE AFOREMENTIONED FRAUDULENTLY NOTARIZED DOCUMENTS.

IT SHOULD BE NOTED THAT ON 9/25/13 ELIOT'S WIFE, CANDICE BERNSTEIN CALLED ME AND MENTIONED THAT SHE WAS FEELING A CONCERN FOR THE SAFETY OF HER AND ELIOT. SHE STATED IT IS JUST A FEELING SHE HAD DUE TO RISING TENSIONS IN THIS ONGOING COURT BATTLE. I ASKED HER IF ANYONE HAS THREATENED HER OR HER HUSBAND AND SHE SAID NO, JUST PEOPLE INVOLVED KNOW PEOPLE WHO HAVE HIGH INFLUENTIAL

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

11/01/2013

Case 1:13-cv-03643

Document: 12-2

CENTRAL RECORDS

Filed: 03/12/2018

Pages: 795

#8144 P.008/011

Page 8 of 11

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 3 OFFENSE REPORT

PAGE 3  
CASE NO. 13097087

DISPOSITION: OPEN

ABILITIES. ELIOT WOULD NOT ELABORATE, BUT DID STATE THAT HE HAS ONGOING FEDERAL COURT BATTLES AND BELIEVES HE IS BEING TARGETED BY PEOPLE DUE TO HIS PATENTS AND INVENTIONS. AT THIS TIME, I HAVE NO EVIDENCE TO SHOW THEY ARE IN ANY HARM'S WAY REGARDING MY INVESTIGATION OR GENERALLY SPEAKING.

BASED ON THE FACTS AND FINDINGS OF THIS INVESTIGATION, I FIND PROBABLE CAUSE FOR THE ARREST OF MORAN FOR CRIMINAL ACTIONS UNDER THE COLOR OF LAW OR THROUGH USE OF SIMULATED LEGAL PROCESS, F.S.S. 843.0855(3), DUE TO THE FACT THAT SHE DID WILLINGLY AND KNOWINGLY SIMULATE A LEGAL PROCESS OF A LEGAL DOCUMENT REGARDING PERSONAL PROPERTY, KNOWING THAT THE DOCUMENT CONTAINED FRAUDULENT SIGNATURES. THIS CASE REMAINS OPEN.

DETECTIVE RYAN W. MILLER #7704

09/25/13 @ 1453 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 09/25/2013/MD/#6405

printed by Employee Id #: 5264 on November 04, 2013 11:10:31AM

CONFIDENTIAL

11/01/2013

20 58 13 35 083

CENTRAL RECORDS

#6144 P.008/011

Case 1:13-cv-03643 Document 58 Filed 12/08/13 Page 64 of 157

PageID 405

Case 1:13-cv-03643 Document 58 Filed 12/08/13 Page 64 of 157

Page 9 of 11

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE: 01  
CASE NO. 13097087 SUPPLEMENT 4 OFFENSE REPORT CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:

IMPRESNTE BUR OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: 07 CODE: 260D 09/27/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1213 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 A 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 47901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

THIS CASE WAS FILED WITH THE PALM BEACH COUNTY STATE ATTORNEY'S OFFICE ON  
09/27/13. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
09/27/13 @ 1311 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 09/30/2013/MDR/#6405

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL CONFIDENTIAL

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE: 1  
CASE NO. 13097087 SUPPLEMENT 5 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:  
INVESTIGATOR: RUC OF  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: \* OT CODE: 260D 10/08/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/07/13 I RECEIVED AN E-MAIL FROM THE STATE ATTORNEY'S OFFICE, STATING  
THEY HAVE REVIEWED THE CASE AND CHARGES WILL BE FILED. ON 10/08/13 I SPOKE  
WITH ELIOT AND MADE HIM AWARE OF MY FINDINGS IN THIS CASE. HE ALSO SUPPLIED  
ME WITH NEW COURT DOCUMENTS, WHICH WERE FORWARDED TO THE SAO. THIS CASE  
REMAINS OPEN.  
DETECTIVE RYAN MILLER #7704  
10/08/13 @ 1033 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 10/08/2013/MDR/#6405

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

COPIED FROM THE ORIGINAL RECORDS

PALM BEACH COUNTY SHERIFF'S OFFICE  
CASE NO. 13097087 SUPPLEMENT 6 OFFENSE REPORT PAGE 11  
DISPOSITION: CLEARED BY ARREST  
DIVISION: DETECTIVE

911:  
IMPRSNTE PUB OF  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: OT \* CODE: 260D 10/29/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 1 FORCED ENTRY: 0  
OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/25/13 KIMBERLY MORAN TURNED HERSELF IN REFERENCE A CAPIAS ISSUED IN THIS CASE. THIS CASE IS NOW CLEARED BY ARREST.  
DETECTIVE RYAN W. MILLER #7704  
10/29/13 @ 1505 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 10/30/2013/MDR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL



**PALM BEACH COUNTY SHERIFF'S OFFICE  
CENTRAL RECORDS  
FSS EXEMPTIONS/CONFIDENTIAL**

- |  |   |
|--|---|
| <input type="checkbox"/> 119.071(2)(c) Active criminal intelligence/active criminal investigative Information  | <input type="checkbox"/> 119.071(5)(g)1 Biometric Identification Information (Fingerprints, palm prints, and footprints)  |
| <input type="checkbox"/> 119.071(2)(e) Confession  | <input type="checkbox"/> 119.071(2)(f) Confidential Informants  |
| <input type="checkbox"/> 365.171(15) Identity of 911 caller or person requesting emergency service   | <input type="checkbox"/> 316.068(5)(a) Crash reports are confidential for period of 60 days after the report is filed   |
| <input type="checkbox"/> 119.071(2)(d) Surveillance techniques, procedures, and personnel; inventory of law enforcement resources, policies or plans pertaining to mobilization, deployment or tactical operations | <input type="checkbox"/> 119.071(2)(h)(1) Identity of victim of sexual battery, lewd and lascivious offense upon a person less than 16 years old, child abuse, sexual offense |
| <input type="checkbox"/> 119.071(2)(l) Assets of crime victim  | <input type="checkbox"/> 985.04(1) Juvenile offender records  |
| <input type="checkbox"/> 119.071(5)(a)(5) Social security numbers held by agency   | <input type="checkbox"/> 119.071(2) Personal information contained in a motor vehicle record  |
| <input type="checkbox"/> 119.071(5)(b) Bank account #, debit, charge and credit card numbers held by an agency   | <input type="checkbox"/> 119.071(2)(b) Criminal intelligence/investigative information from a non-Florida criminal justice agency   |
| <input checked="" type="checkbox"/> 395.3025(7)(a) and/or 456.057(7)(a) Medical information  | <input type="checkbox"/> 394.4615(7) Mental health information  |
| <input type="checkbox"/> 943.053/943.0525 NCIC/FCIC/FBI and in-state FDLE/DOC  | <input type="checkbox"/> 119.071(4)(c) Undercover personnel   |
| <input type="checkbox"/> 119.07(4)(d) Extra fee if request is voluminous or requires extensive personnel, technology   | <input type="checkbox"/> 119.071(4)(d)(1) Home address, telephone, soc. security #, photos of active/former LE personnel, spouses and children                                |

Other:

Case No:12-121312	Tracking No.: n/a	Clerk Name/ID: Hall/9205	Date: 1/31/2013
-------------------	-------------------	--------------------------	-----------------

Revised 03/04/2011

01/31/2013 12:06:56:888163  
CENTRAL RECORDS  
#2517 P. 001/004

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU  
DIVISION: ROAD PATROL

POLICE SERVICE CALL \* \* \*  
SIGNAL CODE: 68 CRIME CODE: NON CRIME CODE: 99 CODE: 9568 09/13/12 THURSDAY  
ZONE: C21 GRID: DEPUTY I.D.: 8826 NAME: HANCOX VINCENT ASSIST: TIME D 1155 A 1211 C 1522  
OCCURRED BETWEEN DATE: 09/12/12 , 0830 HOURS AND DATE: 09/13/12 , 0100 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 7020 LIONS HEAD LA APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 00 NO. OFFENDERS: 0K NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: RESIDENCE - SINGLE FAMILY  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..  
NAME LIST:  
ROLE:  
OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 505 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 12344 MELROSE WY BOCA RATON FL 33426 HOME PHONE: 561 213-2322  
BUSINESS PHONE: 561 000-0000  
OTHER ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 886-7627  
BUSINESS PHONE: 561 000-0000  
OTHER RACHEL WALKER DOB: 03/05/1984  
SEX: F RACE: W HT: 508 WT: 130 HR: BLOND EYE: BLUE  
RESIDENTIAL ADDRESS: 99 SE MIKNER BD BOCA RATON FL 33434 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER MARITZ UCCIO DOB: 04/23/1966  
SEX: F RACE: W HT: 502 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LYONS HEAD LA BOCA RATON FL 33496 HOME PHONE: 561 305-2999  
BUSINESS PHONE: 561 000-0000  
OTHER LISA FRIEDSTEIN DOB: 03/15/1967  
SEX: F RACE: W HT: 501 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 2142 CHURCHHILL LA HIGHLAND IL 60035 HOME PHONE: 847 877-4633  
BUSINESS PHONE: 561 000-0000  
..

.....  
printed by Employee Id #: 9205 on January 31, 2013 12:03:55PM  
.....

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOPSY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOPSY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE. AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ONTO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF PILLS. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF . THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

BOTTLE SHOWING THAT SIMON DID NOT TAKE MORE THAN PRESCRIBED.  
IT SHOULD ALSO BE NOTED THAT I SPOKE WITH ELLIOT, WHO SAID  
HE WAS AT DINNER WITH SIMON AND MARITZA ON 9/8/12 AND OBSERVED  
HIS FATHER TELL MARITZA THAT HE WANTED ONE OF HER ~~XXXXXXXXXX~~ SLEEPING  
PILLS BECAUSE HE COULD NOT SLEEP. ELLIOT SAID THEY HAD A BRIEF  
ARGUMENT OVER THIS AS MARITZA REFUSED TO ALLOW SIMON TO TAKE ONE OF  
HER PILLS INITIALLY. AT THIS TIME SGT. CASTELLI ARRIVED ON SCENE  
AND WAS ADVISED OF THE CASE.

HE MADE CONTACT WITH VCD AND THE MEDICAL EXAMINER'S OFFICE.  
HE WAS ADVISED TO HAVE ME CONTACT DELRAY COMMUNITY HOSPITAL TO PUT  
A HOLD ON SIMON'S BODY FOR ~~XXXXXXXXXX~~ FROM THE MEDICAL EXAMINER'S OFFICE  
WHO WOULD CHECK ON THE SITUATION THE NEXT DAY. I WAS ALSO ADVISED  
TO EMAIL A COPY OF THE REPORT TO ~~XXXXXXXXXX~~ WITH THE MEDICAL EXAMINER'S  
OFFICE. DELRAY COMMUNITY HOSPITAL WAS CONTACTED AND A HOLD WAS PLACED  
ON SIMON'S BODY AND ~~XXXXXXXXXX~~ WAS EMAILED.

THIS REPORT IS FOR INFORMATION PURPOSES.  
D/S HAUGE #8826  
TRANS: 9/14/12 DG#4495  
DICT: 9/13/12 @ 1700 HRS.

---

printed by Employee Id #: 8205 on January 31, 2013 12:03:53PM

---

**EXHIBIT 4 - TRIPP SCOTT CONFLICT LETTER**



CHRISTINE P. YATES  
Direct Dial: 954 760 4816  
Email: [cty@trippscott.com](mailto:cty@trippscott.com)

February 13, 2013

**VIA EMAIL**

Mr. and Mrs. Eliot Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434

***Re: Revised Representation and Conflict Waiver***

Dear Eliot and Candice:

This letter shall confirm that Tripp Scott, P.A. (hereinafter the "Firm") represents your three children, Joshua Ennio Zander Bernstein, Jacob Noah Archie Bernstein and Daniel Elijsha Abe Ottomo Bernstein (hereinafter collectively referred to as the "Children") as beneficiaries of the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of any irrevocable trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsha Abe Ottomo Bernstein created by Simon Bernstein in 2006. Enclosed is a revised Retainer Agreement clarifying the scope of this Firm's representation of your children.

**The Firm *no longer represents you in any individual capacity and we have advised you to seek other counsel immediately so your legal rights and interests may be preserved.***

In addition, we wish to advise you of this Firm's potential conflict of interest in its prior representation of you and your children. Accordingly, we must obtain your acknowledgement and waiver of this conflict due to the Firm's prior representation of you and consent to our continued representation of your children.

In light of the fact that loyalty is an essential element in a lawyer's relation to a client, Florida's Rules of Professional Conduct (the "Rules") prohibit a lawyer from representing a client if such representation will be "directly adverse" to the interests of another client unless (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

The Firm does not believe that the representation of the both of you and your children in connection with your interests as beneficiaries under the Estate of Shirley Bernstein and the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein adversely affected the Firm's responsibilities to and relationship with you or your children. However, we have mutually agreed that we will discontinue representation of the two of you, and will limit our Firm's representation solely to that of the Children. We have advised you to obtain independent legal counsel, other than the Firm, regarding the representation of your interests, including but not limited to, any claims in connection with Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of the irrevocable trusts created by Simon Bernstein.

110 Southeast Sixth Street, Fifteenth Floor • Fort Lauderdale, Florida 33301  
668859v5 995508.0001 Post Office Box 14245 • Fort Lauderdale, Florida 33302  
Tel 954.525.7500 • Fax 954.761.8475 • [www.trippscott.com](http://www.trippscott.com)

Fort Lauderdale • Tallahassee

Engagement Letter

February 13, 2013

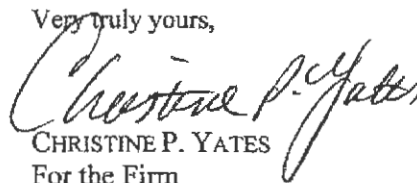
Page 2 of 3

To document your acknowledgement to our discontinued representation of you and the revised scope of our representation of the Children in connection with their interests as beneficiaries under the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsha Abe Ottomo Bernstein created by Simon Bernstein in 2006, subject to the conditions set forth herein, please execute this letter on the space provided below.

**We have not been authorized by you to perform any substantive factual or legal research as to any of your individual claims and we strongly encourage you to retain counsel to do such research and protect your interests.**

We agree that this letter may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument, and a legible facsimile copy of this letter and any signatures hereon shall be considered for all purposes as originals.

Very truly yours,



CHRISTINE P. YATES  
For the Firm

CPY/jcj

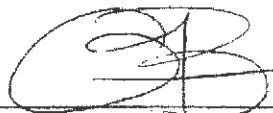
Engagement Letter  
February 13, 2013  
Page 3 of 3

**ACKNOWLEDGEMENT AND WAIVER OF CONFLICT**

The undersigned acknowledge that Christine P. Yates and Tripp Scott, P.A. represent Joshua Bernstein, Jacob Bernstein and Daniel Bernstein with respect to the matters described above and have discontinued their representation of Eliot Bernstein and Candice Bernstien. We hereby (1) waive any conflict of interest that may have existed due to the Attorneys' representation of us and our children as beneficiaries of the Estate of Shirley Bernstein and the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein; (2) agree to seek independent legal counsel to represent our interests in the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of the trusts created by Shirley and/or Simon Bernstein; and (3) acknowledge and consent to the continued representation by Tripp Scott, P.A. of Joshua Ennio Zander Bernstein, Jacob Noah Archie Bernstein and Daniel Elijsa Abe Ottomo Bernstein as beneficiaries of the Estate of Shirley Bernstein, the Estate of Simon Bernstein, as beneficiaries of any trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsa Abe Ottomo Bernstein created by Simon Bernstein in 2006.



Eliot Bernstein, individually and as  
as natural guardian of Joshua Bernstein,  
Jacob Bernstein and Daniel Bernstein



Candice Bernstein, individually and as  
as natural guardian of Joshua Bernstein,  
Jacob Bernstein and Daniel Bernstein



**TRIPP SCOTT, P.A.**  
110 S.E. 6<sup>TH</sup> STREET, 15<sup>TH</sup> FLOOR  
FORT LAUDERDALE, FL 33301  
(954) 525-7500

**RETAINER AGREEMENT**

**Representation of the minor Children of Elliot Bernstein as Beneficiaries of the Estates of Shirley and Simon Bernstein; as Beneficiaries of any Trusts created under the Will or Revocable Trust of Shirley or Simon Bernstein; and as Beneficiaries of the 2006 Irrevocable Trusts created by Simon Bernstein**

We are pleased that you have asked Tripp Scott, P.A. to provide legal services in connection with the above listed matter. The purpose of this agreement is to set forth our mutual understanding regarding the basis upon which we have agreed to undertake such representation.

**FEES**

We will provide our legal services on the basis of hourly rates in effect at the time the legal services are rendered. Those rates currently range up to \$425.00 per hour for attorneys, with paralegals billing at a rate of up to \$160.00 per hour. Law clerks are billed at the rate of \$110.00 per hour. My time is currently billed at \$350.00 per hour. If other attorneys or professionals in the firm work on this matter, their time will be billed on the basis of their hourly rate as well. All of the above rates are for the current calendar year and are subject to change thereafter. Unless otherwise specified, any additional services requested to be provided by our firm beyond the scope of the above matter will be billed to you in accordance with our hourly rates in effect at the time those services are rendered, and subject to the terms set forth in this agreement. Please note that telephone calls are billed at a minimum of two-tenths (0.20) of an hour no matter how short its duration. Additionally, client understands that our representation may involve the discussion of tax and property issues of the client and certain options may be discussed, or a plan entertained, that is not implemented. This time is considered billable and payment is expected upon service.

In connection with your estate planning, you agree to pay us a retainer in the amount of **\$0.00**. You will receive monthly statements and said fees will be credited from your retainer balance. You understand that the retainer amount stated in this agreement is in no way a guarantee or cap on the amount of legal fees that could be expended and will not be refunded to you in the event our representation is terminated by either you, the client, or the attorney.

**COSTS**

Costs and expenses that are incurred by Tripp Scott, P.A. on your behalf, including, but not limited to, mailing and postage, telecopy charges, long distance telephone costs, photocopying charges, etc., will be billed to you with our statement for fees on a monthly basis.

In addition to the fee retainer, you agree to deposit with us the sum of \$ **N/A**; to be applied towards costs. The cost deposit is also due upon execution of this agreement. Whenever the costs deposit falls below \$0.00, you may be asked to replenish said deposit so that at all times there is a credit balance to apply towards costs expended on your behalf. No other professional will be engaged without your pre-approval.

At the conclusion of our legal services, the balance of the cost retainer, if any, will be refunded to you provided all fees have been paid. You agree that the remaining cost deposit, if any, may be applied to the final fee balance.

#### **BILLING**

We ask that you stay current with our office on a monthly basis. However, if a balance remains outstanding with our office for over thirty (30) days, Tripp Scott, P.A., shall have the right to cease work on your file until such time that the balance is paid in full. Additionally, if said fees are not kept current within the thirty (30) day period, we reserve the right to request an additional non-refundable retainer. Tripp Scott, P.A., shall, at its own discretion, have the right to withdraw from representing you in this matter at any time if:

- (A) You do not make payments required within thirty (30) days after billing;
- (B) You have misrepresented or failed to disclose material facts;
- (C) You fail to follow our advice;
- (D) A dispute between client and attorney arise which cannot be worked out with a good faith effort and in an amicable way; and
- (E) Any other reason as deemed appropriate by the attorney.

To protect our fees and costs until they are paid, it is specifically agreed by you, the client, that the undersigned attorney shall have and is hereby granted all general, possessory and retaining liens and all equitable special and attorney's charging liens upon the client's documents, property (both real and personal, regardless of homestead), or money in the client's possession or money or property in another's possession for the client's benefit for the payment of all sums due under this agreement, and upon property or funds received by you, the client, by settlement, judgment, or otherwise. Any such liens shall also include liens upon the client's interest in any estate, trust, guardianship or other asset held in fiduciary capacity or trust, constructive or otherwise, within the jurisdiction of the court for any balance due, owing and unpaid. Any such liens shall relate back to the date of this agreement and shall be superior in dignity to any other liens subsequent to the date thereof. It is agreed by the client that the attorney will file a lien and a Notice of Lis Pendens with regard to the client's interest in any real property (regardless of homestead as you, the client, expressly have waived your homestead exemption under this agreement) upon which a lien may be claimed.

You agree to pay interest at the rate of 1% per month or 12% per annum on any bill, or portion thereof, which remains unpaid for more than thirty (30) days after billing. Also, client agrees that their file will only be released by the attorney upon payment of all fees and costs due and owing Tripp Scott, P.A.

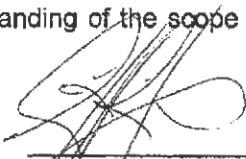
#### **SPECIAL CONSIDERATIONS FOR BENEFICIARIES**

Please be advised, the trustee is generally entitled to pay attorney's fees and costs from the trust assets, but in the event that a claim or defense based upon a breach of trust is made against the trustee, we have the right to seek a pre-hearing order prohibiting the payments. If the order is granted, the trustee must cease using the trust assets to pay attorney's fees and costs and must make those payments personally. Following this pre-evidentiary hearing, the court will determine the merit of the underlying claim or defense of breach of trust at which point the trustee will either be required to refund any payments of costs or fees to the trust, or will be entitled to seek an order permitting a refund of payments made personally by them.

ACCEPTANCE

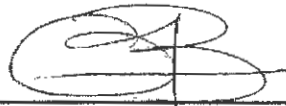
This agreement is consistent with our understanding of the scope and terms of representation and fees.

Dated: 2/13/13



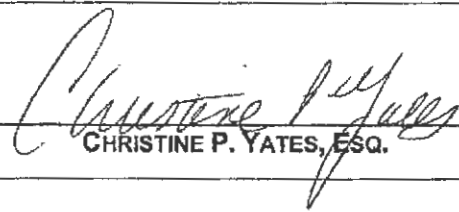
ELLIOT BERNSTEIN, as Natural  
Guardian of Joshua Ennio Zander Bernstein,  
Jacob Noah Archie Bernstein and Daniel  
Elijsha Abe Ottomo Bernstein

Dated: 2/13/13



CANDICE MICHELLE BERNSTEIN, as Natural  
Guardian of Joshua Ennio Zander Bernstein,  
Jacob Noah Archie Bernstein and Daniel  
Elijsha Abe Ottomo Bernstein

TRIPP SCOTT, P.A.  
110 S.E. 6<sup>TH</sup> STREET, 15<sup>TH</sup> FLOOR  
FORT LAUDERDALE, FL 33301  
(954) 525-7500

By:   
CHRISTINE P. YATES, ESQ.

668885v3 995508.0001

**Eliot Ivan Bernstein**

---

**From:** hotmail\_c29fa7bfa63d83c9@live.com on behalf of Marc R. Garber  
<marcgarber@gmail.com>  
**Sent:** Thursday, June 13, 2013 11:51 AM  
**To:** Eliot Bernstein  
**Subject:** FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Regards,

**MARC R. GARBER**

---

From: marcgarber@gmail.com  
To: cty@trippscott.com  
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
Date: Thu, 13 Jun 2013 11:02:40 -0400

Christine:

I had difficulty sleeping, as I was sorting through our conversation. What troubles me has troubled me in prior situations. Spallina is not the first "bully lawyering" situation I have seen or heard about. "If you scream loud enough and pound the table hard and often, the other side will cave". It troubles me that many times this approach works. Sometimes it becomes a fee and time matter, other situations result in the good lawyer becoming tired of dealing with "hard headed" uncompromising opponent. I have heard some people actually seek out a bully lawyer for these reasons. The reasons include the fact that they win using this approach. Further, and as you implied, with all the time you expended, Spallina gave us very little, in terms of everything; from documents to involvement in the administration.

It truly troubles me that Spallina continues to spin his web of deceit, and I believe this conduct is further circumstantial evidence that "something is very wrong". I am very glad Eliot filed whatever he filed and I do hope he prevails. I also hope Spallina is removed and perhaps punished for all he is doing. It also troubles me that once he learns of your withdrawal, Spallina will celebrate his victory. If I was licensed in Florida, I would take this on pro bono. Simply out of principal, and I would make certain a probate judge learns of Spallina's behavior. Unfortunately, I am not a Florida lawyer. If Eliot is able to get his motions before a probate judge, I hope he asks and you agree to testify as to how Spallina treated you. A judge may take real notice of that testimony.

Thanks,

Marc

Regards,

**MARC R. GARBER**

---

Date: Thu, 13 Jun 2013 13:05:50 +0000  
From: cty@TrippScott.com  
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
To: marcrgarber@gmail.com; iviewit@iviewit.tv; iviewit@gmail.com

Marc, it was nice to speak with you yesterday. As we discussed, the reasons for the the termination of my representation were due to the insufficiency of funds in the trust accounts and the the corresponding increase in litigation that would need to be filed in order to move this case forward. It is always a difficult decision as an attorney to proceed with litigation, using all funds in a trust to do so without a guarantee of results. This leaves the attorney in a difficult position with the trust beneficiary, their client. Also, I was concerned that attorney/client communications via email were being filed in court proceedings by Eliot in his case. I want to be able to be assured that information on behalf of my client's remains confidential.

Thank you again for you time in speaking with me yesterday.



110 SE Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
954-525-7500

**Christine T. Yates**

*Director*

Direct: (954) 760-4916

Fax: (954) 761-8475

[cty@trippscott.com](mailto:cty@trippscott.com)

---

**From:** Marc Garber [mailto:marcrgarber@gmail.com]  
**Sent:** Saturday, June 08, 2013 11:15 AM  
**To:** Christine Yates  
**Subject:** Fwd: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Christine please call me about this. Marc Garber. 856 236 6567

----- Forwarded message -----

From: "Eliot Ivan Bernstein" <[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)>  
Date: Jun 8, 2013 10:12 AM  
Subject: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
To: "Marc R. Garber, Esquire @ Flaster Greenberg P.C." <[marc.garber@flastergreenberg.com](mailto:marc.garber@flastergreenberg.com)>, "Marc R. Garber Esq. @ Flaster Greenberg P.C." <[marcrgarber@verizon.net](mailto:marcrgarber@verizon.net)>, "Marc R. Garber Esq." <[marcrgarber@gmail.com](mailto:marcrgarber@gmail.com)>  
Cc:

What is going on here? Give me a call when you get a sec.

**From:** Christine Yates [mailto:[cty@TrippScott.com](mailto:cty@TrippScott.com)]  
**Sent:** Friday, June 7, 2013 11:57 AM  
**To:** 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'  
**Cc:** Ibis A. Hernandez  
**Subject:** Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Eliot and Candace, first I am glad that you are feeling better Eliot.

I have made no progress with Spallina in regards to obtaining documents and in my last call with him and Mark Manceri, Mr. Spallina reiterated his position that the mortgage on the property you are currently residing in was what your father wanted, and that any information regarding the trust of your father would have to be addressed to your brother as trustee.

At this time, in order to receive the information you want, I believe you will need to institute legal proceedings against the estate and trust. Since a new course of action will need to be undertaken, at this time, I will be withdrawing as counsel for your children, and believe that you should now hire separate litigation counsel for them. I will be happy to assist your new counsel in providing them with any information and thank you for the opportunity you gave me to assist you.

110 SE Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
954-525-7500

Christine T. Yates

*Director*

Direct: (954) 760-4916

Fax: (954) 761-8475

[cty@trippscott.com](mailto:cty@trippscott.com)

---

CONFIDENTIALITY NOTE: The information contained in this transmission is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, do not read it. Please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments to this e-mail, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.

**SEE EXHIBIT 5 – ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE  
FRAUD SCHEMES**



## Eliot Bernstein

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Thursday, December 6, 2012 9:59 AM  
**To:** Lisa Friedstein (lisa.friedstein@gmail.com); 'Jill Iantoni'; Eliot Bernstein (iviewit@gmail.com); Eliot Bernstein (iviewit@iviewit.tv); Pamela Simon  
**Cc:** Ted Bernstein  
**Subject:** Life Insurance - agreement  
**Attachments:** Simon Bernstein Irv Trust-set ag1.pdf

Hello,

Good news; the Heritage Union Life Insurance company is ready to make payment on the policy that insured Dad. There was an exhaustive search for the original trust document from 1995, which is the beneficiary of the policy owned by Dad. Since we have not been able to locate it, the attached agreement will permit the insurance company to make payment to a Trust account that will then distribute the proceeds in equal parts to the 5 of us. Robert Spallina recommended that I distribute this document so it can be reviewed by each of you, signed and then it can be submitted to the carrier. Please sign the document where applicable. Then email to me the signature page and FedEx the original to Robert Spallina's office. Once we have all signatures, the carrier should release proceeds quickly.

### TESCHER & SPALLINA, P.A.

Boca Village  
Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, Florida 33431

Call me with any questions.

Ted



### Life Insurance Concepts

950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833

Email: [tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

[www.lifeinsuranceconcepts.com](http://www.lifeinsuranceconcepts.com)

This communication (including attachments) may contain privileged and confidential information intended only for the recipient(s) named above. If you are not the intended recipient(s), you are hereby notified that any viewing, copying, dissemination or distribution of this communication is prohibited and may be subject to legal action. Please contact the sender immediately by reply e-mail and delete all copies of the original message.



**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, at Chicago, Illinois by and between each of the following defined entities and individuals.

**PARTIES DEFINED**

"TED", as defined herein, refers to and means Ted S. Bernstein an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"PAM", as defined herein, refers to and means Pamela B. Simon an individual residing in Chicago, Illinois, her heirs, successors and/or assigns.

"ELIOT" as defined herein, refers to and means Eliot I. Bernstein, an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"JILL" as defined herein, refers to and means Jill M. Iantoni, an individual residing in Highland Park, Illinois, her heirs, successors and/or assigns.

"LISA" as defined herein, refers to and means Lisa S. Friedstein residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"ALLY" as defined herein, refers to and means Alexandra L. Bernstein residing in White Plains, New York, an individual, her heirs, successors and/or assigns.

"ERIC" as defined herein, refers to and means Eric D. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MICHAEL" as defined herein, refers to and means Michael A. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

“MOLLY” as defined herein, refers to and means Molly N. Simon residing in Chicago Illinois, an individual, her heirs, successors and/or assigns.

“THE ELIOT CHILDREN” as defined herein, refers to and means Joshua, Jacob and Daniel Bernstein residing in Boca Raton, Florida, all individual(s), their heirs, successors and/or assigns.

“THE JILL CHILD” as defined herein, refers to and means Julia Iantoni residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

“THE LISA CHILDREN” as defined herein, refers to and means Max and Carley Friedstein residing in Highland Park, Illinois, an individual(s), both heirs, successors and/or assigns.

#### **DEFINITIONS**

"Agreement", as defined herein, refers to and means, this Settlement Agreement and Mutual Release.

“Party” or “Parties”, shall refer to and mean an individual defined above whom shall sign on and be bound by this Settlement Agreement, and Parties shall refer to the individuals collectively.

“Trust”, as defined herein refers to and means the Simon L. Bernstein Irrevocable Insurance Trust dtd 6/21/95.

#### **RECITAL'S**

WHEREAS, the Parties are all of the children and grandchildren of the marriage of Simon L. Bernstein and Shirley Bernstein;

WHEREAS, Simon L. Bernstein established the Trust in 1995 for the benefit of his wife,

Shirley Bernstein, and their children, the Parties;

WHEREAS, Shirley Bernstein predeceased Simon L. Bernstein, and Simon L. Bernstein passed away on September 13, 2012;

WHEREAS, after a diligent search by the Parties, an executed copy of the Trust can not be found;

WHEREAS, the Trust is the beneficiary of life insurance policy number 1009208 issued by Heritage Union Life Insurance Company (the "Insurer") on the life of Simon L. Bernstein (the "Policy");

WHEREAS, the Parties desire to achieve the intent of Simon L. Bernstein on or about the date of the Trust and resolve any and all disputes and controversies that have arisen or may arise regarding the distribution of the death benefit proceeds of the Policy.

**WITNESSETH**

NOW THEREFORE, in consideration of the following covenants, promises and obligations, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged; it is agreed by and between the Parties as follows:

**COVENANTS**

1. TED is appointed and hereby accepts the appointment to act as Trustee of the Trust.
2. That TED, as Trustee, shall open a bank account in the name of the Trust (the "Trust Account").
3. That TED, as Trustee shall deposit or direct the Insurer to deposit the death benefit proceeds of the Policy into the Trust Account.
4. That TED, as Trustee, shall pay expenses of the Trust including the cost of filing a tax return from the proceeds in the Trust Account.
5. That TED, as Trustee, shall distribute all remaining proceeds in the Trust Account equally (in 20% shares) to each of TED, PAM, ELIOT, JILL and LISA.

6. That TED, as Trustee, upon completing the distribution in ¶5 above and the filing of the tax return contemplated in ¶4 above shall close the Trust Account.
7. Upon receipt of the Settlement Agreement executed by all Parties and upon fulfillment of all of the covenants and obligations contained in ¶1 through ¶6 above, TED, PAM, ELIOT, JILL, AND LISA, ALLY, ERIC, MICHAEL, MOLLY, THE ELIOT CHILDREN, THE JILL CHILD AND THE LISA CHILDREN and each of them in their own individual capacity, shall respectively acquit, release, and forever discharge TED, both individually and as Trustee, and each and every other Party from any and all claims, demands, liabilities, obligations, causes and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected by each of them, which each of them now owns or holds or at any time heretofore owned or held as against each other arising out of any matter related to or associated with the Policy and/or the Trust, and without limiting the generality of the foregoing, all claims, demands, liabilities, obligations, causes and causes of action arising out of or in any way connected with: a) the receipt of the death benefit proceeds of the Policy by the Trust; b) arising out of or in any way connected to the operation and management of the Trust, or the actual terms of the Trust in the event it should be located subsequent to the date of this Agreement regardless as to whether all of the covenants and obligations of this Agreement have been executed to completion.
8. All demands and notices given hereunder shall be sent by mail addressed to the respective Parties with a copy to David B. Simon, The Simon Law Firm, 303 E. Wacker Dr., Suite 210, Chicago, IL 60601-5210.
9. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder. All Parties further represent that this Settlement Agreement has been duly executed and delivered.
10. This Settlement Agreement embodies the entire understanding of the Parties. All prior correspondence, conversations, memoranda and agreements have been merged into and replaced by this Settlement Agreement.
11. If a Party breaches this Settlement Agreement, the breaching Party shall reimburse the non-breaching Parties for all reasonable costs, attorney's fees, and expenses incurred by them in enforcing the terms and provisions of the Settlement Agreement.
12. This Settlement Agreement shall (i) be governed and construed in accordance with the laws of the State of Illinois and all claims or controversies arising out of this Settlement Agreement shall be brought within the exclusive jurisdiction of the State of Illinois; (ii) inure to the benefit of and be binding upon the Parties themselves, as well as their respective heirs, executors, predecessors, successors and assigns.
13. All Parties have been represented by counsel, or have had the opportunity to seek the advice of counsel, and if they have sought counsel then such counsel has reviewed this Settlement Agreement and recommended that their respective clients enter into it.
14. This Settlement Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute an original. Facsimile signatures of the Parties shall as valid and binding as original signatures.

15. Should any provision contained in this Agreement be deemed illegal or unenforceable as a matter of law, the remainder of this Agreement shall remain binding and continue in full force and effect.
16. The signatories state that they have read and understand this Settlement Agreement and that they intend to be legally bound by the same.

Agreed and accepted this date and year first written above.

**TED S. BERNSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**PAMELA B. SIMON**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**LISA S. FRIEDSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**ERIC BERNSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**MOLLY N. SIMON**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**THE JILL CHILD**

\_\_\_\_\_  
**Jill Iantoni, Parent**

\_\_\_\_\_  
**Guy Iantoni, Parent**

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**ELIOT I. BERNSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**JILL M. IANTONI**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**ALEXANDRA L. BERNSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**MICHAEL BERNSTEIN**

\_\_\_\_\_  
**Witness:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**THE ELIOT CHILDREN**

\_\_\_\_\_  
Eliot I. Bernstein, Parent

\_\_\_\_\_  
Candace Bernstein, Parent

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**THE LISA CHILDREN**

\_\_\_\_\_  
Lisa Frenstein, Parent

\_\_\_\_\_  
Jeffrey Friedstein, Parent

**Address:** \_\_\_\_\_  
\_\_\_\_\_

**Reassure America Life  
Insurance Company**

**J. L. McDonald, ALHC, LTCP  
Vice President**

12750 Merit Drive  
Suite 500  
Dallas, TX 75251

Telephone (972) 776-8535  
Fax (260) 435-8773

**January 8, 2013**

**Mr. Robert Spallina  
Attorney at Law  
Teschler & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431**

**Re: Simon Bernstein, Dec's  
Policy # 1009208**

**Dear Mr. Spallina:**

**This will acknowledge your letters the most recent of which is dated December 21, 2012.**

**In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process the claim.**

**Please let us know how we may assist you in this process.**

**Sincerely,**

**Jim McDonald, ALHC, LTCP  
Vice President  
Claims Oversight**

# FAX

To: Robert Spallina  
Company:  
Fax: 915619977308

From: Kellie Walker  
Phone:

---

## NOTES:

Insured Simon Bernstein #1009208

## CONFIDENTIALITY

This fax and any attachments are confidential and may also be privileged. If you are not the named recipient, or have otherwise received this communication in error, please notify the sender immediately, and do not disclose its contents to any other person, use them for any purpose, or store or copy them in any medium. Thank you for your cooperation.

---

Date and time of transmission: Tuesday, January 15, 2013 11:49:30 AM

Number of pages including this cover sheet: 02



## Eliot Bernstein

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Friday, January 18, 2013 6:04 PM  
**To:** 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (iviewit@gmail.com); 'Pam Simon'  
**Subject:** UPDATE > HERITAGE INSURANCE POLICY

Hello > I hope everyone is well.

Heritage Life Insurance company has made a decision concerning dad's life insurance policy. They will require a court order to pay the proceeds, based on the large face amount of the policy (\$1.7MM). They have sent a letter to Robert Spallina. The letter was sent by a senior attorney within the company. It is short and to the point.

From here, this should be simple and straightforward. Assuming that we (5 children) agree to create an agreement, we will need to hire a Palm Beach attorney to draft the agreement that will be submitted to the judge. It is my understanding that the agreement can be drafted to reflect our agreement to split the proceeds among the 5 of us or in such a way that would enable one or more of us to effectively refuse our individual share in favor of our children. I am not sure, but I believe that disclaiming our share in favor of our children will put that share at risk of creditors of dad's estate. Seems to me that we should do whatever we can to keep the proceeds out of the reach of potential creditors.

As the successor trustee of the trust that cannot be found, I will be happy to act as trustee of a trust that would receive the proceeds under the new agreement, created by us. Once the court order is issued, the insurance company should pay quickly and I will distribute the proceeds immediately.

Please let me know that you will agree to be a party to the agreement between us (and possibly the grandchildren who will need to acknowledge and agree to the language). If you could do that in the next day or so, we can then decide the most cost effective way to get the agreement created and submitted. It makes no sense at this point to leave the proceeds at the insurance company.

Call me with any questions or maybe we should establish a call between the 5 of us.

Take care...

Ted

**Eliot Ivan Bernstein**

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Tuesday, January 22, 2013 5:14 PM  
**To:** 'Pam Simon'  
**Cc:** Lisa Friedstein; Jill Iantoni; Christine Yates; Eliot Bernstein Ivan  
**Subject:** RE: Heritage Policy

I believe we do, just waiting on Eliot and Christine for the time.

---

**From:** Pam Simon [<mailto:pambsimon@icloud.com>]  
**Sent:** Tuesday, January 22, 2013 3:26 PM  
**To:** Ted Bernstein  
**Cc:** Lisa Friedstein; Jill Iantoni; Christine Yates; Eliot Bernstein Ivan  
**Subject:** Re: Heritage Policy

hi all - do we have a thursday time and call in number ? trying to maneuver my calendar? thanks pam

On Jan 22, 2013, at 12:33 PM, Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

**From:** Robert Spallina [<mailto:rspallina@tescherspallina.com>]  
**Sent:** Tuesday, January 22, 2013 12:16 PM  
**To:** Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Sunday, January 27, 2013 7:26 PM  
**To:** 'Pam Simon'  
**Cc:** Jill Iantoni; lisa friedstein; Eliot Ivan Bernstein  
**Subject:** RE: DO NOT FORWARD THIS > UPDATE > HERITAGE INSURANCE

Keep in mind that this is the policy that lapsed for more than 6 months and was miraculously re-instated a few months before Dad died. It is in our best interest to get this claim paid as soon as possible.

With that being said, I am going to suggest that we get the agreement we were going to use to the point where it is ready to present to the court. We already have an agreement in existence that simply needs to be tailored to our circumstances. Robert Spallina can clean it up to reflect what we said on Thursday and then it can be reviewed by each person and their legal counsel. The only way this does not make sense is if one or more of us are intending to not be part of an agreement stating that 5 children will be equal beneficiaries. Based on what I heard on Thursday, the only sensible option is to ensure these proceeds are not included in Dad's estate. With an agreement, each of us has the ability to do what is best for his or her family, without impacting anyone else.

This way, the work can begin that needs to be done while we are trying to schedule the call around the 6 of us.

Let me know if you see any reason to wait but tomorrow I will ask Robert Spallina to fit the agreement to our circumstances and begin to circulate it. If anyone is going to use a guardian for their minor child or children, it is probably a good idea to start that process too.

Ted

## Eliot Ivan Bernstein

---

**From:** Eliot Ivan Bernstein <iviewit@iviewit.tv>  
**Sent:** Tuesday, February 5, 2013 1:10 PM  
**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com); Ted Bernstein; Pamela Beth Simon (psimon@stpcorp.com); Lisa Friedstein; Jill M. lantoni (jilliantoni@gmail.com); Jill M. lantoni (lantoni\_jill@ne.bah.com); Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com)  
**Subject:** Eliot Heritage policy Analysis

**Tracking:**

Recipient	Read
Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com)	
Ted Bernstein	
Pamela Beth Simon (psimon@stpcorp.com)	Read: 2/5/2013 1:11 PM
Lisa Friedstein	
Jill M. lantoni (jilliantoni@gmail.com)	
Jill M. lantoni (lantoni_jill@ne.bah.com)	
Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com)	
Marc R. Garber Esq. (marcgarber@gmail.com)	
Marc R. Garber Esq. @ Flaster Greenberg P.C. (marcgarber@verizon.net)	
Marc R. Garber, Esquire @ Flaster Greenberg P.C.	

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim.

We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage.

Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the

grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both unknown and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Eliot I. Bernstein  
Inventor  
(561) 245.8588 (o)  
(561) 886.7628 (c)  
(561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
<http://www.iviewit.tv>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video courtesy of NY Senate, my fav part at end

[http://www.youtube.com/watch?v=7oHKs\\_crYIs](http://www.youtube.com/watch?v=7oHKs_crYIs)

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video Handheld Camera View, my favorite version at the very end

<http://youtu.be/3Q9MzqZv4lw>

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=6B1K73p4Ueo>

and finally latest blog

<http://iviewit.tv/wordpress/?p=594>

Eliot Part 1 - The Iviewit Inventions @

<http://www.youtube.com/watch?v=L0n4hwemqW0>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #1

<http://youtu.be/iIAoIBYvvoQ>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #2

<http://youtu.be/OaXys6bImFI>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #3

<http://youtu.be/9R1PNnJVVGU>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #4

<http://youtu.be/rUHCZFkro08>

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Wednesday, February 6, 2013 3:49 PM  
**To:** Eliot Bernstein (iviewit@gmail.com)  
**Cc:** 'Pam Simon'; Jill Iantoni; Lisa Friedstein (lisa.friedstein@gmail.com); ROBERT SPALLINA (rspallina@tescherspallina.com)  
**Subject:** Heritage policy

Eliot,

I have pasted your analysis re the Heritage policy below. The email did not get to me, not sure why.

The problem with your analysis is that it is not factually correct and therefore, you are drawing conclusions that are incorrect.

Dad's desires concerning the policy are crystal clear. There has never been a question concerning his desire. He named his irrevocable trust as beneficiary of the policy and he never changed that. He was the owner. He could have changed it as often as he wanted. He never did, not ever.

In 1995, Dad did not have 10 grandchildren. Therefore, it was never his intent, concerning this policy, to leave it to all of his grandchildren.

He chose Robert Spallina and Don Tescher to be his estate and tax attorneys as well as his personal representatives. Robert Spallina has told us on several occasions what Dad's wishes were for this policy. Dad was well aware of this policy. He was intimately aware of who owned it and who he named as beneficiary. When he was considering a life settlement, all of this information was part of those discussions.

As Robert has stated, Heritage's policy when it comes to a lost irrevocable trust, is to not pay the proceeds to the estate. What you are saying here is not correct: *"Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under [Article IV 2j] and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts"*

You are drawing conclusions for Heritage when you say, "nothing short of the actual 1995 trust document may be sufficient to Heritage." Why don't we let Heritage speak for Heritage, which I believe has already been done?

There is no fraudulent conveyance. These proceeds are not part of Dad's estate, they never were and Heritage has stated they do not intend to pay these proceeds to the estate of a person who clearly did not want them in his estate.

In late July of 2012, Dad executed his planning documents. He could have easily changed the beneficiary of the Heritage policy to be included in his estate. He was the owner, he could have done that with one change form. He did not. If he did not want to be bothered to do it himself, he could have asked Robert, his PR, to do it. People do this every day. Dad did not. Therefore, the proceeds remaining OUT of his estate, NOT payable to his grandchildren (who received everything else), is consistent with Dad's wishes. This policy is not in the domain of his will and trust agreement. To bring proceeds of a life insurance policy into the estate of a man who sold life insurance his entire career would go against everything Dad told every client he ever sold life insurance to during his career. It is unimaginable.

Therefore, the economic analysis is not correct. It simply is not necessary to address as it was never an option in this scenario.

This needs to be brought to resolution. Not only is it simple, it is black and white. Is your counsel involved in this matter for you? If so, has she spoken with Robert and communicated what you have said?

We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted



## Eliot Bernstein

---

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**Sent:** Friday, February 8, 2013 8:41 PM  
**To:** Pam Simon  
**Cc:** Eliot Bernstein; Ted Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** Re: Heritage Policy

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed.

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <[jviewit@gmail.com](mailto:jviewit@gmail.com)> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.

Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.

Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely

what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?-

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. - DL

Iviewit Holdings, Inc. - DL (yes, two identically named)

Iviewit Holdings, Inc. - FL

Iviewit Technologies, Inc. - DL

Uviewit Holdings, Inc. - DL

[Uview.com](#), Inc. - DL

[Iviewit.com](#), Inc. - FL

[Iviewit.com](#), Inc. - DL

I.C., Inc. - FL

[Iviewit.com](#) LLC - DL

Iviewit LLC - DL

Iviewit Corporation - FL

Iviewit, Inc. - FL

Iviewit, Inc. - DL

Iviewit Corporation

2753 N.W. 34th St.

Boca Raton, Florida 33434-3459

(561) 245.8588 (o)

(561) 886.7628 (c)

(561) 245-8644 (f)

[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

<http://www.iviewit.tv>

<http://iviewit.tv/inventor/index.htm>

<http://iviewit.tv/wordpress>

<http://www.facebook.com/#!/iviewit>

<http://www.myspace.com/iviewit>

<http://iviewit.tv/wordpresseliot>

<http://www.youtube.com/user/eliotbernstein?feature=mhum>

<http://www.TheDivineConstitution.com>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video

*courtesy of NY Senate, my fav part at end*

[http://www.youtube.com/watch?v=7oHKs\\_crYIs](http://www.youtube.com/watch?v=7oHKs_crYIs)

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video

*Handheld Camera View, my favorite version at the very end*

<http://youtu.be/3Q9MzqZv4lw>

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower  
Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN  
EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET  
MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN  
FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's,  
ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=6BlK73p4Ueo>

and finally latest blog

<http://iviewit.tv/wordpress/?p=594>

Eliot Part 1 - The Iviewit Inventions @

<http://www.youtube.com/watch?v=LOn4hwemqW0>

**Eliot Ivan Bernstein**

---

**From:** Eliot Ivan Bernstein <iviewit@iviewit.tv>  
**Sent:** Friday, February 8, 2013 6:47 PM  
**To:** Ted Bernstein; Theodore S. Bernstein (TBernstein@lifeinsuranceconcepts.com); Pamela Beth Simon (psimon@stpcorp.com); Lisa Sue Friedstein (lisa@friedsteins.com); Jill lantoni; Jill M. lantoni (lantoni\_jill@ne.bah.com); Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com); Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com); Irina Roach (idr@trippscott.com)  
**Subject:** Heritage Policy

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out. Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement. Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with

reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?-

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

Iviewit Holdings, Inc. – DL (yes, two identically named)

Iviewit Holdings, Inc. – FL

Iviewit Technologies, Inc. – DL

Uviewit Holdings, Inc. - DL

Uview.com, Inc. – DL

Iviewit.com, Inc. – FL

Iviewit.com, Inc. - DL

I.C., Inc. – FL

Iviewit.com LLC – DL

Iviewit LLC – DL

Iviewit Corporation – FL

Iviewit, Inc. – FL

Iviewit, Inc. – DL

Iviewit Corporation

2753 N.W. 34th St.

Boca Raton, Florida 33434-3459

(561) 245.8588 (o)

(561) 886.7628 (c)

(561) 245-8644 (f)

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]

**Sent:** Thursday, February 14, 2013 8:33 AM

**To:** 'Eliot Ivan Bernstein'; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott

**Subject:** RE: Eliot Representation

Robert,

Please move forward as we discussed in the last group phone call in which we decided to have Heritage pay your trust account or a trust that you would act as Trustee. Heritage has stated that they will pay based on a court order showing that there is consensus among the 1995 Trust beneficiaries. Let's get this done.

Ted

**From:** Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]

**Sent:** Wednesday, February 13, 2013 8:52 AM

**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Ted Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott

**Subject:** Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

**EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST**





S.B. Lexington, Inc.

(Employer)

EMPLOYEE DEATH BENEFIT PLAN AND TRUST

'PLAN AND TRUST'  
BENEFICIARY DESIGNATION

Simon L. Bernstein

(PLEASE PRINT OR TYPE NAME OF MEMBER OR AUXILIARY MEMBER)

I hereby designate, in accordance with the terms of said Plan and Trust as it is or may be amended:

NAME OF BENEFICIARY  
Simon Bernstein Irrevocable  
Insurance Trust

RELATIONSHIP

as Primary Beneficiary

as Contingent Beneficiary/ies

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 my Employer.

Signature: [Signature]

Date: 8-26-95

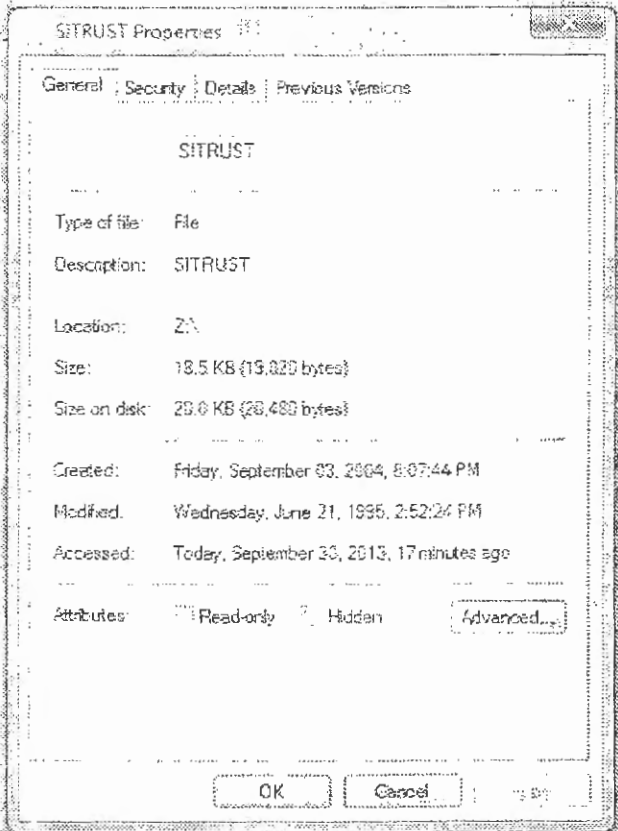
MEMBER OR AUXILIARY MEMBER

Instructions:

- (1) This form should be filed by the Trustee. A photo copy should be retained by the Member or Auxiliary Member.
- (2) This recommendation of beneficiary shall be effective upon receipt by the Trustee.
- (3) Where more than one beneficiary is designated, the proportion to be paid to each should be indicated, and if desired, provision for a contingent beneficiary if a first-named beneficiary predeceases the Member or Auxiliary Member can be included.
- (4) This designation of beneficiary may be changed or revoked at any time by written instruction to the Trustee or by filing a new designation with the Trustee.
- (5) This designation of beneficiary shall be disregarded if received by the Trustee after the death of the Member or Auxiliary Member.

BT000001

Vertical text on the left side of the page, possibly a page number or identifier.



SITRUST      6/21/1995 2:52 PM      File      18 KB

SITRUST    Date modified: 6/21/1995 2:52 PM      Date created: 9/3/2004 8:07 PM      Offline status: Online  
 File      Size: 18.5 KB      Offline availability: Not available



IRREVOCABLE TRUST AGREEMENT

I, Simon L. Bernstein, am entering into this Agreement at Boca Raton, Florida on June 1, 1995 with my wife, Shirley Bernstein, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

**BT000003**

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000004**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000005**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

**BT000006**

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have five children living, namely: Ted S. Bernstein, Pamela B. Simon, Jill Bernstein, Lisa Bernstein Friedstein, and Eliot Bernstein.

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, wherever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had

BT000007

collected after the termination of such interest. The Trustee may charge any such income with any accrued taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.



ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$10,000.00 in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign

the policies for such purposes;

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Bernstein does not continue to act as Trustee, David B. Simon is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital,

BT000010

surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Notary Public

**BT000012**

IRREVOCABLE TRUST AGREEMENT

I, S., am entering into this Agreement at \_\_\_\_\_ on \_\_\_\_\_, 199\_ with my wife, Shirley, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "S. Irrevocable Insurance Trust, dated \_\_\_\_\_, 199\_". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

BT000013

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000014**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.



B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have \_\_\_\_\_

children living, namely:

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had collected after the termination of such interest. The Trustee may charge any such income with any accrued

taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$\_\_\_\_\_ in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign the policies for such purposes;

**BT000019**

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley D. Davel, et al. does not continue to act as Trustee, Kim, Ted is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital, surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Notary Public

**BT000021**

**EXHIBIT 7 – PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM**



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF  
SHIRLEY BERNSTEIN,  
Deceased.

PROBATE DIVISION  
File No. 502011CP000653

2011 FEB 10 AM 9:14  
SHIRLEY BERNSTEIN  
PALM BEACH COUNTY  
SOUTH DCA

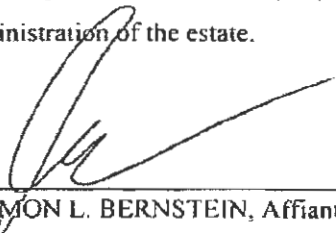
**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, SIMON L. BERNSTEIN (Affiant), state under oath that:

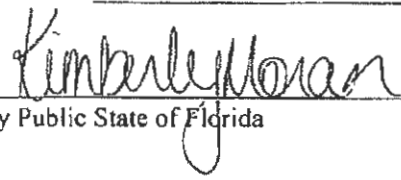
1. I have been appointed personal representative of the estate of SHIRLEY BERNSTEIN, deceased.
2. I will faithfully administer the estate of the decedent according to law.
3. My place of residence is 7020 Lions Head Lane, Boca Raton, FL 33496, and my post office address is the same.
4. I hereby designate Robert L. Spallina, Esquire, who is a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as my agent for the service of process or notice in any action against me, either in my representative capacity, or personally, if the personal action accrued in the administration of the estate.

Moran fails to identify that Simon appeared and either was know or produced identification

  
SIMON L. BERNSTEIN, Affiant

Sworn to and subscribed to before me on February 9, 2011, by Affiant, who is personally known to me \_\_\_\_\_ or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)  
NOTARY PUBLIC-STATE OF FLORIDA  
Kimberly Moran  
Commission # DD766470  
Expires: APR. 28, 2012  
BONDED THROUGH ATLANTIC BONDING CO., INC.

  
Notary Public State of Florida



Document alleged signed on 4/9/2012 not filed allegedly until 10/24/2012. Simon deceased on 9/13/2012.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011000653XXXX SB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased.

2012 OCT 24 PM 1:31  
SHARON H. BROWN, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY SQUARE, SOUTH-FILED

**PETITION FOR DISCHARGE  
(full waiver)**

Judge Colin court rules require that all Waivers need to be notarized and this is not, "all waivers, consents, renunciations and receipt of assets must be notarized."

Petitioner, SIMON BERNSTEIN, as personal representative of the above estate, alleges:

1. The decedent, Shirley Bernstein, a resident of Palm Beach County, died on December 8, 2010, and Letters of Administration were issued to petitioner on February 10, 2011.

2. Petitioner has fully administered this estate by making payment, settlement, or other disposition of all claims and debts that were presented, and by paying or making provision for the payment of all taxes and expenses of administration.

This is untrue on 4/9/12 as State of Florida tax forms were not submitted until October 2012

3. Petitioner has filed all required estate tax returns with the Internal Revenue Service and with the Department of Revenue of the State of Florida, and has obtained and filed, or file herewith, evidence of the satisfaction of this estate's obligations for both federal and Florida estate taxes, if any.

4. The only persons, other than petitioner, having an interest in this proceeding, and their respective addresses are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Simon L. Bernstein	7020 Lions Head Lane Boca Raton, FL 33496	spouse	adult
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult





Pamela B. Simon	950 North Michigan Avenue Suite 2603 Chicago, IL 60606	daughter	adult
-----------------	--	----------	-------

Eliot Bernstein	2753 NW 34 <sup>th</sup> Street Boca Raton, FL 33434	son	adult
-----------------	---	-----	-------

Jill Iantoni	2101 Magnolia Lane Highland Park, IL 60035	daughter	adult
--------------	---	----------	-------

Lisa S. Friedstein	2142 Churchill Lane Highland Park, IL 60035	daughter	adult
--------------------	--	----------	-------

Simon on 4/9/2012 cannot state the waivers and receipts were signed by all interested parties at that time, since Eliot was the first to sign a waiver and signed it on May 15, 2012. Jill Iantoni did not sign one until after Simon deceased in October 2012.

On 4/9/2012 Simon could not have acknowledged that all parties were aware of their rights under 5 a,b,c,d,e,f,g and h, as none of the interested parties had got waivers until 5/10/2012 or after and some interested parties did not submit a waiver until after Simon had passed.

5. Petitioner, pursuant to Section 731.302 of the Florida Probate Code, and as permitted by Fla. Prob. R. 5.400(f), files herewith waivers and receipts signed by all interested persons:

- (a) acknowledging that they are aware of the right to have a final accounting;
- (b) waiving the filing and service of a final accounting;
- (c) waiving the inclusion in this petition of the amount of compensation paid or to be paid to

the personal representative, attorneys, accountants, appraisers or other agents employed by the personal representative and the manner of determining that compensation;

(d) acknowledging that they have actual knowledge of the amount and manner of determining compensation of the personal representative, attorneys, accountants, appraisers, or other agents, and agreeing to the amount and manner of determining such compensation, and waiving any objections to the payment of such compensation;

- (e) waiving the inclusion in this petition of a plan of distribution;
- (f) waiving service of this petition and all notice thereof;

(g) acknowledging receipt of complete distribution of the share of the estate to which they are entitled; and

(h) consenting to the entry of an order discharging petitioner, as personal representative, without notice, hearing or waiting period and without further accounting.

Petitioner requests that an order be entered discharging petitioner as personal representative of this estate and releasing the surety on any bond which petitioner may have posted in this proceeding from any liability on it.



Simon never made a statement in his life, why would he start here?

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 April 9, 2012.

Personal Representative

*[Handwritten Signature]*  
SIMON L. BERNSTEIN

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.

*[Handwritten Signature]*

By: \_\_\_\_\_  
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
561-997-7008

NOTARY PUBLIC STATE OF FLORIDA

Note Law Firm  
Marking and File #

NO NOTARY AS  
REQUIRED BY JUDGE  
COLIN RULES.

Note Bar Form #

Note Bar Logo

Bar Form No. P-5.0550  
© Florida Lawyers Support Services, Inc.  
Reviewed October 1, 1998



**SIMON L. BERNSTEIN**

**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

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

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

That Spallina should not be Witnessing documents that he prepared and his direct interests in, as he becomes alleged Personal Representative.

SETTLOR and TRUSTEE:

*[Handwritten signature of Simon L. Bernstein]*

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

*[Handwritten signature of Robert L. Spallina]*  
Print Name: **ROBERT L. SPALLINA**  
Address: **7387 WISTERIA AVENUE  
PARKLAND, FL 33076**

*[Handwritten signature of Kimberly Moran]*  
Print Name: **Kimberly Moran**  
Address: **6362 Las Flores Drive  
Boca Raton, FL 33433**

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

*[Handwritten signature of Lindsay Baxley]*  
Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC - STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

Fails to state if Simon appeared before her and either was known to her or Produced ID.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

Simon does not initial this page of the alleged Amended Trust.

502012CP004391XXXXSB

J2

**WILL OF**

**SIMON L. BERNSTEIN**

2012 OCT -2 AM 9:32  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

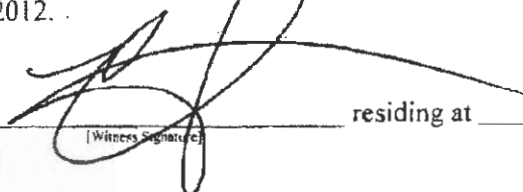
LAW OFFICES

TESCHER & SPALLINA, P.A.

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 24 day of July, 2012.

  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 27 day of July, 2012.

  
[Witness Signature]

residing at

**ROBERT L. SPALLINA**  
**7387 WISTERIA AVENUE**  
**PARKLAND, FL 33076**

[Witness Address]

  
[Witness Signature]

residing at

**Kimberly Moran**  
**6362 Las Flores Drive**  
**Boca Raton, FL 33433**

[Witness Address]

Spallina should not be Witnessing documents that he prepared and has interests in.

State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]  
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran,

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

[Signature]  
Witness

Kimberly Moran  
Witness

Robert Spallina should not be witnessing documents he has interests in that he drafted.

Simon, Spallina and Moran are not verified to have appeared on this day and produced identification or were known to Baxley

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

[Signature]  
Signature - Notary Public-State of Florida

Lindsay Baxley  
Print, type or stamp name of Notary Public

LAST WILL  
OF SIMON L. BERNSTEIN

-8-

LAW OFFICES  
TESCHER & SPALLINA, P.A.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF PROBATE DIVISION  
SIMON L. BERNSTEIN, File No. 502012CP004391  
Deceased. *XXXXSB*  
*JZ*

2012 OCT -2 AM 9:32  
SHARON R. BUCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**NOTICE OF TRUST**


SIMON L. BERNSTEIN, a resident of Palm Beach County, Florida, who died on September 13, 2012, was the settlor of a trust entitled: SIMON L. BERNSTEIN TRUST AGREEMENT dated July 25, 2012, which is a trust described in Section 733.707(3) of the Florida Statutes, and is liable for the expenses of the administration of the decedent's estate and enforceable claims of the decedent's creditors to the extent the decedent's estate is insufficient to pay them, as provided in Section 733.607(2) of the Florida Statutes.

The name and address of the Trustees are set forth below.

The clerk shall file and index this Notice of Trust in the same manner as a caveat, unless there exists a probate proceeding for the settlor's estate in which case this Notice of Trust must be filed in the probate proceeding and the clerk shall send a copy to the personal representative.

Signed on 9/27/12, 2012.

  
ROBERT L. SPALLINA, Co-Trustee  
7387 Wisteria Avenue  
Parkland, FL 33076

  
DONALD R. TESCHER, Co-Trustee  
2600 Whispering Oaks Lane  
Delray Beach, FL 33445

Copy mailed to attorney for the Personal Representative on

CLERK OF THE CIRCUIT COURT

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

**MUST BE FILED IN DUPLICATE**





IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF PROBATE DIVISION  
SIMON L. BERNSTEIN, File No. 5020120004391  
Deceased. IZ KKXSB

2012 OCT - 2 AM 9:32  
SHARON R. BOON, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, ROBERT L. SPALLINA (Affiant), state under oath that:

1. I have been appointed co-personal representative of the estate of SIMON L. BERNSTEIN, deceased.
2. I will faithfully administer the estate of the decedent according to law.
3. My place of residence is 7387 Wisteria Avenue, Parkland, FL 33076, and my post office address is 4855 Technology Way, Suite 720, Boca Raton, FL 33431.
4. I designate myself, a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, together with my partner, DONALD R. TESCHER, ESQ., a member of The Florida Bar, a resident of Palm Beach County, Florida, whose place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445 and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as agents for the service of process or notice in any action against us, either in our representative capacity, or personally, if the personal action accrued in the administration of the estate.

Date is changed and not initialized or properly marked as to who changed it and what year was changed

[Signature]  
ROBERT L. SPALLINA, Affiant

Sworn to and subscribed to before me on September 28, 2012, by Affiant, who is personally known to me \_\_\_\_\_ or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF  
SIMON L. BERNSTEIN,  
Deceased.

PROBATE DIVISION

File No. 502012CP004391  
XXXXSB  
12

2012 OCT - 2 AM 9:32  
SHARON R. BOGGS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, DONALD R. TESCHER (Affiant), state under oath that:

- I have been appointed co-personal representative of the estate of SIMON L. BERNSTEIN, deceased.
- I will faithfully administer the estate of the decedent according to law.
- My place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445, and my post office address is 4855 Technology Way, Suite 720, Boca Raton, FL 33431.
- I designate myself, a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, together with my partner, ROBERT L. SPALLINA, ESQ., a member of The Florida Bar, a resident of Palm Beach County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as agents for the service of process or notice in any action against us, either in our representative capacity, or personally, if the personal action accrued in the administration of the estate.

[Signature]  
DONALD R. TESCHER, Affiant

Change to date not initialized and unclear what year is cut out.

Sworn to and subscribed to before me on October 1, 2012, by Affiant, who is personally known [initials] or who produced [initials] as identification.

(Affix Notarial Seal)



[Signature]  
Notary Public State of Florida

Appears that neither verification was checked.

**PRIMA FACIE EVIDENCE OF FORGERY AND FRAUD AND MORE IN SIGNATURES AND DATES FOR SIMON AND ELIOT**

**WAIVERS**

May 15, 2012 Alleged Signature of Eliot Bernstein. In the un-notarized Waiver the date is in cursive and on the notarized Waiver the signature is in Print making the two Waivers wholly dissimilar. The E in the signature for Eliot in the un-notarized Waiver crosses through the word "By:" and in the notarized document it does not strike through the word "By:" making these wholly dissimilar signatures. Note, Eliot never met Kimberly Moran nor notarized any documents with her. Therefore, Moran did not just affix a stamp to the alleged original Waiver, Moran instead recreated the Waiver and added the date, forged the signature and therefore these are dissimilar Waivers and Prima Facie evidence of Forgery and Fraud. As these Waivers were submitted to the Probate court constitutes alleged Fraud on the Court and more.

**UN-NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Note date in Cursive and "y" in May is looped. "5" is open at top and has comma after

Note E in Eliot loops through the "ary" in "Beneficiary"

Beneficiary  
By: [Signature]  
ELIOT BERNSTEIN

Note the document has no law firm markings or legal form markings

Note E in Eliot crosses through "By:"

Note no notary markings

**NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15 2012.

Note now date in Print not cursive and "y" in May is NOT looped. "5" is closed at top and bottom. No comma after "5"

Note E in Eliot does NOT loop through the "ary" in "Beneficiary"

Beneficiary  
By: [Signature]  
ELIOT BERNSTEIN

Sworn to and signed before me on May 15, 2012, by ELLIOT BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.



Kimberly Moran  
Notary Public State of Florida

Note E in Eliot does NOT cross through "By:"

Note document has no legal form markings or law firm markings.

Note NEW AFFIXED notary markings

April 09, 2012 Alleged Signature of Simon Bernstein. Note, in the un-notarized document the date number 9 crosses the date line and the two separators // for day/year cross the date line, in the notarized document the entire date and separators never cross the date line, indicating these are wholly dissimilar documents regarding the date. That in the un-notarized document date, the 2 in the year 12 is closed at the bottom and in the notarized document the 2 is open at the bottom, making them appear dissimilar documents. That the Signature of Simon appears wholly dissimilar as the S in Simon in the un-notarized waiver crosses through the word "Beneficiary" and in the notarized Waiver it never touches the word "beneficiary." The S in Simon in the un-notarized Waiver never touches the signature line and in the notarized Waiver the S rests on the signature line. That Simon was deceased in November 2012 when Moran notarized the Waiver at the Court's request and therefore this cannot be Simon's signature, especially if it is dissimilar to the alleged April 09, 2012 Waiver and the notarization took place in November 2012.

Therefore, Moran did not just affix a stamp to the alleged original document. Moran recreated the document and added the date and the signature and forged the signatures as that cannot be Simon's signature on the Notarized Document after he was deceased. Therefore, Moran did not just affix a stamp to the alleged original Waiver allegedly signed in April. Moran instead recreated the Waiver and added the date, forged the signature and therefore these are dissimilar Waivers and Prima Facie evidence of Forgery and Fraud. As the Waiver was submitted to the Probate court constitutes alleged Fraud on the Court and more. The Notary is also fraudulent as Simon could not have appeared on April 09, 2012.

**UN-NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Note that the "9" and the separators "/" for date/year touch the date line. Note the bottom of the 2 is closed.

Beneficiary

By: SIMON L. BERNSTEIN

Note that "S" in Simon crosses through the "ici" in "Beneficiary and circles "iciary" in beneficiary

Note remainder of signature above signature line

Note the "S" in Simon crosses through the "MO" in the Print Name

**NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Note that the "9" and the separators "/" for date/year DO NOT touch the date line. Note the bottom of the 2 is NOT closed.

Beneficiary

By: SIMON L. BERNSTEIN

Note the "S" in Simon crosses through the "N" and "L" NOT the "MO" in the Print Name.

Note remainder of signature BELOW signature line

Sworn to and subscribed to before me on April 9, 2012 by SIMON BERNSTEIN, who is personally known to me as identification or who produced \_\_\_\_\_

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida

Note that "S" in Simon DOES NOT cross through the word "Beneficiary" at all and DOES NOT circle "iciary" in beneficiary

Note the date change is not initialed that it was changed and by whom/

**Additional Notes**

1. The date inside the notarization of Simon and Eliot's Waivers are wholly forged as there was no notary stamp on the un-notarized documents.
2. That in Simon's notarization the crossed out 2 in 2012 in the notary section needs further analysis to determine what was crossed out and why no acknowledgement that change had been made.
3. That Candice and Eliot Bernstein on information and belief state that there was a handwritten note by Eliot on the bottom of his original Waiver with similar language to that sent in the email allegedly containing the Waiver signed. The original of all these documents is necessary to analyze for further evidence of forgery and fraud.
4. All documents lack any law firm marking or legal form service markings.

Note no Court Stamp!



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN, File No. 502011CP000653XXXXSB

Deceased.

NOTICE OF ADMINISTRATION

The administration of the estate of SHIRLEY BERNSTEIN, deceased, File Number 502011CP000653XXXXSB is pending in the Circuit Court for Palm Beach County, Florida, Probate Division, the address of which is Palm Beach South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, Florida 33444. The decedent's Will, which is dated May 20, 2008, has been admitted to probate. The name and address of the personal representative and of the personal representative's attorney are set forth below.

A beneficiary of a Will or Codicil described above is not required to have an attorney or to file and document in order to receive the inheritance provided in that Will or Codicil.

Any interested person on whom a copy of this Notice of Administration is served who challenges the validity of the Will and/or Codicil, qualifications of the personal representative, venue, or jurisdiction of the court, is required to file any objection with the court following the form and procedure provided in the Florida Probate Rules WITHIN THE TIME REQUIRED BY LAW, which is on or before the date that is three (3) months after the date of service of a copy of the Notice of Administration on that person, or those objections are forever barred.

A petition for determination of exempt property is required to be filed by or on behalf of any person entitled to exempt property under Section 732.402 of the Florida Probate Code WITHIN THE TIME REQUIRED BY LAW, which is on or before the later of the date that is four (4) months after the date of service of a copy of the Notice of Administration on that person or the date that is forty (40) days after the date of termination of any proceeding involving the construction, admission to probate, or validity of the Will and/or Codicil or involving any other matter affecting any part of the exempt property, or the right of the personal to exempt property is deemed to have been waived.

Any election to take an elective share must be filed WITHIN THE TIME REQUIRED BY LAW, which is on or before the earlier of the date that is six (6) months after the date of service of a copy of the Notice of Administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is two (2) years after the date of the decedent's death.

Attorney for Personal Representative:

ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
Tescher & Spallina, P.A.  
4855 Technology Way, Ste. 720  
Boca Raton, FL 33431  
561-997-7008

Personal Representative:

SIMON L. BERNSTEIN  
7020 Lions Head Lane  
Boca Raton, FL 33496

Note NO DATE and NO LAW FIRM OR FORM MARKINGS

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF                      File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN,                      Probate Division  
Deceased.                                      Division

2012 OCT 24 PM 1:31  
SHARON L. HARRIS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH DIXIE COURTHOUSE-FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Beneficiary

By  \_\_\_\_\_  
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF                      File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN,                      Probate Division  
Deceased.                                      Division

2012 OCT 24 PM 1:31  
SHARON A. HARRIS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY CENTER-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on OCTOBER 1st, 2012.

Beneficiary

By: Jill Iantoni  
JILL IANTONI



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 OCT 24 PM 1:31  
SHARON A. H. ...  
PALM BEACH COUNTY, FL  
SOUTH CTY SR. HIGH-FILED

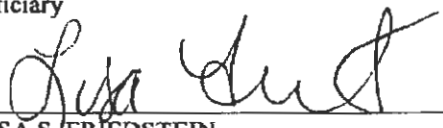
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By:   
LISA S. FRIEDSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

2012 OCT 24 PM 1:31  
SHARON H. B. JONES, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY. CLERK-FILED

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Beneficiary

By:

  
SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 OCT 24 PM 1:31  
SHARON L. BLOOM, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY SPANISH FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By:   
PAMELA B. SIMON

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF                      File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN,                      Probate Division  
Deceased.                                      Division

2012 OCT 24 PM 1:31  
SHIRLEY BERNSTEIN ESTATE  
PALM BEACH COUNTY  
SOUTH PALM BEACH PROBATE DIVISION FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary  
By: Ted Bernstein  
TED BERNSTEIN

**MEMORANDUM**

DATE: November 5, 2012

TO: Robert L. Spallina, Esq.

FROM: Astride Limouzin Case Manager, on behalf of -  
This office does not provide legal advice  
For procedural inquiries Tel. #561-274-1424

| X| JUDGE MARTIN H. COLIN Division - 1Y  
| JUDGE JAMES L. MARTZ Division - 1Z  
| JUDGE ROSEMARIE SCHER Division - 1X

CASE NUMBER: 50 2011CP000653XXXXSB

Estate of Shirley Bernstein

MATTER: Documents being returned

Order of discharge

- \_\_\_ Death certificate (**CERTIFIED COPY**) not submitted. F.S. §731.103, Probate Rule 5.205 & Probate Rule 5.171
- \_\_\_ Received bill for funeral expenses required (*Must be paid in full*).
- \_\_\_ Proof of will or codicil is required; it is not self-proved. Please review F.S. §732.502; 733.201; P.R. 5.210 & P.R. 5.230.
- \_\_\_ Order admitting will/ codicil/ and or appointing personal representative is either missing or incorrect. FS§733.201, R.5.210 & 5.235
- \_\_\_ Petition and order designating a restricted depository, and acceptance is required FS §69.031 & FS §744.351(6).
- \_\_\_ Oath of Personal Representative, of Guardian or Administrator Ad Litem and designation of resident agent was not submitted or incorrect. Resident agent must sign the acceptance. (Rule 5.110, 5.120 and 5.320 committed notes).
- \_\_\_ Proof of publication not submitted. Rule 5.241.
- \_\_\_ Statement regarding creditors not submitted. Probate Rule 5.241 (d).
- \_\_\_ Inventory not submitted. Probate Rule 5.340.
- \_\_\_ All claims must be satisfied, struck, or dismissed.
- \_\_\_ Final certificate of estate tax or affidavit of non-tax is not submitted. FS §198.26 & 193.28
- \_\_\_ All Beneficiaries must join in the petition or they must receive formal notice on the petition. FS §735.203 & Probate Rule 5.530(b).
- XX** Receipts for assets from all of the specific beneficiaries were not notarized.
- \_\_\_ Receipt of final accounting, service of petition for discharge and/or waiver from all residuary beneficiaries or qualified trust beneficiaries are required. See. R. 5.400. Attorney fees see FS §733.6171(6), 731.302, 731.303(1)(b) and Probate Rule 5.180(b). Committee notes (one person serving in two (2) fiduciary capacities may not waive or consent to the persons acts without the approval of those who the person represents).
- \_\_\_ Proof of service of the Objection to the Claims. FS §733.705(2), Probate Rule. 5.496 & Probate Rule 5.040.
- \_\_\_ Proof of Service of the Notice to Creditors to the Agency for Health Care Administration. FS §733.2121(d) & Probate Rule 5.241 (a).
- \_\_\_ For Lost/Destroyed Wills/Codicils please comply with FS § 733.207, 733.201(2) & Probate Rule 5.510
- \_\_\_ An 8:45 a.m. motion calendar hearing (limited to 5 mins) with notice to all interested parties is required. Notice must be at least five (5) business days (Tue, Wed and Thurs). Please verify suspension dates. Files must be order via the internet at <http://15thcircuit.co.palm-beach.fl.us/web/guest/cadmin>.

SHIRLEY R. BUCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTHERN BRANCH-FILED  
NOV 12 2012 10:18 AM

OTHER:

**PLEASE RETURN A COPY OF THIS MEMORANDUM AND PROPOSE ORDERS WHEN REPLYING;  
ADDRESS TO THE CLERK AND COMPTROLLER, 200 W ATLANTIC AVENUE, DELRAY BEACH, FL 33444**

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2:29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on October 1, 2012.

Beneficiary

By: Jill Iantoni  
JILL IANTONI

Sworn to and subscribed to before me on October 1, 2012, by JILL IANTONI, who is personally known to me or who produced \_\_\_\_\_ as identification.



(Affix Notarial Seal)

Kimberly Moran  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2:29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:


- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By: *Lisa Friedstein*  
LISA S. FRIEDSTEIN

S. FRIEDSTEIN, My commission expires April 28, 2016. Subscribed to before me on August 21, 2012, by LISA S. FRIEDSTEIN, personally known to me ✓ or who produced identification.

(Affix Notarial Seal) 

*Kimberly Moran*  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV-19 PM 2:29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Beneficiary  
By: [Signature]  
ELIOT BERNSTEIN

Sworn to and signed before me on May 15, 2012, by ELLIOT BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public State of Florida

(Affix Notarial Seal)





IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2: 29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By:   
PAMELA B. SIMON

Sworn to before me on August 8, 2012, by PAMELA B. SIMON, personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2: 29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary  
By Ted Bernstein

TED BERNSTEIN

Sworn to and subscribed to before me on August 1 2012, 2012, by TED BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL.  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

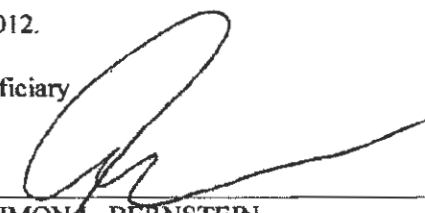
2012 NOV 19 PM 2:29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.


Signed on 4/9/12, 2012.

Beneficiary  
By:   
SIMON L. BERNSTEIN

Sworn to before me on April 9, 2012, by SIMON BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



  
Notary Public State of Florida

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Wednesday, December 11, 2013:

MINUTE entry before the Honorable Amy J. St. Eve: Motion hearing held on 12/11/2013. Motion to intervene by interested party William Stansbury [56] is entered. Response by 1/6/14. Reply by 1/13/14. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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. )

Case No. 13 cv 3643

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

----- )  
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. )

**JPMORGAN CHASE BANK'S ANSWER TO COUNTERCLAIM AND THIRD-PARTY  
COMPLAINT FOR INTERPLEADER**

Third-Party Defendant JPMorgan Chase Bank, National Association ("JPMorgan Chase Bank"), by one of its attorneys, Glenn E. Heilizer, for its answer to the counterclaim and third-party complaint for interpleader by Jackson National Life Insurance Company, states as follows.

#### INTRODUCTION

1. Jackson National Life Insurance Company ("Jackson") brings this counter-claim and third-party complaint for Interpleader pursuant to 28 U.S.C. § 1335(a) and Federal Rule of Civil Procedure 14, as it seeks a declaration of rights under a life insurance policy for which it is responsible to administer. The proceeds from the policy (the "Death Benefit Proceeds") have been tendered to this Court.

#### ANSWER:

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

#### PARTIES AND VENUE

2. Jackson, successor in interest to Reassure America Life Insurance Company ("Reassure"), successor in interest to Heritage Union Life Insurance Company ("Heritage"), is a corporation organized and existing under the laws of the State of Michigan, with its principal place of business located in Lansing, Michigan. Jackson did not originate or administer the subject life insurance policy, Policy Number 1009208 (the "Policy"), but inherited the Policy and the Policy records from its predecessors.

#### ANSWER:

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent

interest in the life insurance policy that forms the subject matter of this lawsuit.

3. The Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 (the "Bernstein Trust") is alleged in the underlying suit to be a "common law trust established in Chicago, Illinois by the settlor, Simon L. Bernstein, and was formed pursuant to the laws of the state of Illinois."

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

4. Ted S. Bernstein is a resident and citizen of Florida. He is alleged in the underlying suit to be the "trustee" of the Bernstein Trust. Ted Bernstein is further, individually, upon information and belief, a beneficiary of the Bernstein Trust (as Simon Bernstein's son).

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

5. Eliot Bernstein is a resident and citizen of Florida. He has asserted that he and/or his children are potential beneficiaries under the Policy as Simon Bernstein's son, presumably under the Bernstein Trust.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent

interest in the life insurance policy that forms the subject matter of this lawsuit.

6. First Arlington National Bank is, upon information and belief, a bank in Illinois that was, at one point, and the purported trustee for the "S.B. Lexington, Inc. Employee Death Benefit Trust" (the "Lexington Trust"). The Lexington Trust was, upon information and belief, created to provide employee benefits to certain employees of S.B. Lexington, Inc., an insurance agency, including Simon Bernstein, but it is unclear if such trust was properly established.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

7. United Bank of Illinois is, upon information and belief, a bank in Illinois that was, at one point, a named beneficiary of the Policy. To date, Jackson has not determined the current existence of this bank.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

8. Bank of America, N.A., is a national banking association with its principal place of business in Charlotte, North Carolina. Bank of America, N.A. is the successor in interest to LaSalle National Trust, N.A., which was a named beneficiary of the Policy.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof



thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

9. The "Simon Bernstein Trust" is, upon information and belief, the Bernstein Trust listed in paragraph 3, above, and was a named contingent beneficiary of the Policy. However, based on the variance in title, to the extent it is a separate trust from the Bernstein Trust referenced above, it is named separately.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

10. Subject matter jurisdiction is proper in accordance with 28 U.S.C. § 1335(a).

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

11. Personal jurisdiction is proper over Ted Bernstein because he, purportedly as Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent

interest in the life insurance policy that forms the subject matter of this lawsuit.

12. Personal jurisdiction is proper over First Arlington National Bank, United Bank of Illinois, and Bank of America in accordance with 735 ILCS 5/2-209(a)(1) because each, upon information and belief, transacts business in Illinois.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

13. Personal jurisdiction is proper over Ted and Eliot Bernstein in accordance with 735 ILCS 5/2-209(a)(13) as each are believed to have an ownership interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this interpleader action occurred in this District.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

FACTS

15. On December 27, 1982, upon information and belief, Capitol Bankers Life Insurance Company issued the Policy, with Simon L. Bernstein as the purported insured (the "Insured").

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

16. Over the years, the Policy's owner(s), beneficiary(ies), contingent beneficiary(ies) and issuer changed. Among the parties listed as Policy beneficiaries (either primary or contingent) include: "Simon Bernstein"; "First Arlington National Bank, as Trustee of S.B. Lexington, Inc. Employee Death Benefit Trust"; "United Bank of Illinois"; "LaSalle National Trust, N.A., Trustee"; "LaSalle National Trust, N.A."; "Simon Bernstein Insurance Trust dated 6/21/1995, Trust"; and "Simon Bernstein Trust, N.A."

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

17. At the time of the Insured's death, it appears "LaSalle National Trust, N.A." was the named primary beneficiary of the Policy, and the "Simon Bernstein Trust, N.A." was the contingent beneficiary of the Policy. The Policy's Death Benefit Proceeds are \$1,689,070.00, less an outstanding loan.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof

thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

18. Subsequent to the Insured's death, Ted Bernstein, through his Florida counsel (who later claimed Bernstein did not have authority to file the instant suit in Illinois on behalf of the Bernstein Trust and withdrew representation), submitted a claim to Heritage seeking payment of the Death Benefit Proceeds, purportedly as the trustee of the Bernstein Trust. Ted Bernstein claimed that the Lexington Trust was voluntarily dissolved in 1998, leaving the Bernstein Trust as the purported sole surviving Policy beneficiary at the time of the Decedent's death.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

19. However, Ted Bernstein could not locate (nor could anyone else) a copy of the Bernstein Trust. Accordingly, on January 8, 2013, Reassure, successor to Heritage, responded to Ted Bernstein's counsel stating:

In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process this claim.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

20. Presently, the Bernstein Trust still has not been located. Accordingly, Jackson is not aware whether the Bernstein Trust even exists, and if it does whether its title is the "Simon Bernstein Insurance Trust dated 6/21/1995, Trust," as captioned herein, or 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, Jackson has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

21. In addition, it is not known whether "LaSalle National Trust, N.A." was intended to be named as the primary beneficiary in the role of a trustee (of the Lexington and/or Bernstein Trust), or otherwise. Jackson also has no evidence of the exact status of the Lexington Trust, which was allegedly dissolved.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

22. Further, Jackson has received correspondence from Eliot Bernstein, attached as Exhibit 1, asserting that he and/or his children are potential beneficiaries under the Policy, (presumably under the Bernstein Trust, but nonetheless raising further questions as to the proper beneficiaries of the Policy), and requesting that no distributions of the Death Benefit Proceeds be made.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

COUNT I- INTERPLEADER

23. This is an action of interpleader brought under Title 28 of the United States Code, Section 1335.

**ANSWER:**

This paragraph calls for a legal conclusion to which no answer is necessary or required.

24. Jackson does not dispute the existence of the Policy or its obligation to pay the contractually required payment Death Benefit Proceeds under the Policy, which it has tendered into the registry of this Court.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

25. Due to: (a) the inability of any party to locate the Bernstein Trust and uncertainty associated thereunder; (b) the uncertainty surrounding the existence and status of "LaSalle National Trust, N.A." (the primary beneficiary under the Policy) and the Lexington Trust; and (c) the potential conflicting claims under the Policy, Jackson is presently unable to discharge its admitted liability under the Policy.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

26. Jackson is indifferent among the defendant parties, and has no interest in the benefits payable under the Policy as asserted in this interpleader other than to pay its admitted liability pursuant to the terms of the Policy, which Jackson has been unable to do by reason of uncertainty and potential competing claims.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

27. Justice and equity dictate that Jackson should not be subject to disputes between the defendant parties and competing claims when it has received a non-substantiated claim for entitlement to the Death Benefit Proceeds by a trust that has yet to be located, nor a copy of which produced.

**ANSWER:**

JPMorgan Chase Bank has insufficient knowledge to admit or deny the allegations of this paragraph, and therefore denies them and demands strict proof thereof. Further answering, JPMorgan Chase Bank disclaims any direct or contingent interest in the life insurance policy that forms the subject matter of this lawsuit.

JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION

By: /s/ Glenn E. Heilizer  
One of their attorneys

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue, Ste. 1304  
Chicago, Illinois 60602  
312-759-9000  
ARDC No. 6196412

Dated: December 11, 2013

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, December 20, 2013:

MINUTE entry before the Honorable Amy J. St. Eve: The Court denies Cross-Plaintiff Eliot Ivan Bernstein's motion to strike and disqualify counsel [58] without prejudice for failure to notice the motion before the Court as required by Northern District of Illinois Local Rule 5.3 Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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 alleged Trustee of the Simon )  
Bernstein Irrevocable Insurance Trust )  
Dtd. 6/21/95, and ELIOT BERNSTEIN, )**

**Third-Party Defendants. )**

----- )

**Case No. 13-cv-03643**

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

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, INC. )  
 (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC. )  
 (OF ILLINOIS) AND )  
 JOHN AND JANE DOE'S )  
 )  
 Third Party Defendants. )

**POTENTIAL BENEFICIARIES<sup>1</sup>:**

---

<sup>1</sup> Parents act as beneficiary Trustees in the estate of Simon L. Bernstein to their children, where Simon's estate may be the ultimate beneficiary of the policy and their children named below would be the ultimate beneficiaries of the policy proceeds. The failure of the grandchildren to be represented in these matters and listed as potential beneficiaries is due to an absolute conflict with their parents who are trying to get the benefits paid to them directly. This is gross violations of fiduciary duties and may be viewed as criminal in certain aspects as the lawsuit attempts to convert the benefits from the grandchildren to 4/5 of the children of SIMON by failing to inform their children (some minors) or have them represented in these matters. The Court should take Judicial Notice of this,



**JOSHUA ENNIO ZANDER BERNSTEIN  
(ELIOT MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN  
(ELIOT MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO  
BERNSTEIN (ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (TED  
ADULT CHILD);  
ERIC BERNSTEIN (TED ADULT  
CHILD);  
MICHAEL BERNSTEIN (TED ADULT  
CHILD);  
MATTHEW LOGAN (TED'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA  
ADULT CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR  
CHILD;  
CARLY FRIEDSTEIN – LISA MINOR  
CHILD;**

**INTERESTED PARTIES:**

**DETECTIVE RYAN W. MILLER –  
PALM BEACH COUNTY SHERIFF  
OFFICE;  
ERIN TUPPER - FLORIDA GOVERNOR  
OFFICE NOTARY EDUCATION - THE  
OFFICE OF THE GOVERNOR OF  
FLORIDA RICK SCOTT**

**(1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL  
REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR  
FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE  
ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES  
IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED  
BY INDEPENDENT NON-CONFLICTED COUNSEL**

---

especially in the interests of the minor grandchildren who may lose their benefits if the proceeds of the insurance policy are converted to the knowingly wrong parties.

Eliot Ivan Bernstein (“ELIOT”) a third party defendant and his three minor children, Joshua, Jacob and Daniel Bernstein, are alleged beneficiaries of a life insurance policy Number 1009208 on the life of Simon L. Bernstein (“Policy(ies)”), a “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” and a “Simon Bernstein Trust, N.A.” that are at dispute in the Lawsuit, makes the following (1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL.

I, Eliot Ivan Bernstein, make the following statements and allegations to the best of my knowledge and on information and belief as a Pro Se Litigant<sup>2</sup>:

### **BACKGROUND**

1. That after reviewing discovery documents tendered by JACKSON in this Lawsuit, it was discovered that a **fraudulent insurance claim** to the Policy(ies) benefits was made by defendant, Attorney at Law, SPALLINA, with the life insurance carrier HERITAGE,

---

<sup>2</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991).” In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)”The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.

whereby SPALLINA acted under a false fiduciary capacity on behalf of an alleged missing and lost trust, the “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that SPALLINA claimed fraudulently to be the “Trustee” for when filing the fraudulent insurance claim form.

2. That ELIOT’S position, as a non-lawyer, is that in the event of a lost beneficiary or trust for an insurance policy, the benefits are to be paid to the estate of the decedent. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's death, the policy is payable to the insured, and thus, in this case, the insured's Estate. *Harris v. Byard*, 501 So.2d 730, 12 Fla. L. Weekly 429.
3. That defendant A. SIMON knowing this law as an Attorney at Law should never have filed this frivolous, vexatious and abusive Lawsuit, as defined further herein.
4. The SPALLINA’S fraudulent insurance claim acting as Trustee of the lost trust was DENIED by HERITAGE and a request for a Court Order was issued by the carrier to SPALLINA to approve of the trust and beneficiary scheme purported by SPALLINA.  
EXHIBIT 1 – SPALLINA FRAUDULENT CLAIM FORM AND CARRIER REQUEST.
5. That EXHIBIT 1 shows that on November 01, 2012, SPALLINA tendered a letter written by Kimberly Moran (“MORAN”) with a Claimant Statement to HERITAGE that on page 5 of the form SPALLINA fraudulently signed as the “Trustee” of the LOST “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” that he knew he was not a “Trustee” of, as evidenced herein.
6. That the cover letter prepared by MORAN for SPALLINA claims that “We are unable to locate a copy of the original insurance policy” and then in a December 06, 2012 letter included in EXHIBIT 1, SPALLINA further states, “We are unable to locate the Simon

Bernstein Irrevocable Insurance Trust dated June 1, 1995, which we have spent much time searching for.”

7. That this Court should note that defendants’ TSPA, SPALLINA and TESCHER’S notary public, MORAN, while working for the law firm TSPA as a legal assistant/notary public, did admit to authorities that she had FORGED and FRAUDULENTLY altered six documents to fraudulently close the estate of SHIRLEY and then attempts were made to change her beneficiaries POST MORTEM using other alleged fraudulent documents currently under investigation. EXHIBIT 2 – MORAN SUSPENSION and EXHIBIT 3 – PALM BEACH COUNTY SHERIFF ARREST REPORT.
8. That due to a lost policy and lost trust, the insurance carrier denied SPALLINA’S claim that he was the “Trustee” of the lost trust and demanded valid legal documentation of such claim or a probate court order to approve of the beneficiary scheme he was proposing in his alleged capacity as “Trustee” of a lost trust.
9. That defendant SPALLINA knew he was not the “Trustee” of the lost trust, as he has claimed repeatedly that he has NEVER ever seen a copy of the lost trust and everything therefore was a “best guess” as evidenced in Exhibit 1 herein, claiming “Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.” If the beneficiaries of the lost trust are at best a “best guess,” so would who the trustees would be. This is Prima Facie evidence of INSURANCE FRAUD and as

such the claim was denied when none of the claim form information requested by the carrier was provided to prove the trusteeship or beneficial interests and thus there was no way for Heritage to legally pay the benefits to the true and proper beneficiaries, so new schemes were hatched by SPALLINA, TED, P. SIMON, A. SIMON and others to try to abscond with the insurance benefits outside of the estate of Simon, including this instant baseless and vexatious Breach of Contract Lawsuit.

10. That when his claim failed, SPALLINA then prepared a Settlement Agreement and Mutual Release (“SAMR”) scheme, evidenced in Exhibit 5, for the children of SIMON to sign in efforts to have the benefits paid to a newly created POST MORTEM trust, with new beneficiaries made on a “best guess” formed on beliefs that defendants SPALLINA, TED and P. SIMON claimed where known from their long ago memories of who they thought were the trustees and beneficiaries of the missing and lost trust and Policy(ies).
11. That SPALLINA was going to take that SAMR trust scheme to the Probate Court in Palm Beach County for approval by the Probate court judge and then was going to tender the SAMR, once it was signed by ALL the beneficiaries, to the carrier.
12. That when the SAMR was presented to ELIOT and his children’s counsel TRIPP SCOTT, there were multiple problems found with the legality of the document, including but not limited to the fact that in a lost beneficiary situation the proceeds should be paid to the estate and this scheme to end around that law, then put ELIOT and his children in a conflict over who would receive the benefits, the estate beneficiaries or others.
13. That ELIOT notified SPALLINA and all of SIMON’S children of the problems with the SAMR and the need according to Tripp Scott for each child of SIMON’S to get counsel for their children as possible beneficiaries, separate than any counsel they might get for

themselves as potential beneficiaries, as it appeared that the beneficiaries could either be the children of Simon, if this SAMR scheme held up or if it failed the grandchildren who are alleged to be beneficiaries of the estate of SIMON. The children of SIMON in the SAMR were going to act simultaneously as direct beneficiaries of the insurance proceeds to themselves and waive their children's rights to the benefits acting as trustees for their children under the estate.

14. That due to problems caused in part by the estate planners TESCHER and SPALLINA, including but not limited to in this insurance scheme, missing insurance policies and missing trusts and where it is alleged that this lost trust is instead suppressed by TSPA, TESCHER and SPALLINA intentionally, creates now disputes and conflicts between SIMON'S children and their children for the insurance benefits. By the estate planners failing to secure the necessary documents for the insurance proceeds and protecting the beneficiaries, as was their duty in preparing alleged 2012 estate planning documents, massive liabilities have now been caused. Due to the conflicts of interest caused, ELIOT was advised by counsel to then have his children represented by separate counsel and ELIOT was then left representing his interests without counsel in the insurance matters.
15. That the estate Personal Representatives (TESCHER and SPALLINA) of SIMON'S estate have refused to pay for counsel for the parties despite the need arising due to the estate planners TSPA, TESCHER and SPALLINA'S Willful, Wanton, Reckless, and Grossly Negligent acts in violation of Law in preparing the estate plan for SIMON and neglecting to protect the beneficiaries of the Policy(ies) and trusts.
16. That SPALLINA claimed in letters that he was aware of whom the beneficiaries were intended by SIMON to be but then failed to get copies or any documentation regarding these



claims. Even failing to include these alleged wishes of SIMON in his ALLEGED Will and Amended Trust, done supposedly only weeks before SIMON died when he was physically and emotionally under great duress. That these documents have also been submitted to civil and criminal authorities for further investigation as MORAN and SPALLINA are again involved in improper documentation with estate documents.

17. That this Court should note that NOBODY is representing the estate of SIMON or the alleged beneficiaries of SIMON'S estate in this matter and where SPALLINA and TESCHER are the alleged Personal Representatives of SIMON'S estate and thus indispensable parties in this lawsuit, perhaps in violation of Rule 19 of Federal Procedures, where they must be joined. Despite being aware that the beneficiaries of the estate may be harmed and despite being sued by ELIOT in these matters, TSPA, TESCHER and SPALLINA failed to enter into this Lawsuit on any parties' behalf, including themselves, only further complicating the problems they are already largely responsible for creating.
18. That the Personal Representatives of SIMON'S estate, TESCHER and SPALLINA are indispensable parties to this action and because under Florida law where a trust is the designated beneficiary of an insurance policy and the trust cannot be located or is lost and the proceeds are then payable to the estate through the Personal Representatives accordingly, appropriate and complete relief cannot be granted in this Lawsuit without the Personal Representatives as parties to this action, thus this aspect of the case regarding the proceeds of the policy must be dismissed without prejudice to ELIOT'S cross claims and damages and relief sought.
19. That TED, P. SIMON, D. SIMON, IANTONI and FRIEDSTEIN are acting as alleged trustees for their children in the estates over their minor and adult children's trusts and yet

failed to have their children included in this Lawsuit as well, knowing they are potential beneficiaries of the now lost or suppressed Policy(ies) if the proceeds were to flow to the estate, as they should. Where each child of SIMON'S now stands in direct conflict with SIMON'S grandchildren, their own children, for inheritance of the benefits and where none of the other children, other than ELIOT, has had their children represented in the insurance matters that have now metamorphosed into this baseless, vexatious and frivolous, Breach of Contract Lawsuit.

20. That ELIOT is unaware if his siblings children even know they are possible direct beneficiaries of the Policy(ies) and trusts, as evidence exists that efforts were made to keep these insurance matters from their children (and it is known that this Lawsuit was kept secret from ELIOT'S children counsel and ELIOT), in order to prevent lawsuits by their children in the future by intentionally not disclosing the conversion of the benefits to themselves to their children.

21. That legal advice to conceal the insurance scheme from their children was given to TED, P. SIMON, ELIOT, LANTONI and FRIEDSTEIN by SPALLINA who advised them to keep it a secret from their children in a meeting. Where in that meeting SPALLINA was acting adversely as Personal Representative to the estate beneficiaries, allegedly the grandchildren. SPALLINA, who claims the beneficiaries are the grandchildren, was working against their interests by making these claims to secret the information from them, in order to advantage his very close personal friend and business associate, TED, to the disadvantage of his own children. SPALLINA did not like that TED and P. SIMON were excluded from the estates entirely and even stated he was trying to get them paid, in opposite of the desires and wishes of SIMON and SHIRLEY. Other witnesses were present on the calls when SPALLINA

made these claims when proposing the SAMR scheme. EXHIBIT 4 - TRIPP SCOTT  
CONFLICT LETTER.

22. That knowing that the grandchildren were possible beneficiaries of the Policy(ies), A. SIMON and TED filed this Lawsuit and intentionally failed to notify and include possible beneficiaries of the Insurance Claim or this Breach of Contract Lawsuit. They also failed to include the Personal Representatives as indispensable parties with scienter.
23. That the actions alleged herein may also invoke the Probate Exception to Federal Jurisdiction in this matter and further evidences fraudulent intent in filing this Lawsuit by A. SIMON and TED who both knew the grandchildren of SIMON may be beneficiaries and filed this Lawsuit without their knowledge or consent and without forcing the estate representatives into the Lawsuit. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim.
24. That the SAMR scheme attempted to convert the assets of the estates from the grandchildren to the children of SIMON without the grandchildren's knowledge and consent and where the parents were going to sign off rights on behalf of their children, acting as "Trustees" for them, in order to release the insurance proceeds to themselves. The breaches of fiduciary duties from this Willful, Wanton, Reckless, Grossly Negligent and alleged unlawful behavior of TED, P. SIMON, IANTONI and FRIEDSTEIN as trustees for their children as the estate beneficiaries constitutes alleged fraud, conversion of estate assets and more. SEE EXHIBIT 5 - ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE FRAUD SCHEMES.

25. That in a lost beneficiary situation the proceeds of the Policy(ies) appear to legally flow to the estate for distribution to the estate beneficiaries, where TED and P. SIMON would be wholly excluded from ANY of the insurance benefits, as both TED and P. SIMON were wholly disinherited from both of their parents estates and trusts and therefore have promulgated failed scheme after failed scheme to try and redirect the insurance benefits and other estate assets to themselves, aided and abetted by TED'S very close personal and business associates, TESCHER and SPALLINA.
26. The reason the beneficiaries of the estates are alleged to be beneficiaries at this time and are not known exactly, is due to revelations in the probate hearings before Judge Martin Colin in SHIRLEY'S estate of forgery, fraud, identity theft and more to close SIMON'S wife estate and attempt to change her beneficiaries POST MORTEM and also change SIMON'S beneficiaries post mortem. Due to an alleged fraudulent Will and Amended and Restated Trust in SIMON'S estate, which are both being challenged and investigated by state authorities currently, as they too are improperly notarized, witnessed and drafted by SPALLINA and TESCHER, it is unclear at this time whom the ultimate beneficiaries of the estates will be.
27. That it was learned in a September 13, 2013 hearing and an October 28, 2013 Evidentiary Hearing that SPALLINA and TESCHER used SIMON post mortem as if he were alive to file a series of documents to close SHIRLEY'S estate and pulled a fraud on the court, whereby Judge Colin stated he had enough evidence at that time that he should read SPALLINA, TESCHER and TED their Miranda Warnings when he discovered these crimes upon his court and the ultimate beneficiaries. The closed estate of SHIRLEY was then reopened and remains open today.

28. That MORAN has been arrested and admitted to filing forged and fraudulent documents in SHIRLEY'S estate on six different documents for six different people, including SIMON who was deceased at the time his name was forged and used in probate court filings. From her statement to Palm Beach County Sheriff officers, "Moran stated that at this time, she took it upon herself to trace [aka FORGE] each signature of the six members of the Bernstein family onto another copy of the original waiver document. She then notarized them and resubmitted them to the courts." This statement contradicts her prior statement to the Governor's Notary Public office where she claimed the documents were identical other than her notary stamp, thus the crime of perjury and/or false statements in official proceedings are now being pursued as well with authorities. This lie about the documents not being forged was also echoed by MORAN'S employer, SPALLINA in the September 13, 2013 hearing before Colin when SPALLINA knowingly lied to the judge and claimed the signatures were also not forged,

8 THE COURT: I mean everyone can see he [ELIOT]  
9 signed these not notarized. When they were  
10 sent back to be notarized, the notary notarized  
11 them without him re-signing it, is that what  
12 happened?

13 MR. SPALLINA: Yes, sir.

14 THE COURT: So whatever issues arose with  
15 that, where are they today?

16 MR. SPALLINA: Today we have a signed  
17 affidavit from each of the children other than  
18 Mr. Bernstein that the original documents that  
19 were filed with The Court were in fact their  
20 original signatures which you have in the file  
21 attached as Exhibit A was the original document  
22 that was signed by them.

23 THE COURT: It was wrong for Moran to  
24 notarize -- so whatever Moran did, the  
25 documents that she notarized, everyone but

00051

1 Eliot's side of the case **have admitted that**  
2 **those are still the original signatures of**  
3 **either themselves or their father?**

4 MR. SPALLINA: **Yes, sir.**

5 THE COURT: I got it.

From MORAN'S statement to the Sheriff's office we see that MORAN did not send back the documents sent back to her by the probate court and merely rubber stamped a notary on it but in fact recreated each of the documents from scratch, then allegedly "traced" aka **forged** the signatures, including one for SIMON post mortem, then affixed her notary stamp and resubmitted them to the court. Where SPALLINA perjuriously told Judge Colin the opposite knowing of her statement to the Sheriff already but knowing the truth in court would invalidate the documents wholly and FORGERY was a far more serious crime with far more serious ramifications according to Judge Colin.

17 THE COURT: Mr. Bernstein, I want you to  
18 understand something. Let's say you prove what  
19 seems perhaps to be easy, that Moran notarized  
20 your signature, your father's signature, other  
21 people's signatures after you signed it, and  
22 you signed it without the notary there and they  
23 signed it afterwards. That may be a wrongdoing  
24 on her part as far as her notary republic  
25 ability, but the question is, unless someone

00060

1 claims and proves forgery, okay, forgery,  
2 proves forgery, the document will purport to be  
3 the document of the person who signs it

29. Further, from Judge Colin's order dated November 14, 2013, "1. The Estate shall remain open pending the filing of a Petition for Discharge by Ted Bernstein, as Successor Personal Representative **and any disposition thereof pursuant to probate rules and statutes.**" The bolded text was added to the order in handwriting by Judge Colin and indicates that all rules of probate must be followed now to close the estate, including now giving the beneficiaries/interested parties all accountings, inventories, attorney records, etc. according to probate rules and statutes.
30. That SHIRLEY'S estate was subsequently reopened due to these forgeries and frauds. These matters are not yet fully resolved in the probate courts of Judge Colin and Judge French in Florida or with state authorities. Therefore, who the ultimate beneficiaries of the estates will be remains unclear as was further learned in an Evidentiary Hearing held in SHIRLEY'S estate on October 28, 2013. If the currently alleged beneficiaries were so effectuated through a series of fraudulent documents and acts done to seize Dominion and Control of the estates illegally and change the beneficiaries, in efforts to loot the estate through a variety of fraudulent acts, insurance benefits paid to this Court in this Lawsuit should not be distributed to any parties until all matters are fully resolved both criminally and civilly in the estates first and determination by this Court instantly if this suit is an Abuse of Process and part of an insurance fraud.
31. That the benefits deposited with this Court by JACKSON should be returned to the insurance carrier immediately until it can be determined if this Court is even the proper court to determine the beneficiaries of the missing and lost trust, the missing and lost insurance Policy(ies) and who the beneficiaries of the estates are and if these matters are legally under the jurisdiction of the Florida state probate court handling the estate. This Court must also

determine instantly if this Lawsuit is and was filed legally or is merely an intentional abuse of process to facilitate a fraud.

32. That ELIOT and his children's counsel were told that the SAMR trust was being submitted to the probate court for approval as requested by HERITAGE and once approved it would be submitted for approval and signature by ELIOT and his children's counsel before any distributions would be made. However, during that time, without informing ELIOT or his children's counsel, this Breach of Contract lawsuit was filed with consent of "4/5" of SIMON'S children, as stated in the original complaint filed and was filed intentionally behind ELIOT and his children's counsel backs with scienter by TED acting as Trustee of the lost trust.
33. That of interest to this Court is that TED filed the lawsuit as a Breach of Contract lawsuit and acted as Trustee on what they allege is the failure to pay of HERITAGE on a claim form filed by SPALLINA as Trustee only weeks earlier. Why would SPALLINA have not filed this Breach of Contract as Trustee of the lost trust on a claim he was denied on, not TED?
34. That it was learned that meetings were held without ELIOT or his children's counsel present, to conspire how to get the proceeds paid to ELIOT'S siblings without informing ELIOT and the grandchildren, without now the need for the SAMR, which resulted in this cleverly concealed baseless lawsuit to knowingly commit insurance fraud and further failing to include all possible beneficiaries of the Policy(ies).
35. That ELIOT would never have even known of this Lawsuit without JACKSON suing ELIOT as a third party defendant and this Court could have paid out the benefits and circumvented the true and proper beneficiaries and none of these parties with interests would have known until after the proceeds were distributed, if ever.



36. That knowing the SAMR would never get approval by the probate court and ELIOT, that scheme was discarded and this new vexatious, frivolous and abuse of process scheme to convert the benefits fraudulently was then hatched and facilitated through this meritless and baseless Breach of Contract lawsuit brought on behalf of an alleged lost trust by an alleged Trustee, either SPALLINA or TED, as both have made separate claims that they are the Trustee of the lost trust knowing full well that they are not Trustees and cannot be of a lost contract.
37. That this Lawsuit is actually a clever Legal Abuse of Process, which uses this Court to facilitate the crime of Insurance Fraud through a Fraud on a Federal Court, an Insurance Carrier, estate beneficiaries and estate creditors, that attempts to convert the insurance benefits to imagined beneficiaries, with no legally valid contracts to prove their claims, concocted together by Defendants TED, P. SIMON, D. SIMON, A. SIMON, IANTONI, FRIEDSTEIN, TSPA, TESCHER, SPALLINA, et al.
38. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was "involved" with MORAN in her fraud and forgery.
39. That on September 13, 2013 at a hearing before Hon. Judge Martin Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify that court that SIMON was dead at the time he was using him as if he were alive, thus acknowledging that he perpetrated a Fraud on the

Court and more in the closing of SHIRLEY'S estate with a dead Personal Representative and Trustee, SIMON.

40. That in an October 28, 2013 Evidentiary Hearing before Judge Colin, it was learned that TED had been acting in fiduciary capacities that he did not have prior, including acting as Personal Representative and Trustee for the estate of SHIRLEY. Due to the FRAUD ON THE COURT using SIMON'S identity, after he was deceased as if alive, to close the estate of SHIRLEY, no successors were elected or appointed by the court after he died and SIMON was continued to be used as if alive. SPALLINA, acting as estate counsel failed to notify the court that SIMON, the Personal Representative and Trustee was dead and continued for four months to use SIMON and file documents on his behalf, filed as if SIMON were still alive to close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate.
41. That it is alleged that to make POST MORTEM beneficiary changes to SHIRLEY'S estate they needed to make it look like SIMON was alive when he closed SHIRLEY'S estate, so that they could then attempt to change her beneficiaries POST MORTEM through a combination of the forged and fraudulent documents in SHIRLEY'S estate combined with the alleged FORGED and FRAUDULENT alleged Will and Amended and Restated Trust filed in SIMON'S estate.
42. That the Will and Amended and Restated Trust of SIMON are improperly drafted, notarized and witnessed and are now being investigated by authorities in Florida. MORAN and SPALLINA are both involved in the documents in question in SIMON'S estate as well, as they improperly witnessed them and more and where MORAN and SPALLINA have admitted involvement in forged and fraudulent documents already in SHIRLEY'S estate,

nothing they have done, past, present or future can be trusted or relied upon without forensic evaluation and more.

43. That the Court should note that SPALLINA witnesses these documents, the alleged Will and Amended and Restated Trust of SIMON, documents he drafted and which gave him fiduciary powers and financial gain, as they elect him and his partner defendant Donald Tescher as Co-Personal Representatives of SIMON'S estate, allowing them to seize Dominion and Control of the estates, these problems make the documents further legally invalid, not just for the improper notarizations but for the improper witnessing by SPALLINA.
44. That MORAN, who already has been arrested for fraud and forged documents in the estate of SHIRLEY, also witnesses these documents in SIMON'S estate and nothing she has done can be relied upon. What unfolds when looking at all of these alleged fraudulent documents and those already admitted forged and fraudulent, is a pattern and practice of fraudulent documents that combine to allow SPALLINA and TESCHER to illegally seize dominion and control of the estates of SIMON and SHIRLEY and then using their illegally gained fiduciary powers to change beneficiaries to the advantage of some parties and disadvantage of others and then loot the estates and covert assets to the wrong beneficiaries (primarily their close personal friend and business associate TED) in a variety of alleged felony crimes, including insurance fraud and fraud upon this Court, fraud upon the Florida Probate courts and fraud on the beneficiaries of the Policy(ies) through this baseless Breach of Contract suit and more.

**STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS.**

45. That when SPALLINA'S insurance fraud failed, this frivolous and baseless instant Breach of Contract lawsuit was instituted before this Court with TED now suddenly and bizarrely claiming to be the alleged "Trustee" of the lost trust. A. SIMON claiming TED now instead of SPALLINA is the "Trustee" of the lost trust and as such stating TED can elect new beneficiaries POST MORTEM for SIMON. SPALLINA now disappears as "Trustee" for this lawsuit and magically transfers trusteeship to TED in an unknown transaction to any alleged beneficiaries and TED then through his brother-in-law, D. SIMON'S brother and P. SIMON'S brother-in-law, A. SIMON who acts as counsel now for TED as alleged "Trustee" and also represents the lost trust as his client and then files this lawsuit to fraudulently attempt to convert the death benefits. Again, ELIOT reminds the Court that all of these bogus claims are being made on behalf of a lost trust on a lost insurance Policy(ies) and no one to date has produced for this Court any legal and binding contracts to prove their claims.
46. That ELIOT alleges that the trusts and Policy(ies) are being suppressed and denied by the parties responsible for maintaining them, in order to change the beneficiaries and convert the funds illegally to themselves. That it was learned in letters from SPALLINA that P. SIMON had good relationships at one of the insurance carriers involved in the claim and that she could facilitate payment of the claim to their SAMR scheme, despite the obvious illegality of the scheme, in the end this failed.
47. P. SIMON and SIMON sold the "lost" insurance Policy(ies) on SIMON, acting as the broker and agent of record and also maintained and setup the VEBA trust through trust companies they operate that paid the insurance proceeds to the plan participants.
48. That D. SIMON, A. SIMON and TSL provided legal counsel to the businesses and trusts involved in this lawsuit and are alleged to be suppressing records relating to the "lost"

insurance Policy(ies) and “lost” trust and more, with intent to conceal and illegally change the beneficiaries of SIMON’S policy(ies) to their immediate family members to the detriment of other beneficiaries and potential creditors of the estate.

49. That defendant A. SIMON and his law firm, defendant TSL, are directly involved as counsel to many of these trusts and the insurance agencies involved that are Bernstein family owned companies and they are located in the same offices. That A. SIMON and P. SIMON have had access to all these records, including the policies and various trusts over the years and it should be noted that when producing documents for this lawsuit, they have failed to include all of the VEBA trust documentation that was responsible for beneficiary designations of the VEBA plan. The VEBA paid the insurance benefits of the plan to the employees elected beneficiaries under the plan. The Policy(ies) direct beneficiaries in the VEBA are trust companies, not typically individuals or their personal trusts. The VEBA trust receives the benefits and then pays the plans beneficiaries designated under the VEBA trust who are not typically listed on the underlying Policy(ies). This appears to be the case with the Policy(ies) claimed in this lawsuit and why the primary beneficiary is LaSalle National Trust, N.A. and the contingent beneficiary is SIMON BERNSTEIN TRUST N.A. Nowhere is the lost “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” trust named as a beneficiary of the Policy(ies), as it was a beneficiary of the VEBA plan and would have been so listed in the documentation of the VEBA trust not on the Policy(ies).

50. That to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the beneficiary was changed to the lost trust in 1995. Yet, in JACKSON’S discovery documents produced thus far, evidence is found that SIMON was sent a letter April 23, 2010, which

stated, "Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance Company. Our records indicate the following beneficiary designation for the above referenced contract number:

Primary Beneficiary/Beneficiaries: Lasalle National Trust, N.A.

Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A."

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

51. That it should be noted by this Court, that after thousands of pages of discovery were sent to ELIOT by defendants A. SIMON and JACKSON in these matters, **NEITHER PARTY SENT A COPY OF THE POLICY AND A VALID LEGAL TRUST DOCUMENT WITH CLAIMS TO THE POLICY.** Where this may be the first such case where all responsible parties to maintain insurance contracts and trusts appear to be missing the insurance contract and trusts entirely, no valid copies even tendered, indicating further alleged insurance fraud and massive liabilities since the suppression of these documents benefits directly those alleged to be suppressing them. Where ELIOT has worked in the insurance and estate planning industry and sold hundreds of millions of dollars of premium to billionaires and multimillionaires for over 20 years and has never heard of a "lost" trust and missing Policy(ies), where no one, including the policyholder, the estate planners, the fiduciaries of the trusts and Policy(ies) and even the INSURANCE CARRIER claim to have original contracts, copies of originals, valid drafts or anything of substantive legal contractual value for making a claim or paying a claim. That the insurance carrier claims not to have a copy of the Policy(ies) and thus far has provided only a specimen contract and claims to not have a single page of the any of the trusts claimed to be beneficiaries and this may expose

them to liabilities and reason they should not be allowed of these matters until they are fully resolved.

52. That also missing from the records sent to ELIOT thus far are the entire records of the VEBA TRUST maintained by P. SIMON, D. SIMON and A. SIMON for SIMON that supposedly was dissolved according to the original complaint in this matter, including but not limited to the annual VEBA trust statements, information pertaining to the dissolution of the VEBA, conversion policies, the sold case information that was maintained by P. SIMON and D. SIMON'S companies and what SIMON and SHIRLEY'S total beneficial interest in the VEBA plan were, including other policies and other assets.
53. That the VEBA TRUST was written for companies owned by SIMON, insuring all the employees of his company and where SIMON was a Pioneer of the life insurance VEBA plans.
54. That also missing at this time is any information from other defendants involved in these matters who have not yet responded to the complaint or answered the actions and have not disclosed under Rule 26, including trust companies and other law firms involved that are largely responsible to the beneficiaries of the VEBA TRUST and Policy(ies), including but not limited to, the estate planners, TSPA, TESCHER and SPALLINA, who are largely responsible for this insurance fraud and the estate planning fraud already discovered in the estate of SHIRLEY.
55. That from the records sent thus far by JACKSON, it appears that the last named alleged beneficiary and contingent beneficiary on the Policy(ies), according to JACKSON is not the lost trust claimed by SPALLINA, TED, P. SIMON and A. SIMON, the "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" but instead the primary beneficiary appears to be

LaSalle National Trust and the contingent beneficiary appears to be another lost trust where no records were tendered to ELIOT by JACKSON or A. SIMON, the "Simon Bernstein Trust, N.A." Therefore, at this time it does not appear relevant who the trustee or the beneficiaries of the "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" are in this lawsuit, as this trust is not a primary or contingent beneficiary on the Policy(ies) according to JACKSON, even if it were the contingent beneficiary there is no legally valid controlling document produced to claim the benefits. Thus, the lost trust serves no purpose to establish a claim as it is not a beneficiary, other than to prove the attempted Insurance Fraud, Abuse of Process and Fraud on this Court taking place to attempt to convert the benefits illegally. Further, in the 2500 page document dump thus far, no clear beneficiary forms have been evidenced for "Simon Bernstein Trust, N.A." showing how this entity became the contingent beneficiary or what it is.

56. That this Willful, Wanton, Reckless, and Grossly Negligent illegal behavior of the Attorneys at Law, TSPA, TESCHER and SPALLINA who have largely caused this mess of unknown beneficiaries and missing trusts and missing Policy(ies) in the estate, by failing to protect the beneficiaries through the extensive estate planning that SIMON and SHIRLEY contracted and paid them do, have still not answered this lawsuit at this time as they were served a courtesy copy to respond to without forcing process serving and more costs to their victims and delaying the ability to settle these matters or litigate them timely and further causing damages to the true and proper beneficiaries of the Policy(ies) who have been denied benefits by these fraudulent insurance and estate schemes and frauds for over a year now.

57. That in filing this instant action, A. SIMON knew that SPALLINA had fraudulently filed a claim as Trustee of the lost trust, which his client TED claims now to be Trustee of the same



lost trust claimed in this Lawsuit. Where A. SIMON knew SPALLINA was not the “Trustee” and could never have been the “Trustee” of the lost trust, as SPALLINA himself claimed never to have seen a copy and A. SIMON knowing of this fraudulent claim failed to notify the proper authorities of this Insurance Fraud by another Attorney at Law as required by state and federal Ethics Codes and Law. A. SIMON has also failed to notify this Court of the fraudulent attempt by SPALLINA to collect the benefits acting as “Trustee” of the lost trust. A. SIMON, filed a Breach of Contract lawsuit for TED on a failed claim of SPALLINA’S and “who’s on first.”

58. That instead of doing what was required by Law when someone attempts to make a fraudulent insurance claim while acting in a false capacity and reporting the crime to the proper authorities, A. SIMON further conspired with TED and SPALLINA to then file this FRAUDULENT BREACH OF CONTRACT LAWSUIT ON A US FEDERAL COURT switching the trustee of the lost trust with intent.
59. That two other documents presented to this Court in Motions and Discovery deserve special note, as they were drafted by **anonymous** Attorneys at Law, no markings of who the draftsmen were and what law firm prepared them, in fact, no identifying marks upon them as to the author(s) at all. The first document is the SAMR trust agreement already exhibited herein, in EXHIBIT 5 and the Court should demand to know who the draftsmen of this document are, so as any legal liabilities or evidence of fraud can be identified to the proper parties.
60. That the second document that deserves further scrutiny was submitted by A. SIMON on behalf of his clients, the lost trust and TED, via discovery in this lawsuit, a document which attempts to now be inserted into the record as some kind of parole evidence of the lost trust,

alleged to be a draft of the lost trust. SEE EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST. This document lacks any identifying marks as to who the Attorneys at Law were that drafted it. The document is unsigned and bears no markings that it was ever sent to any party, it is also undated and has absolutely no legal validity and represents an attempt to fool this Court into believing this document validates the lost trust scheme's trustees and beneficiaries proposed in this baseless Lawsuit. Again, this Court should demand to know who the legal draftsmen of the document are so that any legal liabilities or evidence of further fraud can be identified to the proper parties. It is not standard operating procedure for law firms to send out documents, especially estate planning documents, even a draft, without the proper nomenclature identifying their works. This blank un-authored document is worthless to establish a legal claim to the proceeds and proves nothing but another attempted alleged fraud, this time to fulfill Your Honor's request at the last hearing for a copy of the signed lost trust that has been missing since the start of this action.

61. That both TED and P. SIMON were aware that their signatures had been forged on fraudulent documents for both themselves and their father SIMON in the estate of SHIRLEY in May of 2012. Despite knowing their signatures were forged and fraudulent in documents that materially affected the estate beneficiaries, forcing SHIRLEY'S estate to be reopened by Judge Colin, they failed to take any actions to rectify these felony criminal acts with the proper authorities and Probate court for months and further concealed this information, while they rushed to liquidate assets of SHIRLEY'S estate.

62. That not until Florida state investigators from the Governor's office and Palm Beach Sheriff's office came knocking on the door of SPALLINA, MORAN and ELIOT'S siblings in regard to the forgeries and fraud in documents in the estate of SHIRLEY and the jig was

up, did TED and P. SIMON come forward on September 13, 2013, immediately prior to the first hearing on the fraudulent documents of MORAN and expose their concealed knowledge. Five months after they learned of the forgeries and fraud in their names and in their deceased father's name, they then attempt to claim that the felony crimes were OK by them, including the fact that their signatures and their father's signature were forged on fraudulent documents. Simon's signature was forged and the document created POST MORTEM and then filed along with other documents filed in Simon's name for several months after his death, all filed as if Simon were alive at the time, used to close the estate of SHIRLEY and attempt to change the beneficiaries. These crimes appear OK by TED, as stated in a recent email, sent to ELIOT on 12/06/2013 at 10:16PM EST, "You pursued and caused to be arrested a paralegal that our parents loved and without ill-intent, only tried to help a situation along because of dad's death, and it now appears that you are in the process of trying that again with my assistant who has done nothing wrong. You continue to drag Don and Robert through the mud, both of whom our parents were very fond of and who did very good work for our family, notwithstanding your relentless and slanderous accusations."

63. That it should be noted that TED in the hearings before Judge Colin was found making false statements to the Court regarding his fiduciary roles in the estate of SHIRLEY, prior to September 2013, when he made multiple fraudulent transactions using these knowingly false fiduciary titles, even stating to judge Colin that he was the Trustee of the Estate of Shirley on September 13, 2013 and where it was later learned in that hearing that due to the Fraud on the Court where SIMON was used dead as if alive and serving as Personal Representative and Trustee to close the estate and thus no successors had been chosen when SIMON died, due to the fraud.

64. That in an Order dated, November 14, 2013 in SHIRLEY'S estate, Judge Martin Colin ruled, "2. The Court has determined that it will take no action regarding the form of the pleadings or other documents that were submitted to the Court to close the Estate while Simon Bernstein was serving as Personal Representative." What is important to note is that in the September 13, 2013 hearing it was learned that the estate of SHIRLEY was closed in January 2013, months after SIMON was dead, with SPALLINA and TESCHER using ILLEGALLY SIMON as the Personal Representative while he was dead, as if he were alive. Therefore, the estate was illegally closed by a dead person who could not be "serving" as Personal Representative while dead as only living people can serve in any capacity. This exchange at the hearing is what led to Judge Colin asking the attorneys, defendants SPALLINA and TESCHER (through his counsel) at the September 13, 2013 hearing, how this could be legally possible and then stating he should read them their Miranda Warnings for the fraud upon the court and beneficiaries. Therefore, Colin's Order claims that any documents submitted while SIMON was "serving" as Personal Representative are not actionable and those documents filed POST MORTEM for SIMON by others while he was dead and not legally "serving," remain actionable.
65. That it should be noted that the documents SIMON signed and filed while alive have not been questioned at this time for forgery and fraud, only the documents that appear signed and forged and incomplete in the estates that were filed for him illegally by SPALLINA and TESCHER POST MORTEM are being questioned. See EXHIBIT 7 – PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM. Virtually all of these POST MORTEM documents filed with the court appear legally invalid, as they are improperly notarized, witnessed and more and when combined together attempt to make POST

MORTEM changes to the beneficiaries in SIMON and SHIRLEY'S estates that counteract those SIMON and SHIRLEY made while alive. The changes appear made after they were both deceased, by those who were cut out of the estates, TED and P. SIMON, similar to what is going on in this lawsuit in attempts to convert the insurance proceeds of the estate of SIMON against SIMON'S wishes through suppression of documents and fraud.

66. Another question for this Court to determine is how the lost trust that was being replaced with the SAMR, due to the fact that no one can determine who the trustee and beneficiaries are of the lost trust, now files a suit against the carrier, if it was unknown who the trustees and beneficiaries were prior to the lawsuit? If the trustee and beneficiaries are a "best guess" according to SPALLINA as evidenced in EXHIBIT 5, how can a lost trust with no valid legal contractual rights sue anyone, when TED or SPALLINA or Alice in Wonderland could be the trustee and beneficiaries and no valid binding documents exist?
67. That William Stansbury, a creditor in the estate of SIMON, has filed a Motion to Intervene in this Lawsuit and claims that this action is merely an attempt to defraud him as creditor in the estate, further supporting the claim of ELIOT that this Lawsuit was filed steeped in attempted fraud on beneficiaries and now a creditor of the estate of SIMON.
68. That for all of these reasons defined herein, this Court should strike the pleadings filed by A. SIMON and remove A. SIMON from legal representations in the Lawsuit other than as a Defendant for Fraud on the Court and Abuse of Process for his knowing violations of law in filing this Lawsuit and more.

**REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL**

69. That A. SIMON in two hearings held already before this Court appears to have personal feelings and emotions involving ELIOT as an extended family member that interfere with his ability to act independently and without malice towards ELIOT as an adversary in these proceedings. It should be noted that defendant A. SIMON has an adverse and conflicting interest in these proceedings as he is now a defendant and ELIOT is alleging that he is committing Insurance Fraud, Abuse of Process and Fraud on the Court, as he and his law firm are involved directly in the lost/suppressed Policy(ies) and trusts and now is found attempting to convert the funds to his brother's wife/employer P. SIMON through this fraudulent Lawsuit.
70. That for these reasons and more A. SIMON and his law firm TSL'S partners, including defendant D. SIMON, will be deposed and called as witnesses in these matters, regarding direct involvement in the lost Policy(ies) and trusts and for knowingly fraudulently filing this Lawsuit with no basis in law and all of these personal and professional reasons make his representations and pleadings far from impartial on behalf of both his clients, the lost trust, TED, P. SIMON, FRIEDSTEIN and IANTONI, his law firm TSL, his brother D. SIMON and himself both Personally and Professionally. Defendant A. SIMON can no longer be unbiased either in his representations as counsel for himself or others, especially where there is adverse interest in the matter that could put him behind bars for felony crimes alleged herein that he is a central party to.
71. That defendant A. SIMON appears to have responded to ELIOT'S answer and cross claim representing himself as his own attorney personally and it is further unclear if he is attempting to represent himself professionally, as he was sued in both capacities and may need separate counsel to represent each capacity independently.

72. That in a hearing before this Court, defendant A. SIMON admitted to Your Honor that he was conflicted once he became a defendant and claimed to this Court that ELIOT sued him only to conflict him from further representation. Where this admission of his conflict, despite the claimed reason, is cause for Defendant A. SIMON to withdraw as counsel for any party or be removed from further representing himself and any other parties by this Court. It should be noted that ELIOT sued defendant A. SIMON for good reason and cause, as he is not impartial to these matters and has sued knowing there was no basis to the claims, knowing that he was filing without noticing ELIOT or other potential beneficiaries of this Lawsuit to abscond with the proceeds of the Policy(ies), knowing that SPALLINA had already made a claim as Trustee of the lost trust to the carrier and failed to notify this court or authorities that SPALLINA was not the Trustee and had committed insurance fraud and finally, as he knew in a lost beneficiary situation Florida law has the insured's estate as the beneficiary.
73. That defendant D. SIMON is represented by defendant A. SIMON and again defendant D. SIMON was sued in both his personal and professional capacities and it is unclear which capacity defendant A. SIMON will be attempting to represent his brother in these matters.
74. That defendant A. SIMON for reasons stated herein and in the cross claim should be removed from acting as a counsel for TED or any other party and seek legal counsel for both himself, personally and professionally, and for his law firm, as they have all now been sued in this lawsuit as Cross Claim Defendants, with good cause. Where this Court may find that A. SIMON and other parties may need separate counsel to represent themselves in each capacity sued, prior to further adjudication.

75. That before ELIOT is compelled by this Court to respond to ANY further improper pleadings, wasting thousands of dollars more and further share information with defendants A. SIMON as counsel, this Court should first determine if there is any basis to this Lawsuit and if A. SIMON is conflicted from representing anyone other than himself Pro Se. This Court should note that in JACKSON'S Answer and Counter Complaint, they claim that TED was advised by counsel that he had no basis to file this Lawsuit in the first place and then TED sought out a family member with interests, defendant A. SIMON, whose brother has an interest in the Policy(ies) through his wife P. SIMON an alleged beneficiary, to knowingly file this fraudulent Lawsuit.
76. That if this Lawsuit is found to have no basis in law, then A. SIMON, SPALLINA, TESCHER and TED should be sanctioned and reported to the proper authorities for insurance fraud, fraud on the Court and more and this Court should take Judicial Notice of these alleged crimes and act on its own motions to report and stop this abuse, awarding a Default Judgment and all reliefs and damages requested by ELIOT.
77. That in any event this Court must first determine if A. SIMON can continue to represent himself personally and professionally and others in their varied capacities they were sued under or if he and the parties he represents need to seek independent non-conflicted counsel before proceeding further **for each capacity they were sued under.**

**RELIEF**

**WHEREFORE**, Cross Plaintiff ELIOT prays to this Court:

- i. FOR AN ORDER TO STRIKE PLEADINGS BY A. SIMON FOR FRAUD ON THE COURT AND ABUSE OF PROCESS;



- ii. FOR AN ORDER TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL;
- iii. That all filings of A. SIMON should be withdrawn and disqualified from this proceeding and ELIOT should not be obligated to respond to improper pleadings, until non conflicted counsel can file the pleadings properly;
- iv. This Court should order that TED, P. SIMON, LANTONI, D. SIMON and FRIEDSTEIN find new non conflicted counsel to represent their interests in this FRIVOLOUS, ABUSIVE OF PROCESS AND FRAUDULENT Breach of Contract Lawsuit in each capacity;
- v. That each defendant party represented by defendant A. SIMON seek independent non-conflicted counsel and separate and independent counsel be demanded by this Court for their children who should be entered in this case as possible beneficiaries of the proceeds;
- vi. For sanctions to be levied against A. SIMON, D. SIMON, TSPA, TESCHER and SPALLINA for abuse of process and fraud on the court. That according to JACKSON'S original complaint, TED was advised by counsel, alleged to be SPALLINA, that he had no basis to file this lawsuit, and yet, defendant A. SIMON filed the action on behalf of a "lost" trust and with TED as alleged trustee of said "lost" trust and to further benefit his sister-in-law/employer, P. SIMON.
- vii. That this Court take Judicial Notice of the criminal activities alleged herein and the Fraud and Forgery already proven in the estate of SHIRLEY and act on its own

Motions to stop further criminal activity and damages to the beneficiaries of the estate of SIMON and report these matters to state and federal authorities.

- viii. Award Court Costs not from the Policy(ies) but directly from alleged conspirators of this Fraud on the Court and Abuse of Process and force bonding for these unnecessary legal and other costs by those parties that have caused this baseless and vexatious Lawsuit in efforts to perpetrate a fraud;
- ix. ELIOT requests this Court take Judicial Notice of the alleged Fraud on the Court and Fraud on the Beneficiaries of the Policy(ies) through this criminal abuse of process by Attorneys at Law violating ethical codes of conduct and law and act on its own motions to prevent any further possible criminal activities and damages to others being incurred until these alleged criminal matters are fully resolved and report these alleged criminals with attorney at law degrees and all of them to the proper state and federal bar associations as required by Judicial Cannons and Attorney Conduct Codes.
- x. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees.

Dated

December 20, 2013

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot I. Bernstein  
2753 NW 34<sup>th</sup> St.

Boca Raton, FL 33434

(561) 245-8588

Certificate of Service

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on December 8, 2013 to the following parties:

**Email**

Robert L. Spallina, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

Theodore Stuart Bernstein and  
National Service Association, Inc. (of Florida) ("NSA")  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@liteinsuranceconcepts.com](mailto:tbernstein@liteinsuranceconcepts.com)

Lisa Sue Friedstein  
2142 Churchill Lane  
Highland Park IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com)  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Marla Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
[Iantoni\\_jill@ne.bah.com](mailto:Iantoni_jill@ne.bah.com)

Pamela Beth Simon and  
S.T.P. Enterprises, Inc.,

A handwritten signature in blue ink is written over the text of the first recipient. To the left of the signature, the date '20th' is written in blue ink. The signature is a stylized, cursive name that appears to be 'R. Spallina'.

A handwritten signature in blue ink is written at the bottom of the page. To the left of the signature, the date '20th' is written in blue ink. The signature is a stylized, cursive name that appears to be 'P. Simon'.

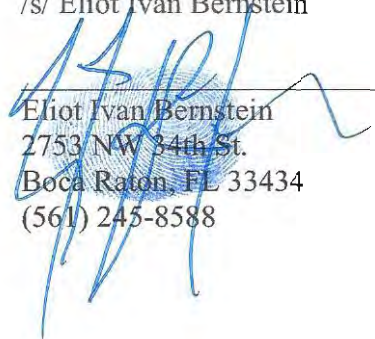
S.B. Lexington, Inc. Employee Death Benefit Trust,  
SB Lexington, Inc.,  
National Service Association, Inc. (of Illinois)  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)

Adam Simon and  
The Simon Law Firm  
General Counsel STP  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[asimon@stpcorp.com](mailto:asimon@stpcorp.com)



/s/ Eliot Ivan Bernstein



Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588



**EXHIBIT 1 – SPALLINA CLAIM FORM WITH SPALLINA AS TRUSTEE OF THE  
“LOST” TRUST**

A blue ink signature is written over a circular fingerprint impression. The signature is a cursive-style name, possibly "Spallina". The fingerprint is a clear, circular impression of a finger's ridges.

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

BOCA VILLAGE CORPORATE CENTER I  
1835 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33433

ATTORNEYS  
DONALD E. TESCHER  
ROBERT L. SPALLINA  
LAUREN A. GATYANI

TEL: 561-997-7608  
FAX: 561-997-7378  
TOLL FREE: 888-997-7008  
WWW.TESCHERANDSPALLINA.COM

SUZANNE SMITH  
DIANE DUBOIS  
KIMBERLY MORAN  
SUZANNE TESCHER

November 1, 2012

**VIA FEDERAL EXPRESS**  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32221

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

Dear Sir or Madam:

Enclosed is the Claimant's Statement for the above referenced policy, together with an original death certificate for the insured, Simon Bernstein. We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which is the trust listed as beneficiary of the above referenced policy. We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post. We are unable to locate a copy of the original insurance policy.

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

km = Kimberly  
Moran

## CLAIMANT STATEMENT

Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

### INSTRUCTIONS

The following items are required for all claims:

- An original certified death certificate showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).

If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special Instructions and additional requirements may apply:

- If the beneficiary is the Estate of the Insured, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- If the beneficiary is a trust, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- If the beneficiary is a minor, we will require evidence of court appointed guardianship of the Minor's Estate.
- If the policy is collaterally assigned, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- If the primary beneficiary(ies) is (are) deceased, we will require a death certificate for each deceased beneficiary.
- If the policy has a split dollar agreement associated with it, we will require a copy of said agreement.
- If the policy is subject to a Viatical or a Life Settlement transaction, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete questions 19 and 30.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.

## CLAIMANT STATEMENT

### FRAUDULENT INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.



CLAIMANT STATEMENT

DECEDENT INFORMATION	
1. Name of Deceased (Last, First Middle) <b>Bernstein, Simon Leon</b>	2. Last 4 digits of Deceased's Social Security No. <b>5211</b>
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, including derivative form of first and/or middle name or an alias, please provide them below	
4. Policy Number(s) <b>1009208</b>	5. If policy is lost or not available, please explain. <b>Unable to locate policy is 30 years old</b>
6. Deceased's Date of Death <b>09/13/12</b>	7. Cause of Death <b>natural causes</b>
8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	

CLAIMANT INFORMATION			
9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section. <b>Simon Bernstein Irrevocable Insurance Trust</b>			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number	16. Relationship to Deceased	
17. Trust filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

CLAIMANT INFORMATION (to be completed by 2 <sup>nd</sup> claimant, if any)			
20. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number	27. Relationship to Deceased	
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.  
 01-0012F-01F-Claimant Statement No 7/7/07 1/20/11 Page 1

00000000 0000710



CLAIMANT STATEMENT

TRUSTEE CERTIFICATION

5009685 002712

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)**

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.  
Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

**Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT**

I/We the undersigned, on oath, depose and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.

2. The GST tax does not apply because the GST tax exemption will offset the GST tax.

3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.

4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)

5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust <b>Simon Bernstein Irrevocable Insurance Trust</b>	Date of Trust Agreement <b>06/01/1995</b>
Date of all Amendments	Trust Tax ID Number <b>65-617896</b>
Printed Name of Trustee(s) <b>Robert L. Spallina</b>	Signature(s) <i>[Signature]</i>
a. _____	_____
b. _____	_____
c. _____	_____
d. _____	_____

Spallina signs as trustee = FRAUD

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32261  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

October 9, 2017

LASALLE NATIONAL TRUST N.A. TRUSTEE  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09765315

Dear Trustee:

We are writing in response to your notification of the death of Simon Bernstein. Our sincere condolences go to the family for their loss.

In order to proceed with our review of the claim, we require the following items to be submitted:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- A certified death certificate. This should indicate cause of death, manner of death, date of birth and Social Security Number.
- Return the original policy - If the original policy cannot be located, please note on the Claimant Statement (Page 3, Item 4).
- Trust Documentation - Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.
- Letter of representation or written authorization signed by the beneficiary authorizing information to be released on the above referenced policy.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. A valid claim will include interest due and payable from the date of death at a rate of 10% if we do not pay the claim within 31 days from the latest of 1) the date that we receive proof of death, 2) the date we receive sufficient information to determine our liability and the appropriate beneficiary(ies) entitled to the proceeds; or 3) the date that any legal impediments are resolved.

If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

Diane Henderson  
Claims Manager

Enclosure(s): Life Claimant Statement No RAA

AWT History for Work object key 2012-10-04-10.38.59.016241T01

JLIFE - DTHCLM - CLLEGAL - CLIENT - Updateable

- 1009208 - - BERNSTEIN - SIMON - 14 - SRDC00014031

Social Security Num: [REDACTED] Policy Number: 1009208

Agent Number: [REDACTED] Insured's Last Name: BERNSTEIN

Printed on Tuesday, May 07, 2013 at 3:01:53PM

Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-17                      Flags:  
Begin Time: 16:49:34                      DTM Job Name:  
User Id: SMCDOJL                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area:                          DTM Next Task:  
Type:                                      End Date: 2013-01-17  
Status:                                  End Time: 16:49:34  
Queue:  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments: Received a call from attorney Spallina. He wants to talk to in-house counsel about not filing dec action because of expense. Sent Jackson legal message to call me or Spallina. JLM

Begin Date: 2013-01-17                      Flags: 000000  
Begin Time: 16:47:32                      DTM Job Name:  
User Id: SMCDOJL                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area: JLIFE                      DTM Next Task:  
Type: DTHCLM                              End Date: 2013-01-17  
Status: CLREVIEW                          End Time: 16:48:22                      ↑  
Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-15                      Flags:  
Begin Time: 11:50:00                      DTM Job Name:  
User Id: JWALKK                          DTM Return Code:  
Workstation Id:                          DTM Task Name:  
Business Area:                          DTM Next Task:  
Type:                                      End Date: 2013-01-15  
Status:                                  End Time: 11:50:00  
Queue:  
User Name: WALKER, KELLIE  
DTM Description:  
Comments: faxed client letter to Robert Spallina and advised of court order required..faxed to 561-997-7308

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, FL 32251  
Phone 800-825-0003 Fax 803-433-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

November 29, 2012

JASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 770  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09801925

Dear Trustee:

We are writing to remind you that we have not received the previously requested items necessary to proceed with our review of the pending claim on the above referenced policy. The required items are:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

V02091806

Sincerely,

D. Henderson  
Claims Services

Enclosure(s): H. Department of Insurance Notification  
Life Claimant Statement No RAA

JCK001290

DEC-05-2012 04:34PM FROM:TESCHER & SPALLINA +5619877308 T-834 P 001/009 F-356

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 MOTAN  
SUANN TESCHER


December 6, 2012

VIA FACSIMILE: 803-333-4936  
Attn: Drec  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 62651

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

Dear Broc:

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

JCK001297



From (561) 997-7008  
Kimberly Moran  
TESCHER & SPALLIN  
4555 Technology Way  
Suite 720  
BOCA RATON, FL 33431

Origin ID: PHKA

FedEx



J1Z20145630725

Ship Date: 21DEC12  
Net Wgt: 1.9 LB  
COD: 194478/METJSC1

Delivery Address: [REDACTED]

SHIP TO: (800) 825-0603

BILL SENDER

Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

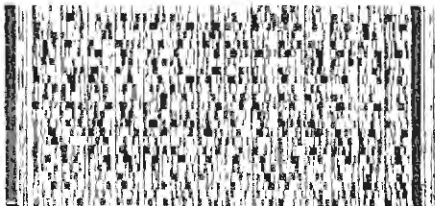
JACKSONVILLE, IL 62651

Rel # 9amcels 11187.308  
Invoice #  
PC #  
Dept #

MON - 24 DEC AA  
STANDARD OVERNIGHT

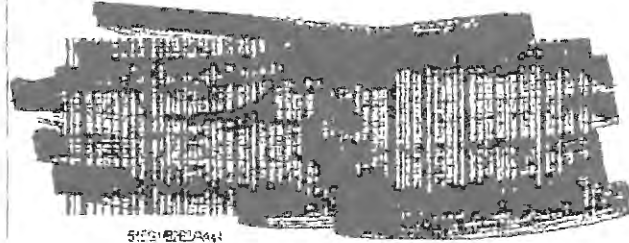
TRK# 7943 7521 3807

1020



SH SPIA

62651  
IL-US  
STL



5121422044


JCK001308

**Eliot Bernstein**

---

**Subject:** FW: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

**From:** Robert Spallina [<mailto:rspallina@tescherspallina.com>]  
**Sent:** Tuesday, October 23, 2012 2:34 PM  
**To:** Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein  
**Subject:** RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form. 

Thank you for your help.

Robert L. Spallina, Esq.  
TESCHER & SPALLINA, P.A.  
4855 Technology Way, Suite 720  
Boca Raton, Florida 33431  
Telephone: 561-997-7008  
Facsimile: 561-997-7308  
E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

**EXHIBIT 2 – MORAN SUSPENSION**

A handwritten signature in blue ink, appearing to be the name 'Moran', is located at the bottom center of the page. The signature is written over a circular, textured blue stamp or seal.



RICK SCOTT  
GOVERNOR

# Office of the Governor

THE CAPITOL  
TALLAHASSEE, FLORIDA 32399-0001

[www.flgov.com](http://www.flgov.com)  
850-488-7146  
850-487-0801 fax

October 14, 2013

Via Certified Mail

Ms. Kimberly Moran  
6362 Las Flores Drive  
Boca Raton, Florida 33433

Dear Ms. Moran:

Enclosed is a copy of Executive Order Number 13-291 issued by Governor Rick Scott on October 14, 2013. This Executive Order suspends your notary public commission pursuant to section 117.01(4)(c), Florida Statutes. As a result, the Executive Office of the Governor requires your notary commission certificate to be relinquished to this Office, in the self-addressed envelope enclosed. Additionally, you are required to destroy your notary stamp.

If you have any additional questions, please contact our office at (850) 717-9529 or via email at [NOTARY@eog.myflorida.com](mailto:NOTARY@eog.myflorida.com).

Sincerely,

A handwritten signature in blue ink that reads "Erin Tupper".

Erin Tupper  
Notary Coordinator  
Executive Office of the Governor, Notary Section

Enclosures

cc: Eliot Bernstein  
Notary Public Underwriters

**STATE OF FLORIDA**  
**OFFICE OF THE GOVERNOR**  
**EXECUTIVE ORDER NUMBER 13-291**  
(Executive Order of Suspension)

**WHEREAS**, Kimberly Moran, is presently serving as a Notary Public of the State of Florida;  
and

**WHEREAS**, this Office received a complaint reporting Kimberly Moran for notary  
misconduct; and

**WHEREAS**, the complainant states that Kimberly Moran notarized a signature on a document  
when the signing party was not in her presence at the time of the notarization, and made a false or  
fraudulent acknowledgement of that signed instrument, and made changes to the instrument after the  
party had signed, in violation of Sections 117.107(9), 117.105, and 117.107(7), Florida Statutes; and

**WHEREAS**, in a sworn written statement, dated August 8, 2013, Kimberly Moran confirmed  
the above-stated violations of notarial statutes; and

**WHEREAS**, it is in the best interests of the citizens of the State of Florida that Kimberly  
Moran be immediately suspended from the public office, which she now holds, upon the grounds set  
forth in this Executive Order;

**NOW, THEREFORE, I, RICK SCOTT**, Governor of Florida, pursuant to Article IV, Section  
7 of the Florida Constitution and Section 117.01(4), Florida Statutes, find and state as follows:

- A. Kimberly Moran is a duly appointed Notary Public of the State of Florida, pursuant to  
Section 117.01, Florida Statutes.
- B. Kimberly Moran is commissioned as a Florida notary public from April 29, 2012, through  
April 28, 2016.
- C. Kimberly Moran admitted to notarizing a document when the signers were not in her  
presence at the time of the notarization, in violation of Section 117.107(9), Florida Statutes.

D. Kimberly Moran admitted to making a false or fraudulent acknowledgment of the instrument being notarized, in violation of Section 117.105, Florida Statutes.

E. Kimberly Moran amended the instrument after the party had signed, in violation of Section 117.107(7), Florida Statutes.

**BEING FULLY ADVISED** in the premise, and in accordance with the Florida Constitution and the laws of the State of Florida, this Executive Order is issued

Section 1. Kimberly Moran is suspended from the public office which she now holds: Notary Public of the State of Florida.

Section 2. Kimberly Moran is prohibited from performing any official act, duty, or function of this public office; from receiving any pay or allowance; and from being entitled to any of the emoluments or privileges of this public office during the period of suspension, which period shall begin, today, until further Executive Order is issued, or as otherwise provided by law.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 14<sup>th</sup> day of October, 2013.

  
\_\_\_\_\_  
RICK SCOTT, GOVERNOR

ATTEST:

  
\_\_\_\_\_  
SECRETARY OF STATE

**FILED**  
2013 OCT 14 AM 9:40  
DEPARTMENT OF STATE  
TALLAHASSEE, FLORIDA

**EXHIBIT 3 – PALM BEACH COUNTY SHERIFF REPORT**

A blue ink signature is written over a circular fingerprint. The signature is stylized and appears to be the initials 'AB' or similar. The fingerprint is a standard latent print with visible ridge patterns.

PALM BEACH COUNTY SHERIFF'S OFFICE  
CASE NO. 13097087 OFFENSE REPORT PAGE 1

DISPOSITION: OPEN  
DIVISION: ROAD PATROL

911:

IMPERMITE PUB OF

SIGNAL CODE: 53 CRIME CODE: 4 NON CRIME CODE: CODE: 2600 07/15/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7657 NAME: LONGSWORTH BRYA ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:

INCIDENT LOCATION: 12901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 2600

NAME LIST:

ROLE:

COMPLAINANT

ELLIOT I BERNSTEIN

DOB: 09/30/1963

SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL

RESIDENTIAL ADDRESS: 2753 NW 34TH ST BOCA RATON FL 33434

HOME PHONE: 561 245-8588

BUSINESS PHONE: 561 886-7628

OTHER

ROBERT L SPALLINA

DOB: 06/09/1965

SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN

RESIDENTIAL ADDRESS: 4855 TECHNOLOGY WY BOCA RATON FL 33431

HOME PHONE: 561 997-7008

BUSINESS PHONE: 561 000-0000

OTHER

TED BERNSTEIN

DOB: 08/27/1959

SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN

RESIDENTIAL ADDRESS: 800 BERKELEY ST BOCA RATON FL 33484

HOME PHONE: 561 988-8984

BUSINESS PHONE: 561 000-0000

OTHER

SIMON BERNSTEIN

DOB: 12/02/1935

SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN

RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496

HOME PHONE: 561 000-0000

BUSINESS PHONE: 561 000-0000

ARRESTEE

KIMBERLY MORAN

DOB: 10/24/1972

SEX: F RACE: W HT: 505 WT: 135 HR: BROWN EYE: BROWN

RESIDENTIAL ADDRESS: 6362 LAS FLORES DR APT. 4 BOCA RATON FL 33433

HOME PHONE: 561 000-0000

BUSINESS PHONE: 561 000-0000

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM



CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
OFFENSE REPORT

PAGE 2  
CASE NO. 13097087

DISPOSITION: OPEN

ROLE:

OTHER ROLE NO. 4

\*NAMES\* LAST FIRST MIDDLE J/S R/S DOB  
 REAL... SIMON PAMELA  
 W F

\*ADDRESS\* NO. STREET SEX DIR APT# CITY ST ZIP  
 BUSINESS 950 MICHIGAN AV N 2603 CHICAGO IL 60035

\*PHONE #S\* HOME OTHER BUSINESS  
 000 0000 000 0000 (312) 819 7474

ROLE:

OTHER ROLE NO. 5

\*NAMES\* LAST FIRST MIDDLE J/S R/S DOB  
 REAL... IANTONI JILL  
 W F

\*ADDRESS\* NO. STREET SEX DIR APT# CITY ST ZIP  
 BUSINESS 2101 MAGNOLIA LA HIGHLAND PARK IL 60035

\*PHONE #S\* HOME OTHER BUSINESS  
 (847) 831 4915 000 0000 (312) 804 2318

ROLE:

OTHER ROLE NO. 6

\*NAMES\* LAST FIRST MIDDLE J/S R/S DOB  
 REAL... FRIEDSTEIN LISA S  
 W F

\*ADDRESS\* NO. STREET SEX DIR APT# CITY ST ZIP  
 BUSINESS 2142 CHEURCHILL LA HIGHLAND PARK IL 60035

\*PHONE #S\* HOME OTHER BUSINESS  
 (847) 877 4633 000 0000 (312) 000 0000

OFFENSE INDICATOR: OFFENSE 1 VICTIM NUMBER: 1  
 VICTIM TYPE: UNKNOWN  
 RESIDENCE TYPE: NOT APPLICABLE RESIDENCE STATUS: NOT APPLICABLE

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CASE NO. 13097087 PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: OPEN

EXTENT OF INJURY: NONE  
INJURY TYPE(1): NOT APPLICABLE  
INJURY TYPE(2): NOT APPLICABLE  
VICTIM RELATION: NOT APPLICABLE

ON 071513, I RESPONDED TO THE DISTRICT VII SUBSTATION LOCATED AT 17901 SOUTH STATE ROAD 7, UNINCORPORATED BOCA RATON, FLORIDA IN REFERENCE TO A REPORT OF FRAUD.

UPON ARRIVAL, I MADE CONTACT WITH THE COMPLAINANT INSIDE OF THE DISTRICT VII LOBBY. THE COMPLAINANT VERBALLY IDENTIFIED HIMSELF AS ELLIOT I. BERNSTEIN. ELLIOT STATED THAT SINCE SEPTEMBER OF 2012 THERE HAVE BEEN SEVERAL FRAUDULENT AND FORGED DOCUMENTS THAT HAVE BEEN FILED IN THE SOUTH COUNTY COURTHOUSE LOCATED AT 200 WEST ATLANTIC AVENUE, DELRAY BEACH, FLORIDA. ELLIOT ADVISED THAT THESE FRAUDULENT/FORGED DOCUMENTS WERE FILED WITH THE SOUTH COUNTY COURTHOUSE TO MISAPPROPRIATE ASSETS ILLEGALLY FROM THE ESTATES OF SIMON AND SHIRLEY BERNSTEIN (DECEASED PARENTS). ELLIOT TOLD ME THAT THESE DOCUMENTS WERE PREPARED AND EXECUTED BY ATTORNEYS DONALD TESCHER AND ROBERT SPALLINA OF TESCHER AND SPALLINA AND THAT THESE DOCUMENTS WERE FOR POWER OF ATTORNEY OVER THE TWO (2) ESTATES WHICH WERE VALUED BETWEEN 20 TO 50 MILLION DOLLARS. ACCORDING TO ELLIOT, HIS BROTHER, THEODORE STUART BERNSTEIN, ALSO HAD INVOLVEMENT WITH THE FILING OF THESE FRAUDULENT/FORGED DOCUMENTS.

WHILE SPEAKING TO ELLIOT, HE SHOWED ME SEVERAL COURT DOCUMENTS WHICH HE ALLEGED ARE COPIES OF THE FRAUDULENT/FORGED DOCUMENTS THAT WERE FILED AT THE COURT HOUSE. ELLIOT COMPLETED A SWORN WRITTEN STATEMENT AND I COMPLETED A VICTIM/WITNESS CASE INFORMATION FORM IN WHICH ELLIOT WAS GIVEN ALONG WITH COPIES OF HIS FOUR (4) PAGE SWORN WRITTEN STATEMENT.

DUE TO THE MONETARY AMOUNT AND THE ALLEGATIONS THAT WERE MADE REGARDING THE FILING OF FRAUDULENT/FORGED DOCUMENTS AT THE SOUTH COUNTY COURTHOUSE, THIS CASE WILL BE FORWARDED TO THE PBSO FINANCIAL CRIMES DIVISION. THIS CASE WAS COMPLETED AT THIS TIME FOR DOCUMENTATION PURPOSES ONLY.  
D/S B.E. LONGWORTH/ID 7657/TRANS:072313/ALS  
DICT:071613/2115HRS.

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 01  
CASE NO. 13097087 SUPPLEMENT 1 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: KULU  
DIVISION: DETECTIVE

911:  
IMPERSONATE PUB OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 2600 08/14/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1216 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 2600

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS CASE,  
I ATTEMPTED TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE ON BOTH 08/13/13  
AND 08/14/13. MESSAGES WERE LEFT FOR HIM TO CONTACT ME ON BOTH NUMBERS  
PROVIDED IN THE ORIGINAL REPORT. THIS CONCLUDES MY SUPPLEMENTAL REPORT.  
DETECTIVE RYAN W. MILLER #7704  
08/14/13 @ 1241 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/15/2013/MDR/#6405

prepared by Employee Id #: 5264 on November 01, 2013 11:10:34AM

CONFIDENTIAL - FOR OFFICIAL USE ONLY

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 13097087 SUPPLEMENT 2 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: ZULU  
DIVISION: DETECTIVE

911:  
IMPRISONED FOR OF \* \* \*  
SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: 01 CODE: 260D 08/20/13 MONDAY  
ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1213 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498  
NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0  
OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D  
..

AFTER BEING ASSIGNED THE FOLLOW-UP INVESTIGATION IN REGARDS TO THIS INCIDENT, I WAS ABLE TO MAKE CONTACT WITH ELLIOT BERNSTEIN VIA PHONE. ELLIOT SUPPLIED ME WITH AN E-MAIL WHICH CONTAINED 567 DOCUMENTS WHICH HE STATES ARE PERTINENT TO THIS CASE. I AM CURRENTLY REVIEWING THE DOCUMENTS AND STATEMENT HE PROVIDED. FURTHER INVESTIGATION WILL CONSIST OF MEETING WITH ELLIOT IN THE NEAR FUTURE TO GO OVER HIS STATEMENT AND THE DOCUMENTS HE SUPPLIED. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
08/20/13 @ 1430 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 08/21/2013/MDR/#6405

Printed by Employee Id #: 9264 on November 01, 2013 11:10:31AM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE: 1  
 CASE NO. 13097087 SUPPLEMENT 3 OFFENSE REPORT CASE NO. 13097087  
 DISPOSITION: OPEN  
 DIVISION: DETECTIVE

911:  
 IMPRINT# PUB OF \* \* \*  
 SIGNAL CODE: 53 CRIME CODE: NON CRIME CODE: OT CODE: 250D 09/25/13 MONDAY  
 ZONE: F52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1218 A 1235 C 1333  
 OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
 EXCEPTION TYPE:  
 INCIDENT LOCATION: 17901 S STATE RD 7 APT. NO.:  
 CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
 LOCATION: GOVERNMENT / PUBLIC BUILDING  
 NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON AUGUST 23, 2013 I MET WITH ELIOT BERNSTEIN REFERENCE HIS COMPLAINT. HE STATED THAT DUE TO SOME DOCUMENTS BEING FRAUDULENTLY NOTARIZED A LARGER FRAUD HAD OCCURRED. HE SUPPLIED ME WITH COPIES OF A DOCUMENT TITLED: WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE: WAIVER OF SERVICE OF PETITION FOR DISCHARGE: AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE FOR THE ESTATE OF SHIRLEY BERNSTEIN, WHO IS ELIOT'S DECEASED MOTHER.

ELIOT STATED THAT IN THE FIRST PART (BELIEVED TO BE APRIL) OF 2012, HIS FATHER HAD A MEETING WITH HIM AND HIS FOUR SIBLINGS (TED, PAMELA, JILL, & LISA). I HAVE SINCE FOUND OUT THAT THIS WAS A CONFERENCE CALL WHICH TOOK PLACE AT THE OFFICE OF ATTORNEY ROBERT SPALLINA, WHO IS/WAS THE ATTORNEY FOR SIMON AND SHIRLEY BERNSTEIN. IT SHOULD BE NOTED THAT SIMON HAS SINCE PASSED, WHICH OCCURRED ON OR ABOUT SEPTEMBER 13, 2012. AT THIS CONFERENCE CALL, WHICH WAS IN THE FIRST PART OF 2012, SIMON BERNSTEIN REVEALED TO HIS CHILDREN THAT HE WOULD LIKE THEM TO SIGN THE AFOREMENTIONED WAIVER. IT IS BELIEVED THAT THERE WAS ALSO SOME DISCUSSION OF INHERITANCE AND WHO WAS TO GET WHAT UPON SIMON'S PASSING.

INVESTIGATION REVEALED THAT ALL FIVE CHILDREN AND SIMON SIGNED THE AFOREMENTIONED WAIVER THAT WAS SENT TO THEM BY SPALLINA'S LEGAL ASSISTANT, KIMBERLY MORAN. I SPOKE WITH MORAN ON 09/24/13 AND SHE ADMITTED TO SENDING OUT THE WAIVER AS TOLD TO BY HER BOSS. THE WAIVERS WERE THEN SIGNED AND RETURNED. SIMON'S WAS SIGNED ON 04/09/12 AND ELIOT'S ON MAY 15, 2012. IT WAS FOUND THAT THE OTHER SIBLINGS DID NOT RETURN THEIR DOCUMENT FOR SEVERAL MONTHS. MORAN STATED SHE HAD TO CONDUCT FOLLOW-UP E-MAILS AND PHONE CALLS TO GET THE

Printed by Employee ID #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 3 OFFENSE REPORT

PAGE 2  
CASE NO. 13097087

DISPOSITION: OPEN

DOCUMENTS RETURNED. THEY WERE FINALLY RETURNED IN AUGUST AND OCTOBER OF 2012.

MORAN STATED SHE FILED THE DOCUMENTS WITH THE COURT IN OCTOBER OF 2012. SHE RECEIVED A MEMORANDUM FOR JUDGE MARTIN COLIN'S CASE MANAGER, ASTRIDE LIMOUZIN, STATING THE DOCUMENTS WERE NOT NOTARIZED AND THEY NEED TO BE. MORAN STATED THAT AT THIS TIME, SHE TOOK IT UPON HERSELF TO TRACE EACH SIGNATURE OF THE SIX MEMBERS OF THE BERNSTEIN FAMILY ONTO ANOTHER COPY OF THE ORIGINAL WAIVER DOCUMENT. SHE THEN NOTARIZED THEM AND RESUBMITTED THEM TO THE COURTS. WHEN I INTERVIEWED HER ON 09/24/13, SHE STATED SHE DID NOT REALLY HAVE A REASON WHY SHE FORGED THE SIGNATURES, OTHER THAN TO MAYBE SAVE TIME.

I SPOKE WITH LISA AND JILL VIA PHONE ON SEPTEMBER 10, 2013. THEY STATED THAT AS FAR AS THEY KNOW, THE FRAUDULENT NOTARIZATION CHANGED NOTHING WITH THE ESTATE SINCE THEY WILLINGLY AND KNOWINGLY SIGNED THE ORIGINAL DOCUMENTS. THEY STATED THAT THEY DO NOT WISH TO PURSUE ANYTHING CRIMINALLY. I SPOKE WITH TED ON 09/24/13. HE ALSO STATED THAT THE MISTAKE DID NOT AFFECT THE ESTATE AND DOES NOT WISH TO PURSUE ANYTHING CRIMINALLY. TO DATE PAMELA HAS NOT RESPONDED TO MY PHONE MESSAGES OR E-MAILS.

D/S MARK BEREY WAS PRESENT DURING MY INTERVIEWS WITH MORAN, TED, AND SPALLINA. WE SPOKE TO MORAN ALONE. THE INTERVIEW WAS RECORDED. SHE ADMITTED TO MAKE A POOR DECISION, BUT STATED SHE DID NOT BENEFIT FINANCIALLY FROM HER ACTIONS. WE ALSO SPOKE WITH SPALLINA ALONE. SPALLINA STATED HE WAS NOT AWARE OF MORAN'S ACTIONS UNTIL SHE TOLD HIM. MORAN STATED SHE WAS MADE AWARE THAT OTHERS HAD CAUGHT ONTO WHAT SHE DID ONCE SHE RECEIVED NOTICE FROM THE GOVERNOR'S OFFICE, NOTARY EDUCATION DIVISION. ELIOT FILED A COMPLAINT ON HER WITH THE STATE. I WAS SUPPLIED WITH A COPY OF THE COMPLAINT AND CORRESPONDENCE BY ELIOT. I ALSO SPOKE WITH ERIN TUPER MAKING HER AWARE OF MY INVESTIGATION. ELIOT SUPPLIED A SWORN WRITTEN STATEMENT TO THE ORIGINAL REPORTING DEPUTY, STATING THAT HE WISHES TO PURSUE CRIMINAL CHARGES. ELIOT ALSO TOLD ME HIMSELF THAT HE WISHES TO PURSUE CHARGES ANY CRIMINAL WRONGDOINGS IN THIS CASE. IN SPEAKING WITH SPALLINA, WE FOUND THAT THE DOCUMENT IN QUESTION CHANGES THE INHERITANCE OF PERSONAL PROPERTY IN THE ESTATE OF SHIRLEY BERNSTEIN FROM SIMON AND SHIRLEY'S CHILDREN TO THEIR GRANDCHILDREN.

D/S BEREY AND I ALSO REVIEWED ALL E-MAILS AND ATTACHMENTS (MAINLY COURT DOCUMENTS) SUPPLIED BY ELIOT. WE FOUND THAT MOST OF THE INFORMATION WAS RELATED TO THE ONGOING CIVIL CASE INVOLVING THE TRUSTS AND ESTATES OF SHIRLEY AND SIMON BERNSTEIN. THE ONLY CRIMINAL WRONGDOINGS FOUND ARE THE AFOREMENTIONED FRAUDULENTLY NOTARIZED DOCUMENTS.

IT SHOULD BE NOTED THAT ON 9/25/13 ELIOT'S WIFE, CANDICE BERNSTEIN CALLED ME AND MENTIONED THAT SHE WAS FEELING A CONCERN FOR THE SAFETY OF HER AND ELIOT. SHE STATED IT IS JUST A FEELING SHE HAD DUE TO RISING TENSIONS IN THIS ONGOING COURT BATTLE. I ASKED HER IF ANYONE HAS THREATENED HER OR HER HUSBAND AND SHE SAID NO, JUST PEOPLE INVOLVED KNOW PEOPLE WHO HAVE HIGH INFLUENTIAL

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 3 OFFENSE REPORT

CASE NO. 13097087

PAGE 8

CASE NO. 13097087

DISPOSITION: OPEN

ABILITIES. ELIOT WOULD NOT ELABORATE, BUT DID STATE THAT HE HAS ONGOING FEDERAL COURT BATTLES AND BELIEVES HE IS BEING TARGETED BY PEOPLE DUE TO HIS PATENTS AND INVENTIONS. AT THIS TIME, I HAVE NO EVIDENCE TO SHOW THEY ARE IN ANY HARM'S WAY REGARDING MY INVESTIGATION OR GENERALLY SPEAKING.

BASED ON THE FACTS AND FINDINGS OF THIS INVESTIGATION, I FIND PROBABLE CAUSE FOR THE ARREST OF MORAN FOR CRIMINAL ACTIONS UNDER THE COLOR OF LAW OR THROUGH USE OF SIMULATED LEGAL PROCESS, F.S. 843.0855(3), DUE TO THE FACT THAT SHE DID WILLINGLY AND KNOWINGLY SIMULATE A LEGAL PROCESS OF A LEGAL DOCUMENT REGARDING PERSONAL PROPERTY, KNOWING THAT THE DOCUMENT CONTAINED FRAUDULENT SIGNATURES. THIS CASE REMAINS OPEN.

DETECTIVE RYAN W. MILLER #7704

09/25/13 @ 1433 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 09/25/2013/MD/#6405

printed by Employee Id #: 5264 on November 04, 2013 11:10:31AM

oqs - viewing Case Number 13097087

11/01/2013

Case 17-3595

Document: 12-2

CENTRAL RECORDS

Filed: 03/12/2018

Pages: 795

#6744 P.008/011

Page 9 of 11

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 4 OFFENSE REPORT

PAGE: 1  
CASE NO. 13097087

DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:

IMPRINTE FOR OF

SIGNAL CODE: 53

CRIME CODE: \*

NON CRIME CODE: \*

CODE: 2600 09/27/13

MONDAY

ZONE: F52 GRID:

DEPUTY I.D.: 7704

NAME: MILLER

ASSIST:

TIME D 1218 A 1235 C 1333

OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS

EXCEPTION TYPE:

INCIDENT LOCATION: 77901 S STATE RD 7

APT. NO.:

CITY: BOCA RATON

STATE: FL

ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0

LOCATION: GOVERNMENT / PUBLIC BUILDING

NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 250D

THIS CASE WAS FILED WITH THE PALM BEACH COUNTY STATE ATTORNEY'S OFFICE ON  
09/27/13. THIS CASE REMAINS OPEN.  
DETECTIVE RYAN W. MILLER #7704  
09/27/13 @ 1311 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 09/30/2013/MDR/#6405

Printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL



PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 13097087 SUPPLEMENT 5 OFFENSE REPORT CASE NO. 13097087  
DISPOSITION: OPEN  
DIVISION: DETECTIVE

911:  
INCIDENT PUB OF  
SIGNAL CODE: 53 CRIME CODE: \* NON CRIME CODE: \* CODE: 260D 10/08/13 MONDAY  
ZONE: P52 GRID: DEPUTY I.D.: 7704 NAME: MILLER ASSIST: TIME D 1218 A 1235 C 1333  
OCCURRED BETWEEN DATE: 07/15/13 , 1241 HOURS AND DATE: 07/15/13 , 1330 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: B7901 S STATE RD 7 APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: GOVERNMENT / PUBLIC BUILDING  
NO. VICTIMS: 01 NO. ARRESTED: 0 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/07/13 I RECEIVED AN E-MAIL FROM THE STATE ATTORNEY'S OFFICE STATING  
THEY HAVE REVIEWED THE CASE AND CHARGES WILL BE FILED. ON 10/08/13 I SPOKE  
WITH ELIOT AND MADE HIM AWARE OF MY FINDINGS IN THIS CASE. HE ALSO SUPPLIED  
ME WITH NEW COURT DOCUMENTS, WHICH WERE FORWARDED TO THE SAO. THIS CASE  
REMAINS OPEN.  
DETECTIVE RYAN MILLER #7704  
10/08/13 @ 1033 HRS.  
TRANS. VIA EMAIL/COPY/PASTE: 10/08/2013/MDR/#6405

Printed by Employee Id #: 5284 on November 01, 2013 11:10:31AM

11/01/2013 11:21 5816888183

Case: 7-3595 Document: 12-2

CENTRAL RECORDS

Filed: 03/12/2018

Pages: 795

#8144 P. 011/011

CASE NO. 13097087

PALM BEACH COUNTY SHERIFF'S OFFICE  
SUPPLEMENT 6 OFFENSE REPORT

PAGE 11

CASE NO. 13097087

DISPOSITION: CLEARED BY ARREST

DIVISION: DETECTIVE

911:

IMPERSNTE PUB OF

SIGNAL CODE: 53

ZONE: P52 GRID:

OCCURRED BETWEEN DATE: 07/15/13

EXCEPTION TYPE:

INCIDENT LOCATION: 17901

CRIME CODE: \*

NON CRIME CODE: \*

CODE: 260D 10/29/13

MONDAY

DEPUTY I.D.: 7704 NAME: MILLER

ASSIST:

TIME D 1218 A 1235 C 1333

, 1241 HOURS AND DATE: 07/15/13 1330 HOURS

S STATE RD 7

CITY: BOCA RATON

STATE: FL

APT. NO.:

ZIP: 33498

NO. OFFENSES: 01 NO. OFFENDERS: 01 NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0

LOCATION: GOVERNMENT / PUBLIC BUILDING

NO. VICTIMS: 01 NO. ARRESTED: 1 FORCED ENTRY: 0

OFFENSE NO. 1 FLORIDA STATE STATUTE: 843 0855 3 CIS CODE 260D

ON 10/25/13 KIMBERLY MORAN TURNED HERSELF IN REFERENCE A CAPIAS ISSUED IN THIS CASE. THIS CASE IS NOW CLEARED BY ARREST.

DETECTIVE RYAN W. MILLER #7704

10/29/13 @ 1505 HRS.

TRANS. VIA EMAIL/COPY/PASTE: 10/30/2013/MDR/#6405

printed by Employee Id #: 5264 on November 01, 2013 11:10:31AM

CONFIDENTIAL

**PALM BEACH COUNTY SHERIFF'S OFFICE  
CENTRAL RECORDS  
FSS EXEMPTIONS/CONFIDENTIAL**

- 119.071(2)(c) Active criminal intelligence/active criminal investigative information
- 119.071(2)(e) Confession
- 365.171(15) Identity of 911 caller or person requesting emergency service
- 119.071(2)(d) Surveillance techniques, procedures, and personnel; inventory of law enforcement resources, policies or plans pertaining to mobilization, deployment or tactical operations
- 119.071(2)(l) Assets of crime victim
- 119.071(5)(a)(5) Social security numbers held by agency
- 119.071(5)(b) Bank account #, debit, charge and credit card numbers held by an agency
- 395.3025(7)(a) and/or 456.057(7)(a) Medical information
- 943.053/943.0525 NCIC/FCIC/FBI and in-state FDLE/DOC
- 119.071(4)(d) Extra fee if request is voluminous or requires extensive personnel, technology
- 119.071(5)(g)1 Biometric Identification Information (Fingerprints, palm prints, and footprints)
- 119.071(2)(f) Confidential Informants
- 316.066(5)(a) Crash reports are confidential for period of 60 days after the report is filed
- 119.071(2)(h)(1) Identity of victim of sexual battery, lewd and lascivious offense upon a person less than 16 years old, child abuse, sexual offense
- 985.04(1) Juvenile offender records
- 119.0712(2) Personal information contained in a motor vehicle record
- 119.071(2)(b) Criminal intelligence/investigative information from a non-Florida criminal justice agency
- 394.4615(7) Mental health information
- 119.071(4)(c) Undercover personnel
- 119.071(4)(d)(1) Home address, telephone, soc. security #, photos of active/former LE personnel, spouses and children

Other:

Case No:12-121312	Tracking No.: n/a	Clerk Name/ID: Hall/9205	Date: 1/31/2013
-------------------	-------------------	--------------------------	-----------------

Revised 03/04/2011

01/31/2013 12:05 6516983163  
CENTRAL RECORDS  
#2517 P.001/004

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 1  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU  
DIVISION: ROAD PATROL

POLICE SERVICE CALL \* \* \*  
SIGNAL CODE: 68 CRIME CODE: NON CRIME CODE: 99 CODE: 9968 09/13/12 THURSDAY  
ZONE: C21 GRID: DEPUTY I.D.: 8826 NAME: HADGM VINCENT ASSIST: TIME D 1155 A 1211 C 1522  
OCCURRED BETWEEN DATE: 09/12/12 , 0830 HOURS AND DATE: 09/13/12 , 0100 HOURS  
EXCEPTION TYPE:  
INCIDENT LOCATION: 7020 LIONS HEAD LA APT. NO.:  
CITY: BOCA RATON STATE: FL ZIP: 33496

NO. OFFENSES: 00 NO. OFFENDERS: 0K NO. VEHICLES STOLEN: 0 NO. PREMISES ENTERED: 0  
LOCATION: RESIDENCE - SINGLE FAMILY  
NO. VICTIMS: 00 NO. ARRESTED: 0 FORCED ENTRY: 0

..  
NAME LIST:  
ROLE:  
OTHER SIMON BERNSTEIN DOB: 12/02/1935  
SEX: M RACE: W HT: 506 WT: 180 HR: GRAY EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LIONSHEAD LA BOCA RATON FL 33496 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER TED BERNSTEIN DOB: 08/27/1959  
SEX: M RACE: W HT: 0 WT: 0 HR: UNKNOWN EYE: UNKNOWN  
RESIDENTIAL ADDRESS: 12344 MELROSE WY BOCA RATON FL 33426 HOME PHONE: 561 213-2322  
BUSINESS PHONE: 561 000-0000  
OTHER ELLIOT I BERNSTEIN DOB: 09/30/1963  
SEX: M RACE: W HT: 510 WT: 185 HR: BROWN EYE: HAZEL  
RESIDENTIAL ADDRESS: 2763 NW 34TH ST BOCA RATON FL 33434 HOME PHONE: 561 886-7627  
BUSINESS PHONE: 561 000-0000  
OTHER RACHEL WALKER DOB: 03/05/1984  
SEX: F RACE: W HT: 508 WT: 130 HR: BLOND EYE: BLUE  
RESIDENTIAL ADDRESS: 99 SE KLEINER BD BOCA RATON FL 33434 HOME PHONE: 561 000-0000  
BUSINESS PHONE: 561 000-0000  
OTHER MARITZ UCCIO DOB: 04/21/1966  
SEX: F RACE: W HT: 502 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 7020 LYONS HEAD LA BOCA RATON FL 33496 HOME PHONE: 561 305-2999  
BUSINESS PHONE: 561 000-0000  
OTHER LISA FRIEDSTEIN DOB: 03/15/1967  
SEX: F RACE: W HT: 501 WT: 120 HR: BROWN EYE: BROWN  
RESIDENTIAL ADDRESS: 2142 CHURCHMILL LA HIGHLAND IL 60035 HOME PHONE: 847 877-4633  
BUSINESS PHONE: 561 000-0000  
..

.....  
printed by Employee Id #: 9205 on January 31, 2013 12:03:53PM  
.....

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 2  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

ON 9/13/12 AT 1211 HOURS, I RESPONDED TO 7020 LYONS HEAD LANE, UNINCORPORATED BOCA RATON, FL., AND MET WITH TED BERNSTEIN AND HIS SISTER AND BROTHER, LISA FRIEDSTEIN AND ELLIOT BERNSTEIN, IN REFERENCE TO A POLICE ASSIST. TED ADVISED HIS FATHER, SIMON BERNSTEIN WAS TAKEN TO DELRAY COMMUNITY HOSPITAL AT 1000 HOURS ON 9/12/12 AND PASSED AWAY AT 0100 HOURS ON 9/13/12. HE EXPLAINED WHILE AT THE HOSPITAL HE WAS ADVISED BY SIMON'S CARETAKER, RACHEL WALKER THAT SIMON'S LIVE-IN GIRLFRIEND, MARITZA PUCCIO MIGHT HAVE PROVIDED SIMON WITH A LARGER THEN PRESCRIBED DOSE OF HIS MEDICATION AS WELL AS ONE OF HER PRESCRIBED SLEEPING PILLS, WHICH COULD OF CAUSED HIS DEATH. HE SAID HE VOICED HIS CONCERNS TO THE DOCTORS AT DELRAY COMMUNITY HOSPITAL BUT THEY ADVISED THERE DID NOT APPEAR TO BE ANY SUSPICIOUS CIRCUMSTANCES SURROUNDING SIMON'S DEATH AND THEY WOULD NOT BE CONDUCTING AN AUTOSPY. TED CONTACTED BOTH A PRIVATE COMPANY AND THE PALM BEACH COUNTY MEDICAL EXAMINER'S OFFICE REGARDING HAVING AN AUTOSPY CONDUCTED. BOTH ADVISED HE SHOULD CONTACT THE PALM BEACH COUNTY SHERIFF'S OFFICE.

AFTER SPEAKING WITH TED, I SPOKE WITH RACHEL. RACHEL STARTED BY TELLING ME THAT SIMON SUFFERED FROM SEVERAL AILMENTS TO INCLUDE, AND HE HAD APPROXIMATELY 2 YEARS AGO, WHICH WAS ONE OF SEVERAL SIMON WAS RECENTLY PLACED ON FOR THE WHICH SHE SAID EFFECTED HIS MENTAL FACULTIES. RACHEL ADVISED WHEN SHE ARRIVED AT SIMON'S HOUSE AT 0830 HOURS ON 9/12/12, SHE FOUND SIMON LYING ON THE COUCH IN THE LIVING ROOM. HE WAS AWAKE AND BREATHING BUT HE HAD A VERY LOW HEART BEAT AND WAS UNAWARE OF HIS SURROUNDINGS. RACHEL SAID SHORTLY AFTER HER ARRIVAL MARITZA RETURNED HOME. THEY HAD A BRIEF ARGUMENT OVER WHETHER OR NOT THEY SHOULD BRING SIMON TO THE HOSPITAL AS RACHEL SAYS MARITZA DID NOT BELIEVE HE NEEDED TO GO TO THE HOSPITAL AT THIS TIME. RACHEL SAID THAT SHE FINALLY TOLD MARITZA THAT SHE WAS GOING TO TAKE HIM TO THE HOSPITAL BY HERSELF. SHE SAID SHE LEFT THE HOUSE APPROXIMATELY 1000 HOURS FOR THE HOSPITAL. RACHEL WENT ONTO TELL ME THAT MARITZA PROVIDED SIMON WITH ONE OF HER PRESCRIBED SLEEPING PILLS ON THE NIGHT OF 9/8/12. SHE ALSO SAID SIMON WAS PRESCRIBED 100 PILLS ON 9/7/12 AND SHE BELIEVE THAT MARITZA WAS PROVIDING SIMON WITH LARGER THEN PRESCRIBED DOSES OF PILLS. RACHEL TOLD ME SHE BELIEVED THERE WERE ONLY 30 PILLS LEFT IN THE BOTTLE AT THE TIME OF SIMON'S DEATH. I LATER COUNTED THE BOTTLE OF PILLS. THERE WERE 90.5 PILLS IN THE

printed by Employee Id #: 9205 on January 31, 2013 12:03:53AM

PALM BEACH COUNTY SHERIFF'S OFFICE PAGE 3  
CASE NO. 12121312 OFFENSE REPORT CASE NO. 12121312  
DISPOSITION: ZULU

BOTTLE SHOWING THAT SIMON DID NOT TAKE MORE THAN PRESCRIBED.  
IT SHOULD ALSO BE NOTED THAT I SPOKE WITH ELLIOT, WHO SAID HE WAS AT DINNER WITH SIMON AND MARITZA ON 9/8/12 AND OBSERVED HIS FATHER TELL MARITZA THAT HE WANTED ONE OF HER ~~XXXXXXXXXX~~ SLEEPING PILLS BECAUSE HE COULD NOT SLEEP. ELLIOT SAID THEY HAD A BRIEF ARGUMENT OVER THIS AS MARITZA REFUSED TO ALLOW SIMON TO TAKE ONE OF HER PILLS INITIALLY. AT THIS TIME SGT. CASTELLI ARRIVED ON SCENE AND WAS ADVISED OF THE CASE.

HE MADE CONTACT WITH VCD AND THE MEDICAL EXAMINER'S OFFICE. HE WAS ADVISED TO HAVE ME CONTACT DELRAY COMMUNITY HOSPITAL TO PUT A HOLD ON SIMON'S BODY FOR ~~XXXXXXXXXX~~ FROM THE MEDICAL EXAMINER'S OFFICE WHO WOULD CHECK ON THE SITUATION THE NEXT DAY. I WAS ALSO ADVISED TO EMAIL A COPY OF THE REPORT TO ~~XXXXXXXXXX~~ WITH THE MEDICAL EXAMINER'S OFFICE. DELRAY COMMUNITY HOSPITAL WAS CONTACTED AND A HOLD WAS PLACED ON SIMON'S BODY AND ~~XXXXXXXXXX~~ WAS EMAILED.

THIS REPORT IS FOR INFORMATION PURPOSES.  
D/S HAUGE #8826  
TRANS: 9/14/12 DG#4495  
DICT: 9/13/12 @ 1700 HRS.

---

printed by Employee ID #: 8205 on January 31, 2013 12:01:53PM

---

**EXHIBIT 4 - TRIPP SCOTT CONFLICT LETTER**



CHRISTINE P. YATES  
Direct Dial: 954 760 4816  
Email: [cly@trippscott.com](mailto:cly@trippscott.com)

February 13, 2013

**VIA EMAIL**

Mr. and Mrs. Eliot Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434

***Re: Revised Representation and Conflict Waiver***

Dear Eliot and Candice:

This letter shall confirm that Tripp Scott, P.A. (hereinafter the "Firm") represents your three children, Joshua Ennio Zander Bernstein, Jacob Noah Archie Bernstein and Daniel Elijsha Abe Ottomo Bernstein (hereinafter collectively referred to as the "Children") as beneficiaries of the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of any irrevocable trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsha Abe Ottomo Bernstein created by Simon Bernstein in 2006. Enclosed is a revised Retainer Agreement clarifying the scope of this Firm's representation of your children.

**The Firm *no longer represents you in any individual capacity and we have advised you to seek other counsel immediately so your legal rights and interests may be preserved.***

In addition, we wish to advise you of this Firm's potential conflict of interest in its prior representation of you and your children. Accordingly, we must obtain your acknowledgement and waiver of this conflict due to the Firm's prior representation of you and consent to our continued representation of your children.

In light of the fact that loyalty is an essential element in a lawyer's relation to a client, Florida's Rules of Professional Conduct (the "Rules") prohibit a lawyer from representing a client if such representation will be "directly adverse" to the interests of another client unless (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation.

The Firm does not believe that the representation of the both of you and your children in connection with your interests as beneficiaries under the Estate of Shirley Bernstein and the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein adversely affected the Firm's responsibilities to and relationship with you or your children. However, we have mutually agreed that we will discontinue representation of the two of you, and will limit our Firm's representation solely to that of the Children. We have advised you to obtain independent legal counsel, other than the Firm, regarding the representation of your interests, including but not limited to, any claims in connection with Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of the irrevocable trusts created by Simon Bernstein.

110 Southeast Sixth Street, Fifteenth Floor • Fort Lauderdale, Florida 33301  
668859v5 995508.0001 Post Office Box 14245 • Fort Lauderdale, Florida 33302  
Tel 954.525.7500 • Fax 954.761.8475 • [www.trippscott.com](http://www.trippscott.com)

Fort Lauderdale • Tallahassee



Engagement Letter

February 13, 2013

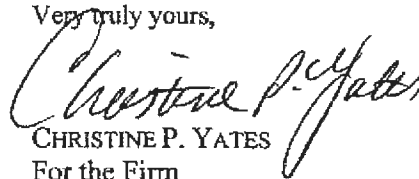
Page 2 of 3

To document your acknowledgement to our discontinued representation of you and the revised scope of our representation of the Children in connection with their interests as beneficiaries under the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsha Abe Ottomo Bernstein created by Simon Bernstein in 2006, subject to the conditions set forth herein, please execute this letter on the space provided below.

**We have not been authorized by you to perform any substantive factual or legal research as to any of your individual claims and we strongly encourage you to retain counsel to do such research and protect your interests.**

We agree that this letter may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument, and a legible facsimile copy of this letter and any signatures hereon shall be considered for all purposes as originals.

Very truly yours,



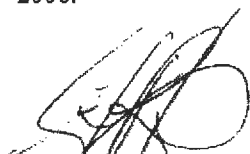
CHRISTINE P. YATES  
For the Firm

CPY/jcj

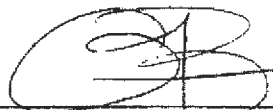
Engagement Letter  
February 13, 2013  
Page 3 of 3

**ACKNOWLEDGEMENT AND WAIVER OF CONFLICT**

The undersigned acknowledge that Christine P. Yates and Tripp Scott, P.A. represent Joshua Bernstein, Jacob Bernstein and Daniel Bernstein with respect to the matters described above and have discontinued their representation of Eliot Bernstein and Candice Bernstien. We hereby (1) waive any conflict of interest that may have existed due to the Attorneys' representation of us and our children as beneficiaries of the Estate of Shirley Bernstein and the Estate of Simon Bernstein and as beneficiaries of any trusts created by Shirley and/or Simon Bernstein; (2) agree to seek independent legal counsel to represent our interests in the Estate of Shirley Bernstein, the Estate of Simon Bernstein and as beneficiaries of the trusts created by Shirley and/or Simon Bernstein; and (3) acknowledge and consent to the continued representation by Tripp Scott, P.A. of Joshua Ennio Zander Bernstein, Jacob Noah Archie Bernstein and Daniel Elijsa Abe Ottomo Bernstein as beneficiaries of the Estate of Shirley Bernstein, the Estate of Simon Bernstein, as beneficiaries of any trusts created by Shirley and/or Simon Bernstein, including the Irrevocable Trust f/b/o Joshua Ennio Zander Bernstein, Irrevocable Trust f/b/o Jacob Noah Archie Bernstein and Irrevocable Trust f/b/o Daniel Elijsa Abe Ottomo Bernstein created by Simon Bernstein in 2006.



Eliot Bernstein, individually and as  
as natural guardian of Joshua Bernstein,  
Jacob Bernstein and Daniel Bernstein



Candice Bernstein, individually and as  
as natural guardian of Joshua Bernstein,  
Jacob Bernstein and Daniel Bernstein

**TRIPP SCOTT, P.A.**

110 S.E. 6<sup>TH</sup> STREET, 15<sup>TH</sup> FLOOR

FORT LAUDERDALE, FL 33301

(954) 525-7500

**RETAINER AGREEMENT**

**Representation of the minor Children of Elliot Bernstein as Beneficiaries of the Estates of Shirley and Simon Bernstein; as Beneficiaries of any Trusts created under the Will or Revocable Trust of Shirley or Simon Bernstein; and as Beneficiaries of the 2006 Irrevocable Trusts created by Simon Bernstein**

We are pleased that you have asked Tripp Scott, P.A. to provide legal services in connection with the above listed matter. The purpose of this agreement is to set forth our mutual understanding regarding the basis upon which we have agreed to undertake such representation.

**FEES**

We will provide our legal services on the basis of hourly rates in effect at the time the legal services are rendered. Those rates currently range up to \$425.00 per hour for attorneys, with paralegals billing at a rate of up to \$160.00 per hour. Law clerks are billed at the rate of \$110.00 per hour. My time is currently billed at \$350.00 per hour. If other attorneys or professionals in the firm work on this matter, their time will be billed on the basis of their hourly rate as well. All of the above rates are for the current calendar year and are subject to change thereafter. Unless otherwise specified, any additional services requested to be provided by our firm beyond the scope of the above matter will be billed to you in accordance with our hourly rates in effect at the time those services are rendered, and subject to the terms set forth in this agreement. Please note that telephone calls are billed at a minimum of two-tenths (0.20) of an hour no matter how short its duration. Additionally, client understands that our representation may involve the discussion of tax and property issues of the client and certain options may be discussed, or a plan entertained, that is not implemented. This time is considered billable and payment is expected upon service.

In connection with your estate planning, you agree to pay us a retainer in the amount of **\$0.00**. You will receive monthly statements and said fees will be credited from your retainer balance. You understand that the retainer amount stated in this agreement is in no way a guarantee or cap on the amount of legal fees that could be expended and will not be refunded to you in the event our representation is terminated by either you, the client, or the attorney.

**COSTS**

Costs and expenses that are incurred by Tripp Scott, P.A. on your behalf, including, but not limited to, mailing and postage, telecopy charges, long distance telephone costs, photocopying charges, etc., will be billed to you with our statement for fees on a monthly basis.

In addition to the fee retainer, you agree to deposit with us the sum of \$ **N/A**; to be applied towards costs. The cost deposit is also due upon execution of this agreement. Whenever the costs deposit falls below \$0.00, you may be asked to replenish said deposit so that at all times there is a credit balance to apply towards costs expended on your behalf. No other professional will be engaged without your pre-approval.

At the conclusion of our legal services, the balance of the cost retainer, if any, will be refunded to you provided all fees have been paid. You agree that the remaining cost deposit, if any, may be applied to the final fee balance.

**BILLING**

We ask that you stay current with our office on a monthly basis. However, if a balance remains outstanding with our office for over thirty (30) days, Tripp Scott, P.A., shall have the right to cease work on your file until such time that the balance is paid in full. Additionally, if said fees are not kept current within the thirty (30) day period, we reserve the right to request an additional non-refundable retainer. Tripp Scott, P.A., shall, at its own discretion, have the right to withdraw from representing you in this matter at any time if:

- (A) You do not make payments required within thirty (30) days after billing;
- (B) You have misrepresented or failed to disclose material facts;
- (C) You fail to follow our advice;
- (D) A dispute between client and attorney arise which cannot be worked out with a good faith effort and in an amicable way; and
- (E) Any other reason as deemed appropriate by the attorney.

To protect our fees and costs until they are paid, it is specifically agreed by you, the client, that the undersigned attorney shall have and is hereby granted all general, possessory and retaining liens and all equitable special and attorney's charging liens upon the client's documents, property (both real and personal, regardless of homestead), or money in the client's possession or money or property in another's possession for the client's benefit for the payment of all sums due under this agreement, and upon property or funds received by you, the client, by settlement, judgment, or otherwise. Any such liens shall also include liens upon the client's interest in any estate, trust, guardianship or other asset held in fiduciary capacity or trust, constructive or otherwise, within the jurisdiction of the court for any balance due, owing and unpaid. Any such liens shall relate back to the date of this agreement and shall be superior in dignity to any other liens subsequent to the date thereof. It is agreed by the client that the attorney will file a lien and a Notice of Lis Pendens with regard to the client's interest in any real property (regardless of homestead as you, the client, expressly have waived your homestead exemption under this agreement) upon which a lien may be claimed.

You agree to pay interest at the rate of 1% per month or 12% per annum on any bill, or portion thereof, which remains unpaid for more than thirty (30) days after billing. Also, client agrees that their file will only be released by the attorney upon payment of all fees and costs due and owing Tripp Scott, P.A.

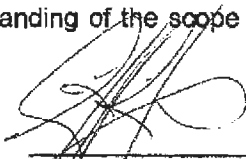
**SPECIAL CONSIDERATIONS FOR BENEFICIARIES**

Please be advised, the trustee is generally entitled to pay attorney's fees and costs from the trust assets, but in the event that a claim or defense based upon a breach of trust is made against the trustee, we have the right to seek a pre-hearing order prohibiting the payments. If the order is granted, the trustee must cease using the trust assets to pay attorney's fees and costs and must make those payments personally. Following this pre-evidentiary hearing, the court will determine the merit of the underlying claim or defense of breach of trust at which point the trustee will either be required to refund any payments of costs or fees to the trust, or will be entitled to seek an order permitting a refund of payments made personally by them.

ACCEPTANCE

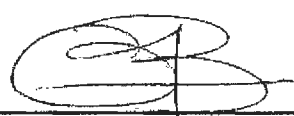
This agreement is consistent with our understanding of the scope and terms of representation and fees.

Dated: 2/13/13



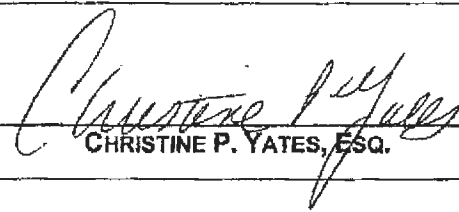
ELLIOT BERNSTEIN, as Natural  
Guardian of Joshua Ennio Zander Bernstein,  
Jacob Noah Archie Bernstein and Daniel  
Elijsha Abe Ottomo Bernstein

Dated: 2/13/13



CANDICE MICHELLE BERNSTEIN, as Natural  
Guardian of Joshua Ennio Zander Bernstein,  
Jacob Noah Archie Bernstein and Daniel  
Elijsha Abe Ottomo Bernstein

TRIPP SCOTT, P.A.  
110 S.E. 6<sup>TH</sup> STREET, 15<sup>TH</sup> FLOOR  
FORT LAUDERDALE, FL 33301  
(954) 525-7500

By:   
CHRISTINE P. YATES, ESQ.

668885v3 995508.0001

**Eliot Ivan Bernstein**

---

**From:** hotmail\_c29fa7bfa63d83c9@live.com on behalf of Marc R. Garber  
<marcgarber@gmail.com>  
**Sent:** Thursday, June 13, 2013 11:51 AM  
**To:** Eliot Bernstein  
**Subject:** FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Regards,

**MARC R. GARBER**

---

From: marcgarber@gmail.com  
To: cty@trippscott.com  
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
Date: Thu, 13 Jun 2013 11:02:40 -0400

Christine:

I had difficulty sleeping, as I was sorting through our conversation. What troubles me has troubled me in prior situations. Spallina is not the first "bully lawyering" situation I have seen or heard about. "If you scream loud enough and pound the table hard and often, the other side will cave". It troubles me that many times this approach works. Sometimes it becomes a fee and time matter, other situations result in the good lawyer becoming tired of dealing with "hard headed" uncompromising opponent. I have heard some people actually seek out a bully lawyer for these reasons. The reasons include the fact that they win using this approach. Further, and as you implied, with all the time you expended, Spallina gave us very little, in terms of everything; from documents to involvement in the administration.

It truly troubles me that Spallina continues to spin his web of deceit, and I believe this conduct is further circumstantial evidence that "something is very wrong". I am very glad Eliot filed whatever he filed and I do hope he prevails. I also hope Spallina is removed and perhaps punished for all he is doing. It also troubles me that once he learns of your withdrawal, Spallina will celebrate his victory. If I was licensed in Florida, I would take this on pro bono. Simply out of principal, and I would make certain a probate judge learns of Spallina's behavior. Unfortunately, I am not a Florida lawyer. If Eliot is able to get his motions before a probate judge, I hope he asks and you agree to testify as to how Spallina treated you. A judge may take real notice of that testimony.

Thanks,

Marc

Regards,

**MARC R. GARBER**

---

Date: Thu, 13 Jun 2013 13:05:50 +0000  
From: [cty@TrippScott.com](mailto:cty@TrippScott.com)  
Subject: RE: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
To: [marcgarber@gmail.com](mailto:marcgarber@gmail.com); [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv); [iviewit@gmail.com](mailto:iviewit@gmail.com)

Marc, it was nice to speak with you yesterday. As we discussed, the reasons for the the termination of my representation were due to the insufficiency of funds in the trust accounts and the the corresponding increase in litigation that would need to be filed in order to move this case forward. It is always a difficult decision as an attorney to proceed with litigation, using all funds in a trust to do so without a guarantee of results. This leaves the attorney in a difficult position with the trust beneficiary, their client. Also, I was concerned that attorney/client communications via email were being filed in court proceedings by Eliot in his case. I want to be able to be assured that information on behalf of my client's remains confidential.

Thank you again for you time in speaking with me yesterday.



110 SE Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
954-525-7500

**Christine T. Yates**

*Director*

Direct: (954) 760-4916

Fax: (954) 761-8475

[cty@trippscott.com](mailto:cty@trippscott.com)

---

**From:** Marc Garber [<mailto:marcgarber@gmail.com>]  
**Sent:** Saturday, June 08, 2013 11:15 AM  
**To:** Christine Yates  
**Subject:** Fwd: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Christine please call me about this. Marc Garber. 856 236 6567

----- Forwarded message -----

From: "Eliot Ivan Bernstein" <[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)>  
Date: Jun 8, 2013 10:12 AM  
Subject: FW: Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status  
To: "Marc R. Garber, Esquire @ Flaster Greenberg P.C." <[marc.garber@flastergreenberg.com](mailto:marc.garber@flastergreenberg.com)>, "Marc R. Garber Esq. @ Flaster Greenberg P.C." <[marcrgarber@verizon.net](mailto:marcrgarber@verizon.net)>, "Marc R. Garber Esq." <[marcrgarber@gmail.com](mailto:marcrgarber@gmail.com)>  
Cc:

What is going on here? Give me a call when you get a sec.

**From:** Christine Yates [<mailto:cty@TrippScott.com>]  
**Sent:** Friday, June 7, 2013 11:57 AM  
**To:** 'Eliot Ivan Bernstein'; 'Eliot Ivan Bernstein'  
**Cc:** Ibis A. Hernandez  
**Subject:** Bernstein - E/O Shirley Bernstein & E/O Leon Bernstein: Status

Eliot and Candace, first I am glad that you are feeling better Eliot.

I have made no progress with Spallina in regards to obtaining documents and in my last call with him and Mark Manceri, Mr. Spallina reiterated his position that the mortgage on the property you are currently residing in was what your father wanted, and that any information regarding the trust of your father would have to be addressed to your brother as trustee.

At this time, in order to receive the information you want, I believe you will need to institute legal proceedings against the estate and trust. Since a new course of action will need to be undertaken, at this time, I will be withdrawing as counsel for your children, and believe that you should now hire separate litigation counsel for them. I will be happy to assist your new counsel in providing them with any information and thank you for the opportunity you gave me to assist you.

110 SE Sixth Street, Suite 1500  
Fort Lauderdale, FL 33301  
954-525-7500

Christine T. Yates  
*Director*  
Direct: (954) 760-4916  
Fax: (954) 761-8475  
[cty@trippscott.com](mailto:cty@trippscott.com)

---

CONFIDENTIALITY NOTE: The information contained in this transmission is privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, do not read it. Please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

CIRCULAR 230 NOTICE: To comply with U.S. Treasury Department and IRS regulations, we are required to advise you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments to this e-mail, is not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding penalties under the U.S. Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this e-mail or attachment.



**SEE EXHIBIT 5 – ELIOT/TED/SPALLINA LETTERS REGARDING THE INSURANCE  
FRAUD SCHEMES**

A handwritten signature in blue ink, appearing to be "E. Spallina", is located at the bottom center of the page. The signature is written over a faint, circular blue ink smudge or stamp.

## Eliot Bernstein

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Thursday, December 6, 2012 9:59 AM  
**To:** Lisa Friedstein (lisa.friedstein@gmail.com); 'Jill Iantoni'; Eliot Bernstein (iviewit@gmail.com); Eliot Bernstein (iviewit@iviewit.tv); Pamela Simon  
**Cc:** Ted Bernstein  
**Subject:** Life Insurance - agreement  
**Attachments:** Simon Bernstein Irrv Trust-set ag1.pdf

Hello,

Good news; the Heritage Union Life Insurance company is ready to make payment on the policy that insured Dad. There was an exhaustive search for the original trust document from 1995, which is the beneficiary of the policy owned by Dad. Since we have not been able to locate it, the attached agreement will permit the insurance company to make payment to a Trust account that will then distribute the proceeds in equal parts to the 5 of us. Robert Spallina recommended that I distribute this document so it can be reviewed by each of you, signed and then it can be submitted to the carrier. Please sign the document where applicable. Then email to me the signature page and Fedex the original to Robert Spallina's office. Once we have all signatures, the carrier should release proceeds quickly.

### TESCHER & SPALLINA, P.A.

Boca Village  
Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, Florida 33431

Call me with any questions.

Ted



### Life Insurance Concepts

950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, FL 33487  
Tel: 561.988.8984  
Toll Free: 866.395.8984  
Fax: 561.988.0833

Email: [tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)  
[www.LifeInsuranceConcepts.com](http://www.LifeInsuranceConcepts.com)

This communication (including attachments) may contain privileged and confidential information intended only for the recipient(s) named above. If you are not the intended recipient(s), you are hereby notified that any viewing, copying, dissemination or distribution of this communication is prohibited and may be subject to legal action. Please contact the sender immediately by reply e-mail and delete all copies of the original message.

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2012, at Chicago, Illinois by and between each of the following defined entities and individuals.

**PARTIES DEFINED**

"TED", as defined herein, refers to and means Ted S. Bernstein an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"PAM", as defined herein, refers to and means Pamela B. Simon an individual residing in Chicago, Illinois, her heirs, successors and/or assigns.

"ELIOT" as defined herein, refers to and means Eliot I. Bernstein, an individual residing in Boca Raton, Florida, his heirs, successors and/or assigns.

"JILL" as defined herein, refers to and means Jill M. Iantoni, an individual residing in Highland Park, Illinois, her heirs, successors and/or assigns.

"LISA" as defined herein, refers to and means Lisa S. Friedstein residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

"ALLY" as defined herein, refers to and means Alexandra L. Bernstein residing in White Plains, New York, an individual, her heirs, successors and/or assigns.

"ERIC" as defined herein, refers to and means Eric D. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

"MICHAEL" as defined herein, refers to and means Michael A. Bernstein residing in Boca Raton, Florida, an individual, his heirs, successors and/or assigns.

“MOLLY” as defined herein, refers to and means Molly N. Simon residing in Chicago Illinois, an individual, her heirs, successors and/or assigns.

“THE ELIOT CHILDREN” as defined herein, refers to and means Joshua, Jacob and Daniel Bernstein residing in Boca Raton, Florida, all individual(s), their heirs, successors and/or assigns.

“THE JILL CHILD” as defined herein, refers to and means Julia Iantoni residing in Highland Park, Illinois, an individual, her heirs, successors and/or assigns.

“THE LISA CHILDREN” as defined herein, refers to and means Max and Carley Friedstein residing in Highland Park, Illinois, an individual(s), both heirs, successors and/or assigns.

#### **DEFINITIONS**

"Agreement", as defined herein, refers to and means, this Settlement Agreement and Mutual Release.

“Party” or “Parties”, shall refer to and mean an individual defined above whom shall sign on and be bound by this Settlement Agreement, and Parties shall refer to the individuals collectively.

“Trust”, as defined herein refers to and means the Simon L. Bernstein Irrevocable Insurance Trust dtd 6/21/95.

#### **RECITAL'S**

WHEREAS, the Parties are all of the children and grandchildren of the marriage of Simon L. Bernstein and Shirley Bernstein;

WHEREAS, Simon L. Bernstein established the Trust in 1995 for the benefit of his wife,

Shirley Bernstein, and their children, the Parties;

WHEREAS, Shirley Bernstein predeceased Simon L. Bernstein, and Simon L. Bernstein passed away on September 13, 2012;

WHEREAS, after a diligent search by the Parties, an executed copy of the Trust can not be found;

WHEREAS, the Trust is the beneficiary of life insurance policy number 1009208 issued by Heritage Union Life Insurance Company (the "Insurer") on the life of Simon L. Bernstein (the "Policy");

WHEREAS, the Parties desire to achieve the intent of Simon L. Bernstein on or about the date of the Trust and resolve any and all disputes and controversies that have arisen or may arise regarding the distribution of the death benefit proceeds of the Policy.

**WITNESSETH**

NOW THEREFORE, in consideration of the following covenants, promises and obligations, as well as other good and valuable consideration, the sufficiency of which is hereby acknowledged; it is agreed by and between the Parties as follows:

**COVENANTS**

1. TED is appointed and hereby accepts the appointment to act as Trustee of the Trust.
2. That TED, as Trustee, shall open a bank account in the name of the Trust (the "Trust Account").
3. That TED, as Trustee shall deposit or direct the Insurer to deposit the death benefit proceeds of the Policy into the Trust Account.
4. That TED, as Trustee, shall pay expenses of the Trust including the cost of filing a tax return from the proceeds in the Trust Account.
5. That TED, as Trustee, shall distribute all remaining proceeds in the Trust Account equally (in 20% shares) to each of TED, PAM, ELIOT, JILL and LISA.

6. That TED, as Trustee, upon completing the distribution in ¶5 above and the filing of the tax return contemplated in ¶4 above shall close the Trust Account.
7. Upon receipt of the Settlement Agreement executed by all Parties and upon fulfillment of all of the covenants and obligations contained in ¶1 through ¶6 above, TED, PAM, ELIOT, JILL, AND LISA, ALLY, ERIC, MICHAEL, MOLLY, THE ELIOT CHILDREN, THE JILL CHILD AND THE LISA CHILDREN and each of them in their own individual capacity, shall respectively acquit, release, and forever discharge TED, both individually and as Trustee, and each and every other Party from any and all claims, demands, liabilities, obligations, causes and causes of action of whatever kind or nature, known or unknown, suspected or unsuspected by each of them, which each of them now owns or holds or at any time heretofore owned or held as against each other arising out of any matter related to or associated with the Policy and/or the Trust, and without limiting the generality of the foregoing, all claims, demands, liabilities, obligations, causes and causes of action arising out of or in any way connected with: a) the receipt of the death benefit proceeds of the Policy by the Trust; b) arising out of or in any way connected to the operation and management of the Trust, or the actual terms of the Trust in the event it should be located subsequent to the date of this Agreement regardless as to whether all of the covenants and obligations of this Agreement have been executed to completion.
8. All demands and notices given hereunder shall be sent by mail addressed to the respective Parties with a copy to David B. Simon, The Simon Law Firm, 303 E. Wacker Dr., Suite 210, Chicago, IL 60601-5210.
9. The Parties hereby represent to one another that they have full power and authority to enter into this Settlement Agreement and carry out their obligations hereunder. All Parties further represent that this Settlement Agreement has been duly executed and delivered.
10. This Settlement Agreement embodies the entire understanding of the Parties. All prior correspondence, conversations, memoranda and agreements have been merged into and replaced by this Settlement Agreement.
11. If a Party breaches this Settlement Agreement, the breaching Party shall reimburse the non-breaching Parties for all reasonable costs, attorney's fees, and expenses incurred by them in enforcing the terms and provisions of the Settlement Agreement.
12. This Settlement Agreement shall (i) be governed and construed in accordance with the laws of the State of Illinois and all claims or controversies arising out of this Settlement Agreement shall be brought within the exclusive jurisdiction of the State of Illinois; (ii) inure to the benefit of and be binding upon the Parties themselves, as well as their respective heirs, executors, predecessors, successors and assigns.
13. All Parties have been represented by counsel, or have had the opportunity to seek the advice of counsel, and if they have sought counsel then such counsel has reviewed this Settlement Agreement and recommended that their respective clients enter into it.
14. This Settlement Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute an original. Facsimile signatures of the Parties shall as valid and binding as original signatures.

15. Should any provision contained in this Agreement be deemed illegal or unenforceable as a matter of law, the remainder of this Agreement shall remain binding and continue in full force and effect.
16. The signatories state that they have read and understand this Settlement Agreement and that they intend to be legally bound by the same.

Agreed and accepted this date and year first written above.

**TED S. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**PAMELA B. SIMON**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**LISA S. FRIEDSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**ERIC BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**MOLLY N. SIMON**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**THE JILL CHILD**

**Jill Iantoni, Parent**

**Guy Iantoni, Parent**

Address: \_\_\_\_\_

**ELIOT I. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**JILL M. IANTONI**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**ALEXANDRA L. BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**MICHAEL BERNSTEIN**

Witness: \_\_\_\_\_

Address: \_\_\_\_\_

**THE ELIOT CHILDREN**

\_\_\_\_\_  
Eliot I. Bernstein, Parent

\_\_\_\_\_  
Candace Bernstein, Parent

Address: \_\_\_\_\_

**THE LISA CHILDREN**

\_\_\_\_\_  
Lisa Frenstein, Parent

\_\_\_\_\_  
Jeffrey Friedstein, Parent

Address: \_\_\_\_\_



**Reassure America Life  
Insurance Company**

J. L. McDonald, ALHC, LTCP  
Vice President

12750 Merit Drive  
Suite 500  
Dallas, TX 75251

Telephone (972) 776-8535  
Fax (260) 435-8773

**January 8, 2013**

**Mr. Robert Spallina  
Attorney at Law  
Teschler & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way, Suite 720  
Boca Raton, FL 33431**

**Re: Simon Bernstein, Dec's  
Policy # 1009208**

**Dear Mr. Spallina:**

**This will acknowledge your letters the most recent of which is dated December 21, 2012.**

**In as much as the above policy provides a large death benefit in excess of \$1.6 million dollars and the fact that the trust document cannot be located, we respectfully request a court order to enable us to process the claim.**

**Please let us know how we may assist you in this process.**

**Sincerely,**

**Jim McDonald, ALHC, LTCP  
Vice President  
Claims Oversight**

# FAX

To: Robert Spallina  
Company:  
Fax: 915619977308

From: Kellie Walker  
Phone:

---

## NOTES:

Insured Simon Bernstein #1009208

## CONFIDENTIALITY

This fax and any attachments are confidential and may also be privileged. If you are not the named recipient, or have otherwise received this communication in error, please notify the sender immediately, and do not disclose its contents to any other person, use them for any purpose, or store or copy them in any medium. Thank you for your cooperation.

---

Date and time of transmission: Tuesday, January 15, 2013 11:49:30 AM

Number of pages including this cover sheet: 02

## Eliot Bernstein

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Friday, January 18, 2013 6:04 PM  
**To:** 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (iviewit@gmail.com); 'Pam Simon'  
**Subject:** UPDATE > HERITAGE INSURANCE POLICY

Hello > I hope everyone is well.

Heritage Life Insurance company has made a decision concerning dad's life insurance policy. They will require a court order to pay the proceeds, based on the large face amount of the policy (\$1.7MM). They have sent a letter to Robert Spallina. The letter was sent by a senior attorney within the company. It is short and to the point.

From here, this should be simple and straightforward. Assuming that we (S children) agree to create an agreement, we will need to hire a Palm Beach attorney to draft the agreement that will be submitted to the judge. It is my understanding that the agreement can be drafted to reflect our agreement to split the proceeds among the 5 of us or in such a way that would enable one or more of us to effectively refuse our individual share in favor of our children. I am not sure, but I believe that disclaiming our share in favor of our children will put that share at risk of creditors of dad's estate. Seems to me that we should do whatever we can to keep the proceeds out of the reach of potential creditors.

As the successor trustee of the trust that cannot be found, I will be happy to act as trustee of a trust that would receive the proceeds under the new agreement, created by us. Once the court order is issued, the insurance company should pay quickly and I will distribute the proceeds immediately.

Please let me know that you will agree to be a party to the agreement between us (and possibly the grandchildren who will need to acknowledge and agree to the language). If you could do that in the next day or so, we can then decide the most cost effective way to get the agreement created and submitted. It makes no sense at this point to leave the proceeds at the insurance company.

Call me with any questions or maybe we should establish a call between the 5 of us.

Take care...

Ted

**Eliot Ivan Bernstein**

---

**From:** Ted Bernstein <tbernstein@lifeinsuranceconcepts.com>  
**Sent:** Tuesday, January 22, 2013 5:14 PM  
**To:** 'Pam Simon'  
**Cc:** Lisa Friedstein; Jill Iantoni; Christine Yates; Eliot Bernstein Ivan  
**Subject:** RE: Heritage Policy

I believe we do, just waiting on Eliot and Christine for the time.

---

**From:** Pam Simon [<mailto:pambsimon@icloud.com>]  
**Sent:** Tuesday, January 22, 2013 3:26 PM  
**To:** Ted Bernstein  
**Cc:** Lisa Friedstein; Jill Iantoni; Christine Yates; Eliot Bernstein Ivan  
**Subject:** Re: Heritage Policy

hi all - do we have a thursday time and call in number ? trying to maneuver my calendar? thanks pam

On Jan 22, 2013, at 12:33 PM, Ted Bernstein <[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)> wrote:

Robert,

We are in the midst of arranging a phone call between myself, Pam, Eliot, Christine Yates, Jill and Lisa. We were hoping to have that call today but Christine cannot make it until Thursday. I think it is imperative for this call to occur prior to anything else being done, including your call with their legal department. This way, we can establish whether there is going to be an agreement among the 5 of us, or not.

I completely agree with your assessment below of the options available here.

Please feel free to call me to discuss.

Ted

**From:** Robert Spallina [<mailto:rspallina@tescherspallina.com>]  
**Sent:** Tuesday, January 22, 2013 12:16 PM  
**To:** Ted Bernstein; Lisa Friedstein; Pam Simon; Jill Iantoni; Christine Yates  
**Cc:** Kimberly Moran  
**Subject:** Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren's shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

Robert L. Spallina, Esq.

TESCHER & SPALLINA, P.A.

4855 Technology Way, Suite 720

Boca Raton, Florida 33431

Telephone: 561-997-7008

Facsimile: 561-997-7308

E-mail: [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

If you would like to learn more about TESCHER & SPALLINA, P.A., please visit our website at [www.tescherspallina.com](http://www.tescherspallina.com)

The information contained in this message is legally privileged and confidential information intended only for the use of the individual or entity named above. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. If you have received this communication in error, please immediately notify us by e-mail or telephone. Thank you.

**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Sunday, January 27, 2013 7:26 PM  
**To:** 'Pam Simon'  
**Cc:** Jill Iantoni; lisa friedstein; Eliot Ivan Bernstein  
**Subject:** RE: DO NOT FORWARD THIS > UPDATE > HERITAGE INSURANCE

Keep in mind that this is the policy that lapsed for more than 6 months and was miraculously re-instated a few months before Dad died. It is in our best interest to get this claim paid as soon as possible.

With that being said, I am going to suggest that we get the agreement we were going to use to the point where it is ready to present to the court. We already have an agreement in existence that simply needs to be tailored to our circumstances. Robert Spallina can clean it up to reflect what we said on Thursday and then it can be reviewed by each person and their legal counsel. The only way this does not make sense is if one or more of us are intending to not be part of an agreement stating that 5 children will be equal beneficiaries. Based on what I heard on Thursday, the only sensible option is to ensure these proceeds are not included in Dad's estate. With an agreement, each of us has the ability to do what is best for his or her family, without impacting anyone else.

This way, the work can begin that needs to be done while we are trying to schedule the call around the 6 of us.

Let me know if you see any reason to wait but tomorrow I will ask Robert Spallina to fit the agreement to our circumstances and begin to circulate it. If anyone is going to use a guardian for their minor child or children, it is probably a good idea to start that process too.

Ted

## Eliot Ivan Bernstein

---

**From:** Eliot Ivan Bernstein <iviewit@iviewit.tv>  
**Sent:** Tuesday, February 5, 2013 1:10 PM  
**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com); Ted Bernstein; Pamela Beth Simon (psimon@stpcorp.com); Lisa Friedstein; Jill M. lantoni (jilliantoni@gmail.com); Jill M. lantoni (lantoni\_jill@ne.bah.com); Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com)  
**Subject:** Eliot Heritage policy Analysis

**Tracking:**

Recipient	Read
Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com)	
Ted Bernstein	
Pamela Beth Simon (psimon@stpcorp.com)	Read: 2/5/2013 1:11 PM
Lisa Friedstein	
Jill M. lantoni (jilliantoni@gmail.com)	
Jill M. lantoni (lantoni_jill@ne.bah.com)	
Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com)	
Marc R. Garber Esq. (marcgarber@gmail.com)	
Marc R. Garber Esq. @ Flaster Greenberg P.C. (marcgarber@verizon.net)	
Marc R. Garber, Esquire @ Flaster Greenberg P.C.	

This is my analysis on the Heritage payout thus far. First, I would like to review the insurance policy as well as the official statements respecting investment returns, use of returns to pay premiums and loans taken from the policy. I understand Ted and Pam have the policy, and do not understand why Mr. Spallina thinks it is curious that I also want to review these materials. Second, I understand the expressed concerns that if the proceeds are paid to the estate then the proceeds would be subject to the claims of creditors of the estate. It is my understanding that the "plan" is to have the proceeds payable to a trust to avoid creditor claims; however, I have also been counseled that if a trust is utilized an estate creditor can challenge the trust transaction as a fraudulent conveyance used to avoid the creditor's claim.

We have been told that Dad designated his 1995 trust as his beneficiary with Heritage. We were also told that that trust cannot be located. I would also like to review an affidavit that indicates the precise steps that were taken and by whom and with whom to locate the 1995 trust, and I would imagine that Heritage will require the same. Heritage, we were told, is now saying that the proceeds may have to go to the State under the applicable escheat laws, so Mr. Spallina is telling us that if Heritage accepts a new trust with all potential beneficiaries agreeing to the mechanism, that Heritage may pay the proceeds to this new trust and not to the State. I have been told that the reason the law requires a trust document (and not simply statements from someone who claims they saw the trust) is that it demonstrates Dad's desires, and because Dad had the right to change his mind and thus the beneficiaries under the trust, nothing short of the actual 1995 trust document may be sufficient to Heritage.

Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under {Article IV 2j} and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts. Thus, to the extent it is decided to use a new trust to avoid the escheat laws, the only beneficiaries that may be acceptable to me is the

grandchildren. As I stated above, I and my siblings should remain concerned that any estate creditor could challenge the transaction as a fraudulent conveyance. Also, having the 5 children as beneficiaries with each having the right to disclaim in favor of their children (i.e., Dad's grandchildren) is not acceptable for 2 reasons. First, such a scheme is not consistent with Dad's wishes under his will and trust agreement. Whatever Dad may have provided under the 1995 trust is both **unknown** and not relevant as stated above. The second reason is simple economics. My kids would get a 33% distribution under the proper method, but only 20% under the other scheme.

Regards,

Eliot I. Bernstein  
Inventor  
(561) 245.8588 (o)  
(561) 886.7628 (c)  
(561) 245-8644 (f)  
[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)  
<http://www.iviewit.tv>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video courtesy of NY Senate, my fav part at end

[http://www.youtube.com/watch?v=-7oHKs\\_crYIs](http://www.youtube.com/watch?v=-7oHKs_crYIs)

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video Handheld Camera View, my favorite version at the very end

<http://youtu.be/3Q9MzqZv4lw>

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's, ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=6BlK73p4Ueo>

and finally latest blog

<http://iviewit.tv/wordpress/?p=594>

Eliot Part 1 - The Iviewit Inventions @

<http://www.youtube.com/watch?v=L0n4hwemqW0>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #1

<http://youtu.be/i1Ao1BYvvoQ>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #2

<http://youtu.be/OaXys6bImFI>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #3

<http://youtu.be/9R1PNnJVVGU>

Iviewit Inventor Eliot Bernstein Guest on Les Winston DisBar the Florida Bar Show #4

<http://youtu.be/rUHCZFkro08>



**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]  
**Sent:** Wednesday, February 6, 2013 3:49 PM  
**To:** Eliot Bernstein (iviewit@gmail.com)  
**Cc:** 'Pam Simon'; Jill Iantoni; Lisa Friedstein (lisa.friedstein@gmail.com); ROBERT SPALLINA (rspallina@tescherspallina.com)  
**Subject:** Heritage policy

Eliot,

I have pasted your analysis re the Heritage policy below. The email did not get to me, not sure why.

The problem with your analysis is that it is not factually correct and therefore, you are drawing conclusions that are incorrect.

Dad's desires concerning the policy are crystal clear. There has never been a question concerning his desire. He named his irrevocable trust as beneficiary of the policy and he never changed that. He was the owner. He could have changed it as often as he wanted. He never did, not ever.

In 1995, Dad did not have 10 grandchildren. Therefore, it was never his intent, concerning this policy, to leave it to all of his grandchildren.

He chose Robert Spallina and Don Tescher to be his estate and tax attorneys as well as his personal representatives. Robert Spallina has told us on several occasions what Dad's wishes were for this policy. Dad was well aware of this policy. He was intimately aware of who owned it and who he named as beneficiary. When he was considering a life settlement, all of this information was part of those discussions.

As Robert has stated, Heritage's policy when it comes to a lost irrevocable trust, is to not pay the proceeds to the estate. What you are saying here is not correct: *"Last, because the 1995 trust document cannot be located, the proceeds should go to the beneficiaries under [Article IV 2j] and [Article III] of Dad's will, which picks up insurance proceeds under failed beneficiary designations. Under Dad's will and trust, these amounts, like the rest of his estate goes to his grandchildren in equal parts"*

You are drawing conclusions for Heritage when you say, "nothing short of the actual 1995 trust document may be sufficient to Heritage." Why don't we let Heritage speak for Heritage, which I believe has already been done?

There is no fraudulent conveyance. These proceeds are not part of Dad's estate, they never were and Heritage has stated they do not intend to pay these proceeds to the estate of a person who clearly did not want them in his estate.

In late July of 2012, Dad executed his planning documents. He could have easily changed the beneficiary of the Heritage policy to be included in his estate. He was the owner, he could have done that with one change form. He did not. If he did not want to be bothered to do it himself, he could have asked Robert, his PR, to do it. People do this every day. Dad did not. Therefore, the proceeds remaining OUT of his estate, NOT payable to his grandchildren (who received everything else), is consistent with Dad's wishes. This policy is not in the domain of his will and trust agreement. To bring proceeds of a life insurance policy into the estate of a man who sold life insurance his entire career would go against everything Dad told every client he ever sold life insurance to during his career. It is unimaginable.

Therefore, the economic analysis is not correct. It simply is not necessary to address as it was never an option in this scenario.

This needs to be brought to resolution. Not only is it simple, it is black and white. Is your counsel involved in this matter for you? If so, has she spoken with Robert and communicated what you have said?

We are going to do what is necessary to have the proceeds paid where they were intended to be paid, as quickly as possible now. If you think I am factually incorrect about any of this, please either call me or email me and explain where I may be wrong. It goes without saying, this is not my expertise. I am processing the same information that everyone else is working with and this is how I see it.

Ted

## Eliot Bernstein

---

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**Sent:** Friday, February 8, 2013 8:41 PM  
**To:** Pam Simon  
**Cc:** Eliot Bernstein; Ted Bernstein; Lisa Sue Friedstein; Jill lantoni; Jill M. lantoni; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** Re: Heritage Policy

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed.

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. He knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you. This should be of no surprise to anyone.

Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

I do not and have never had a copy of the policy.

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.

Sent from my iPhone

On Feb 8, 2013, at 7:41 PM, "Pam Simon" <[psimon@stpcorp.com](mailto:psimon@stpcorp.com)> wrote:

Yad - bad news - we don't have copies of the policy - dad probably took it when he emptied his office / probably the trust too! The carrier seems to be the only one with a copy. As to the other items, we should do a call cause the premise is off. Have a good weekend.

Pam

On Feb 8, 2013, at 5:48 PM, "Eliot Bernstein" <[jviewit@gmail.com](mailto:jviewit@gmail.com)> wrote:

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out.

Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement.

Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely

what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?-

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. - DL

Iviewit Holdings, Inc. - DL (yes, two identically named)

Iviewit Holdings, Inc. - FL

Iviewit Technologies, Inc. - DL

Uviewit Holdings, Inc. - DL

[Uview.com](#), Inc. - DL

[Iviewit.com](#), Inc. - FL

[Iviewit.com](#), Inc. - DL

I.C., Inc. - FL

[Iviewit.com](#) LLC - DL

Iviewit LLC - DL

Iviewit Corporation - FL

Iviewit, Inc. - FL

Iviewit, Inc. - DL

Iviewit Corporation

2753 N.W. 34th St.

Boca Raton, Florida 33434-3459

(561) 245.8588 (o)

(561) 886.7628 (c)

(561) 245-8644 (f)

[iviewit@iviewit.tv](mailto:iviewit@iviewit.tv)

<http://www.iviewit.tv>

<http://iviewit.tv/inventor/index.htm>

<http://iviewit.tv/wordpress>

<http://www.facebook.com/#!/iviewit>

<http://www.myspace.com/iviewit>

<http://iviewit.tv/wordpresseliot>

<http://www.youtube.com/user/eliotbernstein?feature=mhum>

<http://www.TheDivineConstitution.com>

Also, check out

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video  
courtesy of NY Senate, my fav part at end

[http://www.youtube.com/watch?v=..oHKs\\_crYIs](http://www.youtube.com/watch?v=..oHKs_crYIs)

Eliot's Testimony at the NY Senate Judiciary Committee Hearings Professional Video  
Handheld Camera View, my favorite version at the very end

<http://youtu.be/3Q9MzqZv4lw>

and

Christine Anderson New York Supreme Court Attorney Ethics Expert Whistleblower  
Testimony, FOX IN THE HENHOUSE and LAW WHOLLY VIOLATED TOP DOWN  
EXPOSING JUST HOW WALL STREET / GREED STREET / FRAUD STREET  
MELTED DOWN AND WHY NO PROSECUTIONS OR RECOVERY OF STOLEN  
FUNDS HAS BEEN MADE. Anderson in US Fed Court Fingers, US Attorneys, DA's,  
ADA's, the New York Attorney General and "Favored Lawyers and Law Firms" @

<http://www.youtube.com/watch?v=-6BIK73p4Ueo>

and finally latest blog

<http://iviewit.tv/wordpress/?p=594>

Eliot Part 1 - The Iviewit Inventions @

<http://www.youtube.com/watch?v=L0n4hwemqW0>

**Eliot Ivan Bernstein**

---

**From:** Eliot Ivan Bernstein <iviewit@iviewit.tv>  
**Sent:** Friday, February 8, 2013 6:47 PM  
**To:** Ted Bernstein; Theodore S. Bernstein (TBernstein@lifeinsuranceconcepts.com); Pamela Beth Simon (psimon@stpcorp.com); Lisa Sue Friedstein (lisa@friedsteins.com); Jill Iantoni; Jill M. Iantoni (lantoni\_jill@ne.bah.com); Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A. (rspallina@tescherspallina.com); Christine P. Yates ~ Director @ Tripp Scott (CTY@trippscott.com); Irina Roach (idr@trippscott.com)  
**Subject:** Heritage Policy

Thanks for your response to my analysis of the Heritage matter; however, I believe your comments assume I do not understand the trust concept and its utility, and your analysis is based on the theory of estate planning using trusts and not the importance of having the actual trust document. I started by again requesting a copy of the Heritage policy. I need to review the policy's provisions respecting how death benefit proceeds are dealt in situations where a beneficiary designation fails. This is a simple request. You and Pam indicated that you each have a copy of the policy. Robert said he has a copy of the policy. PLEASE send a copy to me. I assure you that nothing will transpire until I have reviewed the policy.

I have been advised that in situations where a beneficiary designation fails, an insurer will in almost all situations pay the proceeds into the probate court and ask the court to determine to whom the proceeds are payable and ask for a release. The position I took in my prior email is clear; that a probate court will likely decide that the proceeds will go to the grand children through the estate and the pour over trust. This analysis troubles you because the Heritage proceeds would thus be considered an estate asset and subject to creditor claims. I understand your concerns. But unless the 1995 trust document is located, and unless the Heritage policy provides otherwise, this is how it most likely will play out. Your comments about Dad's desires and his estate planning experience are simply not relevant; however, I could understand that you may wish to make this argument to the probate court. All of the meetings, time and energy being spent trying to come up with a way to convince Heritage to pay the benefits pursuant to what Robert believes the 1995 trust said is wasted energy, unless Heritage agrees to pay the proceeds pursuant to some form of settlement and release agreement. If you want me to even consider such an arrangement, in addition to reviewing the Heritage policy, I will require a letter from Heritage specifically stating that Heritage may make the proceeds payment under such an arrangement. It should be easy to get such a letter if Heritage is willing to consider such an arrangement. Now that you know my position, I will respond to your comments respecting my analysis in my prior email. We all know that like you and Pam, Dad spent his career in the insurance business. I also spent years in the insurance business. In fact, Dad was one of the best and most innovated at it. Just look at his and your company's (LIC) web site for confirmation. As an expert, Dad understood all the benefits of designating a trust as the beneficiary under a life policy. You keep the proceeds out of the estate and probate process, and the proceeds are not subject to creditor claims. You and Pam and even I understand these concepts too. So does Mr. Spallina, as an expert estates lawyer. All of us (you, Pam, Robert and me) also know that having the actual trust document is essential to ensuring that the insurance proceeds are actually paid to the trust. The reason why insurers will not make payment pursuant to a missing trust document is that the insured had the right and ability to make changes to the trust document, including the beneficiaries thereunder until the day he died. You commented that Mr. Spallina said it is Heritage's policy not to make payments to an estate in situations where a trust is lost. Is that your experience with insurance companies? Perhaps Heritage's position is that it will pay the proceeds to the court (not the estate) and the judge determines how the proceeds are distributed. My friends in the business tell me that this is precisely what insurance companies do, albeit through the probate court. That is also why Mr. Spallina included that clause I mentioned in Dad's will, so any such proceeds flow through to Dad's pour over trust as a backup. Most wills include such a clause even though many people employ a trust. Trusts do get lost or are revoked. Beneficiary designations fail for a variety of reasons.

Your comments regarding the many times Dad dealt with the Heritage policy in recent years interests me. In 2012 Dad did redo his estate plan with Mr. Spallina. In the last couple of years Dad and you (and perhaps Robert) dealt with

reinstating the Heritage policy and considered a life payment buyout. In all those occasions, Dad could have changed the beneficiaries, but you state he did not. I understand, but fail to see the relevance, based on the above analysis. But because you are in the business and counsel your clients to use trusts, why did you not request a copy of the 1995 trust from Dad during those events? Why didn't Mr. Spallina require that Dad give him a copy during the 2012 estate planning overhaul, and insist on having a copy? Mr. Spallina told us that he and Dad met often and discussed Dad's financial affairs. Mr. Spallina knew and knows that having the actual trust document was essential, and I am find it hard to believe he did not insist on including a copy with Dad's 2012 estate planning documents. If I were Dad's estates lawyer and Dad did not provide me a requested copy, I would have copies of letters requesting the trust document, at the very least to protect myself against any claims. And why did Dad not make sure that you all had copies?

I also find it curious that no one has come forth to state the steps that were taken to locate the 1995 trust. Who took the steps, where did they look, and who did they speak with. I was not permitted to go into Dad's house after he died, so who took the contents of Dad's safe? Who looked at the contents of Dad's safe deposit box?-

You start by stating that Dad did not have 10 Grandchildren in 1995, so it was not his then desire to name them as beneficiaries. But absent the actual trust document, it is possible he named his then living grandchildren. BUT, the 1995 trust document cannot be located, so we will never know.

My fraudulent conveyance analysis is based on the above comments. A creditor would argue that the named beneficiary was the 1995 trust. It was lost. In those cases, insurers pay death benefits to the probate court. The proceeds thus become part of the estate even if the judge decides that the proceeds go through the pour over trust. You are in the insurance business Ted. I am surprised you do not know this. Thus I remain concerned that if Heritage agrees to pay the proceeds in trust pursuant to some form of settlement and release (which is your plan to avoid creditors issues) that a creditors lawyer will seek to reach those proceeds on the fraudulent conveyance theory. Obviously, you and Robert are trying awfully hard to get Heritage to do this for the very reason of avoiding creditors' claims. More facts to help a creditor's lawyer reach the proceeds.

So I would suggest my economic analysis is correct when you consider the law and not just Dad's desires. Again, the law requires an actual trust document, not the concept of a trust. It is required because the trust document can be changed and is the best and only evidence of where the proceeds should go. Unfortunately, Dad intent or desires likely are not relevant. He knew this, which again is why I am shocked that Dad did not give copies to each of you.

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

Iviewit Holdings, Inc. – DL (yes, two identically named)

Iviewit Holdings, Inc. – FL

Iviewit Technologies, Inc. – DL

Uviewit Holdings, Inc. - DL

Uview.com, Inc. – DL

Iviewit.com, Inc. – FL

Iviewit.com, Inc. - DL

I.C., Inc. – FL

Iviewit.com LLC – DL

Iviewit LLC – DL

Iviewit Corporation – FL

Iviewit, Inc. - FL

Iviewit, Inc. – DL

Iviewit Corporation

2753 N.W. 34th St.

Boca Raton, Florida 33434-3459

(561) 245.8588 (o)

(561) 886.7628 (c)

(561) 245-8644 (f)



**From:** Ted Bernstein [mailto:tbernstein@lifeinsuranceconcepts.com]

**Sent:** Thursday, February 14, 2013 8:33 AM

**To:** 'Eliot Ivan Bernstein'; Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott

**Subject:** RE: Eliot Representation

Robert,

Please move forward as we discussed in the last group phone call in which we decided to have Heritage pay your trust account or a trust that you would act as Trustee. Heritage has stated that they will pay based on a court order showing that there is consensus among the 1995 Trust beneficiaries. Let's get this done.

Ted

**From:** Eliot Ivan Bernstein [mailto:iviewit@iviewit.tv]

**Sent:** Wednesday, February 13, 2013 8:52 AM

**To:** Robert L. Spallina, Esq. ~ Attorney at Law @ Tescher & Spallina, P.A.; Ted Bernstein; Pamela Beth Simon; JILL BERNSTEIN IANTONI; Jill M. Iantoni; Lisa S. Friedstein; Christine P. Yates ~ Director @ Tripp Scott

**Subject:** Eliot Representation

I will be seeking independent counsel for myself personally, as Candice and I have chosen to have Christine represent our children on the Heritage matter and perhaps other matters to avoid any conflicts. In the interim, please copy me and Christine on all correspondences involving the estates of Simon and Shirley until further notice of who my personal attorney will be. Eliot



I  VIEW  IT TECHNOLOGIES, INC.  
Surf with Vision

Eliot I. Bernstein

Inventor

Iviewit Holdings, Inc. – DL

**EXHIBIT 6 - BLANK COPY OF ALLEGED TRUST**

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by a vertical line and a small flourish at the bottom.

S.B. Lexington, Inc.  
(Employer)

EMPLOYEE DEATH BENEFIT PLAN AND TRUST

'PLAN AND TRUST'  
BENEFICIARY DESIGNATION

Simon L. Bernstein

(PLEASE PRINT OR TYPE NAME OF MEMBER OR AUXILIARY MEMBER)

I hereby designate, in accordance with the terms of said Plan and Trust as it is or may be amended:

NAME OF BENEFICIARY  
Simon Bernstein Irrevocable  
Insurance Trust

RELATIONSHIP

as Primary Beneficiary

as Contingent Beneficiary/ies

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 my Employer.

Signature: [Signature]

Date: 8-26-95

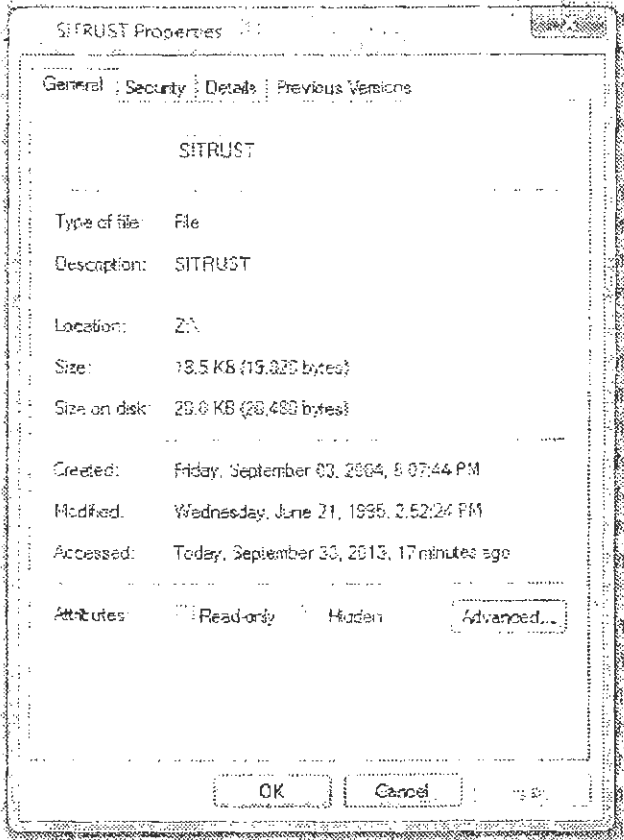
MEMBER OR AUXILIARY MEMBER

Instructions:

- (1) This form should be filed by the Trustee. A photo copy should be retained by the Member or Auxiliary Member.
- (2) This recommendation of beneficiary shall be effective upon receipt by the Trustee.
- (3) Where more than one beneficiary is designated, the proportion to be paid to each should be indicated, and if desired, provision for a contingent beneficiary if a first-named beneficiary predeceases the Member or Auxiliary Member can be included.
- (4) This designation of beneficiary may be changed or revoked at any time by written instruction to the Trustee or by filing a new designation with the Trustee.
- (5) This designation of beneficiary shall be disregarded if received by the Trustee after the death of the Member or Auxiliary Member.

BT000001

Vertical text on the left side of the page, possibly a page number or reference.



SITRUST 18.5 KB (19,020 bytes) File 9/3/2004 8:07 PM

SITRUST General: 6/21/1995 2:52 PM File Size: 18.5 KB  
 Date created: 9/3/2004 8:07 PM Offline availability: Not available  
 Online status: Online



IRREVOCABLE TRUST AGREEMENT

I, Simon L. Bernstein, am entering into this Agreement at Boca Raton, Florida on June 1, 1995 with my wife, Shirley Bernstein, as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "Simon Bernstein Irrevocable Insurance Trust, dated June 1, 1995". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

BT000003

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000004**

4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000005**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

**BT000006**



B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have five children living, namely: Ted S. Bernstein, Pamela B. Simon, Jill Bernstein, Lisa Bernstein Friedstein, and Eliot Bernstein.

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had

BT000007

collected after the termination of such interest. The Trustee may charge any such income with any accrued taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000008

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$10,000.00 in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign

BT000009

the policies for such purposes;

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

#### ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Bernstein does not continue to act as Trustee, David B. Simon is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital,

BT000010

surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 199\_\_.

BT000011

\_\_\_\_\_  
Notary Public

**BT000012**

IRREVOCABLE TRUST AGREEMENT

I, S., am entering into this Agreement at \_\_\_\_\_ on \_\_\_\_\_, 199\_ with my wife, Shirley L., as Trustee. I am transferring to the Trustee \$10 and other property and may from time to time again contribute cash or other property to the Trustee. This instrument and the trusts hereby evidenced shall be known as the "S. Irrevocable Insurance Trust, dated \_\_\_\_\_, 199\_". It is therefore agreed as hereinafter provided.

ARTICLE ONE

1.01 I have caused or will cause the policies of insurance listed in Exhibit A hereto attached to be made payable to the Trustee as Beneficiary hereof. The term "policies" may include annuity contracts, accident policies and any retirement plan or contract under which death benefits can be made payable to the Trustee.

1.02 I or any person may transfer by will or otherwise any other property to the Trustee to be administered as provided in this instrument and may subject the proceeds of any insurance policies to the terms of this instrument by designating the Trustee as beneficiary thereof.

ARTICLE TWO

2.01 This instrument and the Trusts created hereby shall be construed and governed by the laws of Illinois in force from time to time.

**BT000013**

ARTICLE THREE

The Trustee shall pay to me during my life the income of the Trust, and such portions of the principle as I may request from time to time by a written instrument delivered to the Trustee; provided, however, that if I become incapacitated the Trustee shall, as long as such incapacity continues, pay such amounts from the income and from principal as the Trustee may deem necessary for the support and education of the Group consisting of my then living children or their descendants and me. The Trustee may make unequal payments which shall not be considered advancements. Any income not thus paid shall be added to the principal of the Trust.

ARTICLE FOUR

4.01 I reserve during my lifetime all rights under any insurance policies held hereunder including the rights to change the beneficiary, pledge or collect the cash surrender values and to receive all dividends. If any policy is surrendered or if the beneficiary of any policy is changed, this trust shall be revoked with respect to such policy upon acceptance of such surrender or change of beneficiary by the insurance company. During my lifetime the Trustee shall have no responsibility with respect to any policies except to hold any policies received in safekeeping and to deliver them upon my written request.

4.02 Upon being advised of my death the Trustee shall collect the proceeds of any policy(ies) on my life payable to the Trustee and may exercise any available optional method of settlement.

**BT000014**



4.03 Payment to the Trustee shall discharge the liability of the insurance company so paying, which need not see to the application of any payment. The Trustee may compromise claims arising in connection with any policy, and need not engage in litigation to enforce payment without indemnification for any resulting expense.

ARTICLE FIVE

5.01 After my death, the Trustee shall pay such amounts as my personal representative may request in writing for the purpose of paying all or part of the expenses of my funeral, the administration of my estate, my enforceable debts, and federal, state and estate taxes payable by reason of my death.

5.02 In making the payments required under this Article, the Trustee may use proceeds of insurance on my life to the extent other assets are not available but it shall in no event use assets not includable in my gross estate under the Internal Revenue Code.

ARTICLE SIX

6.01 After my death, for purposes of Article Seven, the "Trust Estate" shall consist of the principal together with any accrued and undistributed income of the Trust at the time of my death, plus any property added thereto by my Will or payable to the Trustee by reason of my death, reduced by any gifts herein before made and by the payment of debts admitted and administrative expenses and as provided in Article Five.

ARTICLE SEVEN

7.01 Upon my death, the Trustee shall divide the property

**BT000015**

of the Trust into as many separate Trusts as there are children of mine who survive me and children of mine who predecease me leaving descendants who survive me. These Trusts shall be designated respectively by the names of my children. Each Trust shall be administered and distributed in the following manner:

A) The Trustee shall pay from the net income of each Trust such amounts as the Trustee may deem appropriate to anyone or more persons living from time to time of the Group consisting of the Child for whom the Trust is named, that Child's spouse if any and descendants of such Child, and the spouses of any such descendants. The members of this Group are herein referred to as the Income Beneficiaries. Any income not thus paid shall be added to principal.

B) In addition, the Trustee shall pay from time to time to any one or more of the income beneficiaries of each Trust such amounts from the principal of such Trust as the Trustee may deem necessary for their support and education.

C) The Trustee may make unequal payments of income or principal which shall not be considered advancements.

#### ARTICLE EIGHT

Whenever the termination of any Trust under this instrument, the Trustee is directed to distribute any share of the Trust, except any distribution pursuant to the exercise of the power of appointment, (to any person who is under the age of twenty-five (25) years or is incapacitated, the Trustee shall hold the share of such person hereinafter called the Beneficiary, in a separate Trust for the following purposes:

A) The Trustee shall pay all the net income to the Beneficiary in such amounts of the principal as the Trustee deems necessary for his support and education; provided however, that if and so long as the Beneficiary has not attained majority or is incapacitated, the Trustee may withhold such amounts of income as the Trustee determines not to be necessary for the support and education of the Beneficiary and any amounts thus withheld shall be added to principal.

B) After the beneficiary has attained the age of twenty-five (25) years, he may withdraw all of the principal and accumulated net income of such Trust.

As of the date of this Agreement I currently have \_\_\_\_\_

children living, namely:

ARTICLE NINE

For purposes under this instrument:

A) Adoption of a child shall have the same effect as if such child had been born to the adopting parents, but only if such child was a minor at the time of the adoption;

B) The word "spouse" includes a widow or widower.

C) Except where distribution is directed to the "descendants per stirpes" of a person, the word "descendants" includes descendants of every degree, whenever born, whether or not a parent or more remote ancestor of such descendant is living. Where distribution is directed to any person's descendants per stirpes who are living at a designated point of time, the stirpes shall begin with the children of such person, whether or not any child of his is then living. "Descendants of my parents" shall include only descendants of the marriage of such parents.

D) A person shall be considered "incapacitated" (1) if and as long as he is adjudicated disabled because he is unable to manage his estate or financial matters or (2) if two doctors familiar with his physical and mental condition certify to the Trustee in writing that the person is unable to transact ordinary business, and until there is a like certification to the Trustee that such incapacity has ended.

E) Where appropriate, words of the masculine gender include the feminine, the words used in a plural or collective sense include the singular and vice versa.

F) The word "Trustee" includes any successor Trustee or Trustees.

G) Except as otherwise provided in this instrument, income accrued or collected but not distributed at the termination of any beneficial interest hereunder shall be treated as if it had accrued or had collected after the termination of such interest. The Trustee may charge any such income with any accrued

taxes, expenses or compensation which it considers proper.

H) In determining what amounts are necessary for the support of any person, the Trustee shall take into account (1) the standard of living to which such person is accustomed; (2) his obligations, if any, to support others; (3) the obligation, if any, and the ability of others to support him; and (4) other income available for his support so far as known to the Trustee

I) Whenever the Trustee deems it to be in the best interests of a beneficiary to whom the Trustee is directed or authorized to pay income or principal, the Trustee may apply such income or principal for the benefit of the beneficiary, or distribute it for the beneficiary's use to anyone with whom the beneficiary is residing, or to his guardian, conservator or near adult relative.

J) In determining whether any testamentary power of appointment has been exercised, the Trustee may rely on an instrument admitted to probate in any jurisdiction as the will on the donee of the power. If the Trustee has no written notice of the existence of such a will within three months after the death of the donee of the power, the Trustee may assume that the donee died intestate. This paragraph shall not limit any right of any person against anyone to whom the Trustee has distributed property in reliance thereon.

K) The term "gross estate" refers to the amount described by this term in the Internal Revenue Code in force from time to time.

L) The word "persons" includes corporations.

M) If any distribution, other than a distribution made pursuant to a power of withdrawal of appointment, is a taxable distribution for generation-skipping tax purposes, the Trustee may, out of the principal of the trust from which the distribution is made, either pay any tax attributable to the distribution or increase the distribution to the extent determined by the Trustee to be sufficient to enable the distributee to pay any such tax. In the event of a taxable termination for generation-skipping tax purposes, the Trustee shall, out of the principal of the Trust or share to which such termination relates, pay any tax attributable to the termination without compensating adjustments.

BT000018

ARTICLE TEN

In addition to the powers from time to time conferred on the Trustee by the Illinois Trusts and Trustees Act, the Trustee shall have the following powers exercisable in the Trustee's discretion except:

A) To charge or not to charge against income an allowance for depreciation;

B) To receive in cash the proceeds of any policies payable to the Trustee;

C) To make secure or unsecured loans of trust funds to my estate;

D) To borrow money from any source, including but not limited to, the banking department of a successor corporate trustee;

E) If at any time after my death the principal of a trust required to be held under the terms of this Agreement is less than \$\_\_\_\_\_ in value, to distribute the principal and any accrued or undistributed income of the Trust to its income beneficiary, and that Trust shall thereupon terminate, notwithstanding any provisions in this Agreement to the contrary;

F) To purchase insurance policies on my life and as to any insurance policies owned by the Trustee on my life, the Trustee shall have the following additional powers:

1) To continue the policies in force and to pay the premiums thereon out of income and/or principal

2) To obtain the cash surrender value of the policies;

3) To convert the policies to paid-up insurance;

4) To borrow money on the security of the policies for any purpose, including but not limited to, the payment of the premiums thereon, and to mortgage, pledge and assign the policies for such purposes;

BT000019

5) To make the Trustee and Trustee hereunder the beneficiary of the policies and to hold the policy proceeds in Trust hereunder;

6) To exercise any and all options and privileges under the policies; and

7) To deal with the policies in any other way the Trustee deems necessary or advisable for the proper management, investment and distribution of the Trusts;

G) When there is a trust under this Agreement and another trust under this Agreement or under another document, each having the same beneficiary or beneficiaries and terms which are substantially identical as to the distribution of income and principal and the same Inclusion Ration, to transfer all of the assets of such Trust under this Agreement to the Trustee or Trustees of the substantially identical Trust, and thereupon such Trust under this Agreement shall terminate;

H) To maximize the value of the GST Exemption which is available to my estate and to segregate by allocation to a separate Trust all or part of any asset in order to reflect a partial disclaimer or differences in tax attributes, consistent with the rules governing such attributes and considering the differences in such attributes and all other factors the Trustee believes pertinent; and

I) To do all other acts to accomplish the proper management, investment and distribution of the Trusts.

ARTICLE ELEVEN

The following provisions shall apply to each trust created by this Agreement:

A) If for any reason Shirley Duvall, et al does not continue to act as Trustee, Kim, Ted is appointed successor Trustee. If for any reason neither of the foregoing individuals nor any successor Trustee appointed as hereinafter provided acts or continues to act as Trustee, a successor Trustee shall be appointed as provided in the Illinois Trusts and Trustees Act and shall be any corporation situated in the United States and authorized under the laws of the United States or of any state thereof to administer Trusts and with capital, surplus and undivided profits of at least fifty million dollars.

B) If any individual Trustee becomes incapable of properly managing his or her affairs, as determined unanimously by the group consisting of his or her physician and my then living and competent children, that determination shall be deemed to constitute his or her resignation as Trustee.

C) The income beneficiaries of the Trusts or, in the case of any legally disabled beneficiary, a living and competent parent or child, or guardian or conservator if the beneficiary has no living and competent parent or child, may at any time approve the Trustee's accounts, with the same effect as if a court having jurisdiction over the Trusts approve the accounts.

ARTICLE TWELVE

A. The Trustee need not litigate to collect policy proceeds or other property to which the Trustee may be entitled, unless indemnified to the Trustee's satisfaction against all resulting expense and liability.

B. The trustee's receipt and release shall release and discharge an insurance company or other person for payment made and shall bind every beneficiary of the Trusts.

ARTICLE THIRTEEN

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, I and the Trustee have executed this Agreement.

\_\_\_\_\_  
\_\_\_\_\_

Subscribed and Sworn to before  
me this \_\_\_ day of \_\_\_\_\_, 199\_.

\_\_\_\_\_  
Notary Public

**BT000021**

**EXHIBIT 7 – PARTIAL DOCUMENTS FILED FOR SIMON POST MORTEM**





IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF PROBATE DIVISION  
SHIRLEY BERNSTEIN, File No. 502011CP000653  
Deceased.

2011 FEB 10 AM 9:14  
SHIRLEY BERNSTEIN  
PALM BEACH COUNTY  
SOUTH FLORIDA

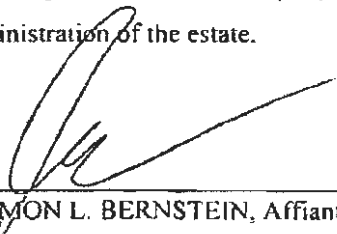
**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, SIMON L. BERNSTEIN (Affiant), state under oath that:

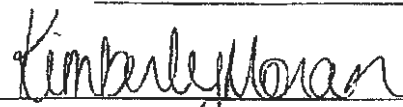
1. I have been appointed personal representative of the estate of SHIRLEY BERNSTEIN, deceased.
2. I will faithfully administer the estate of the decedent according to law.
3. My place of residence is 7020 Lions Head Lane, Boca Raton, FL 33496, and my post office address is the same.
4. I hereby designate Robert L. Spallina, Esquire, who is a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as my agent for the service of process or notice in any action against me, either in my representative capacity, or personally, if the personal action accrued in the administration of the estate.

Moran fails to identify that Simon appeared and either was know or produced identification

  
SIMON L. BERNSTEIN, Affiant

Sworn to and subscribed to before me on February 9, 2011, by Affiant, who is personally known to me \_\_\_\_\_ or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal) NOTARY PUBLIC STATE OF FLORIDA  
Kimberly Moran  
Commission # DD766470  
Expires: APR 28, 2012  
BONDED THRU ATLANTIC BONDING CO., INC.

  
Notary Public State of Florida



Document alleged signed on 4/9/2012 not filed allegedly until 10/24/2012. Simon deceased on 9/13/2012.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

File No. 502011000653XXXX SB

SHIRLEY BERNSTEIN,

Probate Division

Deceased.

2012 OCT 24 PM 1:31  
SHARON B. BROWN, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY 316 SOUTH FILED

**PETITION FOR DISCHARGE  
(full waiver)**

Judge Colin court rules require that all Waivers need to be notarized and this is not, "all waivers, consents, renunciations and receipt of assets must be notarized."

Petitioner, SIMON BERNSTEIN, as personal representative of the above estate, alleges:

1. The decedent, Shirley Bernstein, a resident of Palm Beach County, died on December 8, 2010, and Letters of Administration were issued to petitioner on February 10, 2011.

2. Petitioner has fully administered this estate by making payment, settlement, or other disposition of all claims and debts that were presented, and by paying or making provision for the payment of all taxes and expenses of administration.

This is untrue on 4/9/12 as State of Florida tax forms were not submitted until October 2012

3. Petitioner has filed all required estate tax returns with the Internal Revenue Service and with the Department of Revenue of the State of Florida, and has obtained and filed, or file herewith, evidence of the satisfaction of this estate's obligations for both federal and Florida estate taxes, if any.

4. The only persons, other than petitioner, having an interest in this proceeding, and their respective addresses are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)
Simon L. Bernstein	7020 Lions Head Lane Boca Raton, FL 33496	spouse	adult
Ted S. Bernstein	880 Berkeley Street Boca Raton, FL 33487	son	adult



**Pamela B. Simon** 950 North Michigan Avenue daughter adult  
Suite 2603  
Chicago, IL 60606

**Eliot Bernstein** 2753 NW 34<sup>th</sup> Street son adult  
Boca Raton, FL 33434

**Jill Iantoni** 2101 Magnolia Lane daughter adult  
Highland Park, IL 60035

**Lisa S. Friedstein** 2142 Churchill Lane daughter adult  
Highland Park, IL 60035

Simon on 4/9/2012 cannot state the waivers and receipts were signed by all interested parties at that time, since Eliot was the first to sign a waiver and signed it on May 15, 2012. Jill Iantoni did not sign one until after Simon deceased in October 2012.

On 4/9/2012 Simon could not have acknowledged that all parties were aware of their rights under 5 a,b,c,d,e,f,g and h, as none of the interested parties had got waivers until 5/10/2012 or after and some interested parties did not submit a waiver until after Simon had passed.

→ 5. **Petitioner, pursuant to Section 731.302 of the Florida Probate Code, and as permitted by Fla. Prob. R. 5.400(f), files herewith waivers and receipts signed by all interested persons:**

- (a) acknowledging that they are aware of the right to have a final accounting;
- (b) waiving the filing and service of a final accounting;
- (c) waiving the inclusion in this petition of the amount of compensation paid or to be paid to

the personal representative, attorneys, accountants, appraisers or other agents employed by the personal representative and the manner of determining that compensation;

(d) acknowledging that they have actual knowledge of the amount and manner of determining compensation of the personal representative, attorneys, accountants, appraisers, or other agents, and agreeing to the amount and manner of determining such compensation, and waiving any objections to the payment of such compensation;

- (e) waiving the inclusion in this petition of a plan of distribution;
- (f) waiving service of this petition and all notice thereof;
- (g) acknowledging receipt of complete distribution of the share of the estate to which they are

entitled; and

(h) consenting to the entry of an order discharging petitioner, as personal representative, without notice, hearing or waiting period and without further accounting.

Petitioner requests that an order be entered discharging petitioner as personal representative of this estate and releasing the surety on any bond which petitioner may have posted in this proceeding from any liability on it.

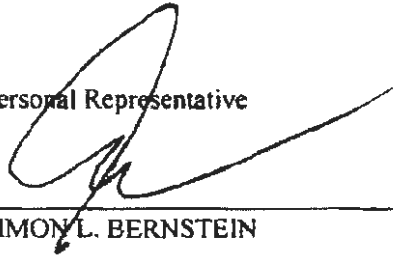


Simon never (Case: 17-3595 Document: 12-2 Filed: 03/12/2018 Pages: 795)  
statement in his life, why would he  
start here?

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.

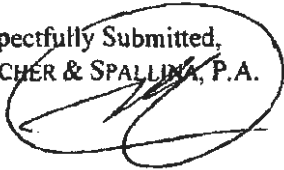
Signed on April 9, 2012.

Personal Representative



SIMON L. BERNSTEIN

Respectfully Submitted,  
TESCHER & SPALLINA, P.A.



By:  
ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 497381  
4855 Technology Way, St. 720  
Boca Raton, FL 33431  
561-997-7008

NOTARY PUBLIC STATE OF FLORIDA

Note Law Firm  
Marking and File #

NO NOTARY AS  
REQUIRED BY JUDGE  
COLIN RULES.

Note Bar Form #

Bar Form No. P-5.0550  
© Florida Lawyers Support Services, Inc.  
Reviewed October 1, 1998

Note Bar Logo



**SIMON L. BERNSTEIN**

**AMENDED AND RESTATED TRUST AGREEMENT**

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

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

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Trust Agreement on the date first above written.

That Spallina should not be Witnessing documents that he prepared and his direct interests in, as he becomes alleged Personal Representative.

SETTLOR and TRUSTEE:

SIMON L. BERNSTEIN

This instrument was signed by SIMON L. BERNSTEIN in our presence, and at the request of and in the presence of SIMON L. BERNSTEIN and each other, we subscribe our names as witnesses on this 21 day of July, 2012:

Print Name: ROBERT L. SPALLINA  
Address: 7387 WISTERIA AVENUE  
PARKLAND, FL 33076

Print Name: Kimberly Moran  
Address: 6362 Las Flores Drive  
Boca Raton, FL 33433

STATE OF FLORIDA

SS.

COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 25 day of July, 2012, by SIMON L. BERNSTEIN.

Signature - Notary Public - State of Florida  
Lindsay Baxley  
Print, type or stamp name of Notary Public

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced \_\_\_\_\_

Fails to state if Simon appeared before her and either was known to her or Produced ID.

SIMON L. BERNSTEIN  
AMENDED AND RESTATED TRUST AGREEMENT

Simon does not initial this page of the alleged Amended Trust.

502012C.P004391XXXXSB

J2

**WILL OF**

**SIMON L. BERNSTEIN**

2012 OCT -2 AM 9:32  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CT BRANCH-FILED

*Prepared by:*

Tescher & Spallina, P.A.  
4855 Technology Way, Suite 720, Boca Raton, Florida 33431  
(561) 997-7008  
[www.tescherspallina.com](http://www.tescherspallina.com)

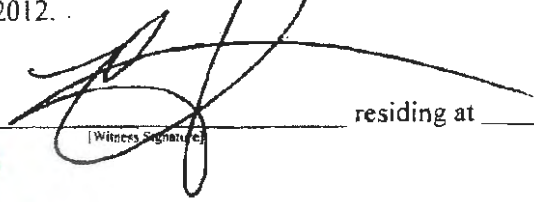
LAW OFFICES

TESCHER & SPALLINA, P.A.

I have published and signed this instrument as my Will at Boca Raton, Florida, on the 26 day of July, 2012.

  
SIMON L. BERNSTEIN

This instrument, consisting of this page numbered 7 and the preceding typewritten pages, was signed, sealed, published and declared by the Testator to be the Testator's Will in our presence, and at the Testator's request and in the Testator's presence, and in the presence of each other, we have subscribed our names as witnesses at Boca Raton, Florida on this 26 day of July, 2012.

  
[Witness Signature]

residing at

**ROBERT L. SPALLINA**  
**7387 WISTERIA AVENUE**  
**PARKLAND, FL 33076**

[Witness Address]

  
[Witness Signature]

residing at

**Kimberly Moran**  
**6362 Las Flores Drive**  
**Boca Raton, FL 33433**

[Witness Address]

Spallina should not be Witnessing documents that he prepared and has interests in.



State Of Florida

SS.

County Of Palm Beach

I, SIMON L. BERNSTEIN, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

[Signature]  
SIMON L. BERNSTEIN, Testator

We, Robert L. Spallina and Kimberly Moran,

have been sworn by the officer signing below, and declare to that officer on our oaths that the Testator declared the instrument to be the Testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the Testator and of each other.

[Signature]  
Witness

Kimberly Moran  
Witness

Robert Spallina should not be witnessing documents he has interests in that he drafted.

Simon, Spallina and Moran are not verified to have appeared on this day and produced identification or were known to Baxley

Acknowledged and subscribed before me, by the Testator, SIMON L. BERNSTEIN, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and sworn to and subscribed before me by the witnesses, Robert L. Spallina, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and Kimberly Moran, who is personally known to me or who has produced \_\_\_\_\_ (state type of identification) as identification, and subscribed by me in the presence of SIMON L. BERNSTEIN and the subscribing witnesses, all on this 25 day of July, 2012.

[Seal with Commission Expiration Date]

NOTARY PUBLIC-STATE OF FLORIDA  
Lindsay Baxley  
Commission # EE092282  
Expires: MAY 10, 2015  
BONDED THRU ATLANTIC BONDING CO., INC.

Lindsay Baxley  
Signature - Notary Public-State of Florida

Lindsay Baxley  
Print, type or stamp name of Notary Public

LAST WILL  
OF SIMON L. BERNSTEIN

-8-

LAW OFFICES

TESCHER & SPALLINA, P.A.

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF

PROBATE DIVISION

SIMON L. BERNSTEIN,

File No. 502012CP004391

Deceased.

*XXXXSB*  
*JZ*

2012 OCT -2 AM 9:32  
SHARON R. BUCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

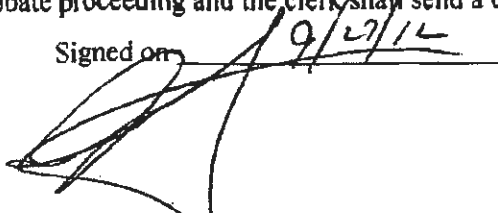
**NOTICE OF TRUST**

SIMON L. BERNSTEIN, a resident of Palm Beach County, Florida, who died on September 13, 2012, was the settlor of a trust entitled: SIMON L. BERNSTEIN TRUST AGREEMENT dated July 25, 2012, which is a trust described in Section 733.707(3) of the Florida Statutes, and is liable for the expenses of the administration of the decedent's estate and enforceable claims of the decedent's creditors to the extent the decedent's estate is insufficient to pay them, as provided in Section 733.607(2) of the Florida Statutes.

The name and address of the Trustees are set forth below.

The clerk shall file and index this Notice of Trust in the same manner as a caveat, unless there exists a probate proceeding for the settlor's estate in which case this Notice of Trust must be filed in the probate proceeding and the clerk shall send a copy to the personal representative.

Signed on 9/27/12, 2012.



ROBERT L. SPALLINA, Co-Trustee  
7387 Wisteria Avenue  
Parkland, FL 33076



DONALD R. TESCHER, Co-Trustee  
2600 Whispering Oaks Lane  
Delray Beach, FL 33445

Copy mailed to attorney for the Personal Representative on

CLERK OF THE CIRCUIT COURT

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

**MUST BE FILED IN DUPLICATE**



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF PROBATE DIVISION  
SIMON L. BERNSTEIN, File No. 5020120004391  
Deceased. IL KRSB

2012 OCT -2 AM 9:32  
SHARON R. BOEN, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, ROBERT L. SPALLINA (Affiant), state under oath that:

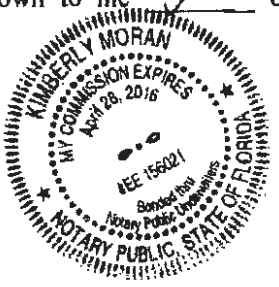
1. I have been appointed co-personal representative of the estate of SIMON L. BERNSTEIN, deceased.
2. I will faithfully administer the estate of the decedent according to law.
3. My place of residence is 7387 Wisteria Avenue, Parkland, FL 33076, and my post office address is 4855 Technology Way, Suite 720, Boca Raton, FL 33431.
4. I designate myself, a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, together with my partner, DONALD R. TESCHER, ESQ., a member of The Florida Bar, a resident of Palm Beach County, Florida, whose place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445 and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as agents for the service of process or notice in any action against us, either in our representative capacity, or personally, if the personal action accrued in the administration of the estate.

Date is changed and not initialized or properly marked as to who changed it and what year was changed

[Signature]  
ROBERT L. SPALLINA, Affiant

Sworn to and subscribed to before me on September 28, 2012 by Affiant, who is personally known to me \_\_\_\_\_ or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF PROBATE DIVISION  
SIMON L. BERNSTEIN, File No. 502012CP004391  
Deceased. IZ XXXXSB

2012 OCT - 2 AM 9:32  
SHARON R. BOGA, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**OATH OF PERSONAL REPRESENTATIVE  
DESIGNATION OF RESIDENT AGENT, AND ACCEPTANCE**

STATE OF FLORIDA  
COUNTY OF PALM BEACH

I, DONALD R. TESCHER (Affiant), state under oath that:

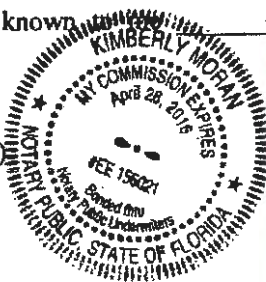
1. I have been appointed co-personal representative of the estate of SIMON L. BERNSTEIN, deceased.
2. I will faithfully administer the estate of the decedent according to law.
3. My place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445, and my post office address is 4855 Technology Way, Suite 720, Boca Raton, FL 33431.
4. I designate myself, a member of The Florida Bar, a resident of Broward County, Florida, whose place of residence is 2600 Whispering Oaks Lane, Delray Beach, FL 33445, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, together with my partner, ROBERT L. SPALLINA, ESQ., a member of The Florida Bar, a resident of Palm Beach County, Florida, whose place of residence is 7387 Wisteria Avenue, Parkland, Florida 33076, and whose post office address is 4855 Technology Way, Suite 720, Boca Raton, Florida 33431, as agents for the service of process or notice in any action against us, either in our representative capacity, or personally, if the personal action accrued in the administration of the estate.

[Signature]  
DONALD R. TESCHER, Affiant

Change to date not initialized and unclear what year is cut out.

Sworn to and subscribed to before me on October 1, 2012, by Affiant, who is personally known [Signature] or who produced [Signature] as identification.

(Affix Notarial Seal)



[Signature]  
Notary Public State of Florida

Appears that neither verification was checked.

**PRIMA FACIE EVIDENCE OF FORGERY AND FRAUD AND MORE IN SIGNATURES AND DATES FOR SIMON AND ELIOT**  
**WAIVERS**

May 15, 2012 Alleged Signature of Eliot Bernstein. In the un-notarized Waiver the date is in cursive and on the notarized Waiver the signature is in Print making the two Waivers wholly dissimilar. The E in the signature for Eliot in the un-notarized Waiver crosses through the word "By:" and in the notarized document it does not strike through the word "By:" making these wholly dissimilar signatures. Note, Eliot never met Kimberly Moran nor notarized any documents with her. Therefore, Moran did not just affix a stamp to the alleged original Waiver, Moran instead recreated the Waiver and added the date, forged the signature and therefore these are dissimilar Waivers and Prima Facie evidence of Forgery and Fraud. As these Waivers were submitted to the Probate court constitutes alleged Fraud on the Court and more.

**UN-NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Note E in Eliot loops through the "ary" in "Beneficiary"

Note date in Cursive and "y" in May is looped. "5" is open at top and has comma after

Beneficiary  
By: [Signature]  
ELIOT BERNSTEIN

Note E in Eliot crosses through "By:"

Note no notary markings

Note the document has no law firm markings or legal form markings

**NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Note E in Eliot does NOT loop through the "ary" in "Beneficiary"

Note now date in Print not cursive and "y" in May is NOT looped. "5" is closed at top and bottom. No comma after "5"

Beneficiary  
By: [Signature]  
ELIOT BERNSTEIN

Sworn to and signed by Kimberly Moran before me on May 15, 2012, by ELIOT BERNSTEIN, who is personally known to me, or who produced \_\_\_\_\_ as identification.



(Affix Notarial Seal)

Kimberly Moran  
Notary Public State of Florida

Note E in Eliot does NOT cross through "By:"

Note NEW AFFIXED notary markings

Note document has no legal form markings or law firm markings.

April 09, 2012 Alleged Signature of Simon Bernstein. Note, in the un-notarized document the date number 9 crosses the date line and the two separators // for day/year cross the date line, in the notarized document the entire date and separators never cross the date line, indicating these are wholly dissimilar documents regarding the date. That in the un-notarized document date, the 2 in the year 12 is closed at the bottom and in the notarized document the 2 is open at the bottom, making them appear dissimilar documents. That the Signature of Simon appears wholly dissimilar as the S in Simon in the un-notarized waiver crosses through the word "Beneficiary" and in the notarized Waiver it never touches the word "beneficiary." The S in Simon in the un-notarized Waiver never touches the signature line and in the notarized Waiver the S rests on the signature line. That Simon was deceased in November 2012 when Moran notarized the Waiver at the Court's request and therefore this cannot be Simon's signature, especially if it is dissimilar to the alleged April 09, 2012 Waiver and the notarization took place in November 2012.

Therefore, Moran did not just affix a stamp to the alleged original document. Moran recreated the document and added the date and the signature and forged the signatures as that cannot be Simon's signature on the Notarized Document after he was deceased. Therefore, Moran did not just affix a stamp to the alleged original Waiver allegedly signed in April. Moran instead recreated the Waiver and added the date, forged the signature and therefore these are dissimilar Waivers and Prima Facie evidence of Forgery and Fraud. As the Waiver was submitted to the Probate court constitutes alleged Fraud on the Court and more. The Notary is also fraudulent as Simon could not have appeared on April 09, 2012.

**UN-NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Note that the "9" and the separators "/" for date/year touch the date line.  
Note the bottom of the 2 is closed.

Beneficiary

By:

SIMON L. BERNSTEIN

Note that "S" in Simon crosses through the "ici" in "Beneficiary and circles "iciary" in beneficiary

Note remainder of signature above signature line

Note the "S" in Simon crosses through the "MO" in the Print Name

**NOTARIZED WAIVER SIGNATURE AND DATE**

(h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Note that the "9" and the separators "/" for date/year DO NOT touch the date line. Note the bottom of the 2 is NOT closed.

Beneficiary

By:

SIMON L. BERNSTEIN

Note the "S" in Simon crosses through the "N" and "L" NOT the "MO" in the Print Name.

Note remainder of signature BELOW signature line

Sworn to and subscribed to before me on April 9, 2012 by SIMON BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



Notary Public State of Florida

Note that "S" in Simon DOES NOT cross through the word "Beneficiary" at all and DOES NOT circle "iciary" in beneficiary

Note the date change is not initialed that it was changed and by whom/

**Additional Notes**

1. The date inside the notarization of Simon and Eliot's Waivers are wholly forged as there was no notary stamp on the un-notarized documents.
2. That in Simon's notarization the crossed out 2 in 2012 in the notary section needs further analysis to determine what was crossed out and why no acknowledgement that change had been made.
3. That Candice and Eliot Bernstein on information and belief state that there was a handwritten note by Eliot on the bottom of his original Waiver with similar language to that sent in the email allegedly containing the Waiver signed. The original of all these documents is necessary to analyze for further evidence of forgery and fraud.
4. All documents lack any law firm marking or legal form service markings.

Note no Court Stamp!



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN, File No. 502011CP000653XXXXSB

Deceased.

NOTICE OF ADMINISTRATION

The administration of the estate of SHIRLEY BERNSTEIN, deceased, File Number 502011CP000653XXXXSB is pending in the Circuit Court for Palm Beach County, Florida, Probate Division, the address of which is Palm Beach South County Courthouse, 200 W. Atlantic Avenue, Delray Beach, Florida 33444. The decedent's Will, which is dated May 20, 2008, has been admitted to probate. The name and address of the personal representative and of the personal representative's attorney are set forth below.

A beneficiary of a Will or Codicil described above is not required to have an attorney or to file and document in order to receive the inheritance provided in that Will or Codicil.

Any interested person on whom a copy of this Notice of Administration is served who challenges the validity of the Will and/or Codicil, qualifications of the personal representative, venue, or jurisdiction of the court, is required to file any objection with the court following the form and procedure provided in the Florida Probate Rules WITHIN THE TIME REQUIRED BY LAW, which is on or before the date that is three (3) months after the date of service of a copy of the Notice of Administration on that person, or those objections are forever barred.

A petition for determination of exempt property is required to be filed by or on behalf of any person entitled to exempt property under Section 732.402 of the Florida Probate Code WITHIN THE TIME REQUIRED BY LAW, which is on or before the later of the date that is four (4) months after the date of service of a copy of the Notice of Administration on that person or the date that is forty (40) days after the date of termination of any proceeding involving the construction, admission to probate, or validity of the Will and/or Codicil or involving any other matter affecting any part of the exempt property, or the right of the personal to exempt property is deemed to have been waived.

Any election to take an elective share must be filed WITHIN THE TIME REQUIRED BY LAW, which is on or before the earlier of the date that is six (6) months after the date of service of a copy of the Notice of Administration on the surviving spouse, or an attorney in fact or a guardian of the property of the surviving spouse, or the date that is two (2) years after the date of the decedent's death.

Attorney for Personal Representative:

ROBERT L. SPALLINA, ESQUIRE  
Florida Bar No. 49738  
Tescher & Spallina, P.A.  
4855 Technology Way, Ste. 720  
Boca Raton, FL 33431  
561-997-7008

Personal Representative:

SIMON L. BERNSTEIN  
7020 Lions Head Lane  
Boca Raton, FL 33496

Note NO DATE and NO LAW FIRM OR FORM MARKINGS



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF                      File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN,                      Probate Division  
Deceased.                                      Division

2012 OCT 24 PM 1:31  
SHARON L. HARRIS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY PALM BEACH-FILED

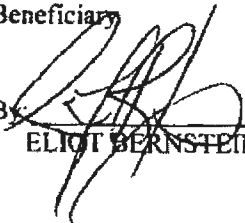
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.

Beneficiary

By   
ELIOT BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 OCT 24 PM 1:31  
SHARON L. ...  
PALM BEACH COUNTY, FL  
SOUTH DTY ...  
FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on OCTOBER 1st, 2012.

Beneficiary

By: Jill Iantoni  
JILL IANTONI

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

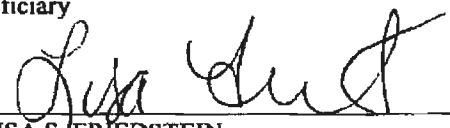
2012 OCT 24 PM 1:31  
SHARON A. HARRIS, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY CENTER BLDG - FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary  
By:   
LISA S. FRIEDSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

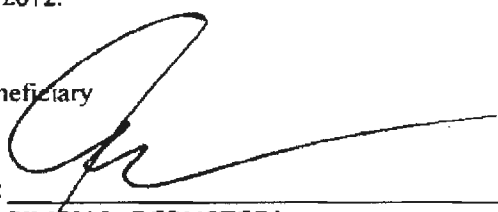
2012 OCT 24 PM 1:31  
SHARON H. B. WALKER  
CLERK  
PALM BEACH COUNTY-FILED  
SOUTH CTY BRANCH

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

Beneficiary  
By:   
SIMON L. BERNSTEIN

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 OCT 24 PM 1:31  
SHARON K. BLOOM, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH - FILED


**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/8, 2012.

Beneficiary

By:   
PAMELA B. SIMON

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 OCT 24 PM 1:31  
SHIRLEY BERNSTEIN ESTATE  
PALM BEACH COUNTY FL  
SOUTH CIVIL DIVISION FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary  
By: Ted Bernstein  
TED BERNSTEIN

**MEMORANDUM**

DATE: November 5, 2012

TO: Robert L. Spallina, Esq.

FROM: Astride Limouzin Case Manager, on behalf of -  
This office does not provide legal advice  
For procedural inquiries Tel. #561-274-1424

| X| JUDGE MARTIN H. COLIN Division - 1Y  
| JUDGE JAMES L. MARTZ Division - 1Z  
| JUDGE ROSEMARIE SCHER Division - IX

CASE NUMBER: 50 2011CP000653XXXXSB

Estate of Shirley Bernstein

MATTER: Documents being returned

Order of discharge

- \_\_\_ Death certificate (**CERTIFIED COPY**) not submitted. F.S. §731.103, Probate Rule 5.205 & Probate Rule 5.171
- \_\_\_ Received bill for funeral expenses required (*Must be paid in full*).
- \_\_\_ Proof of will or codicil is required; it is not self-proved. Please review F.S. §732.502; 733.201; P.R. 5.210 & P.R. 5.230.
- \_\_\_ Order admitting will/ codicil/ and or appointing personal representative is either missing or incorrect. FS§733.201, R.5.210 & 5.235
- \_\_\_ Petition and order designating a restricted depository, and acceptance is required FS §69.031 & FS §744.351(6).
- \_\_\_ Oath of Personal Representative, of Guardian or Administrator Ad Litem and designation of resident agent was not submitted or incorrect. Resident agent must sign the acceptance. (Rule 5.110, 5.120 and 5.320 committee notes).
- \_\_\_ Proof of publication not submitted. Rule 5.241.
- \_\_\_ Statement regarding creditors not submitted. Probate Rule 5.241 (d).
- \_\_\_ Inventory not submitted. Probate Rule 5.340.
- \_\_\_ All claims must be satisfied, struck, or dismissed.
- \_\_\_ Final certificate of estate tax or affidavit of non-tax is not submitted. FS §198.26 & 193.28
- \_\_\_ All Beneficiaries must join in the petition or they must receive formal notice on the petition. FS §735.203 & Probate Rule 5.530(b).
- XX** Receipts for assets from all of the specific beneficiaries were not notarized.
- \_\_\_ Receipt of final accounting, service of petition for discharge and/or waiver from all residuary beneficiaries or qualified trust beneficiaries are required. See. R. 5.400. Attorney fees see FS §733.6171(6), 731.302, 731.303(1)(b) and Probate Rule 5.180(b). Committee notes (one person serving in two (2) fiduciary capacities may not waive or consent to the persons acts without the approval of those who the person represents).
- \_\_\_ Proof of service of the Objection to the Claims. FS §733.705(2), Probate Rule. 5.496 & Probate Rule 5.040.
- \_\_\_ Proof of Service of the Notice to Creditors to the Agency for Health Care Administration. FS §733.2121(d) & Probate Rule 5.241 (a).
- \_\_\_ For Lost/Destroyed Wills/Codicils please comply with FS § 733.207, 733.201(2) & Probate Rule 5.510
- \_\_\_ An 8:45 a.m. motion calendar hearing (limited to 5 mins) with notice to all interested parties is required. Notice must be at least five (5) business days (Tue, Wed and Thurs). Please verify suspension dates. Files must be order via the internet at <http://15thcircuit.co.palm-beach.fl.us/web/guest/cadmin>.

SHIRLEY BERNSTEIN  
PALM BEACH COUNTY, FL  
SUCCESSION BRANCH-FILED  
NOV 12 2012 10:18 AM

OTHER:

PLEASE RETURN A COPY OF THIS MEMORANDUM AND PROPOSE ORDERS WHEN REPLYING;  
ADDRESS TO THE CLERK AND COMPTROLLER, 209 W ATLANTIC AVENUE, DELRAY BEACH, FL 33444

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2:29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Jill Iantoni, whose address is 2101 Magnolia Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

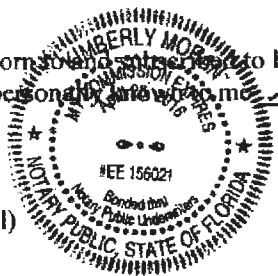
- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on October 1, 2012.

Beneficiary

By: Jill Iantoni  
JILL IANTONI

Sworn to and subscribed to before me on October 1, 2012, by JILL IANTONI, who is personally known to me or who produced \_\_\_\_\_ as identification.



(Affix Notarial Seal)

Kimberly Moran  
Notary Public State of Florida



IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2: 29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CTY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Lisa S. Friedstein, whose address is 2142 Churchill Lane, Highland Park, IL 60035, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on August 21, 2012.

Beneficiary

By: *Lisa Friedstein*  
LISA S. FRIEDSTEIN

Sworn to and subscribed to before me on August 21, 2012, by LISA S. FRIEDSTEIN, personally known to me  or who produced identification.

(Affix Notarial Seal)

*Kimberly Moran*  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV-19 PM 2:29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

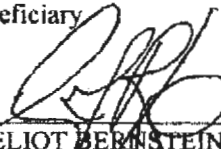
**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Eliot Bernstein, whose address is 2753 NW 34<sup>th</sup> Street, Boca Raton, FL 33434, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on May 15, 2012.


Beneficiary

By:   
ELIOT BERNSTEIN

Sworn to and Subscribed before me on May 15, 2012, by ELLIOT BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2:29  
SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION  
FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR  
DISCHARGE; AND RECEIPT OF BENEFICIARY AND  
CONSENT TO DISCHARGE**

The undersigned, Pamela B. Simon, whose address is 950 North Michigan Avenue, Suite 2603, Chicago, IL 60606, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

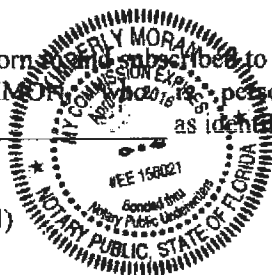
Signed on 8/8, 2012.

Beneficiary

By: [Signature]  
PAMELA B. SIMON

Sworn and subscribed to before me on August 8, 2012, by  
PAMELA B. SIMON, personally known to me [Signature] or who produced  
[Signature] as identification.

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2: 29  
SHARON R. SOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Ted S. Bernstein, whose address is 880 Berkeley Street, Boca Raton, Florida 33487, and who has an interest in the above estate as beneficiary of the estate:

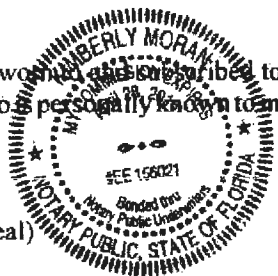
- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 8/1/12, 2012.

Beneficiary  
By Ted Bernstein  
TED BERNSTEIN

Sworn and subscribed to before me on August 1 2012, 2012, by TED BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



Kimberly Moran  
Notary Public State of Florida

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL  
IN RE: ESTATE OF File No. 502011CP000653XXXXSB  
SHIRLEY BERNSTEIN, Probate Division  
Deceased. Division

2012 NOV 19 PM 2:29

SHARON R. BOCK, CLERK  
PALM BEACH COUNTY, FL  
SOUTH CITY BRANCH-FILED

**WAIVER OF ACCOUNTING AND PORTIONS OF PETITION FOR DISCHARGE; WAIVER OF SERVICE OF PETITION FOR DISCHARGE; AND RECEIPT OF BENEFICIARY AND CONSENT TO DISCHARGE**

The undersigned, Simon L. Bernstein, whose address is 7020 Lions Head Lane, Boca Raton, Florida 33496, and who has an interest in the above estate as beneficiary of the estate:

- (a) Expressly acknowledges that the undersigned is aware of the right to have a final accounting;
- (b) Waives the filing and service of a final or other accounting by the personal representative;
- (c) Waives the inclusion in the Petition for Discharge of the amount of compensation paid or to be paid to the personal representative, attorneys, accountants, appraisers, or other agents employed by the personal representative, and the manner of determining that compensation;
- (d) Expressly acknowledges that the undersigned has actual knowledge of the amount and manner of determining the compensation of the personal representative, attorneys, accountants, appraisers, or other agents; has agreed to the amount and manner of determining such compensation; and waives any objections to the payment of such compensation;
- (e) Waives the inclusion in the Petition for Discharge of a plan of distribution;
- (f) Waives service of the Petition for Discharge of the personal representative and all notice thereof upon the undersigned;
- (g) Acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled; and
- (h) Consents to the entry of an order discharging the personal representative without notice, hearing or waiting period and without further accounting.

Signed on 4/9/12, 2012.

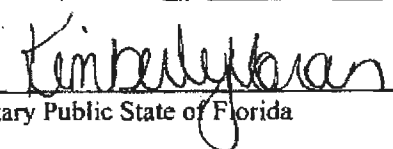
Beneficiary

By:   
SIMON L. BERNSTEIN

Sworn to before me on April 9, 2012, by SIMON BERNSTEIN, who is personally known to me or who produced \_\_\_\_\_ as identification.

(Affix Notarial Seal)



  
Notary Public State of Florida

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, January 3, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Eliot Bernstein's motion to disqualify counsel [63] is entered. Response by 1/17/14. Reply by 1/24/14. No appearance is required on the 1/6/14 notice date. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted S. )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )  
Defendant, )

----- )  
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**

**PLAINTIFFS MOTION FOR LEAVE  
TO FILE FIRST AMENDED COMPLAINT**

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 S. 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 moves this Honorable Court for Leave to File their First Amended Complaint stating as follows:

### **BACKGROUND**

1. The BERNSTEIN TRUST filed a breach of contract action against HERITAGE in the Circuit Court of Cook County, Illinois arising out of HERITAGE’S failure to pay a death claim on a life insurance policy.
2. On May 16, 2013, HERITAGE filed a notice of removal to the United States District Court for the Northern District of Illinois and filed a counterclaim for interpleader.
3. Subsequently, HERITAGE, with leave of the court, deposited the proceeds of the life insurance policy with the Registry of the Court.
4. On September 22, 2013, Eliot Bernstein filed certain cross-claims and third-party claims.
5. On December 5, 2013, William Stansbury filed a motion to intervene and that motion is pending and currently being briefed by the parties.
6. Plaintiff seeks leave of the court to file its first amended complaint to add four of the beneficiaries (children of Simon Bernstein) as Plaintiffs and to add two additional claims and/or theories of recovery. A copy of the proposed First

Amended Complaint is attached hereto as Exhibit A.

7. Fact discovery is not scheduled to close until February 17, 2014.
8. The additional parties being added as Plaintiffs have been parties to the litigation as counter-defendants and/or third-party defendants since November 4, 2013 when they filed their appearance and responsive pleadings to Eliot Bernstein's cross-claims and third-party claims.
9. There will be very little or no prejudice to the other parties to the litigation as this First Amended Complaint is being submitted with sufficient time left to conduct discovery, and the parties have already had time to initiate discovery because the new Plaintiffs are not new parties to the litigation.
10. FRCP Rule 15(b)(2) states as follows:  
  
***Other Amendments.*** In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.
11. For all of the foregoing reasons, Plaintiffs request that this Court grant them leave to file its first amended complaint, instantaner.

*[REMAINDER OF PAGE LEFT BLANK]*

WHEREFORE, PLAINTIFFS, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, Ted Bernstein, as Trustee and individually, Pamela Simon, Jill Iantoni, and Lisa Friedstein pray for an Order granting leave to file their first amended complaint, instanter, and for such other relief as this court deems just and proper.

**Dated:** January 3, 2014

**By:** s/Adam M. Simon

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
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*

EXHIBIT A

**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

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773

E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)

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 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, )

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 Tstee 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**

**PLAINTIFFS MEMORANDUM OF LAW  
IN OPPOSITION TO WILLIAM  
STANSBURY'S MOTION TO  
INTERVENE**



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, (collectively referred to as “BERNSTEIN TRUST”), and states as its Memorandum of Law in Opposition to Stansbury’s Motion to Intervene as follows:

### **INTRODUCTION**

1. Stansbury’s motion and complaint for declaratory relief fail to allege any facts which would entitle Stansbury to the life insurance proceeds at issue in the instant litigation “Policy proceeds” or “Stake”). Instead, Stansbury seeks a declaration that the Policy proceeds should be paid to the Estate of Simon Bernstein, at a time when Stansbury has no interest in the Estate. More telling, Stansbury’s motion fails to show that he is a potential claimant of the Policy proceeds which is the “Stake” at issue in this litigation.

Stansbury’s motion attempts to conjure a basis for his standing to intervene that simply does not exist. This court should deny Stansbury’s motion as his allegations of a potential claim are far too speculative.

### **FACTUAL BACKGROUND**

2. Stansbury’s motion claims he has standing to intervene in the instant action as a result of a lawsuit he filed in Palm Beach County, Florida (the “Florida Action”) against “Simon Bernstein, Ted Bernstein and several corporate defendants to collect compensation and corporate distributions purportedly due to Stansbury arising out of a business venture in which Stansbury, Simon Bernstein and Ted Bernstein were principals.” (Dkt. #56, Stansbury Motion to Intervene at ¶1).

3. Stansbury's motion alleges that following the death of Simon Bernstein, Stansbury substituted the Estate of Simon Bernstein (the "Estate") as a defendant in place of Simon Bernstein, individually. (Dkt. #56, Stansbury Motion to Intervene at ¶2).

4. Stansbury alleges in his complaint in the Florida Action, attached to his motion to intervene, that "In 2006, Plaintiff received his agreed salary as an employee.....from ARBITRAGE INTERNATIONAL MARKETING, INC., and from ARBITRAGE INTERNATIONAL HOLDINGS, INC., which later became Defendant ARBITRAGE INTERNATIONAL MANAGEMENT, INC." (Dkt. #56-5, Stansbury Florida Complaint at ¶17).

5. To manufacture a basis for his standing to intervene in the instant action, Stansbury alleges in his Motion to Intervene as follows: "Stansbury also asserted claims against the Estate in the Probate Court of Palm Beach County, Florida. As a result, Stansbury is a creditor of the Estate." (Dkt. #56, Stansbury Motion to Intervene at ¶3).

6. Stansbury attached a copy of his statement of claim filed in the Probate Court in Palm Beach County against the Estate as "Exhibit C" to his motion to intervene. (Dkt. #56, Ex. C, statement of claim by William Stansbury).

7. In his Statement of Claim which is verified under penalties of perjury, Stansbury states as follows: "The claim is *contingent or unliquidated and uncertain* to the extent that the Claimant's claim is dependent on the outcome of the Pending Action [the "Florida Action"]. The specific amount of Claimant's [Stansbury's] claim will be determined in the Pending Action and the Claimant expects to recover \$2.5 million dollars in damages, as well as, but not limited to, treble damages, pre-judgment and post-judgment interest, and costs. The claim is not secured." (Dkt. #56-5, Ex. C, Statement of Claim of William Stansbury at ¶4 and ¶5). (emphasis added).

8. As to the source of the proceeds from which Stansbury alleges he was to paid, his complaint in the Florida Action alleges as follows: “The bank accounts into which any of the commissions received by Defendants as to which Plaintiff was to receive a share of commissions received, and the operating accounts and other accounts of the corporate Defendants into which said commission checks were deposited were intended for Defendants and by Plaintiff to be the source out of which Plaintiff would be paid, and they therefore were intended to be, and therefore, should be, charged by this Court with the obligations of being the source of all amounts Plaintiff was and is to be paid, including amounts not yet paid.” (Dkt. 56-5, Ex. A to Stansbury’s Motion to Intervene, Stansbury’s Complaint in the Florida Action).

9. Stansbury has provided no evidence or allegations in his motion that the Estate was ever named a beneficiary of the Policy. For that matter, neither has any other party to this litigation.

### **STANDARD OF REVIEW**

A trial court must grant a motion to intervene as a matter of right if: (1) the petition is timely filed; (2) the representation by the parties already in the suit is inadequate; and (3) the party seeking intervention has a sufficient interest in the suit.

In order to show inadequacy of representation, for purposes of a motion to intervene as of right, one must not engage in speculation, but rather allege specific facts demonstrating a right to intervene. *In re Marriage of Vondra*, 2013 Ill. App. (1<sup>st</sup>) 123025, 373 Ill. Dec. 620, 994 N.E.2<sup>nd</sup> 105 (1<sup>st</sup> Dist., 2013)

## ARGUMENT

### **A. Stansbury's motion to intervene fails because the facts alleged in an effort to manufacture an interest in the in the Stake are mere speculation.**

Stansbury's motion to intervene is based on his alleged standing as a creditor of the Estate. However, Stansbury's statement of claim filed against the Estate belies this assertion. In the statement of claim Stansbury states under penalties of perjury that "The claim is contingent or unliquidated and uncertain to the extent that the Claimant's claim is dependent on the outcome of the Pending Action [Florida Action]." (see ¶6 supra). Stansbury's own statement which was made a part of his motion to intervene illustrates the speculative nature of his claim against the Estate.

More importantly, the instant action does not involve assets of the Estate but rather only involve the Policy proceeds from a life insurance policy insuring Simon Bernstein's life. Stansbury's motion to intervene is devoid of any allegations or evidence showing that the Estate was named a beneficiary of the Policy.

Instead, Stansbury makes a bald, unsupported assertion that since the Bernstein Trust agreement cannot be located "...the Trust no longer exists" (Dkt. #56, Stansbury Motion to Intervene at ¶5). Stansbury's assertion that the trust no longer exists contains no cite to any legal authority to support Stansbury's pronouncement. The Insurer's own action for interpleader did not name the Estate as an interested party because none of the documents the Insurer has disclosed contain any reference to the Estate being named beneficiary of the Policy.

It is also essential to examine the substance of Stansbury's complaint in the Florida Action. The complaint admits that Stansbury was a principal and ten percent shareholder in a corporate entity named LIC Holdings, Inc. Stansbury's complaint in the Florida Action further admits that during his tenure working at LIC Holdings, Inc. his compensation was paid by two

affiliated corporate entities, National Service Association and Arbitrage International Marketing, Inc. Count I of Stansbury's complaint in the Florida Action is for an accounting against corporate defendants, LIC Holdings, Inc. and Arbitrage International Marketing, Inc. for the compensation Stansbury is allegedly owed. (See ¶4 and ¶8, supra). (Dkt. 56-5, Ex. A to Stansbury's Motion to Intervene, Stansbury's Complaint in the Florida Action).

Some of the remaining counts in Stansbury's Complaint in the Florida Action represent his attempts to pierce the corporate veil to impose personal liability against Simon Bernstein and Ted Bernstein for the compensation he is owed. The true nature of the Florida Action is to seek recovery of compensation and distributions he is owed from the two *corporate defendants*. (emphasis added).

So, in fact, this represents yet another degree of separation from the Stake which Stansbury mischaracterizes as an asset of the Estate. Stansbury's need to prevail not only against the corporate defendants, but then also pierce the corporate veil in the Florida Action to then become a creditor of the Estate (not the Stake) further illustrate that he is far too removed to have a real interest in the instant litigation.

Stansbury is not a secured creditor of Simon Bernstein, nor is he a judgment creditor because as Stansbury admits his claim against the Estate is "contingent, unliquidated and uncertain."

**B. Assuming arguendo that Stansbury's Motion Establishes that he is a creditor of the estate of Simon Bernstein, Ted Bernstein and the Corporate Defendants, the motion still fails to establish Stansbury's claim or interest in the Stake.**

Even if Stansbury's motion establishes that he is a creditor of the Estate -- it does not -- the motion wholly fails to establish that Stansbury has an interest at the stake at issue in the instant action which are the Policy proceeds (the "Stake"). In fact the allegations of Stansbury's

Complaint assert that the source of funds from which he was to be paid are the corporate accounts of the defendants in the Florida Action. (See ¶7 supra).

Stansbury's Florida Complaint fails to provide a single source of documentation that Stansbury is a creditor or claimant of the Stake. In contrast, his motion and Complaint in the Florida Action prove that at most he is a contingent, general creditor of the two corporate defendants. If one were to stretch even further -- that Stansbury may actually succeed in piercing the corporate veils and may be a creditor of Simon Bernstein and Ted Bernstein, individually -- Stansbury's allegations are still insufficient to establish that he has a potential claim or interest in the Stake.

Stansbury either misapprehends or deliberately mischaracterizes the Stake as an asset of the Estate. At the moment of Simon Bernstein's death, the Policy proceeds immediately vested in the beneficiary of the Policy, and neither Stansbury, the Insurer, Plaintiff nor Eliot Bernstein have put forth a shred of evidence that the Estate was ever named a beneficiary of the Policy.

Stansbury's motion attempts to conjure a purported claim by relying on its tenuous status as a potential claimant of the Estate of Simon Bernstein, BUT not the Stake. In so doing, Stansbury has attached to his motion to intervene the Petition filed by the Executors of the Estate admitting the Will to Probate in Palm Beach County, Florida, and the Petition includes a copy of the Last Will of Simon Bernstein (the "Will").

The Will is incorporated as an Exhibit in support of Stansbury's motion yet the Will itself contains a provision wherein Simon Bernstein reaffirms his beneficiary designations. The Will states in pertinent part as follows:

**Other Beneficiary Designations.** Except as otherwise explicitly and with particularity provided herein (a) no provision of this Will shall revoke or modify any beneficiary

designation of mine made by me and not revoked by me prior to my death under any individual retirement account, other retirement plan or account, or annuity or *insurance contract*; (b) I hereby reaffirm any such beneficiary designation such that any assets held in such account, plan, or contract shall pass in accordance with such designation, and (c) regardless of anything herein to the contrary, any such assets which would otherwise pass pursuant to this Will due to the beneficiary designation not having met the requirements for a valid testamentary disposition under applicable law or otherwise shall be paid as a gift made hereunder to the persons in the manner provided in such designation which is incorporated herein by reference. (Dkt. 56-5, at pg. 35 of 41, Stansbury's Intervenor Complaint, Exh. B, Will of Simon Bernstein at p.6)

Here, each designation of the ultimate beneficiary of the Policy proceeds continues to lead directly to one beneficiary which is the Bernstein Trust. Simon Bernstein designated the Bernstein Trust as beneficiary of the VEBA, and the VEBA Trustee was always designated as the primary beneficiary of the Policy proceeds. The contingent but sole surviving beneficiary of the Policy proceeds as of the date of Simon Bernstein's Death was the Bernstein Trust itself. Since the VEBA had been previously dissolved, the Policy proceeds are payable to the Bernstein Trust. The sole reason for this litigation is the Insurer's desire to avoid duplicitous liability because the executed Bernstein Trust agreement cannot be located, and one of the beneficiaries of the Bernstein Trust has chosen to make a contested claim to the Policy proceeds on his own behalf.

Since the Estate has no claim to the Stake, Stansbury's speculative claim against the Estate has no bearing upon the litigation to determine the rightful owner of the Stake. And conversely, even if the Estate had a potential claim to the Policy proceeds, and even if Stansbury has a potential claim against the Estate, that does not provide Stansbury with standing to intervene because he has failed to articulate his own potential claim to the Stake.

**C. As set forth above, Stansbury's motion to intervene is not based on any actual claim he has upon the Stake, instead it is based solely on his efforts to negate the claims of the true beneficiary of the Stake.**



As stated above, Stansbury's motion to intervene is not based on any allegation of his own claim to the Stake. Rather, Stansbury attempt to negate the claim of the Bernstein Trust by balding asserting that the trust does not exist because a trust agreement cannot be located.

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 (1<sup>st</sup> Dist., 1983). Here, Stansbury argues that no one is representing the claims of the Estate. But, Stansbury fails to articulate what facts support a claim by the Estate to the Stake.

It appears Stansbury is arguing if all other claims are negated and thus fail then the Estate would have a claim by default. If that is Stansbury's position, then the Estate needs no representation because under Stansbury's theory the Estate would simply be the beneficiary of last resort. Even this potential claim fails, as the Policy proceeds would likely pass by virtue of the laws of intestacy to the children of Simon Bernstein, as a last resort, and not through the Estate.

**D. Stansbury's unsupported assertion that the court should grant his motion to intervene based on Permissive Intervention under FED. R. CIV. P. 24(b)(1)(B) fails for similar reasons.**

Stansbury's request for permissive intervention is based on his assertion that "Stansbury has a claim that shares with the main action a common question of law and fact, to wit, the proper disposition of the life insurance proceeds that are the subject of this action." (Dkt. #56, Stansbury motion to intervene at ¶10.)

But, Stansbury's own motion and his complaint in the Florida Action negate his own arguments in favor of permissive intervention. Stansbury's underlying claim in the Florida

Action makes absolutely no mention of the Policy proceeds at issue in this matter. The outcome and determinations of law in this case will have absolutely zero impact on the proceedings in the Florida Action which arise out of an alleged breach of contract and failure to pay compensation and distribution from two corporate entities.

As stated in ¶8 supra, Stansbury's complaint in the Florida Action specifically states that corporate accounts of the corporate defendants are the sources of the funds to which he is allegedly entitled. Once again, the Florida Action shares no commonality of fact or law that would entitle Stansbury to intervene under a theory of permissive intervention.

**E. Public policy concerns mitigate against Stansbury's motion.**

Should the court grant Stansbury's motion to intervene it will provide precedent to other similarly situated claimants whose potential claims are far too removed from the Stake. Allowing spurious claimants to participate in such litigation will only drive up costs, create needless delay and obfuscate matters for those with truly viable claims to the Stake.

**CONCLUSUION**

For all of the foregoing reasons, this court should deny Stansbury's motion to intervene.

**By:** s/Adam M. Simon  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
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*

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of the Plaintiff's Memorandum in Opposition to William Stansbury's Motion to Intervene to be served upon the following persons and entities electronically by ECF notification or by US Mail (if so indicated):

Alexander David Marks  
Frederic A. Mendelsohn  
Burke Warren MaCkay & Serritella  
330 N. Wabash Ave.  
22<sup>nd</sup> Floor  
Chicago, IL 60611  
312-840-7000  
*Attorneys for Heritage Union Life Insurance Company  
And Jackson National Insurance Company*

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
*Appearing Pro Se*  
(Served by U.S. Mail)

John M. O'Halloran  
McVey & Parsky, LLC  
30 N. LaSalle Street  
Ste. 2100  
Chicago, IL 60602  
*Attorney for Intervenor – William E. Stansbury*

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five N. Wabash Ave.  
Ste. 1304  
Chicago, IL 60602  
*Attorney for Third-Party Defendant  
JPMorgan Chase Bank, N.A.*

on the 6th day of January, 2014.  
/s/ Adam Simon  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
*Attorneys for Plaintiffs*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT COURT 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 Trnstee of S.B. Lexington, )  
Inc. Employee Death Benefit Trust, )  
UNITED BANK OF ILLINOI S, BANK )  
OF AMERICA, successor in interest to )  
“LaSalle National Trust, N.A.”, )  
SIMON BERNSTEIN TRUST, N. A., )  
TED BERNSTEIN, individually and )  
as alleged Trustee of the Simon )  
Bernsteiu Irrevocable Insurance Trust )  
Dtd. 6/21/95, and ELIOT BERNSTEIN, )**

**Third-Party Defendants. )**  
----- )

**Case No. 13-cv-03643**

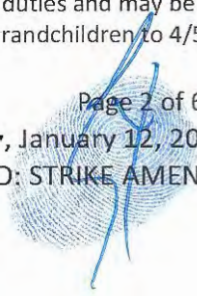
**Honorable Amy J. St. Eve  
Magistrate Mary M. Rowland**

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, INC. )  
 (OF FLORIDA) NATIONAL )  
 SERVICE ASSOCIATION, INC. )  
 (OF ILLINOIS) AND )  
 JOHN AND JANE DOE'S )  
 )  
 Third Party Defendants. )

**POTENTIAL BENEFICIARIES<sup>1</sup>:**

---

<sup>1</sup> Parents act as beneficiary Trustees in the estate of Simon L. Bernstein to their children, where Simon's estate may be the ultimate beneficiary of the policy and their children named below would be the ultimate beneficiaries of the policy proceeds. The failure of the grandchildren to be represented in these matters and listed as potential beneficiaries is due to an absolute conflict with their parents who are trying to get the benefits paid to them directly. This is gross violations of fiduciary duties and may be viewed as criminal in certain aspects as the lawsuit attempts to convert the benefits from the grandchildren to 4/5 of the children of SIMON by failing to inform their



**JOSHUA ENNIO ZANDER BERNSTEIN  
(ELIOT MINOR CHILD);  
JACOB NOAH ARCHIE BERNSTEIN  
(ELIOT MINOR CHILD);  
DANIEL ELIJSHA ABE OTTOMO  
BERNSTEIN (ELIOT MINOR CHILD);  
ALEXANDRA BERNSTEIN (TED  
ADULT CHILD);  
ERIC BERNSTEIN (TED ADULT  
CHILD);  
MICHAEL BERNSTEIN (TED ADULT  
CHILD);  
MATTHEW LOGAN (TED'S SPOUSE  
ADULT CHILD);  
MOLLY NORAH SIMON (PAMELA  
ADULT CHILD);  
JULIA IANTONI – JILL MINOR CHILD;  
MAX FRIEDSTEIN – LISA MINOR  
CHILD;  
CARLY FRIEDSTEIN – LISA MINOR  
CHILD;**

**INTERESTED PARTIES:**

**DETECTIVE RYAN W. MILLER –  
PALM BEACH COUNTY SHERIFF  
OFFICE;  
ERIN TUPPER - FLORIDA GOVERNOR  
OFFICE NOTARY EDUCATION - THE  
OFFICE OF THE GOVERNOR OF  
FLORIDA RICK SCOTT**

**MOTION TO: (I) STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF  
ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN  
INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN  
INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND  
BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER  
PLEADINGS AND MORE; AND (II) MOTION FOR DEFAULT JUDGMENTS**

---

children (some minors) or have them represented in these matters. The Court should take note of this, especially in the interests of the minor grandchildren who may lose their benefits if the proceeds of the insurance policy are converted to the knowingly wrong parties.

Page 3 of 62

Sunday, January 12, 2014 @ 19:31:40

MOTION TO: STRIKE AMENDED COMPLAINT...

Eliot Ivan Bernstein ("ELIOT") a third party defendant and his three minor children, Joshua, Jacob and Daniel Bernstein, are alleged beneficiaries of a life insurance policy Number 1009208 on the life of Simon L. Bernstein ("Lost or Suppressed Policy"), a "Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95" ("Lost or Suppressed Trust") and a "Simon Bernstein Trust, N.A." ("Lost or Suppressed Trust 2") that are at dispute and parties in the Lawsuit matters, makes the following MOTION TO: (I) STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE; AND (II) MOTION FOR DEFAULT JUDGMENTS.

I, Eliot Ivan Bernstein ("ELIOT"), make the following statements and allegations to the best of my knowledge and on information and belief as a Pro Se Litigant<sup>2</sup>.

---

<sup>2</sup> Pleadings in this case are being filed by Plaintiff In Propria Persona, wherein pleadings are to be considered without regard to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir1990), also See Hulsey v. Ownes 63 F3d 354 (5th Cir 1995). also See In Re: HALL v. BELLMON 935 F.2d 1106 (10th Cir. 1991)."  
In Puckett v. Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233 (1972 Sixth Circuit USCA). Justice Black in Conley v. Gibson, 355 U.S. 41 at 48 (1957)"The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." According to Rule 8(f) FRCP and the State Court which holds that all pleadings shall be construed to do substantial justice.

**MOTION TO STRIKE AMENDED COMPLAINT DUE TO EVIDENCE OF  
ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN  
INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN  
OFFICER OF AN INSTITUTIONAL TRUST COMPANY,  
IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST  
TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND  
MORE**

1. That ELIOT apologizes in advance to this Court for the length of this filing, however due to the number of willful misstatements and multitudes of legally complex frauds taking place in the proposed Amended Complaint to advance a Fraud on this Court and others it was virtually impossible as a lay person, unskilled in the art of Legalese, to whittle it down.
2. That the Motion seeking Leave to Amend filed by Adam Simon, Esq., (“A. SIMON”) appears to attempt to pepper the Court record with False Statements of facts and materially change the Original Complaint, after A. SIMON reviewed production documents and evidence filed with this Court by ELIOT and others. This proposed Amended Complaint is alleged part of a continuing and ongoing Fraud on this Court to commit Insurance Fraud through the misuse of this Court as a host to facilitate the crime.
3. That the proposed Amended Complaint states,

“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.”

This statement is factually incorrect as Robert Spallina, Esq. (“SPALLINA”) filed and SIGNED the insurance claim form as Trustee of an alleged lost “Simon Bernstein



Irrevocable Trust dtd. 6/21/95” (“Lost or Suppressed Trust”) acting not as counsel to the Lost or Suppressed Trust but as “Trustee.” This Lost or Suppressed Trust is a trust that SPALLINA has made written statements that he has never seen or had copies of and thus his claim that he is “Trustee” appears fraudulent and as an Attorney at Law acting as “Trustee” of a Trust he claims not to have ever possessed is fraudulent. The claim now asserted in the proposed Amended Complaint is that SPALLINA was acting as counsel to the Lost or Suppressed Trust when he filed an insurance claim with HERITAGE and allegedly acted in that legal capacity according to A. SIMON. However, one look at the insurance claim form submitted will prove to this Court that SPALLINA filed the insurance claim form impersonating as the Trustee of the Lost or Suppressed Trust with intent to defraud HERITAGE to pay him the benefits and SPALLINA’S fraudulent actions get much worse than this, as evidenced further herein. See EXHIBIT 1 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST OR SUPPRESSED TRUST.

4. The statement the “Simon Bernstein Irrevocable Insurance Trust dtd. 6/21/95” is false as this entity is a LOST or SUPPRESSED and NO COPIES OF A LEGAL ORIGINAL EXECUTED TRUST or LEGAL COPY have been exist or have been tendered to this Court since the filing of the Complaint and therefore the Lost or Suppressed Trust continues to have no legal standing as an entity as it does not exist and therefore anyone’s claims to be Trustee and/or Beneficiaries is an unknown and cannot be asserted as fact.
5. That the claim is further false when it refers to the “Policy” as this also is claimed to be LOST OR SUPPRESSED and has not been made a part of the Original Complaint or the Amended Complaint by any party to this Lawsuit and is claimed lost by many of those

involved in this Lawsuit who also have fiduciary obligations to maintain executed copies of the Lost or Suppressed Policy to make or pay an insurance claim legally. This may be the first Lawsuit where the main party is lost and does not exist and the life insurance contract being claimed upon is also at this time lost and non-existent, indicating large liabilities to the responsible parties.

6. That defendant SPALLINA knew he was not the “Trustee” of the Lost or Suppressed Trust, as he has claimed repeatedly that he has NEVER seen a copy and everything therefore was an “educated guess” and not factual as A. SIMON tries to state in the proposed Amended Complaint, SPALLINA claiming in emails,

From: Robert Spallina [<mailto:rspallina@tescherspallina.com>]  
Sent: Tuesday, January 22, 2013 12:16 PM  
To: Ted Bernstein; Lisa Friedstein; Pam Simon; Jill lantoni; Christine Yates  
Cc: **Kimberly Moran** [emphasis added]  
Subject: Heritage Policy

I received a letter from the company requesting a court order to make the distribution of the proceeds [emphasis added] consistent with what we discussed. I have traded calls with their legal department to see if I can convince them otherwise. I am not optimistic given how long it has taken them to make a decision. Either way I would like to have a fifteen minute call to discuss this with all of you this week. There are really only two options: spend the money on getting a court order to have the proceeds distributed among the five of you (not guaranteed but most likely probable), or have the proceeds distributed to the estate and have the money added to the grandchildren’s shares. As none of us can be sure exactly what the 1995 trust said (although an educated guess would point to children in light of the document prepared by Al Gortz in 2000), [emphasis added] I think it is important that we discuss further prior to spending more money to pursue this option. Hopefully I will have spoken with their legal department by Thursday. I would propose a 10:30 call on Thursday EST. Please advise if this works for all of you.

And from another email of SPALLINA’S

Page 7 of 62  
Sunday, January 12, 2014 @ 19:31:40  
MOTION TO: STRIKE AMENDED COMPLAINT...

From: Robert Spallina <rspallina@tescherspallina.com>  
Sent: Tuesday, October 23, 2012 2:34 PM  
To: Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein  
Subject: RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. [emphasis added] Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.  
Robert L. Spallina, Esq.

7. That if the beneficiaries of the Lost or Suppressed Trust are at best an “educated guess” according to SPALLINA, so are who the trustees would be and according to SPALLINA’S own words, “As none of us can be sure exactly what the 1995 trust said” it is hard to imagine that A. SIMON can now represent with legal authority to this Court anything about the Lost or Suppressed Trust as fact and he fails to state the truth that nobody knows what it says or who is trustee or beneficiary. For these and other reasons, SPALLINA’S insurance claim filed as Trustee of the Lost or Suppressed Trust was therefore DENIED as no proof of the True and Proper Beneficiaries could be made and further the Beneficiaries listed with HERITAGE on the Lost or Suppressed Policy, as no one appears to have a copy of the signed and executed Lost or Suppressed Policy either, do not even include the Lost or Suppressed Trust at the time of SIMON’S death as a named Contingent beneficiary. The claim was further not paid when none of the information requested and legally necessary to pay a claim

by HERITAGE was provided by either the Primary or Contingent Beneficiaries that prove either the Trusteeship claimed or who the legal beneficiaries were that SPALLINA claimed in his fraudulent insurance claim and thus there was no way for HERITAGE to legally pay the benefits to the “educated guess” beneficiaries and trustees.

8. That in correspondences included in JACKSON’S production for this Lawsuit we find shocking new information of alleged INSTITUTIONAL TRUST COMPANY Fraud and more. From JACKSON’S files,
  - i. Bates #JCK001262, is a letter regarding the filing of a claim dated October 09, 2012, sent from HERITAGE to SPALLINA with SPALLINA addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.”
  - ii. Again on Bates #JCK001281, in a letter dated November 05, 2012 from HERITAGE to SPALLINA, SPALLINA is again addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.”
  - iii. Again on Bates # JCK001290, in a letter dated November 29, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.”

- iv. Again on Bates # JCK001301, in a letter dated December 07, 2012 from HERITAGE to SPALLINA, SPALLINA is addressed as “LASALLE NATIONAL TRUST N.A. TRUSTEE C/O ROBERT SPALLINA, ATTORNEY AT LAW” address “4855 TECHNOLOGY WAY STE 720 BOCA RATON FL 33431” and the Letter starts “Dear Trustee.” See EXHIBIT 2 – LETTERS TO SPALLINA FROM HERITAGE ADDRESSED TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL TRUST, N.A.
9. That ELIOT states that after an exhaustive online search at Google the only listing at the address 4855 Technology Way Suite 720 Boca Raton, FL 33431 is the law offices of defendant Tescher & Spallina, P.A. and there appears no reference to a listing for an INSTITUTIONAL TRUST COMPANY named “LaSalle National Trust, N.A.” at SPALLINA’S address in Boca Raton, FL, where SPALLINA’S law office now resides.
10. That the only address found for the INSTITUTIONAL TRUST COMPANY named “LaSalle National Trust, N.A.” is 135 South LaSalle Street Chicago, IL 60603 and the INSTITUTIONAL TRUST COMPANY of that name appears to have been acquired several years ago by “Chicago Title Land Trust Company” (part of the Fidelity National Financial family of companies), as Successor, which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603. That the proposed Amended Complaint and the Original Complaint both claim erroneously that “LaSalle National Trust, N.A.” was acquired by Bank of America, however ELIOT was unable to find records of Bank of America acquiring it ever or selling it to “Chicago Title Land Trust Company” as part of Bank of America’s acquisition of LaSalle National Bank’s other holdings.

11. That in letters from HERITAGE addressing SPALLINA as "TRUSTEE" of the INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A.," addressed to "LaSalle National Trust, N.A." at his business office, with SPALLINA impersonating not only a Trustee but the actual INSTITUTIONAL TRUST COMPANY and had HERITAGE send forms to him as such imposter at such fictitious address for "LaSalle National Trust, N.A." and the number of felony criminal code violations this imparts is staggering, from IMPERSONATING AN INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust N.A." located at a fictitious address of SPALLINA'S law firm, to IMPERSONATING A TRUSTEE OF AN INSTITUTIONAL TRUST COMPANY at "LaSalle National Trust, N.A." at SPALLINA'S address, to INSURANCE FRAUD.
12. That these letters from HERITAGE and other evidence implicate SPALLINA gave his address to HERITAGE as the address for "LaSalle National Trust, N.A." while impersonating as a "TRUSTEE" of that INSTITUTIONAL TRUST COMPANY at his law firms address. To be clear, SPALLINA impersonated to HERITAGE that he was both an INSTITUTIONAL TRUST COMPANY, "LaSalle National Trust, N.A." located at his office address, while simultaneously impersonating himself as TRUSTEE of that INSTITUTIONAL TRUST COMPANY at his address, all in efforts to convert and comingle a life insurance contract death benefit for SIMON'S beneficiaries and have it fraudulently converted and comingled with his Law Firm, Tescher & Spallina P.A., trust account.
13. That SPALLINA from October 09, 2012 through December 07, 2012 through several letters and correspondences further fails to ever notify the carrier that he is NOT either "LaSalle National Trust, N.A." located at his office or that he is not the "TRUSTEE" of the

INSTITUTIONAL TRUST COMPANY “LaSalle National Trust, N.A.” and that the address for “LaSalle National Trust, N.A.” and the title “Trustee” they address him as in the letters are wholly factually and legally incorrect. As an Attorney at Law SPALLINA knew this was all untrue when he received and replied to the HERITAGE letters and filed a fraudulent claim but never made corrections and this evidences further intent to defraud.

14. That this impersonation of SPALLINA as an INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.” at his address and further acting as “TRUSTEE” of this INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.” ELIOT alleges was intentional, to cause the appearance to HERITAGE that SPALLINA was the INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.” because that is who the named Primary Beneficiary of the Lost or Suppressed Policy is, according to HERITAGE and if these false claims were accepted as true by HERITAGE, SPALLINA would have been paid the claim fraudulently as the legal Primary Beneficiary.
15. That to cover all the bases in trying to convert and comingle the Lost or Suppressed Policy proceeds through his Fraudulent insurance claim process, SPALLINA further then impersonates the alleged Contingent Beneficiary the Lost or Suppressed Trust as “Trustee” when signing the claim form and not filing it with HERITAGE as A. SIMON attempts to falsely assert in his Amended Complaint, as “counsel” for the Lost and Suppressed Trust. Again, because A. SIMON contends that the Lost or Suppressed is who the named Contingent Beneficiary of the Lost or Suppressed Policy is (not HERITAGE who claims it is “SIMON BERNSTEIN TRUST, N.A.” A.K.A. the Lost and Suppressed Trust 2) and again if these False Claims that SPALLINA was the Trustee of the Lost or Suppressed Trust were

accepted as true by HERITAGE, SPALLINA would have been paid the claim fraudulently as the legal Contingent Beneficiary, if they could have then proven that the Lost or Suppressed Trust was the legal Contingent Beneficiary as HERITAGE claims it is actually the Lost or Suppressed Trust 2, which as of today HERITAGE has refused to pay the claim to SPALLINA at all under any of his alleged claims.

16. That with SPALLINA acting as both the TRUSTEE of "LaSalle National Trust, N.A." and as Trustee of the Lost or Suppressed Trust, HERITAGE would have to legally pay him as either the Primary or the Contingent Beneficiary in his fraudulent Legal and Fiduciary roles.
17. That these are not one off mistakes made by an Attorney at Law but implicate that SPALLINA was acting with Intent to Defraud in these multiple imposter Legal and Fiduciary capacities that were Aided and Abetted by a one, Kimberly Moran ("MORAN") who coordinated the efforts between SPALLINA and HERITAGE, in efforts to try and secure the death benefits as either the Primary or Contingent Beneficiary claiming to HERITAGE to be Trustee of both in order to convert and comingle the benefits to Tescher & Spallina, P.A. law firm's trust account and Defraud the True and Proper Legal Beneficiaries of their death benefits. ELIOT alleges this was all done knowingly and with scienter in conspiracy between Theodore Stuart Bernstein ("THEODORE"), Pamela Beth Simon ("P. SIMON"), SPALLINA, Donald Tescher, Esq., ("TESCHER"), A. SIMON, David B. Simon ("D. SIMON") and others with the help of the currently arrested and criminally charged MORAN.
18. That the motive appears that THEODORE and P. SIMON without this scheme would have no claim to the Lost or Suppressed Policy proceeds as they were wholly disinherited from their parents' estate plans.



19. That it was learned in a September 13, 2013 hearing and an October 28, 2013 Evidentiary Hearing that SPALLINA and TESCHER used SIMON ILLEGALLY POST MORTEM as if he were alive to file a series of documents to close Shirley Bernstein's ("SHIRLEY") Estate and committed a Fraud on the Court and Fraud on the Estate Beneficiaries, whereby Hon. Judge Martin H. Colin stated upon discovering these facts that he had enough at that time that he should read SPALLINA, TESCHER and TED their Miranda Warnings, twice. The closed estate of SHIRLEY was then reopened and remains open today.
20. That MORAN who prepared several of the documents sent to HERITAGE for this alleged Insurance Fraud and Institutional Trust Company Fraud has already been arrested in related matters to the Estate of SHIRLEY and has admitted to filing Forged and Fraudulently Notarized documents in SHIRLEY'S estate on six different documents, for six different people, including SIMON who was deceased at the time his name was Forged and Fraudulently Notarized. MORAN'S documents were then filed ILLEGALLY by SPALLINA and TESCHER in official proceedings before the Florida Probate court for SIMON as Personal Representative / Executor knowing SIMON was DECEASED.
21. That from MORAN'S statement to Palm Beach County Sheriff officers,
- "Moran stated that at this time, she took it upon herself to trace [aka FORGE] each signature of the six members of the Bernstein family onto another copy of the original waiver document. She then notarized them and resubmitted them to the courts."

This statement also contradicted her prior statement to the Governor's Notary Public office where she claimed the documents were identical other than her notary stamp, thus the crime

of perjury and False Statements in official proceedings are now being pursued as well with authorities. This lie about the documents not being Forged was also echoed by MORAN'S employer SPALLINA in the September 13, 2013 hearing before Hon. Judge Martin H. Colin when SPALLINA knowingly lied to Hon. Judge Martin H. Colin and claimed the signatures were also not forged despite Moran's admission,

8 THE COURT: I mean everyone can see he [ELIOT]  
9 signed these not notarized. When they were  
10 sent back to be notarized, the notary notarized  
11 them without him re-signing it, is that what  
12 happened?  
13 MR. SPALLINA: Yes, sir.  
14 THE COURT: So whatever issues arose with  
15 that, where are they today?

23 THE COURT: It was wrong for Moran to  
24 notarize -- so whatever Moran did, the  
25 documents that she notarized, everyone but  
1 Eliot's side of the case have admitted that  
2 **those are still the original signatures of**  
3 **either themselves or their father?**  
4 MR. SPALLINA: Yes, sir.  
5 THE COURT: I got it.

These statements by SPALLINA to Hon. Judge Martin H. Colin contradict the statement of MORAN to the Palm Beach Sheriff Department that they were her FORGED signatures and not those of the original signors, including a FORGED document for SIMON POST MORTEM and further evidence Fraud on a Court by SPALLINA who tries to convince the Judge that they were identical documents that MORAN just innocently placed a Fraudulent Notarization on for six separate peoples signed documents, yet her later confession reveals this as false and SPALLINA knew of her confession while stating this lie to the Court and

attempting to continue to conceal the truth from the record and Hon. Judge Martin H. Colin. All very similar to what is occurring in this Courtroom and the same cast of characters is involved, just different crimes for different assets of the Estates of SIMON and SHIRLEY.

22. That on September 13, 2013 at a hearing before Hon. Judge Martin H. Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the estate of SHIRLEY, SPALLINA did admit that he was “involved” with MORAN in her Fraud and Forgery as the Attorney at Law.
23. That on September 13, 2013 at a hearing before Hon. Judge Martin H. Colin of the CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA, CASE NO. 502011CP000653XXXXSB in the Estate of SHIRLEY, SPALLINA did admit that he had presented documents to the court on behalf of SIMON to close the estate of SHIRLEY and failed to notify the court that SIMON was DECEASED at the time he was using him as if he were alive as acting as Personal Representative / Executor, thus acknowledging that he perpetrated a Fraud on the Court and Fraud on the Estate Beneficiaries and more to illegally close the Estate of SHIRLEY, illegally using a DECEASED Personal Representative / Executor and Trustee, SIMON.
24. That in an October 28, 2013 Evidentiary Hearing in the re-opened Florida Probate Estate action of SHIRLEY based on FORGED and FRAUDULENTLY NOTARIZED documents submitted by MORAN and held before Hon. Judge Martin H. Colin, it was learned that THEODORE had been acting in fiduciary capacities that he did not have legal standing prior, again similar to what is happening with the claims that he is “Trustee” of the Lost or

Suppressed Trust, including acting as Personal Representative / Executor and Trustee for the estate of SHIRLEY for a year, when no Letters had been issued to him prior and he took no legally required steps to notify any beneficiaries of his alleged and assumed Fiduciary roles he undertook and transacted multiple fraudulent transactions in so doing.

25. That due to the Fraud on the Probate court using SIMON'S identity, after he was deceased as if alive, to close the Estate of SHIRLEY, no successors were elected or appointed by the court after SIMON died and therefore at the hearings, no one represented the estate, as no Successors were chosen after the DECEASED SIMON closed the Estate. SPALLINA acting as SIMON'S counsel POST MORTEM posited these fraudulent documents on behalf of SIMON and failing to notify the court that SIMON, the Personal Representative / Executor and Trustee was DECEASED and continued for four months to use SIMON and file documents on his behalf to close her estate, instead of simply notifying the court of his death and electing successors to legally close the estate. All of these events further support a Pattern and Practice of Continuing and Ongoing Frauds to loot the estates of SIMON and SHIRLEY and deny the True and Proper Beneficiaries their inheritances.
26. That from JACKSON'S production their notes indicate QUESTIONS and RED FLAGS arose almost immediately when SPALLINA contacted them in fraudulent fiduciary capacities with no proof or legal contract produced to validate his claims for the death benefits.
27. That on JACKSON'S Bates #JCK001228 & JCK001229, the following language is found in the carriers records on December 31, 2012,

“\$1,689,070.00 - Received letter and death cert with cause and manner on 12/26/12 from attorney advising that they are unable to locate the Simon Bernstein Irrevocable Insurance Trust dated Jun 1, 1995, “LaSalle National Trust, N.A.”, trustee, the beneficiary of record, page 20 of source CPG. **(A claim form was completed by Robert Spallina as Trustee?)** [Emphasis Added] However, indication is made that they know Shirley Bernstein was the initial beneficiary (now deceased) and the Bernstein children were the secondary beneficiaries. The attorney is offering to have the proceeds paid to the firm's Trust account so that distribution can be made to the five children. They have also offered an Agreement and Mutual Release be prepared from the children for Heritage Life. **A Robert Spallina has signed the claim form but there is nothing to document that he is the current trustee of the Trust. Please advise how to proceed.** [emphasis added]

28. The False Statement in the proposed Amended Complaint that SPALLINA filed the claim acting as Attorney at Law to the Lost or Suppressed Trust and not truthfully stating that he acted as “Trustee” of the Lost or Suppressed Trust or as the “TRUSTEE” of the INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.” to this Court, is merely an attempt to cover up for SPALLINA’S fraudulent insurance claims with new false statements made in the proposed Amended Complaint to this Court to attempt to vindicate him by changing the role he played.
29. That Defendant A. SIMON puts forth these False Statements of fact about SPALLINA’S role as counsel in filing the insurance claim, knowing SPALLINA’S true capacity as Trustee when filing the fraudulent insurance claim and after having seen ELIOT’S pleadings and the evidence against them contained therein. A. SIMON is privy to the same records as ELIOT and knowing these same facts desperately attempts to paint a new picture than in his Original Complaint and this proposed Amended Complaint is to try and further cover up their initial complaints flaws and try to convince this Court of a whole new set of fraudulent and false

claims and perpetrate a continuing and ongoing pattern and practice of Fraud on this Federal Court, Fraud on an Insurance Company and Fraud on the True and Proper beneficiaries of SIMON'S Lost or Suppressed Policy.

30. That a sudden switch in fiduciary roles is also noted when defendant A. SIMON filed this tort acting now as Counsel to the Lost or Suppressed Trust, instead of SPALLINA who A. SIMON claims in the proposed Amended Complaint filed the fraudulent insurance claim weeks earlier acting allegedly as "counsel" to the Lost or Suppressed Trust. Another important switch of fiduciary occurs on the way to this Federal Court as THEODORE then becomes the "Trustee" of the Lost or Suppressed Trust when filing this fraudulent Breach of Contract Lawsuit and defendant SPALLINA is replaced in that capacity and then attempts to disappear from scene during the next step in this ongoing and continuing Fraud when the Federal Breach of Contract Lawsuit is filed with Your Honor.
31. That in the Original Complaint filed based upon HERITAGE'S denial of SPALLINA'S fraudulent insurance claim, there is no mention and no appearance of SPALLINA as "Trustee" of the Lost or Suppressed Trust or "TRUSTEE" of "LaSalle National Trust, N.A." or as counsel for the Lost or Suppressed Trust until their legally flawed Amended Complaint tries to now state. SPALLINA is not present in the Original Complaint or the proposed Amended Complaint as Personal Representative / Executor of SIMON'S estate on behalf of the to be determined estate Beneficiaries that have interests in the Lost or Suppressed Policy.
32. That the Court should note that Attorneys at Law, SPALLINA and TESCHER and their law firm have all failed to respond to the Waiver of Service and Cross Claim ELIOT served upon them in their personal and professional capacities and join the action voluntarily as

indispensable parties under Rule 19 of Federal Procedures, where they must be joined.

Perhaps the Court can take it on its own Motion to immediately compel SPALLINA and TESCHER and their law firm to join and save ELIOT and others involved in this Lawsuit the expense and cost of chasing Attorneys at Law who appear afraid to appear in this Lawsuit that they are centrally involved in and whose actions have resulted in this alleged fraudulent Breach of Contract Lawsuit. Never has ELIOT heard of lawyers fearing a lawsuit and dodging service.

33. That Judicial Notice should be taken at this point by this Court to the Fraudulent activity described and evidenced with Prima Facie evidence herein and in ELIOT'S prior pleadings and take it on the Court's own Motion to report these Attorneys at Law, SPALLINA, TESCHER, A. SIMON and D. SIMON to the proper State and Federal authorities for investigation of the probable cause and Prima Facie evidence exhibited in ELIOT'S pleadings, implicating all of them in,

- i. False Statements to this Court,
- ii. Improper Filing of Pleadings,
- iii. Knowingly filing this Lawsuit after being advised by counsel that they had no standing and or legal basis in filing this Lawsuit,
- iv. the alleged IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY FRAUD,
- v. The alleged IMPERSONATION OF A "TRUSTEE" OF AN INSTITUTIONAL TRUST COMPANY,
- vi. INSURANCE FRAUD,

- vii. Fraud on a Federal Court by an Officer of the Court A. SIMON,
- viii. Fraud on ELIOT,
- ix. Fraud on other MINOR AND UNREPRESENTED beneficiaries, and
- x. Torturous Interference

Therefore, this Court must instantly put a stop to these vexatious, frivolous and fraudulent series of pleadings, which are fraught with False Statements and all causing a huge wastes of time and effort by the injured parties and this Court who have had to sift through this proverbial “bull honky” and damaging the True and Proper Legal Beneficiaries by delaying their receipt for the death benefits for now over a year through this smorgasbord of various attempts to fraudulently obtain the benefits to the wrong parties.

34. That this Court should not wait for ELIOT acting in a Pro Se legal capacity to formulate proper pleadings for these alleged crimes that are taking place on and in Your Honor’s Court by Officers of Your Honor’s Court, especially when the pleadings that originated this Lawsuit and those seeking Leave to Amend that Original Complaint are steeped in Fraud and False Statements to this Court giving more probable cause for this Court to take action and notify the proper State and Federal Authorities.
35. That the proposed Amended Complaint starts with the False Statement,

“NOW COMES Plaintiffs, SIMON BERNSTEIN  
IRREVOCABLE INSURANCE TRUST dtd 6/21/95, and TED  
BERNSTEIN, as Trustee”

ELIOT states “where comes the trust?” when it does not exist and no executed copies exist and none was attached to the Original Complaint or proposed Amended Complaint, so it



comes to this Court as a figment of one's imagination not as a qualified legal entity. "Ted Bernstein" is also alleged to not be a legal name for Theodore Stuart Bernstein and despite it being a minor technicality it remains another misrepresentation of the proposed Amended Complaint and the Original Complaint, which make them both legally fail as pleadings and would have to be corrected and refiled if this farce is allowed to continue.

36. That as for the claim in the proposed Amended Complaint that THEODORE is factually "Trustee" of the Lost or Suppressed Trust, in addition to the fact that it cannot be proven as there is no Legal and Binding contract put forth evidencing the claim, there is now also contradictory evidence provided to the Court that SPALLINA stated he was "Trustee" for the Lost or Suppressed Trust when filing the fraudulent insurance claim only weeks earlier and more questions are raised as to THEODORE'S claims that he is now Trustee. Further, information confirming the fallacy of this authoritative claim by A. SIMON and THEODORE that he is "Trustee" of the Lost or Suppressed Trust as falsely stated in both the Original Complaint and the proposed Amended Complaint comes from JACKSON'S request to Affirm or Deny that were posed by A. SIMON to them in this Lawsuit, whereby virtually every Affirmation/Denial is answered with the following statement,

**"ANSWER: JACKSON OBJECTS TO THE REQUESTS BECAUSE AN EXECUTED COPY OF THE TRUST HAS NOT BEEN PRODUCED, AND THUS TO THE EXTENT ANY FINDING IS SUBSEQUENTLY MADE THAT THE TRUST WAS NOT ESTABLISHED AND/OR IS NOT VALID, IT WILL NOT HAVE BEEN A PROPER PARTY PLAINTIFF TO THIS SUIT, INCLUDING PROPOUNDING THESE REQUESTS. REGARDLESS, EVEN IF THE TRUST IS ESTABLISHED, TED BERNSTEIN, UPON INFORMATION AND BELIEF, IS NOT THE PROPER TRUSTEE OF THE TRUST, AND THEREFORE HE DOES NOT HAVE STANDING TO PURSUE THIS MATTER ON**

**BEHALF OF THE TRUST, INCLUDING PROPOUNDING  
THESE REQUESTS.** [EMPHASIS ADDED]

37. That the next false statement to this Court in the proposed Amended Complaint by Defendant

A. SIMON claims,

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

Since no Legally Binding Contract exist to show who the “Trustee” is, who the successor is would also be an unknown and again this claim is not a factual statement but based on nothing but imagination of what a nonsexist Lost or Suppressed Trust is claimed to have said by THEODORE, FAVORING THEODORE. Again, ELIOT thought SPALLINA was “Trustee/Successor Trustee” of the Lost or Suppressed Trust as stated when he filed his Fraudulent insurance claim that this Lawsuit is based upon. If THEODORE were the “successor trustee” in fact, why did he not file the insurance claim as Trustee instead of having his close personal friend and business associates TESCHER and SPALLINA file a Fraudulent insurance claim as “Trustee?”

38. That when THEODORE in his alleged fiduciary capacity, once he had knowledge of the Fraud of SPALLINA attempting to secure the death benefit from HERITAGE he did nothing a fiduciary is legally required to do but instead Aided and Abetted the ongoing and continuing fraud by filing this fraudulent Lawsuit as a new scheme and concealing the truth about the last failed attempt of SPALLINA to fraudulently convert and comingle the death benefits to this Court.

39. That if A. SIMON believes that Theodore is the true “Trustee” then why has he not notified this Court, the State Bar and the State and Federal Authorities of SPALLINA’S fraudulent

insurance claim, acting as alleged "Trustee" of his client the Lost and Suppressed Trust?

This reporting of SPALLINA is Legally and Ethically required of A. SIMON as an Officer of this Court mandated by Attorney Conduct Codes and State and Federal Law. When an Attorney at Law knows of alleged criminal acts of another Attorney at Law they must report the alleged or suspected criminal or ethical violations and yet we find A. SIMON (who has interests in the outcome) instead furthering the ongoing and continuing Fraud and filing this fraudulent Lawsuit and concealing SPALLINA'S Felony misconduct while ignoring his legal obligations to report SPALLINA to this Court and others for his unclean hands, egregious bad faith and felony misconduct? Finally, he tries to cover up SPALLINA'S fraudulent insurance claim he filed as Trustee by claiming in this proposed Amended Complaint that he only filed it as "counsel." This may impart Misprision of a Felony<sup>3</sup> or two and more.

40. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

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

Since no legally valid or executed copy of the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 exists this claim is not a factual statement but based on nothing Legally Binding just imagination, yet it is claimed as fact to this Court. ELIOT quotes SPALLINA in an email sent to ELIOT stating,

---

<sup>3</sup> 18 U.S. Code § 4 - Misprision of felony

Current through Pub. L. 113-52. (See Public Laws for the current Congress.)

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

**From:** Robert Spallina <rspallina@tescherspallina.com>  
**Sent:** Tuesday, October 23, 2012 2:34 PM  
**To:** Jill Iantoni; Eliot Bernstein; Ted Bernstein; Ted Bernstein; Pamela Simon; Lisa Friedstein  
**Subject:** RE: Call with Robert Spallina tomorrow/Wednesday at 2pm EST

As discussed, I need the EIN application and will process the claim. Your father was the owner of the policy and we will need to prepare releases given the fact that we do not have the trust instrument and are making an educated guess that the beneficiaries are the five of you as a result of your mother predeceasing Si. [emphasis added] Luckily we have a friendly carrier and they are willing to process the claim without a copy of the trust instrument. A call regarding this is not necessary. We have things under control and will get the claim processed expeditiously after we receive the form.

Thank you for your help.  
Robert L. Spallina, Esq.

If the beneficiaries of the Lost or Suppressed trust are at best an “educated guess” so would it be an “educated guess” as to whom the trustees would be. Yet, A. SIMON appears in his proposed Amended Complaint to try and make this “educated guess” a statement of fact to Your Honor, despite knowing it is only a guess. In fact, A. SIMON does not even qualify his claim of who the beneficiaries are as a guess to Your Honor but instead states it as fact when later divvying up the loot in the proposed Amended Complaint between what he claims are the factual beneficiaries, thereby these statements being included in the proposed Amended Complaint attempt to further prejudice the case with misstatements of fact.

41. That the next False Statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

“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.”

Where ELIOT states that if the Beneficiaries of the Lost or Suppressed trust are a best guess than what percentages they own are also hot air guesstimates, that is if this Court buys into the five children are the True and Proper Beneficiaries based on no valid legally binding contract. The 4/5<sup>th</sup> of SIMON'S children who are making this anointment of THEODORE as “Trustee” seems odd too, as why would THEODORE need consent if he could prove he was “Trustee” of the Lost or Suppressed trust legally? Further, these are the same 4/5<sup>th</sup> of SIMON'S children who for almost two years prior to his death were so angry with SIMON that they boycotted him and refused to let their children see or talk to him and left him after the death of his beloved wife SHIRLEY alone, refusing to speak to him if he did not change his and SHIRLEY'S beneficiaries (THEODORE & P. SIMON) and did not stop seeing his companion Maritza Puccio Rivera (THEODORE, P. SIMON, IANTONI and FRIEDSTEIN) and Tough Loved him, with an already frail heart, to bend to their ways and give in to their demands.

42. That in a letter from THEODORE he states the following,

From: Ted Bernstein [mailto:bernstein@lifeinsuranceconcepts.com]  
Sent: Friday, January 18, 2013 6:04 PM  
To: 'Jill Iantoni'; Lisa Friedstein (lisa.friedstein@gmail.com); Eliot Bernstein (jviewit@gmail.com); 'Pam Simon'  
Subject: UPDATE > HERITAGE INSURANCE POLICY

Hello > I hope everyone is well.

Heritage Life Insurance company has made a decision concerning dad's life insurance policy. They will require a court order to pay the proceeds, based on the large face amount of the policy (\$1.7MM). They have sent a letter to Robert Spallina. The letter was sent by a senior attorney within the company. It is short and to the point.

From here, this should be simple and straightforward. Assuming that we (5 children) agree to create an agreement, we will need to hire a Palm Beach attorney to draft the agreement that will be submitted to the judge. It is my understanding that the agreement can be drafted to reflect our agreement to split the proceeds among the 5 of us or in such a way that would enable one or more of us to effectively refuse our individual share in favor of our children. I am not sure, but I believe that disclaiming our share in favor of our children will put that share at risk of creditors of dad's estate. Seems to me that we should do whatever we can to keep the proceeds out of the reach of potential creditors.

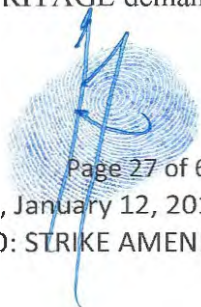
As the successor trustee of the trust that cannot be found, I will be happy to act as trustee of a trust that would receive the proceeds under the new agreement, created by us. Once the court order is issued, the insurance company should pay quickly and I will distribute the proceeds immediately.

Please let me know that you will agree to be a party to the agreement between us (and possibly the grandchildren who will need to acknowledge and agree to the language). If you could do that in the next day or so, we can then decide the most cost effective way to get the agreement created and submitted. It makes no sense at this point to leave the proceeds at the insurance company.

Call me with any questions or maybe we should establish a call between the 5 of us.

Take care...  
Ted

43. That from the above email one can see that THEODORE has not followed any of the statements in the letter regarding doing a new POST MORTEM trust for the Lost or Suppressed Policy proceeds that he would then act as Successor Trustee too based on his belief that he was "Successor Trustee" to the Lost or Suppressed Trust. This was to be done after preparing a Settlement and Mutual Release agreement and getting a Probate Court order to approve of the Beneficiary scheme they then proposed once their initial claim was DENIED by HERITAGE. Instead, this Lawsuit was done secretly behind ELIOT and his children's counsel backs and they then failed to do anything they claimed in his email about attempting to create a new POST MORTEM insurance trust for SIMON, skipped the requested Probate court order HERITAGE demanded and tried this fraudulent Lawsuit instead.



44. That now THEODORE and A. SIMON make claims to the Court that contradict their own prior statements, the evidence submitted thus far in this Lawsuit and even their own prior actions and try to pepper the record in the Lawsuit with factually incorrect statements to continue to try and defraud ELIOT, the True and Proper Beneficiaries, this Court, the Insurance Carrier and even Creditors through this proposed Amended Complaint.
45. That the Court should know THEODORE knew the grandchildren were potential beneficiaries of the Lost or Suppressed Policy and knew of the conflict this created and in his email he acknowledges the grandchildren would have to acknowledge and agree to the fate of the insurance proceeds going to their parents. Their names however were to be signed and their rights waived in the proposed Settlement & Mutual Release ("SAMR") and ("SAMR TRUST") (see ELIOT's Answer and Cross Complaint for a copy of both the SAMR and SAMR TRUST) by their parents, as being released from their claims to the proceeds and suddenly when filing this Lawsuit, the grandchildren have been dispensed of and the information that a Lawsuit was filed was further concealed and in fact, ELIOT to was dispensed of as party when they filed this Lawsuit and they concealed it from him as well. The reason to hide this suit from interested parties, as explained in the prior pleadings is that THEODORE, P. SIMON, IANTONI and FRIEDSTEIN did not want their children to know that they could have received the benefits through the Estate. In the SAMR, their parents would act as their children's trustees for their alleged estate inheritances and were willing to waive their children's claims acting as their trustees of their estate inheritances and convert the monies directly into their pockets from their children's. SIMON may have intended the proceeds to go through his estate plan to the grandchildren if they are determined to be the

ultimate Beneficiaries of his Estate and Trusts and these conflicts for the proceeds created by the loss of the LOST or SUPPRESSED TRUST between ELIOT and his children and this new scheme proposed by SPALLINA that would pay ELIOT instead of his children, are what forced ELIOT'S counsel, Tripp Scott, to state that ELIOT could not act in both capacities without running into legal problems and perhaps committing criminal acts as a fiduciary for his children and the children then retained Tripp Scott and ELIOT represented himself without counsel. Yet, after informing his siblings of the conflicts and adverse interests his children's counsel had found, they all refused to get counsel for their children or themselves and were willing to move forward on the SAMR, yet abandoned in favor of this fraudulent Lawsuit.

46. That again the need for these schemes is because in the estate plans of both SIMON and SHIRLEY both THEODORE and P. SIMON would get nothing if the proceeds flowed through the estate plans, as they were wholly disinherited by their parents for compensation received while alive, in the form of multimillion dollar businesses and later for bad behavior and bad blood between SIMON and SHIRLEY with THEODORE and P. SIMON in the waning years of their lives. SIMON was tortured for almost two years after SHIRLEY passed in attempts to put THEODORE and P. SIMON back into the estate plans by the withholding of SIMON'S grandchildren from seeing or talking with him and even recruited IANTONI and FRIEDSTEIN into the isolation of SIMON claiming they had to work together in a pack to "Tough Love" their father over his companion, Maritza Puccio, who they claimed was an "Anna Nicole" despite her having absolutely no interest in the Estates, unlike an Anna Nicole. When approached to boycott SIMON by THEODORE'S children,



ELIOT and his children refused to participate in the “Tough Love” of his Father and in fact, he, his wife and three children retaliated with ANTI TOUGH LOVE and began to see SIMON even more trying to offset the damages being inflicted on him by his four other children and seven other grandchildren. SIMON was so Depressed and Distraught over the torture that he sought medical psychological help to cope with his 4/5<sup>th</sup> children in the last years of his life to his dying day. That P. SIMON and D. SIMON and their daughter stopped most communication with SIMON and SHIRLEY in or about 2001 forward after P. SIMON learned she was disinherited and the bad blood lasted until both SIMON and SHIRLEY were deceased.

47. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

“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.”

This statement is factually incorrect, as it again assumes there is a valid and legally binding BERNSTEIN TRUST that defines valid and legal beneficiaries and their interests, again based on an “educated guess” not fact, as posited in the proposed Amended Complaint, again an attempt to pepper the record with False Statements in official proceedings by A. SIMON and THEODORE.



48. That further this statement is also factually incorrect as ELIOT did not choose to pursue his own purported claims, pro se, in this matter, ELIOT was forced to pursue his claims in this matter when he was notified by JACKSON that this fraudulent Lawsuit was in progress and was sued as a **Third Party Defendant** by JACKSON. Up to JACKSON'S suit naming ELIOT in this matter, ELIOT was unaware the Lawsuit was even taking place, as he was conned, misinformed and information was intentionally withheld from him while he believed all that time this Lawsuit was in progress that the Probate court order the carrier requested to approve the SAMR scheme was being sought to approve the fraudulent insurance claim filed by SPALLINA as Trustee that was **DENIED** by HERITAGE.

49. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

“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.”

From JACKSON'S production, Bates # JCK000110, on April 23, 2010, SIMON was sent a letter by HERITAGE confirming the current Primary Beneficiary of the Policy as “LaSalle National Trust, N.A.” and “SIMON BERNSTEIN TRUST, N.A.” as the Contingent Beneficiary and no records indicate that SIMON rejected these as his Beneficiaries or



corrected them with the carrier. ELIOT states that SIMON BERNSTEIN TRUST, N.A. may be a trust that is further being suppressed in these matters.

50. That further, after reviewing production documents from JACKSON and A. SIMON, it appears no Legally Binding POLICY or TRUST exists in this Lawsuit and ELIOT alleges the insurance company records may have been tampered with by A. SIMON, P. SIMON and others, with insiders at their “friendly insurance carrier” that was willing, according to SPALLINA’S email evidenced herein, to pay the claim without a legally binding valid trust agreement expeditiously.
51. That this Court should take notice that with no legally binding trust or policy put forth the whole Lawsuit appears based on a mirage with no legal basis and this Court should demand, as it did in the first hearing ELIOT attended that these Lost or Suppressed Trust documents and the Lost or Suppressed Policy, both essential to the lawsuit having any basis be produced and if they cannot be produced and authenticated than a Default Judgment in favor of ELIOT should be granted.
52. That the next false statement to this Court in the proposed Amended Complaint by defendant A. SIMON claims,

“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.”

That as stated above, the sole surviving beneficiary according to the records provided by JACKSON is SIMON BERNSTEIN TRUST, N.A., not the BERNSTEIN TRUST and not SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95. Again, instead

of just stating the facts to Your Honor, A. SIMON tries to bend the truth and pepper the record with the continuous drumbeat that the beneficiary is something factual and legal that it is not. As already evidenced, "LaSalle National Trust, N.A." is still an active surviving beneficiary of the Lost or Suppressed Policy that needs to be joined in this Lawsuit and discovery had to see if they have the information that they were responsible for maintaining regarding the Lost or Suppressed Policy and Lost or Suppressed Trust.

53. That the next statements that deserves mention are,

"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."

These claims are further False Statements of Fact as HERITAGE is obligated to pay the Lost or Suppressed Policy proceeds to a legal beneficiary where a clear path to the legal beneficiary is proven as stated in their claim form by legitimate parties to the proceeds and not just because the insured was proven dead. No insurance carrier ELIOT knows would pay a claim to a Lost or Suppressed trust with claims made by people impersonating Trustees and Beneficiaries when no valid legally binding proof of their claims to the death benefits are made. The claim was DENIED allegedly due to the fraudulent nature of the assertions made by SPALLINA and when clarification was not received back and the requested court order

was not even attempted to be secured, this ploy of a Breach of Contract lawsuit was initiated to try and force HERITAGE to pay without first proving to them legally that their beneficiary schemes were legitimate through the requested Probate court order or providing HERITAGE with a legally binding contract that proved beneficial interests and trusteeship.

54. That the next statements of the proposed Amended Complaint suffer from having any lack of legal standing as parole evidence in efforts again to pepper the file with False Statements now based on a hearsay account by defendant D. SIMON who has a direct interest in making such claims, as he is direct benefactor of the proceeds if this Lawsuit succeeds through his spouse P. SIMON who stands to gain 1/5<sup>th</sup> of the benefits. The hearsay account in the proposed Amended Complaint claims,

“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.”

55. That the following statement in the Amended Complaint, number 31 almost blends together as a continuing affirmation of D. SIMON but does not and it claims,

“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.”

ELIOT states that defendant D. SIMON is not stating in 31 above that he attests that the final version he allegedly saw SIMON’S signature upon had the children of SIMON as

beneficiaries and the statement is made without his alleged attestation and is supported by worthless parole evidence of an alleged unsigned, undated, un-authored draft of the Lost or Suppressed Trust submitted after the filing of the Original Complaint when the Court demanded something be produced. At no time prior to this Lawsuit was this alleged unsigned, undated, un-authored alleged draft sent to any parties and suddenly it just drops from the sky after supposed exhaustive searches were made for the Lost or Suppressed Trust as stated in the proposed Amended Complaint.

56. That defendant A. SIMON claims in the proposed Amended Complaint that defendant D. SIMON, his brother and partner in the law firm, defendant The Simon Law Firm, saw this Lost or Suppressed trust in 1995 leaving the law offices of Hopkins & Sutter, now known as Foley & Lardner, LLP and that unsigned ALLEGED drafts submitted to this Court by A. SIMON somehow validate the claim that SIMON elected his children as beneficiaries. The problem here is that the UNSIGNED UNDATED UN-AUTHORED draft that was submitted to this Court by A. SIMON, Bates # BT000003 through BT000021, is basically BLANK paper other than the text, with absolutely no identifying marks of Hopkins & Sutter law firm and where in all the years ELIOT saw draft after draft of work done by Hopkins & Sutter for SIMON, he cannot recall a single instance where their letterhead and author was missing from their work product, no author even listed, no file number stated, no date, no cover letter accompanying the document, just words on an unidentified ALLEGED "draft" produced allegedly by their law firm. The ALLEGED draft could have been done by anyone, anywhere, at any time and one would think if A. SIMON had retained this draft, why they did not retain the original signed and executed agreements or copies and why he is waited

until the court demanded some kind of proof that the Lost or Suppressed Trust existed. This draft in no way proves the assertions made and may prove instead evidence of the continuing and ongoing pattern and practice of Fraud on the Court and the True and Proper Beneficiaries.

57. That the next False Statement to this Court in the proposed Amended Complaint by A. SIMON claims,

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

Again, if there is no copy of the executed “final version” and the beneficiaries and trustees are at best an “educated guess” according to SPALLINA, then how can A. SIMON and THEODORE now try and state with authority that this claim that THEODORE was successor Trustee is a fact to this Court? If they knew this all along, why did SPALLINA then file his claim impersonating the Trustee of the Lost or Suppressed Trust and not THEODORE? Again, this statement appears another attempt to pepper the record of this case with False Statements of fact and hope Your Honor is fooled to believe this fictional story and distribute the proceeds to improper beneficiaries based on a hoax fraught with imaginary and fraudulent, Trustees and Beneficiaries, a fraudulent INSTITUTIONAL TRUST COMPANY at a fictitious address with an imposter Trustee SPALLINA, a Lost or Suppressed Trust, a Lost or Suppressed Policy and more. That the whole fictional story appears based on False Statements of Fact in an Official proceeding made by an Officer of the Court. These acts are creating a Tortious Interference of an Inheritance Expectancy.

58. That A. SIMON, whose brother, their law firm and his brother's wife P. SIMON all have direct conflicting financial interests in the outcome of the matters that are adverse with ELIOT and the True and Proper Beneficiaries and are creating a Tortious Interference of an Inheritance Expectancy.
59. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

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

The drumbeat of false statements continues with this claim that tries to pepper the record again and again with this False Statement asserted as fact as to who the legal beneficiaries on the Lost or Suppressed Policy are. The defined and legal Primary and Contingent beneficiaries are not proven to be the BERNSTEIN TRUST or the SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95 but instead HERITAGE claims “LaSalle National Trust, N.A.” is the Primary beneficiary and the SIMON BERNSTEIN TRUST, N.A., is the factual Contingent beneficiary no matter how many times the proposed Amended Complaint tries to pound this misstatement into the record. Further, since the “Chicago Title Land Trust Company,” as Successor to “LaSalle National Trust, N.A.” **still exists and is surviving** located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603, it appears that BERNSTEIN TRUST is not the “sole surviving beneficiary” as falsely claimed by A. SIMON and therefore the Contingent Beneficiary is moot at this point.



60. That further, it appears that no searches were conducted of SIMON'S possessions for the "SIMON BERNSTEIN TRUST, N.A." the named Contingent beneficiary.

61. That the next series of statements to this Court in the proposed Amended Complaint by A. SIMON are revealing and claim,

"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."

62. That a series of searches was allegedly done for the Lost or Suppressed Policy and the Lost or Suppressed Trust and one wonders first why THEODORE and other unknown Bernstein family members would search SIMON'S home and business office POST MORTEM and why this search was not conducted by the ALLEGED Personal Representative / Executor, defendants SPALLINA and TESCHER who did not conduct this search of SIMON'S home and office records. Why would SPALLINA let others search the files that may have interests in suppressing and denying the information to benefit themselves at the expense of others,

especially where THEODORE and P. SIMON have no interests in the Estate or Trusts of SIMON?

63. That further the searches of SIMON'S home and office were conducted without ELIOT'S knowledge or invitation to participate or witness and were in fact secreted from him until he learned they were claiming both the insurance contract and trusts were lost.

64. That in fact, on the night ELIOT'S father SIMON passed away, a one, Rachel Walker, assistant to SIMON, removed from SIMON'S home, directed by THEODORE, minutes after SIMON was pronounced dead, a large amount of files from the home of SIMON, including many estate documents and brought them to the hospital to THEODORE. These documents were never accounted for and remain missing and when ELIOT requested copies from both THEODORE and SPALLINA he was refused. That for more on that factual account of events of that night, please see ELIOT'S first Petition in the Estate of SIMON and SHIRLEY with the Florida Probate Courts of Hon. Judge Martin H. Colin and Hon. Judge David E. French, Titled **"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 ESTATES OF SIMON/SHIRLEY BERNSTEIN AND MORE"** @

• [www.iviewit.tv/20130506PetitionFreezeEstates.pdf](http://www.iviewit.tv/20130506PetitionFreezeEstates.pdf) 15th Judicial Florida Probate Court  
and

- [www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf) US District Court Southern District of New York case before The Most Honorable Shira A. Scheindlin. Pages 156-582.

65. That a search then was conducted of the law firm defendant Tescher & Spallina, P.A. and one must wonder how and why if SPALLINA claims he did not ever see or have possession of the Lost or Suppressed Trust or the Lost or Suppressed Policy why a search would be conducted at his offices at all. From an email from Robert Spallina one can see he claims allegedly to never have seen the Lost or Suppressed Trust or Policy but in fact claims he knew of it and knew who the beneficiaries were to be and as the Attorney at Law who did the estate plans of SIMON he then took no steps to protect the Beneficiaries by securing the Policy(ies) and Lost or Suppressed Trust or having SIMON even write a letter stating who the Beneficiaries were or any other steps to insure the beneficiary designations since he did not allegedly possess the Lost or Suppressed Trust and Lost or Suppressed Policy, the Beneficiaries he claims to have known about were protected in the estate plan and therefore the liabilities caused by this failure that have led to this circus of Fraud In and Upon this Court, Fraud on an Insurance Carrier and Fraud on ELIOT and the True and Proper Beneficiaries are all directly related to SPALLINA and TESCHER'S incompetent or purposeful inactions. From SPALLINA'S email, ELIOT quotes,

**From:** Robert Spallina  
**To:** Pam Simon  
**Cc:** Eliot Bernstein; Ted Bernstein; Lisa Sue Friedstein; Jill Iantoni; Jill M. Iantoni; Christine P. Yates ~ Director @ Tripp Scott  
**Subject:** Re: Heritage Policy  
**Date:** Friday, February 8, 2013 8:41:25 PM

The law does not REQUIRE a trust to pay proceeds. The terms of lost wills and trusts are routinely proved up through parole evidence. The lawyer I spoke with at Heritage told me that this happens once every ten days and the estate is rarely if ever the beneficiary of the proceeds on a lost trust instrument. I have NEVER heard of proceeds being paid to the probate court.

Your father changed himself to the owner of the policy because he wanted to have the RIGHT to change beneficiaries **despite the fact that it causes inclusion of the proceeds in his estate for estate tax purposes. Very near to his death he requested beneficiary change forms but never actually changed the beneficiaries. I will give you one guess who he thought of including and it was none of his grandchildren. I counseled him not to do this and the form was never executed. [Emphasis Added]**

As for your father's intent, that is the most important thing and the court will always look to carry that out. The fact that he changed his dispositive documents to include only his grandchildren lends credibility to the fact that he intended that the insurance proceeds would go to his five children. I knew that the trust provided for his children some of whom he knew needed the money. Additionally we had a conference call prior to his death with all of you where he discussed his plans regarding his estate and your mother's estate with all of you.

This should be of no surprise to anyone. Bottom line is that we do not need to have the trust for the carrier to pay the proceeds. The carrier is looking for a court order to pay them to a successor trustee who will distribute them among the beneficiaries.

**I do not and have never had a copy of the policy. [Emphasis Added]**

Lets stop making this more difficult than it is. Your father told me that the trust provided that the proceeds were going to his children. Pam saw him execute the trust with the same attorney that prepared her own trust a copy of which I have and will offer up to fill in the boilerplate provisions. We have an SS-4 signed by your mother to obtain the EIN. There is not one shred of evidence that the trust was terminated which is the only circumstance that would require payment of the proceeds to the estate.

The fact that your father requested change forms prior to death and didn't execute them speaks to the existence of the trust and that he intended that you all receive an equal share of the proceeds.

I hope that this helps to guide you and unite you in your decision.

Have a nice weekend.  
Sent from my iPhone

66. That Spallina's email above reveals and insurance company records provided in

JACKSON'S discovery documents support this claim that SIMON was requesting change of

Beneficiaries forms near the time of his death but ELIOT is unclear who he was changing it to, as SPALLINA fails to identify the party(ies) he “counseled” him not to change it too. Further, if SPALLINA did not ever have a copy of the Lost or Suppressed Policy why would he search his offices for the missing Lost or Suppressed Policy and Lost or Suppressed Trust that he claims never to have seen? If SPALLINA were the “Trustee” of the Lost or Suppressed Trust or the “Trustee” of INSTITUTIONAL TRUST COMPANY, “LaSalle National Trust, N.A.”, as he falsely claimed when filing his fraudulent insurance claim acting as such, then he would have had reason to search his offices. Why on the other hand if SPALLINA did not have a copy or ever saw the Lost or Suppressed Policy and never saw or possessed a copy of the Lost or Suppressed Trust, how in G-d’s name he made a claim in these fiduciary titles he gave himself when filing a claim with HERITAGE????????????????????????????????

67. That the law offices of Foley & Lardner LLP were then searched but apparently no copies of the executed Lost or Suppressed Trust or copies of it appear to have been located, as they appear to have vanished into thin air with no copies or evidence of its existence left according to the proposed Amended Complaint?

68. That on information and belief, Foley & Lardner may have claimed to have sent all the documents to Proskauer Rose LLP who also claims to have not to have any executed copies or originals in their records and it is interesting to note here that Proskauer was left out of the proposed Amended Complaint’s list of places searched as SPALLINA references a one, Albert Gortz of Proskauer as having information relating to the insurance from prior estate planning he did for SIMON in his email evidenced herein. Why did they not have Albert

Gortz come testify to what the Lost or Suppressed Trust and Lost or Suppressed Policy stated as he was in possession of them and from there they appear to become Lost or Suppressed.

69. That the reason ELIOT believes this was omitted is because both Foley & Lardner LLP and Proskauer Rose LLP are the two main alleged perpetrators of the theft of ELIOT and SIMON'S Intellectual Properties that have an estimated value in the TRILLIONS of dollars, as they have profoundly changed the world and have been quoted by leading engineers as "The Holy Grail" of the Internet and "Digital Electricity" and more. To further understand how Proskauer and Foley may be influencing all of these efforts to deprive ELIOT and his family of their inheritances and the Lost or Suppressed Policy proceeds the way SIMON and SHIRLEY designed them to intentionally sabotaging ELIOT'S continued efforts to prosecute them by depriving him with intent from his properties. For more information of ELIOT'S continued RICO efforts and more, see the Federal Court filing @

[www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf](http://www.iviewit.tv/20130512MotionRehearReopenObstruction.pdf), Pages 217-242, Section **"XV. THE ELEPHANT IN THE ROOM THE IVIEWIT COMPANIES STOCK AND PATENT INTEREST HOLDINGS OWNED BY SIMON AND SHIRLEY, AS WELL AS, INTERESTS IN A FEDERAL RICO ACTION REGARDING THE THEFT OF INTELLECTUAL PROPERTIES AND ONGOING STATE, FEDERAL AND INTERNATIONAL INVESTIGATIONS."** The Court should note here that previous efforts to silence ELIOT and his family to stop their efforts to have fair and impartial due process against those that stole his Intellectual Properties, mainly criminals disguised as Attorneys at Law and Public Officials and reclaim his Intellectual Property Royalties, please

visit the graphic images of the **TERRORIST STYLE CAR BOMBING ATTEMPTED MURDER of ELIOT and his wife and children @ [www.iviewit.tv](http://www.iviewit.tv)** .

70. The final search for the Lost or Suppressed Trust and Lost or Suppressed Policy according to defendant A. SIMON'S statement in the proposed Amended Complaint was conducted in his very own law firm, defendant The Simon Law Firm, that is located inside the offices of defendant P. SIMON'S companies that she received from SIMON worth millions, in exchange for her rights to any later inheritances and partially why she was wholly excluded from the Estates and Trusts of both SIMON and SHIRLEY.

71. That this search of A. SIMON'S law firm further supports ELIOT'S claims in his **"(1) MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL"**

[www.iviewit.tv/20131208MotionStrikePleadingAdamSimonForFraudOnCourt.pdf](http://www.iviewit.tv/20131208MotionStrikePleadingAdamSimonForFraudOnCourt.pdf) filed with this Court, that defendants, The Simon Law Firm, A. SIMON and D. SIMON cannot represent these matters not only due to their Adverse Interests with ELIOT and other potential beneficiaries but because they are conflicted with the matters having direct financial interest in the outcome. The search of their offices shows further that they have firsthand knowledge and involvement in these matters beyond those that independent counsel would have and therefore will be deposed and called as material and fact witnesses. They also stand

to gain part of the death benefits to themselves and their immediate families, at the detriment of the True and Proper beneficiaries, including P. SIMON and D. SIMON'S own children, if they succeed with this farce before Your Honor.

As administrators of the VEBA under the Company they are counsel too, National Service Association ("NSA"), The Simon Law Firm had copies so where did they go? As exclusive agents to Capital Bankers of the VEBA concept SIMON created, who sold the Lost or Suppressed Policy, were they also responsible to maintain copies of the Lost or Suppressed Policy and the Lost or Suppressed Trust held under the VEBA trust and are they liable if they are lost? Why do they have an unidentifiable ALLEGED draft of the Lost or Suppressed Trust on hand that they suddenly inserted in their production, after filing this Lawsuit, after concealing it from HERITAGE and others for over a year until this Court demanded something? Why are they missing executed copies of the Lost or Suppressed Trust and the Lost or Suppressed Policy, or even unexecuted copies, which have the author, dates and other pertinent information that can be verified or used as solid parole evidence of their false claims in the proposed Amended Complaint? Why did they not have other witnesses to their claims of what SIMON'S trust said and who the Trustees and Beneficiaries were, say for example the authors at the law firms searched, especially after contacting the law firms who allegedly drafted and executed these documents with SIMON? Are they liable and responsible for the maintenance and safe keeping of these records? Do they have LIABILITIES for failure to retain records, which would further their adverse interests and conflicts? Were copies of the Lost and Suppressed trust sent to their law firm and where did they go? What were their roles as Attorneys at Law in the insurance affairs of SIMON and



SHIRLEY and SIMON'S companies where they have both been employed since graduating college? Were copies sent to their law firm as attorneys for the VEBA trust, what roles did they play as Trustee's for the VEBA? From these questions alone, it is obvious that A. SIMON and D. SIMON will be material and fact witnesses in these matters. The fact that they have direct interests in suppressing these documents and policies to inure benefits directly to their family members and their law firm makes the Conflicts and Adverse Interests prohibitive of A. SIMON further representing any parties in this Lawsuit, other than himself as a Pro Se defendant.

72. That the fact that A. SIMON, D. SIMON and their law firm The Simon Law Firm are all defendants and therefore conflicted in representing any others and for other reasons already defined herein that conflict them and create adverse interests with other parties are all just and good causes for this Court to report them all for this misconduct and violations of Attorney Conduct Codes and State and Federal Laws and demand that they retain counsel and discontinue further representing any parties in this lawsuit.

73. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

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

This statement is also incorrect as none of the Plaintiffs provided HERITAGE with due proof of death, as defendant Attorney at Law SPALLINA and his legal assistant / notary public, a one Kimberly Moran provided this information to HERITAGE and they are not Plaintiffs in

these matters. Where ELIOT has evidenced already in prior pleadings that MORAN has been arrested and admitted to FORGING and FRAUDULENTLY NOTARIZING six separate signatures for six separate people on six separate documents that were then posited in the Probate court by defendants, SPALLINA, TESCHER and their law firm Tescher & Spallina P.A. on behalf of a Deceased SIMON who acted as Personal Representative / Executor while DECEASED, as if alive, to serve documents to the Probate court in another Fraud on the Court under Hon. Judge Martin H. Colin, leading Judge Colin when discovering that a Fraud on his Court had occurred, to state he had enough to read Attorneys at Law, SPALLINA, TESCHER and Mark Manceri and THEODORE their Miranda Warnings, twice, for the crimes he discovered took place in his courtroom and were admitted to in part at the hearing.

74. That the next statement false statement claims,

75. "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."

76. ELIOT claims if the Lost or Suppressed Trust and Lost or Suppressed Policy are in fact lost and the Trustees and Beneficiaries therefore are not known, then despite their efforts to claim they now suddenly know as fact who the Beneficiaries and Trustees were does not really matter as when the beneficiaries of a policy are lost or missing at the time of death of the insured the benefits are legally to be paid to the Insured. Under Florida law, if the beneficiary of a life insurance policy is not in existence at the time of the insured's

death, the policy is payable to the insured, and thus, in this case, the insured's Estate.

Harris v. Byard, 501 So.2d 730, 12 Fla. L. Weekly 429.

77. That this next misleading statement claims,

“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.”

That ELIOT states that this “unexecuted draft” of the Lost or Suppressed trust is a further hoax as the trust was done by law firm Hopkins & Sutter and drafts as mentioned earlier would be identifiable and the draft submitted as part of their “proof” offers very little in legal proof of anything, as it has no author, no dates, no year even and could have been done the morning it was sent to this Court by A. SIMON who also knows this document proves nothing but possibly further Fraud on the Court and the True and Proper Beneficiaries of the Lost or Suppressed Policy and Lost or Suppressed Trust.

78. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

“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.”

While this statement of intent is stated with force and authority by A. SIMON, whom did Simon express this intent to, as it was not to his estate planners who would have then secured

the trust or documentary evidence of his intent or have mass exposure for their lack of duty and care. It was not expressed to HERITAGE as even when sent a letter to confirm the Primary and Contingent Beneficiaries he did not offer any changes in reply. It was not expressed to his children, for in JACKSON'S production it is noted that certain of his children were to receive NO information on his Lost or Suppressed Policy for unknown reasons at this time and again this evidences a peppering of the record with biased, unproven and false statements of fact. From JACKSON'S production, Bates # JCK000086, we find a new child for SIMON that ELIOT has never heard of, Maryann, who attempts to get Policy information from the carrier, apparently using a false name,

“Maryann, daughter of Insured called to get min. prem. on the policy to pay. No info. given as we do not show auth. to be able to speak w/ her . Says she does this every time & gets the info & I advised that we should not be providing anyone info except Simon, over the phone unless we have written auth.”

And then on July 03, 2011 from JACKSON'S production Bates #JCK000239 we find a most disturbing claim in their client notes,

“Broke relationship with a Child”

79. That to attempt to establish the beneficiary of the lost trust, a few cherry picked or created documents were produced by A. SIMON and TED that attempt to support their claim that the Beneficiary was changed to the lost trust in 1995. Yet, in JACKSON'S discovery documents produced thus far, Bates # JCK000110 evidence is found that SIMON was sent a letter April 23, 2010, which stated,

“Dear Simon Bernstein: Thank you for contacting Heritage Union Life Insurance Company. Our records indicate the following beneficiary designation for the above referenced contract number:  
Primary Beneficiary/Beneficiaries: LaSalle National Trust, N.A.  
Contingent Beneficiary/Beneficiaries: Simon Bernstein Trust, N.A.

Where there is no further record from SIMON disputing this beneficiary designation with the carrier after receiving the letter.

80. That the next false statement to this Court in the proposed Amended Complaint by A. SIMON claims,

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

Again, this is not factually correct as the Primary Beneficiary of the Lost or Suppressed Policy at the time of SIMON’S death was factually according to HERITAGE, “LaSalle National Trust, N.A.” as Primary and Contingent was factually, “Simon Bernstein Trust, N.A.” and at the time of his death it is NOT the BERNSTEIN TRUST aka SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95” as A. SIMON falsely asserts as fact, when knowing it is not correct and puts in no qualifying statements as to his assertion to this Court.

81. That the next false statements to this Court in the proposed Amended Complaint by A. SIMON claims,

“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.”

Eliot states that “LaSalle National Trust, N.A.” was and IS still acting as Trustee when the insurance claim was filed on their behalf by SPALLINA who impersonated the INSTITUTIONAL TRUST COMPANY “LaSalle National Trust, N.A.” at SPALLINA’S address and place of business and further impersonated himself as an OFFICER / TRUSTEE of “LaSalle National Trust, N.A.” as already defined herein. Also, ELIOT does not believe that A. SIMON’S alleged information and belief that Bank of America, N.A. is the Successor to “LaSalle National Trust, N.A.” is true and again an intentional attempt to mislead this Court and others from the fact that “Chicago Title Land Trust Company” appears as Successor to “LaSalle National Trust, N.A.” currently and actively, which is located at 10 South LaSalle Street, Suite 2750 Chicago, Illinois 60603 and no listing at SPALLINA’S address appear in any records search conducted by ELIOT for this INSTITUTIONAL TRUST COMPANY, “Chicago Title Land Trust Company.” That this may impart that not only did SPALLINA commit INSTITUTIONAL TRUST COMPANY FRAUD by impersonating “LaSalle National Trust, N.A.” but that he may have also committed INSTITUTIONAL TRUST COMPANY FRAUD on “Chicago Title Land Trust Company”

the current Successor Trustee of "LaSalle National Trust, N.A." by acting as a TRUSTEE of "LaSalle National Trust, N.A." that "Chicago Title Land Trust Company" is the Successor to at his address. Further, A. SIMON tries to advance this false statement when a simple records search would have afforded him the same information, again making this proposed Amended Complaint a further abuse of process.

82. That this Court should further act on its own Motion to Join under Federal Rule 19, "LaSalle National Trust, N.A." and the Successor "Chicago Title Land Trust Company" to this action as indispensable parties that have been concealed from the Court through False Statements in the pleadings with intent.

83. That the next fallacious statement claims,

"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."

That ELIOT states this statement is merely conjecture as there is nothing legally valid in the proposed Amended Complaint to prove they should receive the benefits as it is made mainly of false statements in an official proceeding by an Officer of this Court knowingly while acting with adverse interests and conflicts whom is also a defendant in the matters and who has failed to respond to ELIOT'S Cross Claim and defaulted knowingly and without excuse.

84. That this patchwork effort to now amend their Original Complaint in order to craft further false statements in the record and attempt to cover up evidence provided in the pleadings and production documents already released in this Lawsuit filed by both ELIOT and other parties is a carefully attempt to change their original statements and is a bit late and is wholly

reprehensible. Contrary to their claims in their Motion to Seek Leave to Amend that “6. Plaintiff seeks leave of the court to file its first amended complaint to add four of the beneficiaries (children of Simon Bernstein) as Plaintiffs and to add two additional claims and/or theories of recovery” after review of the proposed amendments this is not all they are trying to do, they are factually trying to change the pleading in significant other ways defined already herein.

85. That further A. SIMON’S claims to the Court in the Motion for Leave to Amend,

“There will be very little or no prejudice to the other parties to the litigation as this First Amended Complaint is being submitted with sufficient time left to conduct discovery, and the parties have already had time to initiate discovery because the new Plaintiffs are not new parties to the litigation.”

However, the proposed Amended Complaint does prejudices parties to this Lawsuit by attempting to pepper the record with a stream of further False Statements in Official proceedings that are pled as statements of fact that are factually prejudicial as they are wholly false and misleading with intent.

86. That ELIOT states that further wastes of time and monies by ELIOT and this Court and the delays caused to the Beneficiaries by allowing these improper pleadings from Defendants A. SIMON, D. SIMON and the The Simon Law Firm who have failed to Answer the complaint served upon them have therefore defaulted as third party defendants and should be removed from the lawsuit in any/all legal capacities. That responding to this almost wholly false proposed Amended Complaint was torturous enough as they try to pepper the record with



false statements and questionable parole documents in official proceedings and asserting this hogwash as facts before this Court.

87. That the proposed Amended Complaint may also invoke the Probate Exception to Federal Jurisdiction in this matter. Whereby the proceeds paid to this Court by the carrier should instantly be returned to the carrier and the matter turned over to the Florida Probate court to rule on this life insurance claim as the beneficiary was lost and missing allegedly at the time of SIMON'S death.
88. That for the all the reasons stated herein ELIOT prays this Court STRIKE THE AMENDED COMPLAINT DUE TO EVIDENCE OF ALLEGED, FRAUD ON A FEDERAL COURT, IMPERSONATION OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF AN OFFICER OF AN INSTITUTIONAL TRUST COMPANY, IMPERSONATION OF TRUSTEES AND BENEFICIARIES OF A LOST TRUST, INSURANCE FRAUD, FRAUD, IMPROPER PLEADINGS AND MORE

**MOTION FOR DEFAULT JUDGMENTS**

89. That the proposed Amended Complaint is filed by A. SIMON for a limited number of defendants only and ELIOT requests the Court clarify if parties not represented in these matters that were served and failed to respond have defaulted by failure to appear in these matters despite being served. In A. SIMON'S pleading for LEAVE TO AMEND he states he is representing the following,

“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.”

However, many parties sued by ELIOT do not appear at the moment to have counsel or filed any responsive pleadings and thus have defaulted already, including but not limited to, all of the following,

- i. DAVID B. SIMON, PERSONALLY was sued and served ELIOT’S cross claim and A. SIMON does not represent him personally and appears to have left him off the represented third party defendants in this capacity and as he has failed to respond timely and has defaulted.
- ii. DAVID B. SIMON, PROFESSIONALLY was sued and served ELIOT’S cross claim and A. SIMON does not represent him personally and appears to have left him off the represented third party defendants in this capacity and as he has failed to respond timely and has defaulted.
- iii. ADAM SIMON, PERSONALLY was sued and served ELIOT’S cross claim and A. SIMON does not represent himself personally as a third party defendant and appears to have left himself off in this capacity and he has also failed to respond timely to ELIOT’S cross claim and therefore has defaulted.
- iv. ADAM SIMON, PROFESSIONALLY was sued and served ELIOT’S cross claim and A. SIMON does not represent himself personally as a third party defendant and appears to have left himself off in this capacity and he has also failed to respond timely to ELIOT’S cross claim and therefore has defaulted.

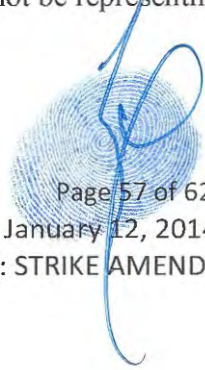


- v. THE SIMON LAW FIRM, was sued and served and has failed to respond and therefore has defaulted.
- vi. TESCHER & SPALLINA, P.A., were served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join the Law Firm as an indispensable party before having ELIOT forced to serve them at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit.
- vii. DONALD TESCHER, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law TESCHER as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.
- viii. DONALD TESCHER, PROFESSIONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law TESCHER as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.

ix. ROBERT SPALLINA, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law SPALLINA as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.

x. ROBERT SPALLINA, PERSONALLY was served a Waiver of Service and failed to reply and ELIOT has sought a Court order on the Court's own motion to join Attorney at Law as an indispensable party before having ELIOT forced to serve him at additional cost to ELIOT, for a mess created in large part by TESCHER & SPALLINA, P.A. or just issue a default for evading this Lawsuit as an Attorney at Law that knew he was an indispensable party and causing further harm and delays to the True and Proper Beneficiaries.

90. That all of the above parties sued and served in these matters have failed to timely respond or respond at all and a Default Judgment should be awarded ELIOT and there can be no excuses or leniency for failing to respond by any of the parties served and sued that are Attorneys at Law who knowingly have chosen to fail to respond and especially A. SIMON who conceals himself from his list of third party defendants he represents to hide his obvious conflicts and adverse interests in representing himself as a Pro Se defendant while representing others in matters as counsel and he should not be representing anyone other than himself Pro Se further.



91. That many of ELIOT'S contentions challenging the legality of the Original Complaint filed can be found in ELIOT'S "MOTION TO STRIKE PLEADINGS AND REMOVE ADAM SIMON FROM LEGAL REPRESENTATION IN THIS LAWSUIT OTHER THAN AS DEFENDANT FOR FRAUD ON THE COURT AND ABUSE OF PROCESS AND (2) MOTION TO REMOVE ADAM SIMON FROM LEGAL REPRESENTATION ON BEHALF OF ANY PARTIES IN THIS LAWSUIT OTHER THAN AS A DEFENDANT PRO SE or REPRESENTED BY INDEPENDENT NON-CONFLICTED COUNSEL" filed with this Court on December 08, 2013 and those arguments are further included herein by reference in further support for this Court to STRIKE both the Original Complaint and the proposed Amended Complaint and award damages to ELIOT.

92. That for the reasons stated herein ELIOT prays for Default Judgments against all parties who have failed to respond in any way to these matters knowingly.

Wherefore, for all the reasons stated herein, ELIOT prays this Court STRIKE the proposed Amended Complaint and award Default Judgments and further Sanction and Report the Attorneys at Law involved for their violations of Attorney Conduct Codes and State and Federal Law. Award damages sustained to date and continuing in excess of at least EIGHT MILLION DOLLARS (\$8,000,000.00) as well as punitive damages, costs and attorney's fees and any other relief this Court deems just and proper.

Respectfully submitted,

/s/ Eliot Ivan Bernstein

Eliot I. Bernstein

Dated Sunday, January 12, 2014

2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
(561) 245-8588

**Certificate of Service**

The undersigned certifies that a copy of the foregoing Answer and Cross Claim was served by ECF, and E-mail on Sunday, January 12, 2014 to the following parties:

**Email**

Robert L. Spallina, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)

Donald Tescher, Esq. and  
Tescher & Spallina, P.A.  
Boca Village Corporate Center I  
4855 Technology Way  
Suite 720  
Boca Raton, FL 33431  
[dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com)

Theodore Stuart Bernstein and  
National Service Association, Inc. (of Florida) ("NSA")  
950 Peninsula Corporate Circle, Suite 3010  
Boca Raton, Florida 33487  
[tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com)

Lisa Sue Friedstein  
2142 Churchill Lane  
Highland Park IL 60035  
[Lisa@friedsteins.com](mailto:Lisa@friedsteins.com)  
[lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)

Jill Marla Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)

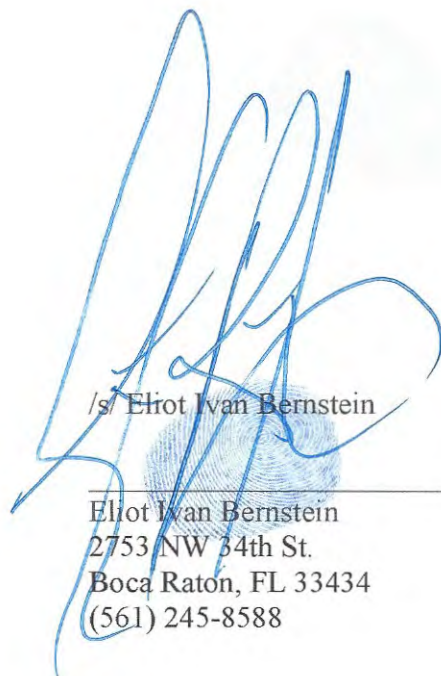
A blue ink handwritten signature is written over a blue ink fingerprint. The signature is stylized and appears to be 'Jill Iantoni'. The fingerprint is a standard ten-print pattern.

[lantoni\\_jill@ne.bah.com](mailto:lantoni_jill@ne.bah.com)

Pamela Beth Simon and  
S.T.P. Enterprises, Inc.,  
S.B. Lexington, Inc. Employee Death Benefit Trust,  
SB Lexington, Inc.,  
National Service Association, Inc. (of Illinois)  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[psimon@stpcorp.com](mailto:psimon@stpcorp.com)

David B. Simon and  
The Simon Law Firm  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[dsimon@stpcorp.com](mailto:dsimon@stpcorp.com)

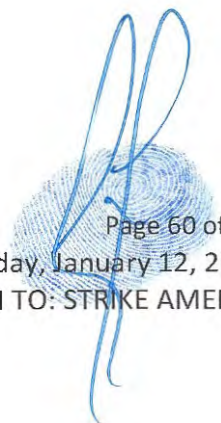
Adam Simon and  
The Simon Law Firm  
General Counsel STP  
303 East Wacker Drive  
Suite 210  
Chicago IL 60601-5210  
[asimon@stpcorp.com](mailto:asimon@stpcorp.com)



/s/ Eliot Ivan Bernstein

---

Eliot Ivan Bernstein  
2753 NW 34th St.  
Boca Raton, FL 33434  
(561) 245-8588



**EXHIBIT 1 – SPALLINA INSURANCE CLAIM SIGNED AS TRUSTEE OF THE LOST  
OR SUPPRESSED TRUST.**



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

BOCA VILLAGE CORPORATE CENTER I  
4055 TECHNOLOGY WAY, SUITE 720  
BOCA RATON, FLORIDA 33432

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

TEL: 561-997-7000  
FAX: 561-997-7308  
TOLL FREE: 888-997-7008  
WWW.TESCHERSPALLINA.COM

SENIOR TRUST  
MANAGER  
FINANCIAL  
SUANN TESCHER

November 1, 2012

VIA FEDERAL EXPRESS  
Claims Department  
Heritage Union Life Insurance Company  
1275 Sandusky Road  
Jacksonville, FL 32201

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

Dear Sir or Madam:

Enclosed is the Claimant's Statement for the above referenced policy, together with an original death certificate for the insured, Simon Bernstein. We are also enclosing a copy of Internal Revenue Service Form SS-4, Application for Employer Identification Number for the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995, which is the trust listed as beneficiary of the above referenced policy. We will provide wiring instructions for the trust bank account when you have processed the claim, if possible, in lieu of a check. Finally, we are enclosing a copy of the obituary for the decedent which was published in the Palm Beach Post. We are unable to locate a copy of the original insurance policy.

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

Sincerely,

ROBERT L. SPALLINA

RLS/km

Enclosures

km = Kimberly  
Moran

## CLAIMANT STATEMENT

Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

### INSTRUCTIONS

The following items are required for all claims:

- An original certified death certificate showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).

If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special Instructions and additional requirements may apply.

- If the beneficiary is the Estate of the Insured, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- If the beneficiary is a trust, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- If the beneficiary is a minor, we will require evidence of court appointed guardianship of the Minor's Estate.
- If the policy is collaterally assigned, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- If the primary beneficiary(ies) is (are) deceased, we will require a death certificate for each deceased beneficiary.
- If the policy has a split dollar agreement associated with it, we will require a copy of said agreement.
- If the policy is subject to a Viatical or a Life Settlement transaction, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete questions 19 and 20.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.

## CLAIMANT STATEMENT

### FRAUD INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

CLAIMANT STATEMENT

CG008500.0002710

DECEDENT INFORMATION		
1. Name of Deceased (Last, First Middle) Bernstein, Simon Leon	2. Last 4 digits of Deceased's Social Security No. 5211	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below:		
4. Policy Number(s) 1009208	5. If policy is lost or not available, please explain. UNABLE TO LOCATE, POLICY IS 30 YEARS OLD	
6. Deceased's Date of Death 04/13/12	7. Cause of Death natural causes	8. <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending

CLAIMANT INFORMATION			
9. Claimant's Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section. Simon Bernstein Irrevocable Insurance Trust			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number	16. Relationship to Deceased	
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No. If "No" please list country of citizenship.			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

CLAIMANT INFORMATION (to be completed by 2 <sup>nd</sup> claimant, if any)			
20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number	27. Relationship to Deceased	
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No. If "No" please list country of citizenship.			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.  
 CG 6012F Life Claimant Statement (Rev. 3/06) Page 1



### CLAIMANT STATEMENT

#### TRUSTEE CERTIFICATION

5006686-0002712

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)**

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.  
Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

**Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT**

I/We the undersigned, on oath, depose and state as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4. The GST tax does not apply because of the reasons set forth in the attached document. (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5. The GST tax may apply. As a result, the death benefit payment is subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust <b>Simon Bernstein Irrevocable Insurance Trust</b>	Date of Trust Agreement 06/01/1995
Date of all Amendments	Trust Tax ID Number 65-487896
Printed Name of Trustee(s) a. <b>Robert L. Spallina</b>	Signature(s)
b.	
c.	
d.	



Spallina signs as trustee = FRAUD



We will promptly review and evaluate the claim upon receipt of the required documents. A valid claim will include interest due and payable from the date of death at a rate of 10% if we do not pay the claim within 31 days from the latest of 1) the date that we receive proof of death, 2) the date we receive sufficient information to determine our liability and the appropriate beneficiary(ies) entitled to the proceeds; or 3) the date that any legal impediments are resolved.

If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

Diane Henderson  
Claims Manager

Enclosure(s) Life Claimant Statement No RAA

AWD History for Work object key 2012-10-34-13.38.59.016241T01

UIIFE - DTHCIM - CLLEGAL - CLIENT - Updateable

- 1000208 - - BERNSTEIN - SIMON - 19 - SRDC03014031

Social Security Num: [REDACTED] Policy Number: 1000208

Agent Number: [REDACTED] Insured's Last Name: BERNSTEIN

Printed on Tuesday, May 07, 2013 at 3:01:53PM

Queue: CLIFNT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-17  
Begin Time: 16:49:34  
User Id: SMCDOJL  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments: Received a call from attorney Spallina. He wants to talk to in-house counsel about not filing dec action because of expense. Sent Jackson legal message to call me or Spallina. JLM

Begin Date: 2013-01-17  
Begin Time: 16:47:32  
User Id: SMCDOJL  
Workstation Id:  
Business Area: JLIFE  
Type: DTHCIM  
Status: CLRSVIEW  
Queue: CLIENT  
User Name: MCDONALD, JIM L  
DTM Description:  
Comments:

Begin Date: 2013-01-15  
Begin Time: 11:50:00  
User Id: JWALKR  
Workstation Id:  
Business Area:  
Type:  
Status:  
Queue:  
User Name: WALKER, KELLIE  
DTM Description:  
Comments: faxed client letter to Robert Spallina and advised of court order required..faxed to 561-997-7308



DEC-05-2012 04:34PM FROM: TESCHER & SPALLINA +5619877808 T-834 P-001/003 F-338

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.TESCHERSBALLINA.COM

SUPPORT STAFF  
DIANE DUSTIN  
KIMBERLY MORAN  
SUANN TESCHER

December 6, 2012

VIA FACSIMILE: 803-333-4936

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

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

Dear Broc:

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:

← Kimberly Moran authors.

↑ Kimberly Moran signs.

From: (561) 997-7008  
Kimberly Meyer  
TESCHER & SPALLINA  
4655 Technology Way  
Suite 730  
BOCA RATON, FL 33431

Origin ID: PHKA



J123123456789

Ship Date: 21DEC12  
Art/Wgt: 1.0 LB  
ICAO: 1944078UNET3300

Destination Address Bar Code



SHIP TO: (800) 625-0603

BILL SENDER

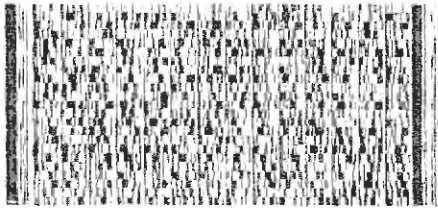
Claims Department  
Heritage Union Life Insurance Compa  
1275 Sandusky Road

JACKSONVILLE, IL 62651

Ref # Barnstein 11107.00P  
Invoice #  
PO #  
Dept #

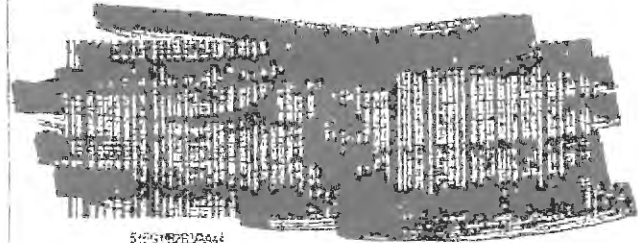
MON - 24 DEC AA  
STANDARD OVERNIGHT

TRK# 7943 7521 3807  
0201



SH SPIA

62651  
1 US  
STL



512518262AA4

JDK001308



**EXHIBIT 2 – LETTERS TO SPALLINA FROM HERITAGE ADDRESSED TO  
SPALLINA AS LASALLE NATIONAL TRUST, N.A. C/O ROBERT SPALLINA  
TRUSTEE**

LETTER 1 - HERITAGE TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL TRUST, N.A., DATED OCTOBER 09, 2012

**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

October 9, 2012

LASALLE NATIONAL TRUST N.A TRUSTEE  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33491

Check out  
Spallina's title at  
LaSalle National  
Trust N.A.

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09765315

Dear Trustee:

We are writing in response to your notification of the death of Simon Bernstein. Our sincere condolences go to the family for their loss.

In order to proceed with our review of the claim, we require the following items to be submitted:

- The enclosed Claimants Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- A certified death certificate. This should indicate cause of death, manner of death, date of birth and Social Security Number.
- Return the original policy – If the original policy cannot be located, please note on the Claimant Statement (Page 3, Item 4).
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.
- Letter of representation or written authorization signed by the beneficiary authorizing information to be released on the above referenced policy.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. A valid claim will include interest due and payable from the date of death at a rate of 10% if we do not pay the claim within 31 days from the latest of 1) the date that we receive proof of death, 2) the date we receive sufficient information to determine our liability and the appropriate beneficiary(ies) entitled to the proceeds; or 3) the date that any legal impediments are resolved

If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

Diane Henderson  
Claims Manager

Enclosure(s): Life Claimant Statement No RAA

## CLAIMANT STATEMENT

### Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

#### INSTRUCTIONS

The following items are required for all claims:

- An original certified death certificate showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).

If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special Instructions and additional requirements may apply.

- If the beneficiary is the Estate of the Insured, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- If the beneficiary is a trust, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- If the beneficiary is a minor, we will require evidence of court appointed guardianship of the Minor's Estate.
- If the policy is collaterally assigned, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- If the primary beneficiary(ies) is (are) deceased, we will require a death certificate for each deceased beneficiary.
- If the policy has a split dollar agreement associated with it, we will require a copy of said agreement.
- If the policy is subject to a Viatical or a Life Settlement transaction, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete questions 19 and 30.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.

## CLAIMANT STATEMENT

### FRAUD INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.



### CLAIMANT STATEMENT

<b>DECEASED INFORMATION</b>			
1. Name of Deceased (Last, First Middle)		2. Last 4 digits of Deceased's Social Security No:	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below.			
4. Policy Number(s)		5. If policy is lost or not available, please explain:	
6. Deceased's Date of Death	7. Cause of Death	8. <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	
<b>CLAIMANT INFORMATION</b>			
9. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number		16. Relationship to Deceased
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>CLAIMANT INFORMATION (to be completed by 2<sup>nd</sup> claimant, if any)</b>			
20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number		27. Relationship to Deceased
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

**YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.**

## CLAIMANT STATEMENT

### SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

\_\_\_\_\_  
Name of Settlement Option from Policy

### Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

### SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

### SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

**For Residents of New York:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**For Residents of All Other States:** See the Fraud Information section of this claim form.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

\_\_\_\_\_  
Signature of Claimant and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Second Claimant, if any, and Title

\_\_\_\_\_  
Date

## CLAIMANT STATEMENT

### TRUSTEE CERTIFICATION

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)**

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.

Please include a copy of the trust agreement, including the signature page(s) and any amendments.

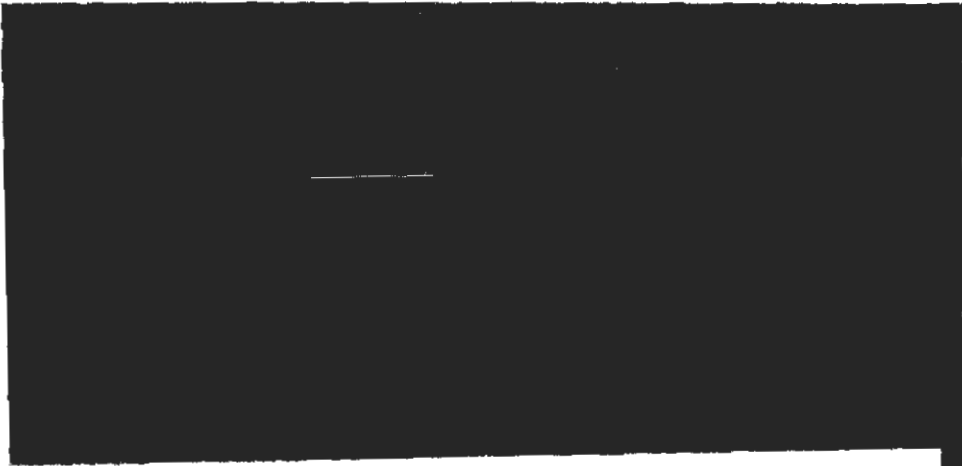
I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

**Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT**

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust	Date of Trust Agreement
Date of all Amendments	Trust Tax ID Number
Printed Name of Trustee(s)	Signature(s)
a _____	_____
b _____	_____
c _____	_____
d _____	_____



From: (813) 397-7000  
Kinshy, Marc  
TESCHER & SPALLINA  
4856 TechnoWay Way  
Suite 120  
BOCA RATON, FL 33431

Style ID: P17A



Ship to: 019001  
Arling, TOLB  
CAD. 1041790VET3300

SHIP TO: (800) 925-0602  
Claims Department  
Heritage Union Life Insurance Co.  
1275 SANDUSKY RD

BILL SENDER

JACKSONVILLE, IL 62650



FRI - 02 NOV AA  
STANDARD OVERNIGHT

TRK# 7939 8244 8685  
L2M

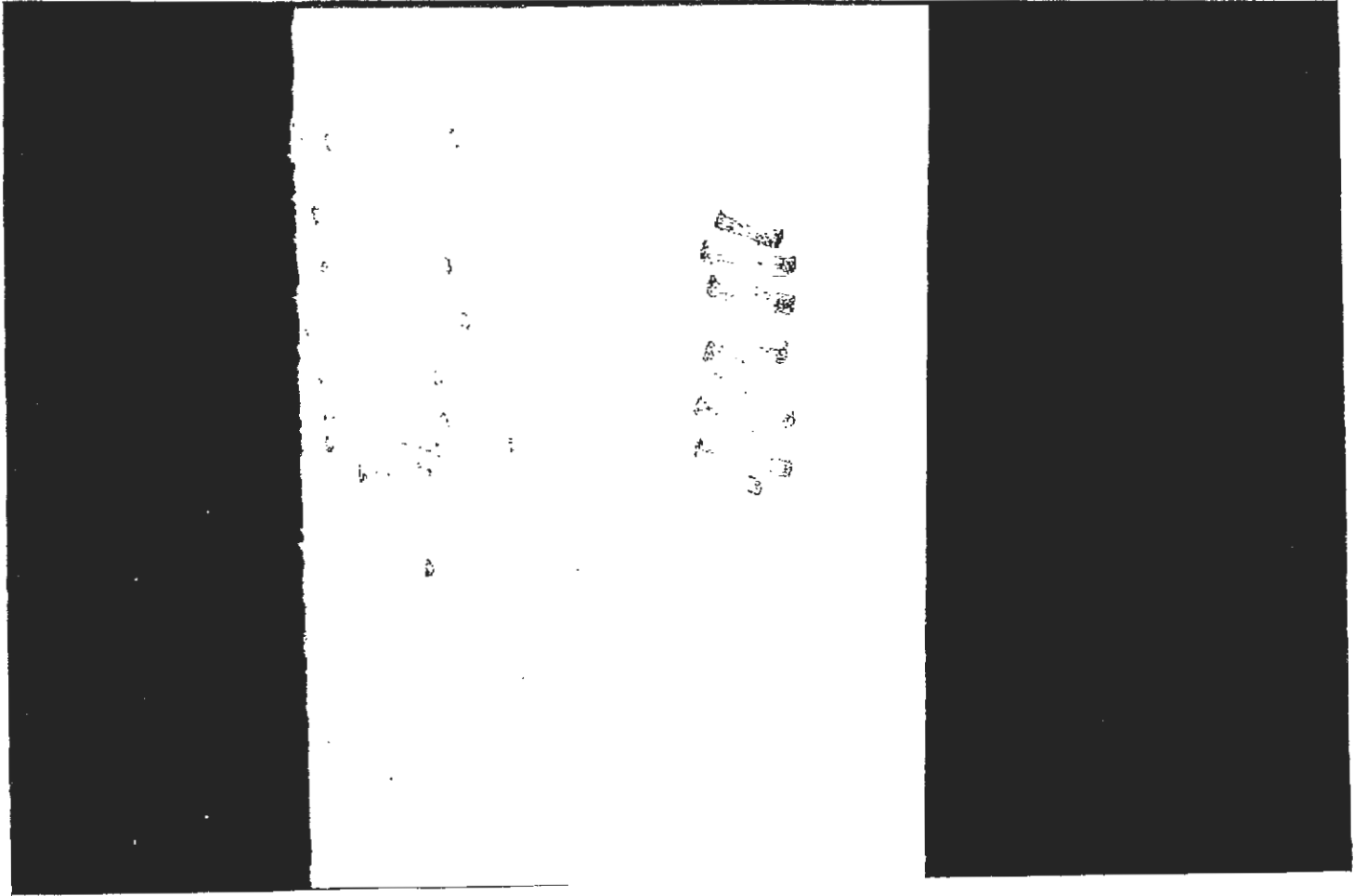
62650  
L-UG  
STL



XX SPIA



JCK001269



LETTER 3 - HERITAGE TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL TRUST,  
N.A., DATED NOVEMBER 05, 2012

**Heritage Union Life Insurance Company**

PO Box 1147, Jacksonville, IL 62651-1147

Phone 800-825-0003 Fax 803-333-7842

Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

November 5, 2012

LASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09784754

Dear Trustee:

We have reviewed the material provided for consideration. This letter is to inform you that additional information is needed to continue our review.

The required items are:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

V02091806

Sincerely,

BRETT H  
Claims Services

Enclosure(s): IL Department of Insurance Notification  
Life Claimant Statement RAA

JCK001281

**The Illinois Department of Insurance requires us to put the following notices on our letters to you.**

- Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.



## CLAIMANT STATEMENT

Reassure America Life Insurance Company

Mailing Address  
PO BOX 1207  
JACKSONVILLE IL 62651

Proof of Loss Part I

### INSTRUCTIONS

The following items are required for all claims:

- An original certified death certificate showing the cause of death. Photocopies are not acceptable.
- The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.
- This claim form completed and signed by the claimant(s).**

If the policy has been in force for less than two years during the lifetime of the insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.

If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.

Special instructions and additional requirements may apply.

- **If the beneficiary is the Estate of the Insured**, we will also require evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.
- **If the beneficiary is a trust**, we will also require a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.
- **If the beneficiary is a minor**, we will require evidence of court appointed guardianship of the Minor's Estate.
- **If the policy is collateral assigned**, we will require a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.
- **If the primary beneficiary(ies) is (are) deceased**, we will require a death certificate for each deceased beneficiary.
- **If the policy has a split dollar agreement associated with it**, we will require a copy of said agreement.
- **If the policy is subject to a Viatical or a Life Settlement transaction**, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete questions 19 and 30.

Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.

## CLAIMANT STATEMENT

### FRAUD INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (5,000) dollars nor more than ten thousand (10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

### CLAIMANT STATEMENT

DECEDENT INFORMATION			
1. Name of Deceased (Last, First Middle)		2. Last 4 digits of Deceased's Social Security No:	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below.			
4. Policy Number(s)		5. If policy is lost or not available, please explain:	
6. Deceased's Date of Death	7. Cause of Death	8. <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	
CLAIMANT INFORMATION			
9. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number		16. Relationship to Deceased
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No
CLAIMANT INFORMATION (to be completed by 2 <sup>nd</sup> claimant, if any)			
20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number		27. Relationship to Deceased
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider, or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

**YOUR SIGNATURE IS REQUIRED ON PAGE 6.**

## CLAIMANT STATEMENT

### SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Installments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy.

\_\_\_\_\_  
Name of Settlement Option from Policy

**If you DO NOT indicate a settlement option on the line above, a lump sum payment will be made as follows:**

- Total amount payable of less than \$10,000 (from one or more policies) will be paid directly to the beneficiary(ies) by check.
- Total amount payable of \$10,000 or more may be placed in a KeepSafe Account in the beneficiary's name, giving you complete control and immediate access to all of your funds. See below for more information and State availability.
- Claims payable to a corporation, partnership, multiple trustees or estate will be paid by check.

## CLAIMANT STATEMENT

### **KEEPSAFE ACCOUNT**

The KeepSafe Account ("Account") is an interest bearing draft account set up in your name that provides immediate access to your funds. The draft account is like a checking account. The Account is designed to let your insurance benefit earn interest immediately and give you time to make the financial decisions that are best for you. The Northern Trust Bank administers the Account on Reassure America Life Insurance Company's ("Reassure") behalf and the funds supporting the Account are held within Reassure's general account.

- **Set-Up** - An information kit, draftbook (like a checkbook) and Supplemental Contract will be mailed to you. Payment of the total proceeds will be accomplished by delivery of the draftbook. Once the Account is established, no other settlement options are available.
- **Withdrawals and Deposits** - You may withdraw funds at any time by writing a draft (like writing a check) for any amount from \$250 up to the entire amount, including interest, for any purpose you wish. Deposits cannot be made by you into the Account.
- **Fees** - There are no monthly services charges or draft fees and no penalties for withdrawal. You will be charged a fee of \$10 per draft for insufficient funds, \$15 for each stop payment order, and \$50 for a wire transfer request.
- **Minimum Balance** - The Account will be closed automatically if the balance drops below \$1,000. The balance in the account will be sent to you by a check at the end of the month in which it is closed.
- **Statements** - Each month you will receive a statement showing current account balance, withdrawals, interest credited, and any other account activity.
- **Interest Rates** - Your Account starts earning interest the day it is established. Interest is compounded daily and credited to the Account at the end of the month and is available for withdrawal on the day after it has been credited. Accounts will earn a minimum guaranteed interest rate of 0.5%. However, no interest will be credited to an Account with a balance below \$2,500 or if an Account becomes dormant and is subject to unclaimed property laws. Your interest rate is determined monthly by Reassure using the 1-month national average CD rate as published by the Wall Street Journal in the BankRate.com section the last Wednesday of each month. The current crediting rate is 0.5%.
- **Taxation** - Interest earned on the Account may be taxable. It is recommended you consult a tax advisor.
- **Account safety** - Your money in the Account is backed by the assets of Reassure. This Account is not guaranteed by the FDIC. However, your funds are guaranteed by State Guaranty Associations, subject to certain limitations. To learn more, contact the National Organization of Life & Health Insurance Guaranty Associations at 703-481-5206 or [www.nolhga.com](http://www.nolhga.com).
- **Inactive dormant accounts** - Lack of customer-generated activity on the Account for more than a specified period of time may force the Account to be considered abandoned and subject to be reported as unclaimed property to your state. Customer-generated activity is automatically accomplished when you write a draft or update information on the Account such as your address or beneficiary.
- **Questions** - For further information about the Account, please call 1-800-678-6227 Monday through Friday, 7:30 A.M. - 4:30 P.M. CST.

The KeepSafe Account is not available if you are a resident of or the policy was issued in Alaska, Arkansas, Connecticut, Florida, Indiana, Kansas, Kentucky, Louisiana, Maryland, New Hampshire, New Jersey, North Carolina, and Rhode Island.

### **Important Information About the USA PATRIOT Act**

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

**YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.**

### CLAIMANT STATEMENT

**SUBSTITUTE FOR IRS FORM W-9**

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

**SIGNATURES**

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

**For Residents of New York:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**For Residents of All Other States:** See the Fraud Information section of this claim form.

**The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.**

Signature of Claimant and Title	Date
Signature of Second Claimant, if any, and Title	Date

## CLAIMANT STATEMENT

### TRUSTEE CERTIFICATION

TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)	
<p><b>COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.</b>                      Please include a copy of the trust agreement, including the signature page(s) and any amendments.</p> <p>I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.</p> <p><b>Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT</b></p> <p>I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):</p> <p><input type="checkbox"/> 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.</p> <p><input type="checkbox"/> 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.</p> <p><input type="checkbox"/> 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.</p> <p><input type="checkbox"/> 4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)</p> <p><input type="checkbox"/> 5. The GST tax may apply. As a result, the death benefit payment IS subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.</p>	
Name of Trust	Date of Trust Agreement
Date of all Amendments	Trust Tax ID Number
Printed Name of Trustee(s)	Signature(s)
a _____	_____
b _____	_____
c _____	_____
d _____	_____

LETTER 3 - HERITAGE TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL  
TRUST, N.A., DATED NOVEMBER 29, 2012



**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

November 29, 2012

LASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4855 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33491

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 69801925

Dear Trustee:

We are writing to remind you that we have not received the previously requested items necessary to proceed with our review of the pending claim on the above referenced policy. The required items are:

- The enclosed Claimant Statement completed and signed by the named beneficiary. If the beneficiary has had a change in name, we require a copy of the applicable marriage license, divorce decree or similar legal documents.
- Trust Documentation – Please provide a copy of the trust agreement and any amendment(s), including the signature page(s). We will also require the Trustee Certification section of the claim form to be completed by all trustees. Please use the trust's name when completing the Claimant Information section.

Please review Page 1 of the Claimant Statement which also explains other documents that may be required. Providing the Claimant Statement is not an admission of liability on the part of the Company.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

V02091806

Sincerely,

D. Henderson  
Claims Services

Enclosure(s): IL Department of Insurance Notification  
Life Claimant Statement No RAA

JCK001290

**The Illinois Department of Insurance requires us to put the following notices on our letters to you.**

- Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

## CLAIMANT STATEMENT

Heritage Union Life Insurance Company

Mailing Address  
P.O. Box 1600  
Jacksonville, IL 62651-1600

Proof of Loss

Part I

INSTRUCTIONS
<p>The following items are required for all claims:</p> <ul style="list-style-type: none"><li><input type="radio"/> An original <b>certified death certificate</b> showing the cause of death. Photocopies are not acceptable.</li><li><input type="radio"/> The original policy or, if unavailable, an explanation provided in Decedent Information section, space 5 of this form.</li><li><input type="radio"/> <b><u>This claim form completed and signed by the claimant(s).</u></b></li></ul> <p>If the policy has been in force for less than two years during the lifetime of the Insured or if the policy has been reinstated within two years of the Insured's death, then we may perform a routine inquiry into the answers on the application for the policy or reinstatement application of the lapsed policy.</p> <p>If the death occurred outside of the United States, we will require a Report of the Death of an American Citizen Abroad.</p> <p>Special Instructions and additional requirements may apply.</p> <ul style="list-style-type: none"><li>• <b>If the beneficiary is the Estate of the Insured, we will also require</b> evidence of the court approved legal representative over the Estate. Please provide the Tax ID number of the Estate of the Insured.</li><li>• <b>If the beneficiary is a trust, we will also require</b> a copy of the trust agreement and any amendments, including the signature page(s). Please note the Trustee Certification section of the claim form will also need to be completed by all trustees. Please use the trust's name when completing the Claimant Information section of the claim form and provide the Tax ID number of the trust.</li><li>• <b>If the beneficiary is a minor, we will require</b> evidence of court appointed guardianship of the Minor's Estate.</li><li>• <b>If the policy is collaterally assigned, we will require</b> a letter from the collateral assignee stating the balance due under the collateral assignment. If the collateral assignee is a corporation, please include a copy of the corporate resolution verifying who is authorized to sign on behalf of the corporation.</li><li>• <b>If the primary beneficiary(ies) is (are) deceased, we will require</b> a death certificate for each deceased beneficiary.</li><li>• <b>If the policy has a split dollar agreement associated with it, we will require</b> a copy of said agreement.</li><li>• <b>If the policy is subject to a Viatical or a Life Settlement transaction, and if the beneficiary is a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider or an individual or entity which invested in this policy as a viatical or life settlement, please complete</b> questions 19 and 30.</li></ul> <p>Other requirements may be needed depending on the individual facts of the claim. The company will advise you if other documentation is required.</p>

## CLAIMANT STATEMENT

### FRAUD INFORMATION

**For Residents of Alaska, Arizona, Nebraska, New Hampshire and Oregon:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

**For Residents of California:** For your protection California law requires the following notice to appear on this form. Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**For Residents of Colorado:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**For Residents of Florida:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**For Residents of Kentucky, Ohio and Pennsylvania:** Any person who knowingly & with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime & subjects such person to criminal and civil penalties.

**For Residents of Maine, Tennessee and Washington:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**For Residents of Minnesota:** A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

**For Residents of New Jersey:** Any person who knowingly files a statement of claim containing any false or misleading information is subject to criminal and civil penalties.

**For Residents of New Mexico:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

**For Residents of New York:** Please see the Signature section of this form.

**For Residents of Puerto Rico:** Any person who, knowingly and with intent to defraud, presents false information in an insurance request form, or who presents, helps or has presented a fraudulent claim for the payment of a loss or other benefit, or presents more than one claim for the same damage or loss, will incur a felony, and upon conviction will be penalized for each violation with a fine no less than five thousand (\$5,000) dollars nor more than ten thousand (\$10,000) dollars, or imprisonment for a fixed term of three (3) years, or both penalties. If aggravated circumstances prevail, the fixed established imprisonment may be increased to a maximum of five (5) years; if attenuating circumstances prevail, it may be reduced to a minimum of two (2) years.

**For Residents of All Other States:** Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

### CLAIMANT STATEMENT

DECEDENT INFORMATION			
1. Name of Deceased (Last, First Middle)		2. Last 4 digits of Deceased's Social Security No:	
3. If the Deceased was known by any other names, such as maiden name, hyphenated name, nickname, derivative form of first and/or middle name or an alias, please provide them below.			
4. Policy Number(s)		5. If policy is lost or not available, please explain:	
6. Deceased's Date of Death	7. Cause of Death	8. <input type="checkbox"/> Natural <input type="checkbox"/> Accidental <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending	
CLAIMANT INFORMATION			
9. Claimant Name (Last, First, Middle) If trust, please list trust name and complete Trustee Certification section.			
10. Street Address	11. City	12. State and Zip	13. Daytime Phone Number
14. Date of Birth	15. Social Security or Tax ID Number		16. Relationship to Deceased
17. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
18. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
19. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider; or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No
CLAIMANT INFORMATION (to be completed by 2 <sup>nd</sup> claimant, if any)			
20. Claimant Name (Last, First, Middle). If trust, please list trust name and complete Trustee Certification section.			
21. Street Address	22. City	23. State and Zip	24. Daytime Phone Number
25. Date of Birth	26. Social Security or Tax ID Number		27. Relationship to Deceased
28. I am filing this claim as: <input type="checkbox"/> an individual who is named as a beneficiary under the policy <input type="checkbox"/> a Trustee of a Trust which is named as a beneficiary under the policy <input type="checkbox"/> an Executor of Estate which is named as a beneficiary under the policy <input type="checkbox"/> Other			
29. Are you a U.S. Citizen? <input type="checkbox"/> Yes <input type="checkbox"/> No If "No" please list country of citizenship			
30. Policies subject to Viatical / Life Settlement transactions - Are you a viatical settlement provider, life settlement provider, the receiver or conservator of viatical or life settlement company, a viatical or life financing entity, trustee, agent, securities intermediary or other representative of a viatical or life settlement provider; or an individual or entity which invested in this policy as a viatical or life settlement?			<input type="checkbox"/> Yes <input type="checkbox"/> No

**YOUR SIGNATURE IS REQUIRED ON THE NEXT PAGE.**

## CLAIMANT STATEMENT

### SETTLEMENT OPTIONS

The policy may contain one or more settlement options, such as Interest Payments, Instalments for a Specified Amount, Life Annuity, Life Annuity with Period Certain, and/or Joint Life and Survivorship Annuity. You may choose to receive a lump sum payment or another settlement option available in the policy under which a claim is made. For more information, refer to the optional methods of policy settlement provision in the policy or contact us at the mailing address noted on the front of the claim form.

If you wish to select a settlement option, please indicate your settlement selection by name (not by number) on the line below after you have carefully reviewed the options available in the policy. Availability of settlement options are subject to the terms of the policy. If you do not choose a settlement option, we will send a lump sum settlement to you.

\_\_\_\_\_  
Name of Settlement Option from Policy

### Important Information About the USA PATRIOT Act

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires banks, including our processing agent bank, to obtain, verify and record information that identifies persons who engage in certain transactions with or through a bank. This means that we will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number or other tax identification number of all account owners.

### SUBSTITUTE FOR IRS FORM W-9

This information is being collected on this form versus IRS form W-9 and will be used for supplying information to the Internal Revenue Service (IRS). Under penalty of perjury, I certify that 1) the tax ID number above is correct (or I am waiting for a number to be issued to me), 2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and 3) I am a U.S. person (including a U.S. resident alien). Please cross through item 2 if you have been notified by the IRS that you are subject to backup withholding because you have failed to report all interest and dividends on your tax return.

### SIGNATURES

I/We do hereby make claim to said insurance, declare that the answers recorded above are complete and true, and agree that the furnishing of this and any supplemental forms do not constitute an admission by the Company that there was any insurance in force on the life in question, nor a waiver of its rights or defenses.

**For Residents of New York:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

**For Residents of All Other States:** See the Fraud Information section of this claim form.

**The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.**

\_\_\_\_\_  
Signature of Claimant and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Second Claimant, if any, and Title

\_\_\_\_\_  
Date

## CLAIMANT STATEMENT

### TRUSTEE CERTIFICATION

**TRUSTEE CERTIFICATION (to be completed only if trust is claiming proceeds)**

COMPLETE THIS SECTION ONLY IF A TRUST IS CLAIMING BENEFITS.

Please include a copy of the trust agreement, including the signature page(s) and any amendments.

I/We, the undersigned trustee(s), represent and warrant that the copy of the trust agreement, which we will provide you pursuant to this certification, is a true and exact copy of said agreement, that said agreement is in full force and effect, and that we have the authority to make this certification.

**Generation Skipping Transfer Tax Information - THIS MUST BE COMPLETED FOR PAYMENT**

I/We the undersigned, on oath, deposes and states as follows with respect to the possible application of the Generation Skipping Transfer (GST) tax to the death benefit payment (Mark the appropriate item):

- 1. The GST tax does not apply because the death benefit is not included in the decedent's estate for federal estate tax purposes.
- 2. The GST tax does not apply because the GST tax exemption will offset the GST tax.
- 3. The GST tax does not apply because at least one of the trust beneficiaries is not a "skipped" person.
- 4. The GST tax does not apply because of the reasons set forth in the attached document (Please attach document setting forth the reasons why you believe the GST tax does not apply.)
- 5. The GST tax may apply. As a result, the death benefit payment is subject to withholding of the applicable GST tax. Enclosed is the completed Schedule R-1 (Form 706) for submission to the Internal Revenue Service.

Name of Trust	Date of Trust Agreement
Date of all Amendments	Trust Tax ID Number
Printed Name of Trustee(s)	Signature(s)
a _____	_____
b _____	_____
c _____	_____
d _____	_____

LETTER 4 - HERITAGE TO SPALLINA AS TRUSTEE OF LASALLE NATIONAL TRUST, N.A.,  
DATED DECEMBER 07, 2012



**Heritage Union Life Insurance Company**

P.O. Box 1600, Jacksonville, IL 62651  
Phone 800-825-0003 Fax 803-333-4936  
Visit us at [www.insurance-servicing.com](http://www.insurance-servicing.com)

---

December 7, 2012

LASALLE NATIONAL TRUST N.A.  
C/O ROBERT SPALLINA, ATTORNEY AT LAW  
4355 TECHNOLOGY WAY STE 720  
BOCA RATON FL 33431

Insured Name: SIMON BERNSTEIN  
Policy Number: 1009208  
Correspondence Number: 09808194

Dear Trustee:

We have reviewed the material provided for consideration. This letter is to inform you that additional information is needed to continue our review.

The required items are:

- A certified death certificate. This should indicate cause of death, manner of death, date of birth and Social Security Number. We are not able to accept a death certificate with "pending" as the cause of death.

We will promptly review and evaluate the claim upon receipt of the required documents. If you have any questions, please call our office at 800-825-0003, Monday through Friday from 7:30 AM to 4:30 PM Central Standard Time.

Sincerely,

C Kindred  
Claims Services

Enclosure(s): IL Department of Insurance Notification

JCK001301

The Illinois Department of Insurance requires us to put the following notices on our letters to you.

- Part 919 of the Rules of the Illinois Department of Insurance requires that our company advise you that if you wish to take this matter up with the Illinois Department of Insurance, it maintains a Consumer Division in Chicago at 100 W. Randolph Street, Suite 15-100, Chicago, Illinois 60601 and in Springfield at 320 West Washington Street, Springfield, Illinois 62767.

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 5.1.1  
Eastern Division**

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

Plaintiff,

v.

Case No.:  
1:13-cv-03643  
Honorable Amy J.  
St. Eve

Heritage Union Life Insurance Company

Defendant.

---

**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Monday, January 13, 2014:

MINUTE entry before the Honorable Amy J. St. Eve: Motion hearing held on 1/13/2014. Plaintiffs' motion for leave to file first amended complaint [66] is granted. Counsel shall separately file the amended complaint upon receipt of this order. Eliot Bernstein's motion to strike and for default judgment [69] is denied. Parties shall answer or otherwise plead to the amended complaint by 2/3/14. Discovery is hereby stayed until the proper Trustee is determined. Status hearing set for 1/22/14 is stricken and reset to 2/6/14 at 8:30 a.m. Mailed notice(kef, )

**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.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

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 )  
TRUST DTD 6/21/95, )

Counter-Defendant )

and, )

JPMORGAN CHASE BANK, N.A., )  
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 Amy J. St. Eve  
Magistrate Mary M. Rowland

REPLY TO PLAINTIFF'S  
MEMORANDUM OF LAW  
IN OPPOSITION TO  
INTERESTED PARTY  
WILLIAM E. STANSBURY'S  
MOTION TO INTERVENE  
PURSUANT TO FED. R. CIV. P. 24

\_\_\_\_\_ )  
 )  
 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. )

William E. Stansbury (“Stansbury”), creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, by and through his undersigned counsel, pursuant to Fed. R. Civ. P. 24, files this Reply to Plaintiff’s Memorandum of Law in Opposition to William Stansbury’s Motion to Intervene, and states:

**I. Federal Courts should construe Fed. R. Civ. P. 24 liberally and should resolve all doubts in favor of allowing intervention.**

1. Federal courts should apply Rule 24, Fed. R. Civ. P., and should resolve all doubts in favor of allowing a party to intervene. *Miami Tribe of Oklahoma v. Walden*, 206 F.R.D. 238, 241 (S.D. Ill. 2001) (federal courts should resolve all doubts in favor of permitting a party to intervene; a court should not deny a motion to intervene unless it is certain that the proposed intervenor cannot succeed in the case under any set of facts).

2. In the present case, Stansbury should clearly be permitted to intervene. If the Plaintiff fails prove the valid existence of the purported Trust, as it is required to do, by clear and convincing evidence, the insurance proceeds at issue will inure to the benefit of the estate of the decedent, including creditors of the estate, like Stansbury. Because it is doubtful that the Plaintiff will be able to prove the existence of a valid Trust, Stansbury should clearly be permitted to intervene. *Estate of Wilkening v. Nicholson*, 441 N.E. 2d 158, 163 (Ill. App. Ct. 1982) (the evidence necessary to establish a trust must be unequivocal both as to its existence and to its terms and conditions). Indeed, Plaintiff presents no copy of the alleged Trust and no writing or evidence of the purported Trust's terms and conditions. Without such evidence, Plaintiff cannot prove the existence of a valid Trust under Illinois law. *Id.*

**II. A significant potential creditor of an Estate, like Stansbury, has standing to intervene in an action involving a determination of entitlement to insurance proceeds.**

3. As a significant claimant against the Estate of Simon Bernstein, Stansbury has standing to intervene in this proceeding, which will determine the entitlement to the insurance proceeds. *Reassure America Ins. Co. v. Shomers*, 265 F.R.D. 672 (S.D. Fla. 2010) (potential creditor of estate would be entitled to intervene in action because beneficiary of the insurance policy was disputed; potential creditor was entitled to intervene to dispute alleged trust's right to insurance proceeds as trust was alleged to be invalid); *First Penn-Pacific Life Ins. Co. v. Evans*,

200 F.R.D. 532 (D. Md. 2001) (representatives of creditors/investors were permitted to intervene in action involving life insurance policy where action could deprive creditors/investors of a substantial sum that was claimed to be an asset of the estate); *Munford, Inc. v. TOC Retail, Inc.*, 115 B.R. 388 (N.D. Ga. 1990) (unsecured creditor's committee was allowed to intervene because creditors had a direct interest in the outcome of the proceedings).

**III. When no valid beneficiary is designated by life insurance policy, the proceeds pass to the decedent's Estate.**

4. Since the beneficiary of the insurance policy is disputed, it is very likely, if the Court finds that the trust cannot be proven by clear and convincing evidence, that the proceeds of the insurance policy will inure to the benefit of the Estate of Simon Bernstein and such proceeds will be available to pay the claims of such claimants as Stansbury.

5. If no valid beneficiary is found to exist, the insurance proceeds will pass to the Estate of Simon Bernstein. 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); *Knights of Columbus v. Virginia Trust*, No. 2:12-cv-00688-JCM-VCF, 2012 WL 4963758, at \*3 (D. Nev. Dec. 5, 2012) (where no valid beneficiary existed at time of decedent's death, the decedent's estate became beneficiary of the insurance policy proceeds).

WHEREFORE, proposed Intervenor, William E. Stansbury 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).

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 13, 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 for those counsel or parties who are not authorized to receive electronic Notice of Electronic Filing:

Alexander D. Marks  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22nd Floor  
Chicago, IL 60611  
[amarks@burkelaw.com](mailto:amarks@burkelaw.com)

Frederic A. Mendelsohn  
Burke, Warren, MacKay & Serritella, P.C.  
330 N. Wabash Ave., 22nd Floor  
Chicago, IL 60611  
[fmendelsohn@burkelaw.com](mailto:fmendelsohn@burkelaw.com)

Adam M. Simon  
The Simon Law Firm  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
[asimon@chicago-law.com](mailto:asimon@chicago-law.com)

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

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five North Wabash Avenue, Ste. 1304  
Chicago, IL 60602  
312-759-9000  
[glenn@heilizer.com](mailto:glenn@heilizer.com)

McVEY & PARSKY, LLC  
Attorney for Plaintiff  
30 North LaSalle Street  
Suite 2100  
Chicago, IL 60602  
[joh@mcveyparsky-law.com](mailto:joh@mcveyparsky-law.com)  
Tel: 312-551-2130  
Fax: 312-551-2131

By: /s/ John M. O'Halloran  
John M. O'Halloran (02095076)



**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

Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773

E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)

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

SIMON BERNSTEIN IRREVOCABLE )  
INSURANCE TRUST DTD 6/21/95, )  
by Ted S. Bernstein, its Trustee, Ted S. )  
Bernstein, an individual, )  
Pamela B. Simon, an individual, )  
Jill Iantoni, an individual and Lisa S. )  
Friedstein, an individual. )

Plaintiff, )

v. )

HERITAGE UNION LIFE INSURANCE )  
COMPANY, )

Defendant, )

----- )  
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. )

\_\_\_\_\_)

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, certifies that he caused a copy of Plaintiffs' First Amended Complaint to be served upon the following persons and entities electronically by ECF notification or by US Mail (if so indicated):

Alexander David Marks  
Frederic A. Mendelsohn  
Burke Warren MaCkay & Serritella  
330 N. Wabash Ave.  
22<sup>nd</sup> Floor  
Chicago, IL 60611  
312-840-7000  
*Attorneys for Heritage Union Life Insurance Company  
And Jackson National Insurance Company*

Eliot Ivan Bernstein  
2753 NW 34<sup>th</sup> St.  
Boca Raton, FL 33434  
*Appearing Pro Se*  
(Served by U.S. Mail)

John M. O'Halloran  
McVey & Parsky, LLC  
30 N. LaSalle Street  
Ste. 2100  
Chicago, IL 60602  
*Attorney for Intervenor – William E. Stansbury*

Glenn E. Heilizer  
Law Offices of Glenn E. Heilizer  
Five N. Wabash Ave.  
Ste. 1304  
Chicago, IL 60602  
*Attorney for Third-Party Defendant  
JPMorgan Chase Bank, N.A.*

on the 13th day of January, 2014.

/s/ Adam Simon  
Adam M. Simon (#6205304)  
303 E. Wacker Drive, Suite 210  
Chicago, IL 60601  
Phone: 313-819-0730  
Fax: 312-819-0773  
E-Mail: [asimon@chicagolaw.com](mailto:asimon@chicagolaw.com)  
*Attorneys for Plaintiffs*

**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 denies non-party William E. Stansbury’s motion to intervene [56].

**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 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.<sup>1</sup> 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. Before the Court is non-party William E. Stansbury’s motion to intervene both as of right and permissibly under Federal Rule of Civil Procedure 24(a)(2) and Rule 24(b)(1)(B). For the following reasons, the Court denies Stansbury’s motion brought pursuant to Rule 24(a)(2) and denies, in its discretion, Stansbury’s motion brought under Rule 24(b)(1)(B).

---

<sup>1</sup> On January 13, 2014, Plaintiffs — who now include not only the Bernstein Trust, but four of the five adult children of decedent Simon Bernstein — filed a First Amended Complaint. (R. 73.)



## BACKGROUND

Plaintiffs 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.) Further, 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.) 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.)

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 been able to locate an executed copy of the Bernstein Trust. (*Id.* ¶ 19.) Jackson further alleges that Eliot Bernstein has also claimed that he and/or his children are potential beneficiaries under the policy. (*Id.* ¶ 22.) Indeed, Eliot Bernstein has filed a pro se Cross-Claim and Counter-Claim against Ted Bernstein and the Bernstein Trust. (R. 35, Cross-Claim, Counter.)

In the present motion to intervene, Stansbury maintains that he filed a lawsuit in the Circuit Court of Palm Beach County, Florida against Simon Bernstein, Ted Bernstein, and several Florida corporate defendants in August 2012 to collect compensation and corporate distributions arising from a Florida business venture. (R. 56, Mot. Intervene ¶ 1.) Also, Stansbury substituted the Estate of Simon Bernstein ("Estate") as a Defendant in the Florida lawsuit and asserted claims against the Estate in the Probate Court of Palm Beach, County, Florida based on this business venture. (*Id.* ¶¶ 2, 3.) Stansbury contends that because no one can locate an executed copy of the Bernstein Trust, the Bernstein Trust does not exist. (*Id.* ¶ 5.) As such, Stansbury argues that the proceeds of the life insurance policy are an asset of the Estate and should be distributed to creditors, such as himself. (*Id.* ¶ 7.)

## 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) requires that the applicant claim 'an interest relating to the property or transaction that is the subject of the action.'" *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 571 (7th Cir. 2009) (citation omitted); *see also Wisconsin Educ. Ass'n Council v. Walker*, 705 F.3d 640, 658 (7th Cir. 2013) ("Intervention as of right requires a 'direct, significant[,] and legally protectable' interest in the question at issue in the lawsuit.") (citation omitted). Rule 24(a)(2) does not define "interest," but case law makes it clear that "a mere economic interest" is not enough. *See Flying J, Inc.*, 578 F.3d at 571. As the Seventh Circuit

explains, “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.” *Id.* “Whether 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).

Permissive intervention under Rule 24(b), permits “anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact,” unless intervention would “unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R.Civ.P. 24(b)(1)(B), (b)(3); *see also City of Chicago v. FEMA*, 660 F.3d 980, 987 (7th Cir. 2011) (“Rule 24(b) is ... about economy in litigation.”). In addition, Rule 24(b) “plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.” *Bond v. Utreras*, 585 F.3d 1061, 1069 (7th Cir. 2009) (citation omitted). Permissive intervention under Rule 24(b) is within the district court’s discretion. *See Foster v. Maram*, 478 F.3d 771, 775 (7th Cir. 2007).

### ANALYSIS

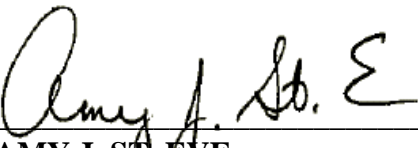
First, Stansbury argues that he is entitled to intervention as of right under Rule 24(a)(2) because he is a creditor of the Estate, albeit an unsecured creditor. (R. 56-3, Probate Stmt. of Claim ¶¶ 1-5.) Assuming Stansbury is a creditor of the Estate based on his Florida lawsuit against certain Florida corporate entities and Ted and Simon Bernstein, being a creditor does not establish the requisite “interest” under Rule 24(a)(2), especially if the purported injury is remote. *See Flying J, Inc.*, 578 F.3d at 571; *see also City of Chicago*, 660 F.3d at 985. Here, Stansbury’s claimed interest is merely an economic interest that is too remote for purposes of Rule 24(a)(2) because the Estate is not a party to this lawsuit, and Stansbury does not assert that he or the Estate are beneficiaries to the life insurance proceeds nor the Bernstein Trust. *See Flying J, Inc.*, 578 F.3d at 571. In other words, the property or transaction at stake in this lawsuit involves Simon Bernstein’s life insurance policy, the beneficiaries of the policy, and the policy’s proceeds — not Stansbury’s compensation for a Florida business venture.

Stansbury’s alleged “interest” is not only remote, but it is speculative. *Solid Waste Agency of No. Cook County v. U.S. Army Corps of Eng’rs*, 101 F.3d 503, 507 (7th Cir. 1996) (“It is not enough to show a purely theoretical possibility that the suit might impair an interest.”). In fact, in the Seventh Circuit, the interest requirement under Rule 24(a)(2) incorporates Article III standing requirements. *See City of Chicago*, 660 F.3d at 984-85; *Aurora Loan Servs., Inc. v. Craddieth*, 442 F.3d 1018, 1022 (7th Cir. 2006). It is well-established that Article III standing requires a causal connection between the alleged injury and one of the party’s conduct. *See Scherr v. Marriott Int’l, Inc.*, 703 F.3d 1069, 1074 (7th Cir. 2013) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). Here, Stansbury’s injury, namely, his unpaid compensation and corporate distributions, is not fairly traceable to any of the alleged conduct pertaining to the life insurance policy proceeds.

In addition, Stansbury does not have a redressable claim as required for Article III standing because he is asking the Court to interfere with the probate proceedings by determining that the life insurance proceeds are part of the Estate's assets and that these assets must be distributed to pay creditors of the Estate, such as himself. *See Swanson v. City of Cheteck*, 719 F.3d 780, 783 (7th Cir. 2013) (to have standing "it must be likely that the injury will be redressed by a favorable decision"). In short, because the remedy Stansbury seeks interferes with the probate court's control and administration of the Estate, the probate exception to federal jurisdiction applies. *See Marshall v. Marshall*, 547 U.S. 293, 311-12, 126 S.Ct. 1735, 164 L.Ed.2d 480 (2006). Thus, Stansbury does not have standing to insert his claim into this lawsuit nor does he have the appropriate "interest" under Rule 24(a)(2).

Next, Stansbury argues that he is entitled to permissive intervention under Rule 24(b)(1)(B) because his claim shares common questions of fact or law with the underlying action involving insurance proceeds. Even if Stansbury's claim shared common questions of fact or law, allowing Stansbury to intervene would not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit. *See City of Chicago*, 660 F.3d at 987. Not only does the Court lack jurisdiction to interfere with the probate court's administration of the Estate, but Stansbury's claims regarding a business venture that started sometime in 2003 would unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit. In sum, the most efficient way to handle the case before the Court is to deny Stansbury's motion to intervene. *See SEC v. Homa*, 7 Fed.Appx. 441, 447 (7th Cir. 2001) (unpublished). Therefore, the Court, in its discretion, denies Stansbury's Rule 24(b)(1)(B) motion to intervene.

**Dated:** January 14, 2014

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